

**Sisyphus Is Alive and Well in Health and Human Services:
Pushing the Policy Boulder up the Fiscal Hill**

A Report to the 58th Legislature
From the
Children, Families,
Health, and Human Services
Interim Committee

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After the September 11, 2001, tragedy, David Niss, staff attorney assigned to this Committee, was called to active duty as Army Judge Advocate General in Washington, D.C. The LSD Legal Office stepped up to assume his duties: Valencia Lane assumed administrative rule review duties, and Eddy McClure assisted with issues regarding Indian affairs and wage and hour issues on respite care. Greg Petesch also assisted with issues regarding mental illness and developmental disabilities. Research staff is grateful to the Legal Office for its team effort in supporting this Committee and in supporting our colleague in service to our country.

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Preface

The title to this report reflects the frustration of a policy committee during lean fiscal times. The interim began with somewhat strained legislative staff resources (the research analyst was also assigned to the decennial task of redistricting), and three studies were authorized relating to health care issues: mental health issues, health care costs and insurance, and privatization of foster care. The mental health issues remained with the Legislative Finance Committee as an extension of the last interim, a health care costs and insurance study was assigned to an Economic Affairs Subcommittee, and the foster care privatization was relegated to a white paper. The interim had hardly begun when events of such proportion occurred that could not have been imagined or predicted and accelerated an economic bubble burst. That burst proved to have dire ramifications in this state economically that hit the area of health and human services especially hard.

The September 11, 2001, tragedy also turned typical public health issues, such as communicable diseases, public health/environmental lab facilities, and confidentiality of medical information, into "Homeland Security" issues.

Barely into the new fiscal year, an initial wave of across-the-board budget cutting occurred to mitigate any need for supplemental appropriations. A second budget cut resulted from the triggering of a statutory requirement to maintain a sufficient ending fund balance and signaled the beginning of a revolving door of amendments to administrative rules limiting the amount, scope, and duration of Medicaid services. Two months into the second fiscal year of the biennium, a special session of the Legislature was held for yet another wave of across-the-board cuts, again hitting human services hard because of its proportion of the state budget and its reliance on general fund money to bring in a larger amount of federal matching funds.

The Children, Families, Health, and Human Services Interim Committee faithfully monitored the Department of Public Health and Human Services, performing its duties that are statutorily required, but did not have the time or opportunity to advance any policy issues.

The time usually spent on these issues was spent trying to catch up on or to understand the latest round of budget cuts and their impacts on existing programs. Policy issues of mental health and the uninsured were being studied by other committees, committees usually involved in fiscal analysis or economic affairs, although many of the members of this interim Committee faithfully participated as full members.

It is hoped that health care and human services issues can be reunited in a single interim committee, the Children, Families, Health, and Human Services Interim Committee, and can have sufficient staff resources allocated from both the Legislative Services Division and the Legislative Fiscal Division. This would enable policy and corollary fiscal issues to be studied as a unified whole and enable the Committee to work toward achieving understanding and advancement of policy with a realistic fiscal element.

Introduction

The Children, Families, Health, and Human Services Interim Committee (Committee) is the descendant of the former Joint Oversight Committee on Children and Families. Begun as a study committee authorized by House Joint Resolution No. 54 in 1991, it was continued for a second biennium under a study resolution in 1993 and became a permanent interim committee in 1995 (Ch. 414, L. 1995).

The current interim committee structure was created in 1999 (Senate Bill No. 11, Ch. 19, L. 1999). Senate Bill No. 11 placed responsibility for monitoring each of the Executive Branch agencies under one of six interim committees or the Environmental Quality Council. Also, interim committee duties were reformulated, adding administrative rule review and program evaluation. The monitoring functions for the Department of Public Health and Human Services (DPHHS) and the entities attached to the DPHHS for administrative purposes (5-5-225, MCA) were assigned to this Committee.

In 2001, the Legislature passed Senate Bill No. 10 (Ch. 210) revising interim committee functions to include responsibility for reviewing draft legislation proposed by state agencies. This function was previously performed by the Legislative Council that, as a courtesy, would request all agency legislation. The change is intended to provide more continuity between the interim and the session by having the committee that is involved in a specific subject area preview the legislation that the agencies are proposing and allow it to be drafted for preintroduction for consideration by the full Legislature in the following legislative session.

Study Plan and Committee Activities

The first meeting of the 2001-02 interim was held August 9, 2001, at which time the Committee elected its officers. Representative Trudi Schmidt was elected as presiding officer, and Senator Duane Grimes was elected as vice presiding officer. Legal staff provided an overview of the Committee's administrative rule review responsibilities. Staff prepared a list of issues that included possible topics derived from the DPHHS structure,

2001 legislative issues, House Bill No. 2 (Ch. 572, L. 2001), and interested persons' concerns. This provided a guide for the activities of the interim.

The Committee received a Director's report at each meeting from Gail Gray, Director of the DPHHS. The Committee received introductory presentations from each of the DPHHS division administrators at the first three meetings:

1. Addictive and Mental Disorders Division - Dan Anderson, August 9, 2001, May 14, 2002 (HJR 1)
2. Child and Family Services Division - Chuck Hunter, November 16, 2001
3. Child Support Enforcement Division - Lonnie Olson, February 13, 2002
4. Disability Services Division - Joe Mathews, February 13, 2002, May 15, 2002
5. Health Policy and Services Division - Maggie Bullock, November 16, 2001
6. Human and Community Services Division - Hank Hudson, August 9, 2001
7. Operations and Technology Division - Mike Billings, February 13, 2002
8. Quality Assurance Division - Mary Dalton, November 16, 2001
9. Senior and Long Term Care Division - Mike Hanshew, August 9, 2001

The Deputy Director, John Chappuis, and new Division Administrators for the Quality Assurance Division, Mary Dalton, and Child Support Enforcement Division, Lonnie Olson, were introduced at the November 16, 2001, meeting. At the February 13, 2002, meeting, the DPHHS announced a new Fiscal Services Division, and Mick Robinson was named as its administrator. The new Division will focus on finances and accounting, and an Internal Auditor was hired to find and resolve problems and strengthen internal controls.

