



Children, Families, Health and Human Services Interim Committee

57th Montana Legislature

SENATE MEMBERS

DUANE GRIMES, Vice Presiding Officer
EVE FRANKLIN
JERRY O'NEIL
GERALD PEASE

HOUSE MEMBERS

TRUDI SCHMIDT, Presiding Officer
MICHELLE LEE
BOB LAWSON
BILL THOMAS

COMMITTEE STAFF

SUSAN BYORTH FOX
RESEARCH ANALYST
DAVID NISS
STAFF ATTORNEY
LOIS O'CONNOR
SECRETARY

MINUTES

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Committee tapes are on file in the offices of the Legislative Services Division.
Exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of documents.

Final Meeting of Interim
Room 137, State Capitol
August 23, 2002

COMMITTEE MEMBERS PRESENT

Rep. Trudi Schmidt, Presiding Officer
Sen. Duane Grimes, Vice Presiding Officer
Sen. Jerry O'Neil
Sen. Gerald Pease
Rep. Bob Lawson

COMMITTEE MEMBERS EXCUSED

Rep. Bill Thomas
Sen. Eve Franklin

COMMITTEE MEMBERS ABSENT

Rep. Michelle Lee

STAFF PRESENT

Susan Byorth Fox, Research Analyst
Valencia Lane, Staff Attorney
Lois O'Connor, Secretary

VISITORS

Visitors' list ATTACHMENT #1)
Agenda (ATTACHMENT #2)

COMMITTEE ACTION

- Approved the minutes from the May 15, 2002, meeting

- Approved a blanket motion to adopt all DPHHS proposed legislation with the inclusion of Priority #23 regarding the Montana Veterans Home in Columbia Falls from the May Committee meeting. The blanket motion did not include any positive support of the proposed legislation by the Committee only the authorization of the drafting of the legislation.
- Approved draft legislation to exclude from minimum wage and overtime laws employees who provide companionship services
- Approved draft legislation clarifying that seriously developmentally disabled persons may not be found fit to proceed in a criminal proceeding as a Committee bill with the caveat that certain issues be thoroughly researched

CALL TO ORDER AND ROLL CALL

The meeting was called to order by Rep. Schmidt, Chair, at 8:40 a.m. Attendance was noted; Rep. Thomas and Sen. Franklin were excused and Rep. Lee was absent. (ATTACHMENT #3)

Rep. Lawson **moved** that the minutes of the May 15, 2002, meeting be approved. Motion passed unanimously.

REPORT ON THE GOVERNOR'S ALCOHOL, TOBACCO, AND OTHER DRUG CONTROL POLICY TASK FORCE

Sen. Grimes provided an overview of the Governor's Alcohol, Tobacco, and Other Drug Control Policy Task Force and provided an outline of the final Report recommended by the Task Force. (EXHIBITS #1 and #2 respectively)

Rep. Lawson asked how the Task Force progressed in its work when a private consultant was used to facilitate the study. Sen. Grimes said that it was his experience that the Task Force already knew the problems and did not need to go through the exercise of determining everyone's interests that would normally exist at agency and administrative levels. However, it was obvious that the people who came from the public who were not normally used to brainstorming policy, particularly the law enforcement and treatment communities, had to build a rapport and understand each other's agendas. Having a private facilitator worked very well. However, in the end, it was good that legislators were on the Task Force to give a political spin on things. Sen. Grimes believed that it has always been better policy to take the legislators out, lock the professionals in a room, and have them work out the solutions.

DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES' (DPHHS) DIRECTOR'S REPORTS

Governor's Task Force on Health Care Workforce Shortage

Gail Gray, Director, DPHHS, provided an overview of the following:

- Medicaid eligibles for both children and adults, the aged and disabled eligibles residing in an institution, and Medicaid disabled eligibles for 2002 (EXHIBIT #3);
- Medicaid's cost-sharing requirements (EXHIBIT #4);
- the Montana West Nile Virus Surveillance Project (EXHIBIT #5)
- the findings and proposals for Montana's Health Care Workforce (EXHIBIT 6);
- a report on TANF as it relates to HB 2 from the 2002 Special Session (EXHIBIT #7);
- the Montana Mental Health Care Advisory Committee;
 - There is still a tremendous amount of dialog as to the types of mental health services that are needed by the state.

- HJ31--a resolution dealing with the problem of litter, teenage drinking, and drug use in general while operating a motor vehicle;
 - This area was covered well by Sen. Grimes in his report on the Governor's Alcohol, Tobacco, and Other Drug Control Policy Task Force.
- the Travis D. case as it relates to the Montana Developmental Center;
 - The Department is entering into a formal mediation process. If it is not successful, the Department has a Court date set for May or June 2003.
- the Montana Chronic Disease Registry feasibility study (HB 582);
 - The study relates to whether Montana needs a chronic disease registry and surveillance system. Chronic disease meaning "diseases that are prolonged, do not resolve spontaneously, and are rarely cured completely". The Study Team has developed a final report which will be provided to the Committee when completed.
- direct-care wages information required by HB 2 (EXHIBIT #8)
- personal care facilities (EXHIBIT #9); and
- refinancing efforts in multiple divisions.

