



CHILDREN, FAMILIES, HEALTH, AND HUMAN SERVICES INTERIM COMMITTEE

67th Montana Legislature

SENATE MEMBERS

Chris Friedel
Jen Gross
Theresa Manzella
Mary McNally

HOUSE MEMBERS

Ed Stafman
Mary Caferro
Jennifer Carlson
Jane Gillette
Dennis Lenz
Danny Tenenbaum

COMMITTEE STAFF

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

MINUTES LOG

August 10, 2021
Capitol Building, Room 137, Zoom Meeting
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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MEMBERS PRESENT via Zoom:

Rep. Ed Stafman, Presiding Officer
Rep. Dennis Lenz, Vice Presiding Officer
Rep. Mary Caferro
Rep. Jennifer Carlson
Sen. Chris Friedel
Rep. Jane Gillette
Sen. Theresa Manzella
Sen. Mary McNally
Rep. Danny Tenenbaum

MEMBERS EXCUSED:

Sen. Jen Gross

STAFF PRESENT:

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

AGENDA ([Attachment 1](#))

VISITORS' LIST ([Attachment 2](#))

COMMITTEE ACTION

As required under 53-2-215, the Committee heard presentations from the Department of Public Health and Human Services (DPHHS) on:

- a draft Medicaid Section 1115 waiver application to implement portions of the Healing and Ending Addiction through Recovery and Treatment initiative for behavioral health services; and
- proposed amendments to eliminate 12-month continuous eligibility from two Section 1115 waivers that cover the Medicaid expansion population, low-income parents, and individuals with Serious and Disabling Mental Illness.

The committee also:

- reviewed changes to its draft interim work plan and adopted the work plan as revised;
- continued its informal objection to MAR Notice No. 37-949, pertaining to reimbursement rates for providers of services to people with developmental disabilities; and
- continued its informal objection to portions of MAR Notice No. 37-944, pertaining to provider rate increases for a variety of Medicaid and non-Medicaid providers, and revised the objection so it covers only maternity and optometry services.

CALL TO ORDER/ROLL CALL

- 08:02:33 Rep. Ed Stafman called the meeting to order at 8:02 a.m. The committee secretary called roll. Senators Gross and McNally left their proxies with Rep. Caferro and Sen. Manzella left her proxy with Rep. Carlson. ([Attachment 3](#))
- 08:05:55 Rep. Stafman gave opening remarks.

ADMINISTRATIVE MATTERS

Revised Interim Work Plan

- 08:06:45 Sue O'Connell, Staff Researcher, discussed the revised Draft Interim Work Plan. ([Exhibit 1](#))

Objections to MAR Notices 37-944 and 37-949

- 08:10:41 Alexis Sandru, Staff Attorney, gave a brief background on the committee's objections to MAR Notices 37-944 and 37-949.
- 08:11:44 Rep. Stafman asked Ms. Sandru if the objections have anything to do with the amended rules.
- 08:14:09 Rep. Stafman referred the committee to the document "DPHHS Q&A: MAR 37-944 and 37-949" that DPHHS provided to the committee in advance of the meeting. ([Exhibit 2](#))

Public Comment on Work Plan and Rule Objections

- 08:14:46 Abigail St. Lawrence, Montana Optometric Association
- 08:18:44 Beth Brennenman, Disability Rights Montana

HEART INITIATIVE: WAIVER APPLICATION

Overview of 1115 Waivers and Committee Role

08:22:02 Ms. O'Connell ([Exhibit 3](#))

HEART Waiver Application

08:26:12 Adam Meier, Director, Department of Public Health and Human Services

08:27:42 Zoe Barnard, Administrator, DPHHS Addictive and Mental Disorders Division, gave a presentation on the HEART Section 1115 Demonstration Waiver. ([Exhibit 4](#))

Questions/Discussion

09:03:45 Rep. Tenenbaum asked if the department is willing to modify the HEART Waiver application to limit the request for funding services in facilities with more than 16 beds to private community-based care providers, rather than including the Montana State Hospital in the request.