Interim studies that were relevant to the Committee were:

- House Joint Resolution No. 1: Joint mental health subcommittee of the Legislative Finance Committee (LFC). Senator Eve Franklin and Senator Gerald Pease were appointed members from this Committee to serve on the HJR 1 mental health subcommittee. That subcommittee met on November 27 and 28, 2001, and on February 7 and 8, May 14, and September 17 and 18, 2002.
- Senate Joint Resolution No. 8: A privatization of foster care and adoptive services study was assigned to the Committee by the Legislative Council with a recommendation that it be conducted as a staff white paper for presentation to the

Committee for final recommendations. The Committee voted at its November 16, 2001, meeting to report to the Legislative Council that:

Because of limitations on Committee time and staff resources and as allowed pursuant to 5-5-217, MCA, the Children, Families, Health, and Human Services Interim Committee recommends that the Senate Joint Resolution No. 8 study on the privatization of foster care and adoption services not be conducted. This study was ranked number 9 in the interim study poll and was assigned to the Children and Families Committee as a white paper. The Committee heard a presentation on foster care and adoption services from the Child and Family Services Division of the Department of Public Health and Human Services. The Division estimated that it needed approximately \$11 million in new proposals for next biennium but will be unable to make that request because of budget constraints. The privatization of one or more of its functions would further impact the current limited resources. Also, there is a Legislative Performance Audit being performed on foster care services (HJR 32) and in addition, a federal review that will be conducted shortly of the Division and its practices.

The Legislative Council voted at its November 29, 2001, meeting to accept the Committee's recommendation¹.

- Senate Joint Resolution No. 22: A study of health insurance and health care costs was assigned to the Economic Affairs Interim Committee by the Legislative Council with a recommendation for a subcommittee to be formed with members of the Committee and the LFC to work with the Economic Affairs Interim Committee on this topic. The members of this Committee that served on the SJR 22 subcommittee were: Representatives Bill Thomas, Bob Lawson, Trudi Schmidt, and Michelle Lee and Senator Jerry O'Neil. The SJR 22 subcommittee met on November 29, 2001, and on February 14, April 4, June 6, August 30, and September 12, 2002.

Legislators from the Committee served in many capacities on other related committees:

- Representative Trudi Schmidt served on the State Family Services Advisory Council for the DPHHS.

¹Senator O'Neill subsequently requested that legislation be drafted for the 2003 session regarding this issue (LC0003).

- Senator Duane Grimes served as the chairman of the Governor's Task Force on Alcohol, Tobacco, and Other Drug Control Policy.
- Representative Bill Thomas attended various meetings of the Montana Dental Access Coalition.
- Representative Bob Lawson served on the Developmental Disabilities Policy Advisory Council².

The Committee held a total of five meetings over the interim, in addition to the meetings that many members attended on behalf of the Committee. One of the meetings was held jointly with the HJR 1 Subcommittee on Mental Health Issues. Committee minutes and exhibits, including reports, are available from the Legislative Services Division for the following meeting dates:

- August 9, 2001
- November 16, 2001
- February 12-13, 2002
- May 14-15, 2002 - joint meeting with HJR 1 subcommittee
- August 23, 2002.

Committee staff also created and maintained a website for the Committee at http://leg.mt.gov/Interim_Committees/Children_and_Families/index.htm that provides access to agendas, minutes, staff reports, and other information about Committee activities. Relevant information from this and past interims is available on the website.

House Bill No. 2 (Ch. 572, L. 2001), the general appropriations bill, made numerous references to the DPHHS and interim committee work as did other pieces of legislation. In total, there were eight requirements in legislation passed by the 57th Legislature for reports, information, or proposals to be presented to the Committee.

Provisions pertaining to this Committee in House Bill No. 2 were:

²This is not an exhaustive list of the other activities of the Committee members, but lists some activities that were directly related to the Committee's work.

- The DPHHS was required to provide information by program by August 1, 2002, on rates for services, wage and benefits rates, and the methodology for evaluation. Mike Hanshew provided a report for the Committee for its August 23, 2002, meeting.
- The DPHHS was required to provide at every meeting information on Temporary Assistance to Needy Families (TANF) block grant funds, maintenance of effort funds, and unexpended funds. The Committee received this information at each meeting. On November 16, 2001, Hank Hudson reported that Montana receives an approximate \$45 million annual TANF block grant to operate its public assistance programs. During the 2001 session, the DPHHS had \$28 million of unspent TANF funds from previous block grants. The Legislature authorized the expenditure of those unspent funds (termed FAIM II-R) because it wanted to ensure that the funds were spent before the federal act was reauthorized. The funds for FAIM II-R are obligated. The only unobligated FAIM II-R money is for tribal employment and training services because they are annual contracts that are not formally obligated until the start of the next contract year. The DPHHS asked the Office of Budget and Programming to certify that the Division needs \$9 million of the TANF funds to be transferred into the benefit line item and out of FAIM II-R based on August 2001 caseloads. By the end of the August special session of 2002, the remaining biennial amount of maintenance of effort was \$7,657,170 from \$26,058,457 in the original amount. The first and second budget reductions had reduced the maintenance of effort amount by more than \$18 million.
- The Addictive and Mental Disorders Division (AMDD) appropriation was contingent on the DPHHS' development of a management plan for children's residential treatment and placement with in-state providers by July 1, 2002. The DPHHS provided a copy of the plan at the August 9, 2001, meeting.
- The tobacco prevention and control program appropriation (\$2.8 million) will be administered by the Interagency Coordinating Council for State Prevention Programs (ICC). The DPHHS provided an August 9, 2001, report on tobacco prevention and control.
- Interest income on the tobacco settlement trust fund was appropriated in HB 2 for provider rate increases. The Committee received information at the February 13, 2002, meeting that rate increases were granted in the first 6 months of the fiscal