Rep. Lawson said that the Montana Veterans Nursing Home in Columbia Falls is experiencing problems with hiring nurses. He asked if the problem could be blamed on the hiring freeze enacted in the 2002 Special Session or work force shortage in general. Director Gray said that the Department has a process for exceptions from the hiring freeze. The biggest problem that the Department has is six institutions and the need to have position filled to provide the appropriate care and to keep the Department's Medicare and Medicaid certification. The Montana Developmental Center (MDC) has a blanket exemption for residential aides. Director Gray said that there is no blame for not having positions because of the hiring freeze. If there was a problem, it is because there are no RNs, LPNs, or people willing to take the residential aide positions. In addition, the Veterans' Nursing Home budget contains no general fund resulting in no fiscal reward for keeping the positions open nor can the Department morally, ethically, or legally freeze the positions.

Sen. Grimes asked how the exemptions worked when there where state dollars involved in the institutions and would the Department have to save the funds somewhere else in the agency. Director Gray said that there has been a lot of confusion related to the exemptions. The legislation that was passed relates to the positions that are vacated. For example, if the Department had a person resign, it would need to allocate back to the general fund 25% of what was left in the person's salary for the rest of the fiscal year. However, there were exceptions made when the fiscal note was calculated. Until Curt Nichols from OBPP, who calculated the fiscal note, returns, all of the questions will not be answered.

Sen. O'Neil asked if the \$100 co-payment paid by Medicaid recipients included emergency room care. Director Gray said if the visit was truly emergency care, such as a broken limb, there is an exception. The Department will not pay for non-emergent care at emergency rooms. If the emergency room physician says that it is not an emergency visit, the hospital does not get paid. More work must be done in this area because there is no incentive for hospitals to declare visits non-emergent.

Rep. Schmidt asked if work on the mental health service authority would be moving forward or because of the budget constraints, would the idea have to be put aside. Director Gray said that it

will go forward but it will not be in the next year, and it has not helped that the Department has had fiscal problems.

Sen. Grimes asked if legislative proposals were forthcoming as a result of the Alcohol, Tobacco, and Other Drug Control Policy Task Force. **Dan Anderson, Administrator, Addictive and Mental Disorders Division, DPHHS**, said that the Department had no legislative proposals in the area of HJR 31 in large part because everyone relied on the work of the Task Force.

Sen. Grimes asked if any direct-care staff positions working in DPHHS programs were under competency pay or were they classified positions. Director Gray said that many of the direct-care positions for DD services are contracted and not state positions. However, those who determine eligibility at Disability Services and nurses who survey nursing homes have alternate salary schedules.

Rep. Schmidt asked about the income testing related to the Travis D. case and have any changes been made to eligibility, payment, or reimbursement based on the study. Director Gray said no changes have been made to date. However, because of the future fiscal issues that the Department will be facing, it is a topic that will be reviewed. The Department will make no changes in income-based services for people who have developmental disabilities until after the 2003 Session.

Sen. Grimes asked if there were major issues of contention related to personal care facilities. Director Gray said no, that consumers and provider groups have worked through the problems with the statutes related to personal care facilities.

Chuck Hunter, Child and Family Services Division, DPHHS, provided an overview of the Child Protective Services' centralized intake and audits. (EXHIBITS #10)

Rep. Lawson asked about the difference in the CFS calls (Child Protective Services request for services or referral to services) between Regions 2 and 3. Mr. Hunter said that he attributed the regional difference to be a variation in prior times on how the calls were handled. Region 2 (Cascade County) for a number of years could not keep up with the amount of calls that it received, and in some cases, swept a number of them into the category of "need no response at all". Region 3 (Yellowstone County) has a huge amount of work and disproportionate staffing but they were more accurate in recording the calls that were coming into the system.

Mr. Hunter stated the following:

- The Legislative Audit Division made seventeen recommendations for the Child and Family Services Division in its audit report.
- The Division will comply with the most of the recommendations but will take exception with the recommendation that the Division should come to the Legislature to have its role clarified as it relates to intervention efforts and child protective service efforts.
- Currently, the Division has a lot of work going on in in-home services.
- Working with a family that is already in the foster care arena, the Division and family must comply with legally directed orders through the court.
- In-home work tends to be more social work oriented in trying to change the issues in families before a child needs to come into foster care.

- The Auditor suggests that the Division has a mix of duties and that it may be not focusing enough or may have a mixed focus because of the two responsibilities.
- The Department's response will be that since the adoption of the federal Adoption and Safe Families Act, that is the work.
- The federal legislation states that states must (1) work to prevent placement; (2) if a state has a placement of a child in foster care, the state must work to unify families; and (3) if the reunification efforts fail, states must move to permanency quickly.
- The Division views that as being a continuum that is hard to separate.

Sen. Grimes asked if the Legislative Auditors were saying that the Division was being both the enforcer and the counselor and that they saw a conflict. Mr. Hunter was unsure whether the auditors saw it as a conflict but rather two different components of the program Division and that it may be better served if it split them up (i.e. put the in-home service component to some other entity and the Division focus just on child protective service work). Sen. Grimes asked if Mr. Hunter were comfortable with the decisions made at the lower level. Mr. Hunter said that he had the opportunity to review many complaints in cases. In a very high percentage of the cases, he was satisfied with the work that was going on. There were also a low percentage of cases where he had to intervene. He added that with the way that the Courts are involved in making key decisions at key times is the check and balance in the system.

