



Children, Families, Health and Human Services Interim Committee

PO BOX 201706
Helena, MT 59620-1706
(406) 444-3064
FAX (406) 444-3036

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.**

Fourth Meeting of Interim
Room 102, State Capitol
May 15, 2002

COMMITTEE MEMBERS PRESENT

Rep. Trudi Schmidt, Presiding Officer
Sen. Eve Franklin
Sen. Jerry O'Neil
Rep. Bob Lawson
Rep. Bill Thomas

COMMITTEE MEMBER EXCUSED

Sen. Duane Grimes, Vice Presiding Officer
Sen. Gerald Pease

COMMITTEE MEMBERS ABSENT

Rep. Michelle Lee

STAFF PRESENT

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

VISITORS

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

COMMITTEE ACTION

- Approved the February 12 and 13, 2002, minutes as amended
- Approved August 23, 2002, as the next Committee meeting

ROLL CALL AND ADOPTION OF MINUTES

The meeting was called to order by Rep. Schmidt, Chair, at 8:35 a.m. Attendance was noted; Senators Grimes and Pease were excused and Representative Lee was absent.
(ATTACHMENT #3)

Sen. O'Neil requested that his name be added to the Committee Members Present list for the February 12 and 13, 2002, meetings.

Rep. Lawson requested the following change:

- February 13, 2002, minutes: Page 20--paragraph 10--Rep. Lawson **moved** that a formal ~~mediation~~ mediation process. . . .

Sen. Franklin **moved** that the minutes from the February 12 and 13, 2002, be approved as amended. Motion pass unanimously.

PLEASE NOTE: These corrections have been made to the original minutes which are on file in the office of the Legislative Services Division.

DPHHS DIRECTOR'S REPORTS

ICC Prevention Update

Gail Gray, Director, Department of Public Health and Human Services (DPHHS), said that the Interagency Coordinating Council (ICC) was established by the 1993 Legislature. It currently consists of 10 Cabinet officers, the Chair of the Montana Children's Trust Fund, two community members appointed by the Governor, and the Lieutenant Governor as an ex-officio member. The focus of the ICC is a coordinated and comprehensive system of prevention services in the state.

Vicki Turner, Coordinator, Prevention Resource Center, provided an overview of the goals and resources of the ICC, a copy of The Prevention Connection Newsletter, a brochure regarding the Prevention Resource Centers (PRC), and information related to the PRC AmeriCorps*Vista volunteers. (EXHIBITS #1, #2, #3, and #4 respectively)

Bill Snell, Governor-appointed ICC member, said that when he first became an ICC member, he questioned the ICC's ability to be functional with such broad goals. However, by narrowing its focus and a commitment from staff, the ICC has now gained credibility and the PRC is a functional and an informative agency. The PRC has been most sensitive to Native American issues in the state, and the state would lose if the PRC went away. The PRC strategically thinks about the unique needs of Montana's Indian youth. Mr. Snell added that other Montana communities benefit from the strategic mission of the ICC and the work of the PRC as well. The PRC website provides improved access to information on prevention in the state, nation, and communities in an effective and efficient manner. The ICC has been selected as a VISTA site and will be working on tobacco use and child abuse prevention. The ICC continues to revisit the issue of sustainability on an annual basis, and the PRC is the sole support to the ICC. Montana

needs a better system that supports prevention. He requested that the ICC and PRC be totally funded so that they can be as functional as possible.

Sen. O'Neil asked about cost of the ICC and the PRC. Ms. Turner said that currently the ICC receives no funding other than member-agency donations in the amount of \$5,000 each, totaling approximately \$45,000. The remaining funding sources for the PRC are a VISTA grant and some funding from the Addictive and Mental Disorder Division (AMDD) of the DPHHS.

Sen. Franklin said if the ICC's focus is prevention and the coordination of resources and looking at the 10% cuts, she was unsure whether there would be anything to coordinate. She asked what is the point? Director Gray said that coordination is even more important when the state talks about the cuts of the magnitude that have been suggested. Even if the Department has a 10% cut, one of the first thing that goes is prevention. It is not good, long-term policy. There is a lot of coordination and discussion on federal funding which appears to be increasing in some areas. The Department is reviewing the possibility of taking some of its prevention grants and put them into the PRC program.

Rep. Schmidt questioned why the ICC was not receiving money from the Governor's Office when it is attached to it for administrative purposes. She suggested that the language in 2-15-225(5), MCA, be changed from "may" to "shall" assist the council. She added that it did not make any sense that the cuts within the Department were the lower-end services which are prevention services leaving the higher-end services that are more expensive. She asked if there had been any discussion about how to keep the ICC and PRC going. Director Gray said that the Governor is in favor of the ICC. However, Governor Martz has been very clear to the Executive Agencies that they are responsible for providing the recommendations for the various cuts. If the cuts come to fruition, the Department must look for other avenues of funding to sustain ICC efforts.