year and were funded partially from the interest income from the trust fund, which was funded by a portion of tobacco tax returns. The DPHHS reported that if the provider rate increases are discontinued or reduced, the tobacco money will have been spent already and not result in a legal problem.

The following related health and human services issues were raised during the 57th Legislature and followed by the Committee:

- SB 82 (Ch. 466, L. 2001) - The Mental Health Oversight Advisory Council (MHOAC) was required to report a summary of each of its meetings and any recommendations to the Committee, and the DPHHS was required to report on the rationale for not following recommendations of the MHOAC. The DPHHS provided a report on the MHOAC at each meeting.
- SB 184 (Ch. 215, L. 2001) - The ICC was required to cooperate with and to report to the Committee, which received a status report of the ICC on February 13, 2002.
- SB 420 (Ch. 331, L. 2001) - The DPHHS was required to review rules regarding personal care facilities and report to the Committee by September 15, 2002.
- SB 454 (Ch. 416, L. 2001) - DPHHS staff was required to report on the multiagency children's initiative to the Committee every 6 months.
- HJR 31 - This was a resolution on litter and alcohol use. Any findings and recommendations were required to be reported to the Committee.
- HB 582 (Ch. 166, L. 2001) - The DPHHS was required to report on the feasibility study of a chronic disease registry to the 58th Legislature as provided by 5-11-210, MCA.
- SB 476 (Ch. 346, L. 2001) - To provide more consistent regulation of long-term care facilities, the DPHHS was required to adopt rules on certification, informal dispute resolution, and standards.
- SB 477 (Ch. 347, L. 2001)- The DPHHS was required to adopt rules on safety devices in long-term care facilities.
- House Bill No. 2 (Ch. 572, L. 2001) - The Disability Services Division (DSD) was required to complete a report on the impact of applying income criteria to determine eligibility for developmental disabilities program services and benefits, on the waiting list for services, and on the impact on the budget. The DPHHS provided a report to the LFC on June 24, 2002, and the Committee received this

report in August 2002. Neither the DPHHS nor the Legislature acted on the results of this report in the special sessions of 2002. As of August 2002, the DPHHS had no 2003 legislative proposals. The preliminary Legislative Fiscal Division (LFD) analysis reported that 84% of the non-Medicaid eligible clients receiving children and family services reported incomes above the federal poverty level (or did not complete the survey) and that the value of the services provided to these clients was about \$3.8 million.

Administrative Rule Review

The Legislative Services Division legal staff reviews all DPHHS rulemaking notices regarding the proposal or adoption of a new rule or an amendment to a rule--a duty that remains the same in method, timing, purpose, and review of legality as it did for the former Administrative Code Committee. The legal staff review is triggered by the submission of a notice to the Secretary of State by a state agency. After a public hearing is held (if any) and public comments are considered, a notice of adoption of the rule is published and the rule becomes effective. The purpose of the legal staff review is to determine if the Montana Administrative Procedure Act and other statutes were followed. The agency determines legislative intent by the language of the statute, which may or may not include a statement of purpose, by speaking to the prime sponsor, and from other public comments. The legal staff reviews only the proposed rule and the enabling statutes. The review will catch legal errors, but it is not intended to judge the merit of the idea or other possible interpretations of intent by individual legislators.

The Committee asked legal staff to advise the members of any major issues pertaining to administrative rules, and the Committee remained open to the possibility of any issues raised by the public regarding administrative rules. The significant administrative rule issue considered by the Committee was the Families Achieving Independence in Montana (FAIM) sanction policy (Title 37, chapter 78, subchapter 5, ARM).

Administrative rule changes regarding FAIM sanctions were a major topic of the November 16, 2001, meeting. Representatives from Working for Equality and Economic Liberation, the Montana Tribal Welfare Reform Consortia, and the Montana Wyoming

Tribal Leaders Council testified regarding the process leading to the changes in the FAIM sanctions policy and the fact that Indian women carry the highest sanctioning rate in the state. The DPHHS testified that its goal is to not sanction people. Its dilemma is between sanctioning people (who then lose benefits and time off of the 60-month time limit) and dropping them from the program so that they can return when they are ready to participate within the rules of the program and not lose time on the clock. There was some encouragement that the Committee pursue either an economic or a family impact statement, but it declined to do so and asked the DPHHS to not propose rule changes until there was a report back. Mr. Hudson provided an update at the February 13, 2002, meeting and stated that he anticipated having new rules in place by July 2002.

At the May 15, 2002, Committee meeting, Linda Snedigar of the DPHHS provided an update of the FAIM sanction changes that later became effective July 1, 2002. The new sanction policy adds a conciliation process following noncompliance and prior to sanction, and if the noncompliance is not resolved, there is 1 month of reduced benefits and the timeclock ticks off of the 60-month limit of benefits. The Family Investment Agreement (FIA) can be renegotiated and benefits reinstated the next month. If no FIA is negotiated, the case is closed for a 1-month ineligibility period in which the timeclock does not tick. Cases can be reopened after that month with a new application and FIA.