Rep. Lawson asked whether anything could be done about the perceived lack of the ability of some parents to communicate with the Department and the perception that parents do not have a voice. Mr. Hunter said that if the cases are reviewed, particularly those that are egregious, there are two completely different sets of facts that people are working with. He said that in the last four years, he recalled only two cases in which he felt that parents did not have a chance to get their own story heard, and for whatever reason, the District Court did not want to hear that perception. One thing that he would do to improve the system is to appoint legal counsel for parents very early on. Rep. Lawson asked how the appointment of legal counsel would be handled. Mr. Hunter said that most areas that appoint legal counsel appoint public defenders who focus on child and family service type issues. He said that if he were to put together a legal scheme on how it should be done in Montana, he would not have county attorneys prosecute these cases. He would have a consortium of state prosecutors from the Department of Justice who are familiar with child and family services law do the prosecution, and conversely, he would have the defenders appointed for clients be a similar group of people.

Rep. Schmidt asked if Mr. Hunter had any other suggestions for improving the system. Mr. Hunter said that a suggestion would be to provide enough resources for the Department to do its job. He felt that the biggest problem in the child and family arena is not having the amount of time to spend with families and children to bring a successful resolution. Rep. Schmidt asked about the effects of the foster care cuts. Mr. Hunter said that he has some fears about the cuts. Over the past year, the Division has been operating on a very narrow margin, and the 5% vacancy savings has been particularly difficult. As the Division looks at future reductions, it will put a dramatic stress on the system if the Department does not see a drop in the caseload.

Director Gray added that if she had to pick one Division within DPHHS that had the most stress and the least resources to meet its demands, it would be the Child and Family Services Division.

Sen. O'Neil asked what contribution the court-appointed special advocates (CASA) have made to the resolution of some of the CFSD's cases. Mr. Hunter said that there is a mixed response. To some degree, it depends on how the Judges use CASAs, and in others, it depends on the CASAs themselves. However, he felt that CASA was a positive benefit within the CFSD. The Division has a proposal for defining the role of CASAs. Sometimes their role is confusing with guardians ad litem--sometimes they are used in the same fashion, sometimes they are not. Clarification is needed.

Rep. Lawson asked if the foster care and citizen review boards at the local level were rubber stamps for the Department. Mr. Hunter said that social workers would say that they are not rubber stamps. Judges appoint the people who sit on those boards not the Department. Second, in terms of the boards rubber stamping what the Department does, it is true that those groups approve a very high percentage of what is going on in the case plan from the Department. However, the case plans are developed with a cross spectrum of people and there has been much dialog outside the perspective brought to bear on the plans.

Mr. Hunter said that the federal audit was a 2-part process--a statewide assessment from stakeholders across the state and an on-site review. (EXHIBIT #11) Early reports indicate that Montana has a very good array of services, particularly up front, in-home services; it has a positive impact from family group decisionmaking; it has strength in working with extended families, seeking out noncustodial parents, and placement with relatives. The federal auditors along with the Legislative Auditors see the need for an enhanced recruitment of foster families, particularly Native American families, and they are seeing a huge impact from substance abuse which are drivers in many of the CFSD cases. They also said that the big elephant in the CFSD was resources which they will be responding to.

Rep. Lawson asked if the public at large had the opportunity to speak with the federal auditors. Mr. Hunter said that other than the families involved in the random selection of cases, no specific public comments would go into the findings of the audit.

Mr. Hunter provided an overview of the Medicaid investment/incentive assessment. (EXHIBIT #12) The concept is based upon an assessment on all medical providers using the funds to match with federal Medicaid funds (3 to 1 ratio) and reinvesting the funds back into the Medicaid system. It would also provide a substantial rate increase to providers, up to 20%, over what they are currently receiving as well as providing for the restoration of services decreased by the budget cuts and to provide for caseload growth.

Rep. Lawson asked if all medical providers were included in the assessment. Mr. Hunter said that the assessment could be done on a blanket basis or by a provider type. Federal regulations on provider taxes state that it must be broad-based meaning that every provider of a given-type of service. However, the Department can pick and choose among the categories. Rep. Lawson requested a copy of the report to the Governor on the assessment concept and the Division's recommendations on how to proceed.

Rep. Schmidt asked about the medical provider response to the assessment. Mr. Hunter said that there is considerable interest from some provider groups, particularly those who do a substantial amount of Medicaid business. CFSD is hearing the most dissension on the assessment in the physicians arena because it is an arena that includes many specialties that

do not see many Medicaid patients or any at all, and the Department must bring in all physicians as a class.

LEGISLATIVE PROPOSALS (DPHHS)

Susan Fox, Research Analyst, Legislative Services Division, provided an overview of the proposed procedure for review of DPHHS legislation and requesting of bill drafts on the DPHHS's behalf. (EXHIBIT #13) A blanket motion to adopt all proposed legislation authorizes the drafting of the legislation only. It does not reflect Committee support.

Agency Proposals by Division

Dan Anderson, Administrator, Addictive and Mental Disorders Division, DPHHS, provided a brief overview of the AMDD's legislative proposals. (EXHIBIT #14)

Sen. O'Neil asked if it made a difference in which type of guardian is used to admit a person to the Mental Health Nursing Care Center (MHNCC). Mr. Anderson said no that the Department tries to get family members to serve as guardians but it has been a difficult task.

Sen. Grimes asked if any mental health admissions to the MHNCC were criminally convicted. Mr. Anderson said no, that they are civil commitments with no criminal process involved.

Chuck Hunter, Administrator, Child and Family Services Division, provided a brief overview of the CSFD's legislative proposals. (EXHIBIT #15)

Sen. Grimes said that there may be ramifications regarding the clarification that "child or youth" means any person under the age of 16. According to testimony heard from parent during the Alcohol and Tobacco Task Force, many children are addicted to methamphetamine and parents could not control them because of their age. Parents are looking to go in the opposite direction and want more resources to pull children into the system and hold them more accountable. In addition, proposed legislation related to the release of information from adoption records has been a recurring legislative proposal and may encounter some resistance. He added that the Legislature will want to know when the statute applies when there has not been a substantiated case of abuse and neglect.

