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**CHILDREN, FAMILIES, HEALTH, AND HUMAN SERVICES INTERIM
COMMITTEE**
67th Montana Legislature

SENATE MEMBERS

John Esp
Mary McNally
Albert Olszewski
Diane Sands – Vice Chair

HOUSE MEMBERS

Barbara Bessette
Mary Caferro
Dennis Lenz
Frederick (Eric) Moore - Chair
Gordon Pierson
Tom Welch

COMMITTEE STAFF

Sue O'Connell - Research Analyst
Alexis Sandru - Attorney
Fong Hom - Secretary

MINUTES LOG
ZOOM Conferencing

June 29, 2020
Remote Room 102, Capitol Building
Helena, Montana

Please note: This document is a Minutes Log and provides annotation of the time elapsed between the beginning of the meeting and the time at which the item was presented or discussed, a motion was made, or a vote was taken. The narrative presented here is provided only as a guide to the audio or video recording of the meeting. The official discussion, motion, or vote is available on the audio or video archive of this meeting. The Legislature does not prepare a transcript of the meeting activities. The time designation may be used to locate the referenced discussion on the audio or video recording of this meeting.

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ROLL CALL

Members Present:

Rep. Frederick (Eric) Moore, Chair
Sen. Diane Sands, Vice Chair
Rep. Barbara Bessette
Rep. Mary Caferro
Sen. John Esp
Rep. Dennis Lenz
Sen. Mary McNally
Sen. Albert Olszewski
Rep. Gordon Pierson
Rep. Tom Welch

Staff Present:

Sue O'Connell, Research Analyst
Alexis Sandru, Attorney
Fong Hom, Secretary

AGENDA (Attachment 1)

Committee Action

After reviewing initial bill drafts and bill draft concepts for three of its studies, the committee:

- asked staff to draft three bills that would incorporate into Montana law aspects of a uniform guardianship law to require consideration of less restrictive alternatives, require a guardian of an adult to submit an individualized plan for the adult, and revise reporting requirements for guardians;
- agreed to continue reviewing four bill drafts related to the House Joint Resolution 50 study of senior and long-term care before taking final action on the ideas in August; and
- asked for more information from people involved in the judicial system about a range of concepts related to allowing for a quicker court review of an emergency removal of a child from the home because of abuse or neglect.

Also, during the meeting, the committee:

- approved the draft final report for the HJR 32 study of prenatal drug use;
- heard about public health efforts to reduce or prevent child abuse and neglect through home visiting programs during pregnancy and the early years of a child's life;
- heard from tribal representatives about the health care, prevention, and long-term care services they provide, as well as the barriers to providing those services;
- received an overview of and the agency response to a financial-compliance audit that, among other things, looked at the state's procedures for verifying eligibility for Medicaid and other public assistance programs; and
- received an update from the Department of Public Health and Human Services on agency efforts related to the COVID-19 pandemic.

The committee also decided to hold its final meeting in August by videoconference and to reduce the planned two-day meeting to a one-day meeting.

CALL TO ORDER/ROLL CALL

- 09:00:07 Rep. Eric Moore called the meeting to order at 9:00 a.m. The secretary called roll. All members were present.
- 09:02:07 Rep. Moore gave opening remarks.

HJR 32 STUDY: PRENATAL DRUG USE

Draft Final Report

- 09:03:05 Sue O'Connell, Research Analyst ([Exhibit 1](#))

Committee Questions

- 09:05:30 Sen. Sands asked whether the safe harbor bill passed in 2019 had an effect on the removal of a woman's children if the woman has an addiction problem that is considered a criminal offense.
- 09:07:43 Rep. Moore said that without objection, the committee will wait until the final meeting to vote on the final report.

Public Comment

None

AGENCY OVERSIGHT: LEGISLATIVE STAFF REPORTS

Administrative Rule Review

09:08:22 Alexis Sandru, Committee Attorney ([Exhibit 2](#))

Committee Questions

09:09:24 Sen. Sands discussed the upcoming public hearing for the proposed administrative rule on banning flavored vaping products.

09:10:52 Sen. Esp said that for the record, he is not in favor of moving on that issue without further thought.