Program Evaluation

In fulfillment of its program evaluation function and in addition to the regular reports, the Committee received information and presentations on the following activities:

- The Committee received regular listings of DPHHS audit reports completed by the Legislative Audit Division, especially the progress on HJR 32 that asked for a performance audit of child protective services issues. The top six performance audits identified by the Legislative Audit Committee for the interim were regarding the DPHHS: Area Agencies on Aging; nursing home inspections; controls over prescription drugs at DPHHS institutions; administration of Medicaid and contracting for mental health services; the State Children's Health Insurance Program (CHIP); and a combined audit of three areas of the Human Resource

Development Councils. The HJR 32 final audit report will be sent to the Committee in late 2002.

- In order to prepare for the 58th legislative session, the Committee heard overviews of the DPHHS Executive Planning Process budget and legislative proposals at the May 15, 2002, meeting and received summaries of the agency legislative proposals on August 23, 2002.
- Olmstead Planning³ - At the May 15, 2002, meeting, Gail Gray, Director, DPHHS, reported that the Olmstead plans for the Disability Services and Senior and Long Term Care Divisions were almost complete and that the Health Policy Services Division was in the beginning phases.
- At the May 15, 2002, meeting, the ICC gave a presentation regarding its status and need for alternative funding. The ICC also presented a written report pursuant to 2-15-225, MCA, to the Committee on August 9, 2001.
- Intergovernmental transfers and refinancing efforts were a discussion point at the August 23, 2002, meeting, based on information by the LFD. The Legislature in the August 2002 special session provided the agency with funding for five positions (existing) to further explore additional intergovernmental transfers and refinancing efforts to maximize the federal match on state and local money spent on federal programs. Refinancing efforts are applicable to every division that provides services to the public.
- The Committee followed elimination of the customer service contract with Maximus by the Child Support Enforcement Division because of the budget shortfall and subsequent cuts and the absorption of the duties internally.

Monitoring - Standing Reports

³ In June 1999, the Supreme Court ruled in *Olmstead v. L.C.*, 138 F.3d 893, that "it is a violation of the Americans with Disabilities Act for states to discriminate against people with disabilities by providing services in institutions when the individual could be served more appropriately in a community-based setting. ...The Court suggests that a state could establish compliance with the Americans with Disabilities Act if it has 1) a comprehensive, effective working plan for placing qualified people in less restrictive settings, and 2) a waiting list for community-based services that ensures people can receive services and be moved off the list at a reasonable pace." (The States' Response to the Olmstead Decision: A Work in Progress, NCSL 2000.) The DPHHS is involved in "Olmstead planning" as per the Court's suggestion.

In its role of monitoring the DPHHS, program representatives gave standing reports regularly to the Committee at each meeting:

- HJR 1 Subcommittee on Mental Health Issues. LFD staff provided the Committee with the HJR 1 study plan and Issues and Options for Consideration.
- Mental Health Managed Care Ombudsman, Bonnie Adee.
- Mental Health Oversight Advisory Council.
- The Child and Family Services Division gave regular reports and a presentation and tour of the centralized intake program.
- The Human and Community Services Division provided regular reports on the TANF block grant, Maintenance of Effort, and unexpended funds as required by HB 2.
- Participants of the Multiagency (or Montana) Children's Services Initiative (Senate Bill No. 454) reported regularly on the progress of the group working on the initiative.
- The Governor's Council on Families reported regularly to the Committee.
- The Governor's Task Force on Healthcare Workforce Shortage was followed by the Committee. The final report from the Task Force will be sent to the Committee upon completion in late 2002.

Special Activities

Budget Issues Took the Forefront:

On November 16, 2001, Director Gail Gray reported to the Committee that the September 2001 budget status report showed that the DPHHS had a bottom-line general fund deficit of \$4.5 million for the biennium. The DPHHS implemented cost-cutting measures to decrease the deficit. The Human and Community Services Division projected a \$500,000 deficit. Most of the deficit will be taken care of through a cost allocation plan of more charges to the federal government. There was also a projected deficit of \$777,000 in the Director's Office as a result of federal A-87 audit requirements. The largest deficit was an amount of \$3.3 million because of the growth in the Medicaid program. There was an \$800,000 general fund surplus in the Senior and Long Term Care Division. The AMDD projected a deficit of \$660,000.

Between September 11 and November 16, 2001, the State Public Health Laboratory had 97 recorded bioterrorism threats. About one-half of the threats required testing with no additional funding. Although they have all been negative, the Laboratory worked weekends and nonregular hours to ensure that the people of Montana received a response about those threats.

On February 13, 2002, the Committee received a budget status report from the DPHHS. John Chappuis, DPHHS Deputy Director, reported on the budget reduction options and, specifically, the budget reductions within the FAIM II-R program. Legislators expressed concern regarding the transfer of general fund money from CHIP, prior authorization for outpatient therapy for mental illness, cost-shifting between divisions in the DPHHS, and mental health care coordination. The TANF cuts on Indian tribes were of great concern to the legislators because they had seen that as proactive when it was appropriated, but it was disconcerting for the funding to be cut so abruptly as the programs were just beginning to get off of the ground. Also, the proportionality of the cuts was questioned because the circumstances on the reservations are more severe relative to nonreservation areas. Most of the impact of the TANF cuts was on the working poor people below 150% of the poverty level. The budget cuts come at a time of unexpected caseload increases.