Rep. Schmidt asked the age differential in reported abuse cases was driven by departmental resources. Mr. Hunter said that it was driven both by resources and by the recognition that working with older teens is very frustrating because, very often, they refuse to do what the Department is trying to provide in the way of services. Their way of dealing with what may be a bad situation at home is to just not be there and there is nothing that the Department can do to make them return to those settings.

Sen. Pease asked if the case entrance and exit standards for foster care were coming from the tribes. Mr. Hunter said that the idea came from an adoption specialist position who has all adoption records from individuals and tribes. It is not an organized effort on behalf of the tribes. Sen. Pease asked if the proposed legislation was just for enrollment purposes. Mr. Hunter said it would be used primarily for enrollment to determine if someone is truly is enrollable or not.

Maria Matthews, Fiscal Services Division, DPHHS, provided a brief overview of the Fiscal Services Division's legislative proposals. (EXHIBIT #16)

Director Gray said the health care database required under 50-4-502, MCA, is something far beyond the database that the Department has for Medicaid. The database would cover all health care, and it would be a gargantuan and very costly task. The Department wants to repeal that portion of 50-4-502 because the bottom line is that it cannot pay for it.

Ms. Matthews said that the Division's proposed legislation has one modification--that the per diem due date be periodically reviewed with no specific timeline for the changes.

Maggie Bullock, Administrator, Health Policy Services Division, DPHHS, provided a brief overview of the HPSP's legislative proposals. (EXHIBIT #17)

Sen. Grimes asked if the Department currently had the power to quarantine under its emergency health powers. Ms. Bullock yes, but the issue is related to the planning for bioterrorism preparedness and hospital emergency response in the event of a bioterrorist attack or a statewide event that would require good coordination and planning.

Valencia Lane, Staff Attorney, Legislative Services Division, said that agencies can currently adopt federal law by reference under the Montana Administrative Procedure Act (MAPA). However, the Department indicated that it wants to amend current law so that it could adopt by reference any future laws enacted by the federal government. 2-4-307, MCA. was written because of the constitutional problem of the unlawful delegation of legislative authority. Even if the statute was changed, there still remains the constitutional problem that agencies cannot adopt future enactments of the federal government because it is an unlawful delegation of its legislative authority. She suggested that the Department's legal staff review this issue before it proceeds with the proposed legislation.

Hank Hudson, Administrator, Human and Community Services Division, DPHHS, provided an explanation of the Division's legislative proposal by stating the following:

- The proposal is to amend 53-4-210 which describes how, in the event of a recognized tribe in administering their own TANF program, the state money would flow to the tribes.
- The statute states that if the tribes decide to exercise their prerogative under the federal Welfare Reform Act to operate their TANF program directly with the federal government, the state's TANF block grant is reduced and the tribe's share of the block grant is given directly from the federal government to the tribe.
- The state then has a maintenance of effort requirement that would be reduced to reflect the reduced block grant to the state.
- In 1999, a law was passed that stated that if a tribe operates its own TANF plan, it would receive its share of the state's maintenance of effort plus a \$100,000 payment each year of the biennium that they chose to operate its own program.
- The \$100,000 was a recognition of the fact that there are some costs that a tribe would have to assume that would not be covered in the TANF block grant.
- Last session, one tribe decided to exercise that option.
- The state's maintenance of effort was reduced but there was no appropriation for the \$100,000 or the share of the maintenance of effort that the state had to transfer to the tribes.
- The Department had to find the money which caused a problem within its budget and would cause a more serious problem under its current budget situation.

- The proposed change would say that the state would pass on their portions of the maintenance of effort plus \$100,000 to any tribe that decides to operate its own TANF plan if the Legislature appropriates the money for that purpose and if the tribes submit the required reports to the federal government.
- Unless the tribes report the same elements the state reports, the state is subject to penalties.

Sen. Grimes asked if it would still be optional for the tribes to operate their own TANF programs. Mr. Hudson said yes.

Sen. Pease asked about the Confederated Salish and Kootenai Tribes' TANF program. Mr. Hudson said that it is one of the best TANF programs in the country run by an Indian tribe. It is integrated with their economic development programs and it has a very strong focus on children. Sen. Pease asked if the cost to the state was \$500,000 to administer the TANF program for the two reservations that run their own TANF programs. Mr. Hudson said that the state's maintenance of effort fund is approximately \$500,000 for the two reservations but they are not all administrative costs.

Mary Dalton, Administrator, Quality Assurance Division, DPHHS, provided a brief overview of the QAD's legislative proposals. (EXHIBIT #18)

Director Gray said that the Department had originally had a request from the Senior and Long Term Care Division for flexibility in bidding. Ms. Fox said that it was her understanding that the Department of Administration would pursue the issue because the Architectural and Engineering Division would be involved. She will clarify whether that is the case.

Rep. Lawson asked if the issue would be handled within HB5. He said that the project is moving along but asked if preapproval was needed to get the job done. Ms. Fox said HB5 is usually an appropriations bill. If statutory changes are needed, the Legislature cannot do statutory changes in an appropriation bill. She will find out if the Department has a separate place holder or bill draft request.