Montana Medical Marijuana Act

09:11:37 Ms. O'Connell discussed the Medical Marijuana Act registry statistics ([Exhibit 3](#)). She also briefly discussed the pain management account that was created by Senate Bill 265.

09:13:08 Ms. O'Connell discussed the Board of Medical Examiner's annual report on medical marijuana complaints related to physicians. ([Exhibit 4](#))

Committee Questions

09:13:57 Rep. Moore asked about the decrease in the number of cardholders.

09:14:30 Sen. Sands asked if DPHHS intends to promulgate rules for the pain management account and establish a program or whether that money will be reverted to the general fund.

State Revenue Update

09:16:40 Jon Arnold of the Legislative Fiscal Division reported on the state budget implications of COVID-19 as they relate to DPHHS. ([Exhibit 5](#))

09:21:30 Legislative Fiscal Analyst Amy Carlson reported on the COVID-19 impact on the general fund and state special revenue funds. (See [Exhibit 5](#))

09:24:29 Sam Schaefer of the Legislative Fiscal Division discussed the division's revenue forecast. (See [Exhibit 5](#))

09:39:45 Ms. Carlson discussed general fund ending fund balance scenarios. (See [Exhibit 5](#))

Committee Questions

09:44:01 Rep. Moore asked Ms. Carlson about the minimum ending fund balance.

09:44:29 Rep. Moore asked Mr. Schaefer about the 15.5% dip in revenue.

09:46:01 Rep. Moore asked Ms. Carlson about the federal government freeing up any of the funds from the Coronavirus Aid, Relief, and Economic Assistance (CARES) Act for revenue replacement.

09:48:20 Sen. Olszewski asked Ms. Sandru about 50-1-202, MCA, and questioned whether the statute gives the Department of Public Health and Human Services the power to prohibit flavored vaping products, which are lawful

products. He requested that DPHHS come to the August meeting to explain that.

09:51:34 Rep. Moore asked Ms. Sandru to provide the committee with a copy of 50-1-202, MCA.

FINANCIAL-COMPLIANCE AUDIT OF DPHHS

09:52:45 Alexa O'Dell, Financial Compliance Audit Manager, Legislative Audit Division (**Exhibit 6**)

Committee Questions

- 10:02:01 Sen. McNally expressed concerns about the audit's exclusive use of state tax data to look at Medicaid eligibility. She asked Ms. O'Dell if DPHHS had legal access to the data that the Audit Division used to evaluate eligibility.
- 10:05:34 Sen. McNally said that DPHHS had an agreed-upon plan for determining eligibility using a variety of sources. She noted that income tax filings are a point-in-time measure and questioned the use of only that data as a means of verifying eligibility.
- 10:11:08 Sen. McNally asked if the audit team included anyone who had expertise in Medicaid issues.
- 10:12:14 Rep. Moore said the audit raised two possibilities -- that DPHHS was negligent in verifying income requirements, or the agreed-upon measuring sticks between CMS and DPHHS are not an accurate indicator of actual need for the services.
- 10:16:12 Rep. Moore asked Ms. O'Dell about the sample size as a percentage of the total Medicaid and Medicaid expansion.

Department of Public Health and Human Services' Response to the Audit Report

- 10:22:48 Sheila Hogan, Director, DPHHS, responded to the Legislative Audit Division's audit report.
- 10:31:51 Erica Johnston, Operations Manager, DPHHS discussed the specifics in the audit report.

Committee Questions

- 10:45:39 Rep. Moore asked Director Hogan if DPHHS is properly accounting for the criteria that is authorized for use by CMS and is looking at the right documents to verify eligibility.
- 10:47:51 Rep. Moore asked if DPHHS is adequately looking at the same documents that the Audit Division is looking at.
- 10:48:17 Rep. Bessette asked Director Hogan how the department can be looking at state tax returns as an accurate measure for eligibility.
- 10:49:56 Director Hogan and Ms. Johnston responded to Rep. Bessette's question.
- 10:51:10 Rep. Esp asked Ms. Johnston several questions regarding the five people out of 63 found by the audit to have problems with eligibility and the costs that were associated with those errors.