The Committee received a budget analysis from Lois Steinbeck and Pat Gervais, Fiscal Analysts from the LFD. The cash-assistance benefit (FAIM/TANF) caseload was budgeted at \$24 million for each year of the biennium, but estimates in February 2002 were for \$30 million and \$33 million, respectively, each fiscal year. Elimination of payment for room and board costs for children in therapeutic foster care has potential cost shifts to the child protective services system and to the Department of Corrections. There have been calls from parents seeking to relinquish custody of their children in order that their children can receive services. The Child Support Enforcement Division's federal incentive award grant was \$2 million less than anticipated, which, combined with the federal match, resulted in a cut of 60% of the Division's budget, prompting cuts in FTE and the customer service unit contract.

On May 15, 2002, the Committee received a budget status report that included a report on the ending fund balance "trigger"⁴ required by 17-7-140, MCA. The DPHHS presented its alternatives for a 3% budget cut or a 10% budget cut, depending on what the Governor would require. A 3% cut would have involved \$8.4 million in general fund money but has an \$18.1 million impact to the DPHHS because of the loss of federal matching funds. A 10% cut would have involved \$27.7 million in general fund money, with an impact of \$58 million in total funds. The Governor's Office directed a 3.5% budget cut.

Representative Trudi Schmidt as presiding officer asked the LFD staff to present information regarding the budget picture. At the May 15, 2002, meeting, Terry Johnson, Principal Fiscal Analyst, LFD, reported that by November 2001, revenue deterioration was being reported from the revenue estimates contained in HJR 2. Revenue estimates had been based, in part, on higher capital gains collections, and there had been declining income in other areas also. Another factor was a decline in revenue resulting from a federal increase of depreciation expenses for business. Also, a structural imbalance had been built into the budget with ongoing revenue lagging behind ongoing disbursements.

The Governor called a special session for August 2002. The purpose was to ask the Legislature to make additional cuts in appropriations. At the August 23, 2002, Committee meeting, Lois Steinbeck and Pat Gervais provided the Committee with a summary of all of the budget cuts made to the DPHHS through the special session:

- The special session action reduced general fund appropriation levels by an estimated \$5.8 million (August 2002).
- The Executive Branch implementation of 17-7-140, MCA, reduced general fund expenditures by an estimated \$9.6 million (June 2002).
- The initial actions by the DPHHS to avoid a supplemental appropriation were anticipated to reduce services and other costs by \$10.8 million to stay within the original general fund appropriation (November 2001).

The total funds reduction, including general fund money and matching federal funds, for the 2003 biennium for the DPHHS is estimated at \$69.5 million.

⁴ Budget cut requirements are triggered when the ending fund balance is projected to fall below 2%.

Policy Issues:

The Committee was concerned that because the HJR 1 subcommittee was concentrating on adult issues, the ***SB 454 multiagency children's services initiative*** for children with serious emotional disturbances would not be monitored. The Committee dedicated a portion of the November 16, 2001, meeting to this issue and heard from a panel including: Dan Anderson, AMDD Administrator; Lois Steinbeck, LFD (HJR 1) Fiscal Analyst; Bonnie Adee, Mental Health Ombudsman; Denise Griffith, Montana Multiagency Children's Service Initiative; Chuck Hunter, Children and Family Services Division Administrator; and Steve Gibson, Department of Corrections Juvenile Corrections Administrator. The Committee also heard regularly from the Montana Children's Initiative Provider Association, a group of private providers who are working on this issue with the DPHHS. The Multi-Agency Coordinating Council received a \$45,000 planning grant from the Youth Justice Council to assist in the progress of SB 454.

At the November 16, 2001, meeting, the Committee approved a motion to draft a letter to the Law and Justice Interim Committee (LJIC) stating that public health care is the Children, Families, Health, and Human Services Interim Committee's focus, that the Committee is concerned about the ***status of inmate health care and the legal ramifications of the Department of Corrections' administrative changes***, and that the financial implications of the health care of inmates is considerable and asked that the LJIC make this issue an item for its review and to report back. The Committee sent a letter December 5, 2001, to the LJIC, which responded by requesting information from the Department of Corrections (DOC) at its December 2001 meeting. The DOC followed up on its presentation with a December 14, 2001, letter outlining the reorganization plan. The DOC has achieved two successive findings of "substantial compliance" under its settlement agreement with the U.S. Department of Justice and the American Civil Liberties Union. The DOC has not completely resolved the issue relating to inmate health care, but is striving to see that offender patients see a physician within 5 days of referral from a nurse or physician assistant. The DOC has reorganized its medical and mental health support in response to budget cuts, but Director Slaughter informed the LJIC that the DOC was vigilant in attending to the provision of cost-effective, quality medical and mental health care for incarcerated offenders.

On February 12, 2002, the Committee heard presentations from Toni Plummer and Jonathan Windy Boy on the ***impact and outcomes of federal welfare reform and recent state cuts to the program on Indian tribes***. Funds from the ***FAIM II-R (TANF reserve)***⁵ funds were directed by the 2001 Legislature to be spent down. Plummer and Windy Boy testified that when the DPHHS welfare reform plan was developed, little or no consultation was done with the Indian tribes. Because of the distinctive poverty, unemployment, and lack of economic development, the Indian tribes were not prepared for the level of system changes that would take place, and no specific support dollars were provided for tribes. FAIM is operated in Montana at a county level with community operating plans, but Indian tribes were not included at the county level in the plans. Sanction rates to Indian women have also increased dramatically since welfare reform in 1996.