Rep. Schmidt asked about the licensing of out-patient surgical service centers. Ms. Dalton said that currently for Medicaid and Medicare payment purposes, out-patient surgical centers can be licensed by AAAHC. However, state statute does not allow the Department to recognize the AAAHC as a "deeming agency" resulting in out-patient surgical centers having to go through a completely new licensure review. The proposed legislation would allow the Department to recognize AAAHC as a deeming agency.

Adoption of Proposed Legislation

Sen. Grimes **moved** a blanket motion to adopt all of the DPHHS's proposed legislation.

Rep. Lawson asked if Mike Hanshew's plan for the Veterans Home in Columbia Falls could be included in the motion on a conceptual basis. Ms. Fox said that in May, the Committee received a prioritized legislative proposal for the 2003 Session. If the Committee wants to include Priority #23 from the May meeting, it could do a place holder. Since the Committee received the OBPP priority sheet on the proposal in the past, it has a document to refer to and it could be included in the motion.

Rep. Lawson made a substitution motion to adopt the DPHHS's proposed legislation with the inclusion of Priority #23 regarding the Montana Veterans Home in Columbia Falls from the May Committee meeting. The blanket motion did not include any positive support of the proposed legislation only the authorization of the drafting of the legislation.

The substitution motion passed unanimously.

ADMINISTRATIVE RULE REVIEW AND OTHER REPORTS

Rule Review

Ms. Lane provided a summary of the DPHHS's rule submissions. (EXHIBIT #19)

Rep. Schmidt asked what were the three rules that Ms. Lane referenced as not having much time to spend on. Ms. Lane said that she wants to revisit the extension of the 2.6% provider reimbursement reductions, the Medicaid cost-sharing rule, and the authorization requirements for mental health service centers and the Mental Health Services Plan. If she finds problems with the rules, she will notify the Committee.

Legislative Audit Report on HJ32

Mike Wingard, Performance Audit Manager, Legislative Audit Division (LAD) provided an overview of the Legislative Audit Division's performance audit summary of the Child Protective Services System (CPSS) of the DPHHS. (EXHIBIT #20)

Rep. Lawson requested a copy of the LAD's final report on the CPSS and he asked if public comment would be accepted on the LAD's findings at the Legislative Audit Committee meeting in November. Mr. Wingard said that questions and comments from the public will follow agency responses to the LAD recommendations and the agency's formal response will be included in the final performance audit reports.

Sen. Grimes asked if the LAD's research methods included looking at problem cases or was it a survey of the Division's standard operations in general. Mr. Wingard said yes and that because of the way HJR32 was written, LAD also reviewed whether the CFSD was following laws, regulations, policies, and procedures as they are established. Sen. Grimes asked if LAD had access to confidential information from the Department and did Mr. Wingard feel confident that the Division was making good decisions. Mr. Wingard said yes and he noted that the Department is hampered in some respects because they cannot respond to the public's concerns and anxieties about certain cases because of the confidentiality requirements. Sen. Grimes asked if Mr. Wingard saw a high burnout rate in the CFSD and did he have a sense that the lack of communication may exacerbate the problems that families have with the Department. Mr. Wingard said that approximately 40% of the social workers in the Division have less than 3 years experience which indicates a high turnover rate. However, the LAD did no work that was specifically related to the reasons why people were no longer social workers. Mr. Wingard said that because the LAD spends a substantial amount of time in the regional offices with the social workers, there is a sense of frustration with the lack of time that social workers get to spend with families. The LAD report indicates that there is very little documentation that social workers are spending much time visiting with children once they are placed in foster care situations. The LAD felt that was a concern.

Special Session Budget Debriefing

Lois Steinbeck and Pat Gervais, Senior Fiscal Analysts, Legislative Fiscal Division, provided a summary of legislative action taken during the August 2002 Social Session related to the DPHHS appropriation reductions. (EXHIBIT #21)

Sen. Grimes said that caseloads were down in 1999 and bottomed out. He asked if the 1999 numbers were prorated using caseload statistics, would that account for the entire \$78 million. Ms. Steinbeck said that was a good part of it. However, the Legislature also granted significant provider rate increases (\$13 million) in the last biennium. Although caseloads have grown and although there has been an expansion of services, the cost per service has also increased. This biennium saw that largest provider rate increases across all DPHHS programs.

Sen. Grimes asked about the concerns raised related to the fund transfers from the institutions. Ms. Steinbeck said that statute requires that when the Executive Branch makes an appropriation transfer--moving money from the second year of the biennium to the first year--which was done for DPHHS, that it present a plan on how it would mitigate and contain expenditures within the appropriation because the Executive Branch cannot commit the Legislature to appropriate more money. Just because revenue increases, it does not authorize the Executive Branch to spend more. The appropriation-transfer mitigation plan identified additional revenue in the general fund as the way that it would mitigate the supplemental that it said that it would request, and legislative staff said that it was not in compliance with statute. It does not give the Legislature, as policymakers, the choice between appropriating more money and expenditure reductions. Ms. Steinbeck said that the DPHHS has had many expenditure reductions, but the Legislature may choose to use the \$3 million increase differently than it would as proposed by the Executive Branch.

Sen. Grimes asked if DPHHS had requested the supplemental. Ms. Steinbeck said according to a letter from Budget Director Swysgood to the Legislative Finance Committee, the Department would be making an appropriation transfer and that it would be requesting a \$3.9 million supplemental. She said that her preliminary estimate is that the supplemental will be closer to \$6.7 million because the medically fragile waiver requested will not be approved in time to reduce expenditures. DPHHS was counting on \$2.1 million of general fund savings from the waiver.