- 10:55:34 Rep. Caferro asked about the department's approach regarding the requirements and policy set by the Legislature and whether the department adopted the rules accordingly.
- 10:59:35 Rep. Caferro asked Ms. Johnston to explain where the criteria for self-attestation comes from, who funds it, and who approves it.
- 11:05:25 Rep. Caferro asked about the state's responsibility to repay to the federal government the \$84.1 million that the audit estimated could have been paid in error.
- 11:06:30 Rep. Dennis Lenz commented on supporting the work of the Audit Division.
- 11:07:52 Sen. Esp asked for clarification on the improper payout to the five people mentioned in the audit.
- 11:10:11 Rep. Moore asked Ms. Johnston about the repayment on erroneous paid Medicaid claims based on a survey analysis and whether each repayment claim must be individually audited.
- 11:11:49 Sen. McNally commented about the critical work of the Audit Committee. She said this audit is an outlier and there are issues in the audit report because it was a financial audit.

Motion

- 11:12:57 Rep. Caferro moved for an independent third-party review of the audit report of the Department of Public Health and Human Services by a subject matter expert.

Committee Discussion

- 11:13:57 Rep. Moore asked Rep. Caferro if her request for an independent third-party review is to be sent to the Legislative Council or to the 2021 Legislature.
- 11:15:14 Sen. Esp and Rep. Moore said they will resist the motion.
- 11:17:45 Rep. Caferro said the committee should not be applying political opinions to an audit.

Vote

- 11:20:00 The motion failed on roll call vote, 5-5, with Senators Esp and Olszewski and Representatives Lenz, Moore, and Welch voting no, and Senators McNally and Sands and Representatives Bessette, Caferro, and Pierson voting yes.

AGENCY OVERSIGHT: DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES DPHHS Update

- 11:22:29 Sheila Hogan, Director, provided an update on the pandemic in Montana. She discussed COVID-19 cases, hospitalizations, deaths, and testing information, the State Laboratory's testing plan, and the effects on human services programs.

Committee Questions

- 11:39:29 Sen. Sands asked Director Hogan about agency plans for the federal CARES Act money.
- 11:42:22 Sen. Sands commented on how nonprofit organizations, food organizations, and the public sectors have stepped up to match funding for many of the programs.
- 11:44:01 Sen. Esp asked Director Hogan where he can find information online regarding the leading causes of death in Montana this year.
- 11:45:25 Rep. Pierson asked about the length of time it takes to get the results back from those people who have been tested for COVID-19.
- 11:48:02 Rep. Caferro asked about the Audit Division's report on vocational rehabilitation.
- 11:48:24 Laura Smith, Deputy Director, responded.
- 11:50:38 Rep. Moore commented on the good work being done by the department.

GENERAL PUBLIC COMMENT

- 11:51:02 Mary Windecker, Behavioral Health Alliance of Montana, commented on the COVID-19 impacts and the audit impact.
- 11:58:21 Ms. O'Connell made reference to two statutorily required DPHHS reports that were in the committee's packet: House Bill 458: Quarterly Tracking of Current and Former Montana Developmental Center Clients ([Exhibit 7](#)) and House Bill 660: Mobile Crisis Units ([Exhibit 8](#)).

LUNCH BREAK (reconvened at 12:30 p.m.)

SB 202 STUDY: UNIFORM GUARDIANSHIP LAW

Consideration of Recommendations for CFHHS Legislation

- 12:30:43 Alexis Sandru, Committee Attorney ([Exhibit 9](#))
- 12:36:05 Sarah McClain, Director, State Law Librarian, reported on the activities of the Working Interdisciplinary Network of Guardianship Stakeholders (WINGS).

Committee Questions

- 12:45:08 Sen. McNally asked Ms. McClain about the legislative proposals that the committee had discussed.
- 12:46:20 Sen. Sands discussed her concerns of the frequent waiving of the annual reporting requirement and said the annual reporting should be included in any legislation that the committee is considering.
- 12:49:18 Sen. McNally said that she wanted to know if the committee had any interest in drafting legislation. She agreed with Sen. Sands about not allowing annual reviews to be waived.