A recent development is that two Indian reservations now operate their own TANF programs: the Confederated Salish and Kootenai Tribes on the Flathead Reservation and the Chippewa-Cree Tribes on the Fort Belknap Reservation. Other Indians who are eligible for TANF receive benefits through each county as a part of the state program.

Because of reserve funds appropriated to the Indian tribes in 2001, many had begun to administer new programs. As the FAIM statewide caseloads increased, the appropriations from reserve funds were eliminated or reduced, leaving many new programs in the lurch. As a result, caseloads are being transferred back to the county welfare departments. Recommendations suggested to the Committee were: evaluate the state's performance with entities in contract relationships, such as the Indian tribes; review access issues to programs and the urban rural split, especially the rural reservation lack of access to programs and the need then for the Indian tribes to meet the unmet needs; review and analyze the per capita cost of each county, including analysis of administration, purchasing, and operational costs and cash benefit services; review the impact of budget cuts on programs and on recipients; and review the executive planning process and how to integrate the tribal perspective and needs, especially with the DPHHS. The Indian tribes also have the need for data from the state and a need to develop infrastructure to be able

⁵The federal Temporary Assistance to Needy Families (TANF) program is operated in Montana as Families Achieving Independence in Montana (FAIM).

to administer programs for those referred to the Indian tribes by the counties. The Indian tribes would like to see more government-to-government consultation and need economic development to make programs work.

The Committee also received a report from the **State-Tribal Relations Committee (STRC)** on the followup to questions that it had received from the STRC site visit to Rocky Boy Indian Reservation. Much of the discussion revolved around how devastating the impacts of state budget cuts were to welfare programs that were just getting off of the ground and how the Indian tribes received little advance notice or coordination from the state. Committee members were interested in alternative funding vehicles to get money directly to the Indian tribes, but they need more information because of the limitations in federal law and the uncertainties of the budget crisis in the state.

Representatives from **Lifespan Respite** provided public testimony at the Committee's first meeting and gave the Committee a formal presentation on February 13, 2002, and additional information on May 13, 2002. Lifespan Respite is a program that provides information and referral to connect families with trained respite care providers and that provides provider recruitment and training and financial assistance information. Respite care provides families with temporary, short-term care for adult and child family members with any of a wide variety of disabilities, health care concerns, or special needs and for those at risk of abuse and neglect. The Committee requested that a discussion bill (LC8888) be drafted for the final meeting, but declined to request it as a committee bill because of lack of fiscal impact information and the absence of information regarding the DPHHS' position on the bill.

A related respite care issue was brought to the Committee's attention through an information request by Senator Dale Mahlum. **Respite care** agencies asked that the Committee sponsor legislation regarding **wage and hour issues**. In July of 2001, the DSD of the DPHHS was informed that the U.S. Centers for Medicare and Medicaid Services will no longer allow the DPHHS to provide direct reimbursement to the family and that it needed to comply with applicable state and federal employment laws, such as unemployment insurance, workers' compensation, minimum wage, and overtime compensation. The Committee asked that a discussion draft be prepared for the August

23, 2002, meeting. The Committee adopted the discussion draft as a committee bill to be presented to the 2003 Legislature.

The Committee also took onsite tours on February 13, 2002, of the **Centralized Intake Program** in the Child and Family Services Division and of the Public Health and Environmental Labs in the Health Policy and Services Division. Centralized intake is a new program that brings all incoming calls regarding alleged abuse and neglect through the central office in Helena before being referred to the appropriate regional office. The Committee was concerned about this new change and received regular updates throughout the interim. Throughout the interim, the DPHHS was reporting positively about the change, and the Committee did not receive any testimony complaining about it.

Representative Trudi Schmidt had sponsored a bill in the 2001 session (HB 38, Ch. 242, L. 2001) that provided for state **surplus vehicles for participants in the TANF program**, which would provide vehicles to private, nonprofit community agencies that would in turn provide them to TANF families at a low cost. The nonprofit agencies would then reinvest the funds in a revolving fund to assist more families with transportation needs. The DPHHS provided additional information on the success of the program after the June 2002 meeting.

At the February 13, 2002, meeting, the Committee took a special interest in the issues revolving around the **DSD**. It was particularly interested in the Travis D., Et al. v. Eastmont Human Services Center, Et al. (CV-96-63-H-CCL) litigation⁶. The Committee had made strong recommendations to the DPHHS last interim regarding working towards settlement of the lawsuit and the development of a continuum of services. The 2001 Legislature had addressed pressing needs in supporting direct-care staff, but the erosion of federal Title XX funds that had been dedicated to serving the developmentally disabled population is a cause for concern. The Legislature asked that the populations at Montana Developmental Center and Eastmont Human Services Center be reduced, but with budget cuts and

⁶ Class action litigation filed in federal court August 23, 1996, by 10 institutionalized individuals against two state developmental disabilities institutions, seeking community-based developmental disabilities services for persons who are unjustifiably institutionalized and for those at risk of unjustifiable institutionalization (those on a waiting list for community services).

increases in admissions, the DPHHS will not meet the target set by the Legislature. The Travis D. litigation was heading towards a structured, negotiated settlement process, with a trial date to be set if the settlement process was not successful.

Representatives from the Montana Advocacy Program provided their perspective of the lawsuit to the Committee. They asked the Committee to direct or encourage the DPHHS to engage in settlement negotiations to develop a plan that identifies what it would take to settle the lawsuit and to bring the plan back to the Committee. Certain members resisted that attempt, stating that they did not share the Montana Advocacy Program's view of the situation, goals, or objectives and could not endorse a procedure in which they were not participating.