Sen. Grimes asked about the potential time line for receiving Title IV-E funds and other federal funds that were identified. Ms. Gervais said that within federal regulations, states can make changes that they want through state plan amendments effective at the first of the quarter that they filed the amendment. If the amendments were filed this quarter, the funds could feasibly be retroactive to July 1. By the time the amendments get through the federal process, the time line is approximately 60 to 90 days. Implementation would be slightly longer. However, there is a potential to see the beginning of additional reimbursement by the end of this fiscal year. The DPHHS has indicated to the Budget Office that it would recoup at least \$500,000 during this fiscal year. Ms. Gervais said that the Department also had a consultant who identified an estimated annual savings and revenue enhancements of between \$3 million and \$5 million.

Ms. Steinbeck added that the challenge will become making sure that the Department does not need to change system requirements in CAPS which would slow the process down even more. It is a matter of mimicking what other states have done. Minnesota receives \$165 a day for a

case management contract which is federally matched--in Montana's case 70-30. If Montana could get a number of those contracts every day, things could be done this year that would help solve the problems.

LC 9998

Greg Petesch, Director, Legal Division, Legislative Services Division provided a brief overview of proposed legislation (LC 9998) clarifying that a seriously developmentally disabled person may not be found fit to proceed in a criminal proceeding. (EXHIBIT #22) He stated the following:

- This issue first arose from an April 22 analysis of a specific criminal proceeding that he did for Sen. John Cobb. (EXHIBIT #23)
- In analyzing the proceeding, it was found that there are no provisions in statute for what is done with a developmentally disabled person who is convicted in a criminal proceeding.
- The statute is very specific about what is done with a mental disease or defect conviction, but a mental disease or defect and a mental illness or a defendant who is guilty but mentally ill is different than a person who is guilty but developmentally disabled.
- The statute does not provide for a placement in a developmental disability facility.
- Whether the Committee goes with the exact concept of LC 9998 or not, this is an issue that cries out for legislative attention because more developmentally disabled people are coming in front of the criminal justice system.
- LC 9998 attempts to codify a placement for people who are guilty but developmentally disabled to require the same kinds of findings throughout the criminal proceedings with regard to people who are developmentally disabled as is currently required for people who have a mental disease or defect which includes the ability to understand the criminality of their actions and their ability to aid in their own defense.
- He had the opportunity to review a document from the Montana Advocacy Program (MAP) that raised concerns about LC 9998.
- He disagreed with MAP's assertions that not allowing a person who is determined to be seriously developmentally disabled to be proceeded against at all criminally is a violation of equal protection.
- LC 9998 states what staff thought the law was all along that a person who is seriously developmentally disabled cannot have a criminal proceeding continue. The person must be kicked over to the civil side for commitment.
- It is enhancing the protection of a person who is seriously developmentally disabled by not allowing criminal charges to continue. They would have to be dismissed. This is a policy choice.
- Even if the Legislature allowed a person who is seriously developmentally disabled to be convicted, the state does not have a facility to place the person in because the only statutory authority is for placement in mental health facilities.

Ms. Fox said that LC 9998 attempts to clarify that mental disorders are covered under the mental illness statutes, that developmental disability is a separate category not under the mental disease or defect statutes, and it attempts to clarify to the Court system that they are different subjects. She added that it is a policy decision to decide whether a person has been determined to be seriously developmentally disabled and may not be found fit to proceed. The charges would be dismissed and the proceedings would be held in a civil commitment. The reason this was selected is because the definition of seriously developmentally disabled includes three

elements: (1) that a person have a developmental disability, (2) that a person is impaired and cognitive functioning, and (3) that a person has behaviors that pose an imminent risk of serious harm to self or others and they are so severe that it requires total care or near total care and because of the behaviors or deficits cannot be safely and effectively habilitated in community-based services. It is also a policy decision whether the Legislature believes that the seriously developmentally disabled should be a group that should be excluded from the criminal process.

Ms. Fox added that the more that DD people are in the community, there is less supervision and they are more free to act on their free will. As a result, the state is seeing more DD people in the criminal justice systems just as it is seeing more mentally ill in the criminal justice system. What is not apparent in the proposed legislation but was specifically apparent in the one sentencing order, was that it mostly relates to sex offenders. This is the element that is causing much concern in the communities. The legislation applies to everyone equally regardless of the offense.

Sen. Grimes asked if the proposed legislation was the Legislature's intent, would the person in the one sentencing order be criminally charged but not found to be developmentally disabled but rather found to have a mental defect. Ms. Fox said no, the person was developmentally disabled. Because there was never a finding of fitness to proceed or competency to stand trial, it is unknown whether the person would have ended up with the same conviction. LC 9998 would give a clear pattern that even if a person is developmentally disabled, the courts have to follow the same steps that they do for mental illness. LC 9998 takes the seriously developmentally disabled out of the picture which is a policy decision.

Anita Roessmann, Staff Attorney, Montana Advocacy Program (MAP) provided written comments (EXHIBIT #24) and requested more time to study the proposed legislation. She said that MAP opposes the section of the bill that states that the Court orders a person with a developmental disability to be evaluated for fitness to proceed. If the evaluator finds that a person is seriously developmentally disabled, which means that the person is committable to MDC or Eastmont, then that is as far as they go in the system. The case is dismissed, the person is referred to the residential facility screening team, and then it goes to Court on a commitment petition. If the person is committed, the case is dismissed. If the case is referred to the Department either because the person is unfit to proceed or the person was found guilty but developmentally disabled, MAP would like the Department to be able to place the person in an appropriate state institution or in community treatment. She said that this may sound counter intuitive because if a person got to the point where criminal charges were brought against them, then the person needs to be in the most restrictive setting possible because it is the only way to keep communities safe. MAP feels that it is not. MAP believes that the most appropriate level of care, which in the case of a person who has serious behavioral problems, would be a very structured and a closely supervised level of care. This level of care is found in community settings not in state institutional settings. There is closer one-on-one staff supervision in smaller community care centers.