Public Comment on SB 202 Study

- 12:51:17 Beth Brenneman, Disability Rights Montana
- 12:56:20 Ms. O'Connell submitted testimony from Mike Batista, AARP Montana. [\(Exhibit 10\)](#)

HJR 50 STUDY: SENIOR AND LONG-TERM CARE Overview of Bill Drafts

- 12:57:25 Ms. O'Connell discussed four bill drafts requested by the committee in May and considerations related to each bill draft. [\(Exhibit 11\)](#)

HJR 50-1: Clarifying Requirements for the Medically Needy Program

- 12:58:39 Ms. O'Connell [\(Exhibit 12\)](#)

HJR 50-2: Requiring 30-Day Notification Before Termination of Waiver Services

- 13:00:58 Ms. O'Connell [\(Exhibit 13\)](#)
- 13:03:01 Rep. Moore asked if there is a reason that the 30-day notification has to be in statute.

HJR 50-3: Requiring Rulemaking for Substantive Changes to Waiver Services

- 13:03:33 Ms. O'Connell [\(Exhibit 14\)](#)

HJR 50-4: Establishing Legislative Intent for Waiver Services

- 13:05:40 Ms. O'Connell [\(Exhibit 15\)](#)
- 13:06:57 Ms. O'Connell discussed three points for the committee's consideration that were outlined in the briefing paper. (See Exhibit 11)

Draft Final Report

- 13:08:30 Ms. O'Connell [\(Exhibit 16\)](#)

Public Comment on HJR 50 Study

- 13:11:13 Travis Hoffman, Advocacy Coordinator, Summit Independent Living
- 13:14:49 Beth Brenneman, Disability Rights Montana
- 13:22:02 Hailey Love
- 13:26:59 Marie Matthews, State Medicaid Director and Branch Manager for the DPHHS Medicaid and Health Services Branch
- 13:32:20 Rose Hughes, Executive Director, Montana Health Care Association
- 13:42:06 Ms. O'Connell noted that the committee had received written public comments from the Alzheimer's Association [\(Exhibit 17\)](#) and the Area Agencies on Aging [\(Exhibit 18\)](#).

Tribal Perspective

13:42:33 Lisa Whitford, Director, Chippewa Cree Senior Citizen Program, discussed what long-term care services are being offered on the Rocky Boy Reservation.

HJR 48/49 STUDY: CHILD PROTECTIVE SERVICES

Child and Family Services Division Update

13:54:14 Martha Vining, Administrator, Child and Family Services Division

Committee Questions of Ms. Vining

14:02:35 Rep. Moore asked about number of calls CFSD is receiving.

14:03:18 Rep. Lenz thanked Ms. Vining for her work supporting and retaining workers.

14:03:47 Sen. Sands asked questions regarding training modules and how CFSD is incorporating the new priorities for the Family First Prevention Services Act. She also asked about demographic data relative to ethnicity of children who have been removed and whether the division is incorporating cultural sensitivity and bias reduction into training for staff. She also asked for any data on the number of staff by ethnicity and the number of Native American case workers in the field.

14:10:13 Sen. Sands commented on the disproportionate impacts on the Native population and the lack of services offered in many Indian communities.

Building Strong Families through Local Public Health Partnerships

14:12:28 Shawn Hinz, Vice President of Public Health Services, RiverStone Health, Billings, gave a presentation on public health partnerships.

14:24:16 Drenda Niemann, Health Officer, Lewis and Clark Public Health, discussed evidence-based home-visiting models that are funded by state and federal dollars for home visiting.

14:31:21 Matthew Richardson, Government Affairs Manager, Nurse-Family Partnership, gave a presentation on evidence-based home visiting. [\(Exhibit 19\)](#)

Committee Questions of the panelists

14:41:42 Sen. Sands asked Mr. Richardson about domestic violence.

14:43:17 Rep. Caferro asked Ms. Hinz if RiverStone serves families who are currently in child protective services and if RiverStone records outcomes for those families.

BREAK (reconvened at 3:00 p.m.)