The litigation resulted from a policy choice of the Legislature to not close Eastmont Human Services Center in 1995 as proposed by the DPHHS. The resulting litigation had been prolonged by a delay anticipating the results of the Olmstead decision⁷ and a 1999 Montana Consensus project that did not result in any new policy recommendations. The DPHHS cannot "settle" the lawsuit except contingent on the Legislature's action. It will be incumbent on the DPHHS or another entity to propose a plan to be approved by the Legislature or on the federal court to impose its will to resolve the situation.

The Committee declined to forward a recommendation encouraging the DPHHS to engage in the formal mediation process, but Representative Schmidt, as presiding officer, reminded the DPHHS that the Committee in August of 2000 recommended that the DPHHS continue to meet with interested parties to resolve the issues surrounding developmental disability placements, to establish a seamless continuum of care, and to revise or eliminate commitment laws to present to the Legislature.

At the May 15, 2002, Committee meeting, the DPHHS provided an update on the Travis D. litigation and on the corrective action plan needed for the Montana Developmental Center (MDC) to maintain Medicaid certification. A secure unit was created to protect the safety of patients, including those who were exhibiting increasingly hostile behaviors.

⁷See footnote #3.

Issues with the waiting list and current commitment laws were raised, yet the DPHHS did not offer any changes, but stated that a group was formed to review the commitment laws.

Legislative staff raised an issue to the Committee regarding the ***laws on criminal procedure and the issue of mental disease or defect***. At the February 13, 2002, Committee meeting, in the DSD presentation, the "first" criminal commitment to the MDC was reported. Staff followed up on this and requested a copy of the sentencing order. Greg Petesch, Code Commissioner, was asked by Senator John Cobb to review the sentence that ordered commitment to the MDC. In his legal opinion, Mr. Petesch concluded that Montana statutes do not allow for criminal commitment to the MDC. This was a topic at the May 15, 2002, Committee meeting, and based on the information, the Committee allowed draft legislation to be prepared for discussion purposes.

At the August 23, 2002, final meeting, the Committee endorsed a bill draft regarding criminal procedure and those with developmental disabilities. The legislation clarifies that the same process must be followed for persons who are developmentally disabled and are alleged to have committed a crime as is followed for those who claim a "mental disease or defect" and are alleged to have committed a crime. Currently, if a "mental disease or defect" is intended to be used as a defense, a process is applied to determine a defendant's fitness to stand trial and whether the defendant had a particular state of mind that is an essential element of the offense. The legislation would state that if a person with a developmental disability is found fit to proceed to trial and is subsequently convicted of a crime, the court may sentence the person to an appropriate developmental disabilities facility. A person who is determined to be "seriously developmentally disabled", however, could not be found fit to proceed to trial, the charges must be dropped, and the person can be sent forward for involuntary civil commitment procedures.

The Committee adopted the legislation as a committee bill for presentation to the 2003 Legislature. The sole testimony was provided by Anita Roessmann of the Montana Advocacy Program. She raised concerns regarding the provision that diverts a person labeled as seriously developmentally disabled from the criminal proceeding to a civil commitment proceeding. There is also concern over the level of placement for a defendant who was determined to be developmentally disabled and unfit to proceed to

trial. The legislation would require a residential or institutional setting while undergoing treatment to regain fitness and not allow a person to be placed in any developmental disabilities facility for community placement during that time period (90 days maximum). The draft had a short circulation period, and the Committee was hopeful of receiving additional comment from the DPHHS and other entities.

At its February 13, 2002, meeting, the Committee heard from the **Montana Transportation Partnership** that seeks to develop a coordinated transportation effort for people with disabilities. There are limitations with the existing certificate of need process with the Public Service Commission because the need may actually be in the form of accessibility for people with disabilities regarding times, availability, and cost. The Montana Transportation Partnership seeks to make the most efficient use of all the transportation programs that currently exist and not to create a new system.

Committee Recommendations

At its final meeting, on August 23, 2002, the Committee made the following final recommendations:

- adoption of a Committee bill draft regarding persons with developmental disabilities and Title 46, chapter 18, MCA, involving criminal procedure and mental disease or defect (bill draft request LC0443);
- respite care: wage and hour issue (bill draft request LC0442);
- a resolution to study the need for public defenders, advocates, or family ombudsmen for families at early stages of the child protective services system (bill draft request LC0444).

Areas for Future Study

Effects of budget cuts and August 2002 special session on DPHHS programs. The 2003 legislative session will revisit many of the cuts and, facing additional deficits, will have to make critical choices in programs and services to be offered. This Committee in its monitoring capacity will need to review these changes.

The issues surrounding the **public mental health system** have persisted. General administration, access, funding, development of community services, and a move towards the regional administration of services, including assumption of risk, warrant attention in the future. Children's services have been of particular interest to this Committee in the past and, until the new system is in place, should also be monitored.

In the previous interim, the Committee had recommended that "the **Disability Services Division** continue to meet with interested parties to resolve the issues surrounding developmental disability placements; that it work to establish a seamless system, meaning that it should provide an appropriate level of service at the appropriate time in a client's continuum of care; and that it revise or eliminate commitment laws and present proposed legislation to the 2001 Legislature". As of August 2003, the Travis D. litigation was still unresolved, additional litigation had been filed, audits and inspections for Medicaid certification had resulted in corrective action being sought, and further budget cuts had occurred. The population of the MDC appeared to be shifting to a more volatile population requiring changes in practices at the MDC for the safety of patients and staff alike. Although, the DPHHS developed information regarding income-testing for developmental disabilities services, no changes are being sought by the Legislature at this time. With litigation and budget cuts, it may be a proposal that warrants further attention. The waiting lists for services do not appear to be shrinking, and there have been no proposals brought forward at this time regarding changes in the commitment laws, other than LC0443 proposed by this Committee regarding criminal procedure. The **DSD programs** appear to be in need of review, and potentially changes need to be made to them to make them more receptive to the needs of persons who are developmentally disabled and to the needs of the state. The Committee may also want to monitor LC0443 to determine if it is successful and is implemented or revisit the concept if it is unsuccessful.