09:06:59 Rep. Tenenbaum asked if there is any legal issue with using federal Medicaid money for a person's involuntary medication or involuntary confinement in an institution.

09:08:48 Sen. Friedel asked Ms. Barnard if the proposal to use Medicaid funds for the State Hospital is reverting to the days of institutionalization.

09:11:18 Sen. McNally asked whether any future savings would revert back to community-based care.

09:12:34 Director Meier

09:13:18 Rep. Caferro asked why the legislative subcommittee that works on the DPHHS budget wasn't told that the agency would be seeking Medicaid funding for the State Hospital.

09:15:30 Ms. Barnard

09:16:23 Director Meier

09:17:39 Rep. Caferro asked how the change would affect community services and where it was represented in the budget.

09:19:03 Director Meier responded.

09:20:44 Rep. Caferro asked where the legislative authority exists for spending funds expected to be saved through the waiver and how the department plans to spend those cost savings.

09:23:29 Director Meier

09:23:53 Marie Matthews, Medicaid and Health Services Branch Manager

09:26:28 Rep. Caferro asked about the requirement of the federal government that waivers be cost-neutral.

09:29:24 Director Meier and Ms. Barnard responded.

09:31:42 Rep. Stafman asked Ms. Barnard if the department plans to use the American Rescue Plan Act (ARPA) funds to address the crisis of the lack of providers in Montana.

09:32:35 Ms. Barnard and Director Meier responded.

09:34:50 Rep. Stafman discussed the Institutions for Mental Disease (IMD) exclusion and asked if there were any provisions in the waiver to promote more community residential beds.

09:35:27 Ms. Barnard

Public Comment on Proposed HEART Waiver Application

09:37:16 Mary Windecker, Behavioral Health Alliance of Montana
09:42:38 Beth Brenneman, Disability Rights Montana
09:47:42 Katherine Buckley-Patton, Beaverhead County Mental Health Local Advisory Council
09:51:40 Joel Peden, Executive Director, Montana Association of Centers for Independent Living
09:55:29 Rep. Mary Ann Dunwell, House District 84. Rep. Dunwell also commented on the HELP Act.
09:59:48 Stacey Anderson, Montana Primary Care Association

BREAK (reconvened at 10:12 a.m.)

WAIVER AMENDMENTS: HELP AND WASP CONTINUOUS ELIGIBILITY

Overview of Proposed Amendments

10:13:16 Darci Wiebe, administrator of the DPHHS Health Resources Division, gave a presentation on the department's planned amendment to remove 12-month continuous eligibility in two waivers: the Health and Economic Livelihood Partnership (HELP) Act waiver for Medicaid expansion and the Waiver for Additional Services and Populations (WASP) that covers low-income parents and adults with Serious and Disabling Mental Illness (SDMI). [\(Exhibit 5\)](#)

Questions/Discussion

10:33:44 Rep. Stafman asked if recipients of HELP Act or WASP waiver services are currently required to report changes in their status and if the changes are temporary, whether the recipient would be removed from the program immediately rather than waiting for the end of the 12-month period.
10:36:10 Ms. Matthews
10:39:06 Rep. Stafman asked about the additional processes that the department might use to look for these changes, other than the self-reporting process.
10:39:58 Ms. Matthews
10:40:48 Rep. Gillette clarified that 53-6-1314(b), MCA, prohibits the department from disenrolling people from the Medicaid expansion program because of temporary changes in income.
10:41:39 Rep. Caferro asked what outcomes will be demonstrated by eliminating continuous eligibility.
10:42:38 Ms. Wiebe and Ms. Matthews responded.
10:45:03 Rep. Caferro asked about paperwork requirements, particularly when workers don't know if they have a permanent or temporary change in income.
10:46:44 Ms. Matthews
10:47:25 Rep. Caferro said she is unclear on the outcome the department is seeking but feels that the outcome will be a reduction in the Medicaid rolls. She asked Ms. Wiebe to clarify her comments about cost savings and the decrease in the Medicaid rolls.
10:48:59 Ms. Wiebe
10:51:37 Rep. Caferro asked for further clarification on the estimate of a 2.6% loss in coverage, including the number of people affected.