Tribal Perspective

15:00:29 Todd Wilson, Executive Director, Helena Indian Alliance-Leo Pocha Clinic and Kyle Ann Johnson, Leo Pocha Behavioral Health Director [\(Exhibit 20\)](#)

Committee Questions

- 15:16:49 Sen. Sands asked Mr. Wilson about expanding health and mental health services through the use of grants received under Section 330 of the Public Health Service Act.
- 15:19:32 Sen. Sands asked Mr. Wilson about any plans to acquire the services of a physician assistant or to provide pharmacy services so people don't have to travel for hours to get their prescriptions filled.
- 15:22:49 Rep. Caferro asked the panelists to elaborate on the role Medicaid expansion has played in child protective services.

Overview of Bill Drafts

- 15:25:40 Ms. O'Connell gave an overview of the bill drafts for the HJR 48/49 Study. ([Exhibit 21](#))

HJR 48/49-1: Shelter Care Hearing

- 15:28:54 Ms. O'Connell ([Exhibit 22](#))

HJR 48/49-2: Earlier Show Cause Hearing

- 15:30:42 Ms. O'Connell ([Exhibit 23](#))

HJR 48/49-3: Pilot Project Review

- 15:32:10 Ms. O'Connell ([Exhibit 24](#))

Committee Questions

- 15:34:41 Rep. Moore asked whether the shelter care hearing in HJR 48/49-1 would be in addition to the show cause hearing already required in statute.
- 15:35:23 Rep. Caferro asked how the \$1 million that was transferred from DPHHS to the Office of the Public Defender is being used.
- 15:37:00 Rep. Caferro asked about the criteria or requirements for the \$1 million and any outcomes from the use of the money.
- 15:38:59 Rep. Lenz discussed the three bill drafts.
- 15:42:24 Sen. Sands suggested the committee should hear from the court system or get comments from the courts regarding the proposed bills.
- 15:44:15 Rep. Caferro said that she would not support any of the bills because she believes money would be better spent on prevention efforts.
- 15:45:34 Rep. Lenz discussed the goal of keeping families together and preventing removals.
- 15:46:36 Rep. Moore suggested getting feedback from the courts at the August meeting.
- 15:47:02 Rep. Bessette agreed with Rep. Caferro on the importance of prevention efforts.

Public Comment on HJR 48/49 Study

None

COMMITTEE WORK SESSION

HJR 32 Study Final Report

- 15:48:26 Ms. O'Connell discussed the draft final report on the HJR Study.
- 15:49:21 Sen. Sands moved to accept final HJR 32 Study Report, as written.
- 15:49:45 The committee members were in agreement to accept the final report of the HJR 32 Study.

SB 202 Study: Uniform Guardianship Law

- 15:50:11 Sen. McNally discussed moving forward with bill drafts related to the uniform guardianship law.
- 15:51:05 Rep. Welch expressed his concerns about passing bills that deal with guardianship. He wanted to address the issue of waiving the annual reporting.

Motion/Vote

- 15:51:44 Sen. McNally moved that staff draft legislation regarding the aspects of the uniform guardianship law that were discussed earlier in the day.
- 15:52:13 The motion passed unanimously on a voice vote.

HJR 50 Study: Senior and Long-Term Care

- 15:52:43 Ms. O'Connell discussed the draft final report on the HJR 50 Study and the four bill drafts.
- 15:53:13 Sen. McNally said she would like to wait to vote on the bills until the August meeting. She said she is fine with the final report.
- 15:53:50 Sen. Sands discussed the importance of moving the bills to set some requirements in statute rather than by rule. She would like to continue working on the bill drafts.
- 15:54:55 Rep. Lenz said that he was fine with all the bills drafts with the exception of the 30-day notification bill. He asked that more information be provided on potential issues raised by Ms. Matthews.

HJR 48/49 Study: Child Protective Services

- 15:56:08 Rep. Moore discussed getting more information from the courts to be presented at the August meeting.

Other Health and Human Services Matters

- 15:56:37 Ms. O'Connell asked the committee if there were any items from today's agenda on agency oversight duties that the committee wanted to discuss.

August Agenda Items

15:56:58 The committee discussed the agenda for the August meeting and agreed the meeting will be a one-day Zoom meeting.

15:58:29 Rep. Caferro thanked the staff for their good work.

ADJOURNMENT

15:59:22 Rep. Moore adjourned the meeting at 3:59 p.m.

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