The ICC has been directed to prepare a unified budget since 1993 (2-15-225, MCA). The unified budget provision is proposed to be repealed in the 2003 session. This is a small program that has been funded by donations from other agencies. Because of recommendations involving prevention from the Task Force on Alcohol, Tobacco, and Other Drug Control Policy, there may be some significant interest in the area of prevention and administration of prevention programs.

This Committee was interested in following the federal and state audits of the Child and Family Services Division. The 2003-04 interim may be a prime opportunity to take a look at the state and federal audit results and the results of 2003 legislative actions in the area of child abuse and neglect.

The Committee has requested a bill draft (LC0444) regarding a study of potential public defenders, advocates, or family ombudsmen to be appointed to assist families earlier in the child abuse and neglect investigations and process. There are also issues of representation in the Youth Court area that impact foster care, mental health, and other services provided by the DPHHS. If this study is successful, it could be a centerpiece of the Committee's activities on child abuse and neglect issues and relate to the findings in the state and federal audits.

This Committee's place in the interim committee structure should be revisited after the next legislative session and before the Legislative Council makes its study assignments for the 2003-04 interim. Health care issues, such as cost, insurance, and access, appropriately can be assigned to this Committee. This also holds true for mental health issues. Since the demise of the managed care contract for the public mental health system, the policy issue of mental health services has increasingly cropped up as an important piece of health and human services policy that needs to be reintegrated back into this Committee. There are significant policy and budget issues that cross Executive Branch agencies and divisions and therefore legislative committee jurisdictions. With the splitting of mental health issues out of this Committee's realm, it makes integration of policy and budget difficult.

Legislative Staff Reports

Fox, Susan B. "*Mental Competency of the Accused: An Analysis of Statutes Relating to Mental Disease or Defect and Criminal Procedure or "Forensic" Patients*", Legislative Services Division, January 2002.

"*Rules, Procedures, and Guidelines for Interim Committees, 2001-02 Interim*", adopted by the Legislative Council, Legislative Services Division, September 21, 2001.

Fox, Susan B. "2001-2002 Interim, Children, Families, Health, and Human Services Interim Committee", Legislative Services Division, May 2001, updated July 2001.

Heffelfinger, Sheri, Legislative Research Analyst for the State Administration and Veterans' Affairs Interim Committee, Packet on Homeland Security Legislation and Special Session Meeting, Legislative Services Division, August 1, 2002.

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- Hanshew, Mike. *Direct Care Wages Information Required by HB 2*, August 13, 2002.
HB 2 (Ch. 572, L. 2001) required the DPHHS to provide information on direct care staff, by program, by August 1, 2002, on rates for services, wage and benefits rates, and the methodology for evaluation.
- *Development of a Chronic Disease Registry to Improve the Health of Montanans: Feasibility Issues and Recommendations for Implementation*, University of Montana-Missoula, Center for Environmental Health Sciences, and Montana State University-Bozeman, College of Nursing, August 15, 2002.
HB 582 (Ch. 166, L. 2001) - the DPHHS is required to report on the feasibility study of a chronic disease registry to the 58th Legislature as provided by 5-11-210, MCA.

Informational reports provided as a courtesy:

- *Montana Dental Summit II: Building Community Partners*, November 2, 2001.
- "Why Some Parents Didn't Renew CHIP: Findings from the CHIP Retention Survey", September 2001.
- Long, David A. and Shao-Hsun Keng. *Montana FAIM Evaluation: An Assessment of Welfare Reform in a Rural Setting*, Abt Associates, Inc., December 2001.
- June 2002 Information on TANF Transportation Gant and Surplus Vehicles.

- Olmstead Plans for Senior and Long Term Care Division, Disability Services Division, initial draft of the Mental Health Component of the DPHHS Olmstead Plan. Submitted by Cary Lund, DPHHS, December 6, 2001, to the Office of Civil Rights.
- Draft of a *Community Operating Plan and SB 339 Annual Agreement*. Human and Community Services Division, November 13, 2002.

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- Lombardi, Jan. *Council Report pursuant to 2-15-225, MCA*. The Interagency Coordinating Council for State Prevention Programs, August 3, 2001.
- Adee, Bonnie. Mental Health Ombudsman Office. *Annual Report to the Governor and to the Legislature (pursuant to 2-15-210, MCA), FY 2001*.
- *Competing for Quality Care: Findings and Proposals for Montana's Health Care Workforce*, Governor's Blue Ribbon Task Force on Health Care Workforce Shortage, July 23, 2002, Draft.
- *Final Report: Current Situation Assessment, Desired Outcomes and Strategy Recommendations*. Alcohol, Tobacco, and Other Drug Control Policy Task Force, August 2002 Draft.

PUBLIC REPORTS

- Montana Children's Trust Fund provided "Child Abuse Prevention: Montana's Future", August 2001, and "Drawbacks/Costs of Child Abuse and Neglect: A Prevention Works Storybook".
- Regular information from Dennis Brezina, Director of Aluminum Anonymous, Inc., regarding House Joint Resolution No. 31.
- Montana Children's Initiative, Inc.- MCI, Financing Integrated Multi-Agency Service Delivery Teams at the Local Level, October 2, 2001, Draft.

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