10:52:47 Ms. Wiebe
 10:54:13 Rep. Tenebaum asked whether Montanans who lose coverage because of the waiver amendment will have improved life outcomes.
 10:54:43 Director Meier
 10:56:00 Rep. Tenebaum asked Director Meier how he would explain to people who will lose Medicaid coverage under the change why the change was occurring and how they could obtain other health insurance coverage and asked whether Director Meier is expecting improved or worsened economic and health outcomes.
 10:58:05 Director Meier
 10:58:28 Rep. Gillette discussed having some indicators from the enrollee satisfaction surveys.
 10:59:53 Rep. Stafman asked how many people will be impacted by the amendment.
 11:02:42 Ms. Matthews

Public Comment on Proposed Waiver Amendments

11:05:00 Mary Windecker, Behavioral Health Alliance of Montana
 11:10:12 Heather O'Loughlin, Montana Budget and Policy Center
 11:14:33 Stacey Anderson, Montana Primary Care Association
 11:18:20 Kristen Page-Nei, representing self
 11:23:24 Lois Fitzpatrick, American Cancer Society Cancer Action Network
 11:28:37 Rep. Mary Ann Dunwell, House District 84
 11:32:31 Ella Smith, Program Director, Montana Women Vote
 11:35:46 Sydney Barry, Montana Coalition Against Domestic and Sexual Violence
 11:36:40 Beth Brenneman, Disability Rights Montana
 11:38:03 Katherine Buckley-Patton, Beaverhead County Mental Health Local Advisory Council

Questions/Discussion

11:41:12 Rep. Gillette asked whether the department would help the 1,000 people with SDMI transition to a plan on the health insurance exchange if they lose Medicaid coverage.
 11:42:51 Ms. Matthews
 11:44:36 Rep. Carlson asked Ms. Matthews about the lack of case managers.
 11:45:58 Ms. Matthews
 11:48:25 Rep. Carlson asked Ms. Matthews if it's accurate to say that the people who would lose their Medicaid coverage are people whose circumstances are improving.
 11:49:51 Ms. Matthews
 11:51:54 Rep. Caferro asked Ms. Page-Nei to speak to the story of her brother and explain why his situation is different from somebody who has never applied for Medicaid and has always had state-funded insurance.
 11:54:15 Ms. Page-Nei

11:59:02 Rep. Tenenbaum asked Ms. Matthews whether the department has any plans to mitigate the possibility that people might lose coverage simply because they can't navigate the required paperwork.
12:00:11 Ms. Matthews

GENERAL PUBLIC COMMENT

12:03:45 Heather Ditch provided her written comments regarding the Comprehensive School and Community Treatment program (CSCT). ([Exhibit 6](#))
12:04:01 Rep. Stafman discussed Rep. Regier's e-mail response to the committee's question about the reasons for the transfer of the CSCT program from DPHHS to the Office of Public Instruction ([Exhibit 7](#)). He said that committee members who want to hear more from Rep. Regier regarding the transfer should contact Ms. O'Connell and she will arrange that for the September meeting.

BREAK (reconvened at 12:15 p.m.)

COMMITTEE WORK SESSION

Revised Interim Work Plan

Motion/Vote

12:15:57 Rep. Gillette moved to adopt the revised interim work plan as presented. The motion passed unanimously by voice vote, with Senators Manzella, Gross, and McNally voting aye by proxy.

MAR Notice 37-944, Physician Reimbursement

Motion

12:17:33 Rep. Caferro moved to continue the informal objection to MAR Notice 37-944 but modify it to include optometrists and limit the objection to physician rates only to maternity care. She would like to request that DPHHS answer questions about the proposed rule at the September meeting.