Ms. Roessman said that people with DD and people with mental illness in the evaluation process are treated very different. Person with serious mental illnesses are entitled to have their evaluator determine three things: (1) what is their diagnosis, (2) if they have a mental illness, are they committable, and (3) are they fit to proceed. If a person with a DD is referred to an evaluator under the existing statute, the only thing the evaluator is required to do is make a finding that the

person is seriously DD and committable. The reason it is important that all people be treated alike is because they have the right of due process and to defend themselves against criminal charges under the Montana and U.S. Constitutions. If a person with a DD has behaviors that make them not treatable in the community, according to an evaluator, but the person is smart enough to understand the proceeding, the charges, and the alternatives, they never get vindicated. What is found is that people with developmental disabilities or mental illnesses are very often diverted into the treatment system and they never get a chance to hash out the facts of the case. People get into the DD and mental illness treatment systems and they get stuck for years if they are committed because Montana's system is so inadequate.

Sen. Grimes commented that the state currently has the problem of improper commitments, and a bill needs to be drafted to address the immediate problem of judges looking for a loophole in the law to stick violent offenders somewhere. He felt that the Committee should move forward with the proposed legislation and changes to it will take place as it moves through the process. He also felt that community-based options should be included in the bill. He asked if it would offend MAP if the Committee proceeded with the bill. Ms. Roessman said no but that MAP would appreciate the Committee's support for changes to the bill draft that is submitted.

Ms. Fox said that the Committee's final report could reference that concerns were presented regarding whether or not the seriously developmentally disabled should be presumed unfit to proceed and whether a person who is awaiting a determination of fitness to stand trial should be in a residential or institutional facility. When the discussion comes before a legislative committee, it will know that the Committee heard the concerns but decided to go ahead with the bill seeking further information on those points.

Sen. Grimes was not prepared to say that all DD people should not be committed to an institution either. He also felt that Ms. Roessman's comments should be further reviewed. He **moved** that the Committee approve the proposed legislation clarifying that seriously developmentally disabled persons may not be found fit to proceed in a criminal proceeding as a Committee bill with the caveat that certain issue be thoroughly researched. The motion passed unanimously.

Senator Grimes commented that the Drug and Alcohol Task Force had many recommendations that technically should have gone through the appropriate legislative committee for review. He felt that in the future, this should be coordinated more carefully.

SJR22 Study Resolution on Health Care and Health Insurance Costs

Rep. Lawson said that the Subcommittee is reviewing the feasibility of providing tax credits to small businesses and individuals to induce them to buy insurance and how to finance them. It also discussed entering into a purchasing pool for pharmaceuticals which became less attractive as time went. For example, most of the purchasing pools are via mail order which has consequences for local pharmacies. Rep. Lawson said that health care and health insurance will be huge issues in the 2003 Session and in the future because 18.4% of Montana's population is uninsured. The Subcommittee hopes to have some solutions at its September 12 meeting or it may find that there are no viable solutions at all.

Sen. O'Neil added that New West Insurance also submitted a legislative proposal to eliminate legislative mandates involved with health care in order to lower the cost of premiums to provide a no-frills insurance package.

Sen. Grimes said what would get more people covered is if employers could write off their contributions to employee medical costs. Insurance companies would not like it because there would be a quasi-insurer, being the employer, who could discriminate.

Rep. Lawson added that the Subcommittee was also reviewing tax credits for employers and individuals that are advanceable and refundable. However, whatever is done, it increases the cost of any health care insurance package.

Sen. Grimes asked if any discussion referenced the old Health Care Authority. Rep. Lawson said that the Subcommittee reviewed the concept of reestablishing the old Health Care Authority. It found that continued legislative involvement was needed but perhaps that the Children, Families, Public Health, and Human Services Interim Committee would be the preferred vehicle for long-term oversight of health care issues rather than reestablishing the Health Care Authority.

Ms. Fox said that the issue of health care and health insurance costs would be a topic of study suggested to the CFHHS Committee in the next interim and that she would participate in DPHHS' statewide planning effort of which the uninsured and health care costs are a part.

LC 8888

Chris Volinkaty, Executive Director, CDC, spoke about LC 8888 and the need for respite care to become an exemption from the minimum wage and overtime hour laws. (EXHIBIT #25) She requested that the Committee support LC 8888.

Ms. Fox said that the DPHHS has money that it provides to respite care worker through various agencies in the communities. She referred to an information request response to Sen. Mahlum who requested information on the feasibility of a legislative solution to the issue of reimbursement for respite care. (EXHIBIT #26) The proposed legislation amends the exclusions from minimum wage and overtime laws for employees who provide "companionship services"-- term used by the federal government--who are employed by family members and guardians.

Sen. Grimes said that LC 8888 should move forward as a Committee bill with the caveat that more work needed to be done on it. He said that it was a big enough issue for enough families in Montana that it should have an opportunity to be debated before the Legislature. He **moved** that LC 8888 be formerly requested as a Committee bill. Motion passed unanimously.