Discussion on the Motion

12:19:55 Rep. Stafman asked Rep. Caferro to clarify her motion.
12:20:50 Rep. Lenz asked Ms. Sandru whether a modified objection would be a new objection that would change the timeframe for the objection.
12:22:20 Rep. Lenz asked Rep. Caferro to clarify her motion.
12:22:27 Rep. Caferro said that her motion is to continue the informal objection, to discuss it at the September meeting, and to limit the objection to optometrists and maternity care. It does not include the other physicians because the department worked with the group representing physicians to come up with a change that is satisfactory to physicians. There are still concerns about maternity care.
12:25:33 Rep. Lenz asked Ms. Matthews to explain why optometrists are considered physicians.
12:26:54 Ms. Matthews
12:28:10 Rep. Carlson said that she is not comfortable voting on the objection without having her questions answered.
12:28:52 Rep. Stafman said that the motion is based on receiving written information from DPHHS on the rule on Friday and Monday. The motion offers an opportunity to ask questions about that information at the September meeting.

12:29:54 Rep. Carlson said she would prefer that the committee not extend the objection until the end of September because people are waiting for the committee to make decisions.

12:31:26 Rep. Gillette said that to even vote on the motion, she needs more information. She asked Ms. Matthews about segregating obstetrics and optometric services from the rule.

12:32:50 Ms. Matthews

12:35:09 Rep. Gillette asked for further clarification.

12:35:54 Rep. Gillette said that 37-10-104, MCA, talks about discrimination between payment for optometrists and other providers. She asked Ms. Matthews to comment on that.

12:37:40 Ms. Matthews

12:38:20 Rep. Lenz said he doesn't support renewing the objection.

12:39:07 Rep. Caferro provided closing comments on her motion.

Roll Call Vote

12:43:38 The motion passed on a roll call vote, 7-3. Senator Friedel voted aye; Senators Gross, Manzella, and McNally voted aye by proxy, and Representatives Caferro, Stafman, and Tenenbaum voted aye. Representatives Carlson, Gillette, and Lenz voted no.

MAR Notice 37-949, provider rate increase for developmental disability services

12:44:03 Ms. O'Connell briefly discussed MAR Notice 37-949 and noted that the committee had previously informally objected to the entire rule.

Motion

12:44:53 Rep. Caferro moved to continue the committee's informal objection to MAR Notice 37-949.

Discussion on the Motion

12:48:03 Rep. Gillette asked for more clarity on Rep. Caferro's motion.

12:48:45 Rep. Caferro said she wants to make sure that legislative intent related to provider rate increases and increases for direct care workers is being followed.

Roll Call Vote

12:52:18 The motion passed on a roll call vote, 9-1, with Senator Friedel and Representatives Caferro, Carlson, Gillette, Stafman, and Tenenbaum voting aye, and Senators Gross, Manzella, and McNally voting aye by proxy. Representative Lenz voted no.

HEART Waiver Application

12:52:45 Rep. Stafman said that committee members could discuss the waiver and submit comments individual, in groups, or as a committee.

12:53:30 Rep. Gillette said she is in favor of submitting individual comments and would like more information on cost-benefit analysis of outcome measures.

12:55:07 Sen. Friedel concurred with Rep. Gillette's comments.

12:56:27 Rep. Stafman said that committee members will provide their own comments.

Continuous Eligibility Waiver Amendments

- 12:57:12 Rep. Stafman discussed information that Todd Everts, Legal Director of the Legislative Services Division, had provided on the use of intent language in House Bill 2.
- 13:00:16 Rep. Caferro discussed her support for continuous eligibility for the Medicaid expansion population.

ZOOM DISCONTINUED due to technical difficulties.

ZOOM RESUMED at 1:12 p.m.

Continuous Eligibility Waiver Amendments (continued)

- 13:13:44 Rep. Gillette noted that the HELP and WASP waiver amendments would not end the 12-month continuous eligibility until the federal emergency order on COVID-19 ends.

ADJOURNMENT

- 13:17:50 Rep. Stafman adjourned the meeting at 1:17 p.m.

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