Rep. Lawson added that because the Legislature worked very hard to increase provider rates, the proposed legislation could be very controversial.

LC 8889

Billie Miller, Family Outreach provided an overview of LC 8889 proposed legislation and encouraged the Committee to support it. (EXHIBIT #27) She said that the LC 8889 does not have money attached to it to date and that it is a proposal to plan and build a Lifespan Respite infrastructure across the state. Last year, Lifespan Respite had five pilot projects of which two were closed because of lack of funds. It has also unofficially heard that the continuation of its

federal grant is one-half of the amount that it received in the previous year. Lifespan Respite continues to write grants and do what it can to stay afloat until the state incorporates the whole Lifespan Respite idea under DPHHS. In the last year, the Helena Lifespan Respite Project conducted over 2,000 hours of respite services to families and the project is growing with time.

Chadene Atkins, Program Coordinator, Helena Lifespan Respite Project, said that the proposed legislation provides for the training and the recruitment of respite care providers, it stresses a collaborative effort between DPHHS and community-based respite care services, and it is designed to fit into each community's need. She added that respite care is needed in every aspect of the DPHHS.

Ms. Fox said that some states have extensive legislation with extensive appropriations attached for the establishment of Lifespan Respite Projects and some states have implemented Lifespan Respite without legislation. LC 8889 is very close to the latter. Although it directs the DPHHS to do certain things, it is mostly directed toward the setup of a program rather than the DPHHS's operation of the program. As the Legislature appropriates less money, Lifespan Respite is losing its flexibility to even support its grants. There are eight Divisions under the DPHHS that currently utilize respite care, and although there is no funding attached to the legislation, there is a fiscal impact and it will require a fiscal note. If the fiscal note is enough to dissuade the Legislature, the proposed legislation could be turned into a resolution to ask that the DPHHS establish the Montana Lifespan Respite Services Program statewide.

Sen. O'Neil asked if private providers or the state would provide respite care services under LC 8889. Ms. Fox said that LC 8889 encourages the statewide coordination of accessible community-based respite care services for family caregivers and to work with community-based private, non-profit or for-profit agencies. Although most respite services are provided by community-based, non-profit agencies, it does not preclude the DPHHS from working with for-profits.

Sen. O'Neil asked if Lifespan Respite could become a profit-making organization. Ms. Miller said that the statewide group has discussed a fee-for-service approach as a way to generate funds. Currently, there is no charge and all of its efforts have gone toward providing services. The statewide group has also looked at what other states are doing in the lines of respite care. Sen. O'Neil asked if reimbursement for services was received from families. Ms. Miller said that Lifespan Respite does not receive any funding from families. It trains and matches respite care providers with families and the families work out the terms directly with the providers.

Ms. Lane suggested that LC 8889 not be requested as a Committee bill if the Committee is not strongly in support of it as a committee.

Following further discussion, the Committee felt that further information and possibly legislative action was needed before it commits the Department to establishing a lifespan respite program.

No action taken on LC 8889.

Final Report Outline

Ms. Fox provided a summary of the Committee's final report outline. (EXHIBIT #28)

Sen. Grimes said that the Drug and Alcohol Task Force had lengthy discussions about the Interagency Coordinating Council (ICC) and it was very worried after it came up to speed on what the ICC's role was. The Task Force has some recommendations related to the ICC.

Ms. Fox said that the Committee is a policy committee that has been obsessed with budget issues for the entire interim and the HJR1 Budget Committee has been obsessed with mental health policy issues. She would like include a statement in the final report that refers to one place to keep track of the issues. Sen. Grimes asked if in a normal interim where there would not have been budget shortfalls, did Ms. Fox see that the same thing would happen. Ms. Fox said how can the state consider policy issues without budget and budget issues without policy. Even in an anomaly year, if there is no budget, no policy happens and the committee's never receive a true assessment of the policy issues because they become obsessed on how to pay for it. The Legislative Branch should develop ways of dealing with the anomalies within the interim committee system.

Sen. O'Neil felt that there was some benefit to having policy discussed with the budget. Ms. Fox said that the Committee should then ask the Legislative Finance Committee to dedicate staff to the CFHHS so that it has its resources available for the LSD just as the LSD has made its research and legal services available to the LFD.

Ms. Fox added that she will add the issue of the public defender for parents to the final report. Sen. Grimes said that the issue should be included in the final report and the next interim committee should follow up on it. He asked about a possible study resolution on the issue. Ms. Fox said that a study resolution would provide the Committee with a more public forum for participation by the families, the counties, the Judiciary, and other stakeholders.

Rep. Lawson said that he would support any concept that would involve the representation of parents. He **moved** to draft a resolution to study the idea of a public defender for families. Motion passed unanimously.

PUBLIC COMMENT

Steve Yeakel, Executive Director, MT Council for Maternal and Child Health said that he served on the Governor's Workforce Shortage Task Force. He encouraged the Committee to review its final report. He also shared concerns about ICC, the Prevention Resource Center, and whether the state is articulating clearly to fellow policymakers and the public that old adage that if the state invests a dollar in necessary prevention services or can educate families to provide necessary prevention, the state is saving untold dollars later on at emergency rooms, the corrections system, and the child and family service system. The Council will try to conduct 20 children's forums across the state to surface issues that impact children. He added that Sharon Hoff Brodoway, who has always been an advocate of the Committee, retired in July from the Montana Catholic Conference.

There being no further business, the meeting adjourned at 5:00 p.m.