Rep. Lawson asked if there were projected cuts for the ICC and PRC program at the 3% and 10% levels. Ms. Gray said yes, but most of the cuts that the Department has taken have been in other areas and it will probably cut its annual donation from \$8,000 to \$5,000. The expectation in statute cannot be met with the current amount of funding. She added that since the ICC and PRC funding depends on contribution from many different state agencies, it would be hard to determine whether the cuts will affect them.

Sen. O'Neil questioned whether the Legislature had the constitutional authority to tell the Governor's Office how to exercise its functions if the language in 2-15-225(5) was changed from "may" to "shall". **Valencia Lane, Staff Attorney, Legislative Services Division**, felt that there would be no problem with changing the language because it is the way that the administrative procedure code and the government are set up and it has not been found to be unconstitutional. The suggestion to change "may" to "shall" would not do what the Committee wants to do. She felt that the language "for administrative purposes only" should be stricken and actually attach the ICC to the Governor's Office as part of its budget and duties.

Rep. Schmidt asked when the Department's proposed funding solutions would be available. Director Gray said that the Department's legislation does not include funding not ready

Director Gray provided an update of the Department's reorganization. (EXHIBIT #5) She said that the Fiscal Services Division has been taken out of the Operations and Technology Division and Mick Robinson is the Administrator. John Chappius, Deputy Director, will become the Director of Medicaid as recommended by a legislative audit report.

Director Gray added that there are 150 vacancies in the Department and most of them will not be filled. She provide information on the Governor's Task Force on Healthcare Workforce Shortage (EXHIBIT #6) and will provide further information at the Committee's next meeting.

Director Gray said that the Olmstead plans for the Disability Services and Senior and Long Term Care Divisions were almost done. Several comments on the plans related to the scope of planning rather than the content of the plans and specifically included issues regarding transportation, low-income housing, and the Montana School for the Deaf and Blind. Comments also included the cost shift to the Department in terms of what is paid by the Addictive and Mental Disorder Division for services for emotionally disturbed students and what is paid by the Office of Public Instruction. The Health Policy Services Division is in the beginning stages of establishing its Olmstead plan.

Rep. Schmidt asked how the vacancies were affecting the workload in the field. Director Gray will provide the information but added that social workers and direct-care staff were exempt from the hiring freeze and the Department hoped to fill some of the positions by July 1.

TANF Report (HB 2 Required)

Bob Tallerico DPHHS, provided an update on the HB 2 requirements related to TANF. (EXHIBIT #7)

Director Gray said that the OBPP has indicated that it will try to make up the projected biennial transfers during the Department's EPP proposals. The Department has transferred \$17 million over the biennium to child care, \$5.3 million to foster care under the Child and Family Services, and \$2.8 million to the Disability Services Division. Director Gray said that the Department is fearful that it will need this money for cash payments for TANF. If it does that, the Department will not have the funding available to transfer to other programs.

Rep. Schmidt asked why low-income housing did not spend any of its money. Director Gray said that there is not enough low-income housing available, and people at that income level do not have enough income to buy houses.

FAIM Sanctions

Linda Snedigar, Program Manager, TANF, DPHHS, provided an update on the FAIM sanctions. (EXHIBIT #8) She said that sanctions are mandated by federal TANF legislation and are all related to participation requirements. TANF requires that in order to receive cash benefits, individuals must participate in work activities between 30 to 35 hours a week and there has to be a consequence for not doing that. In Montana, there are 5,821 individuals who have family investment agreements (FIA) of which 266 were in sanction status. There are approximately 60 individuals a month who are in non-compliance and move into sanction modes. Intensive case management (the work program) has the highest rate of sanctions, at 70%. Seventeen percent of the sanctions are recommendations from Tribal/New and 13% come from the local Offices of Public Assistance.

Sen. Franklin asked if the Department was tracking families with children who have fallen out of compliance. Ms. Snedigar said that the Department does some tracking but not totally. Under its new policy, the Department is inviting people back into the TANF program to reengage them. These people are usually still on food stamps and Medicaid. If it becomes apparent that there are problems, referrals are made from county offices to Child Protective Services.

Sen. O'Neil asked if whole families are sanctioned or just the parents and what are families being sanctioned for. Ms. Snedigar said the first-month sanction is only the amount equal to one adult's share. The closure of the case is the whole family for a one-month ineligibility period. The Department is finding families who are using up 60 months, resulting in them not qualifying for benefits at all. Ms. Snedigar added that families are being sanctioned for total absence of participation, no contact, and not showing up for work. Sen. O'Neil asked if an individual could be sanctioned if the individual received a DUI. Ms. Snedigar said individuals would not receive a sanction for a DUI conviction unless they had agreed to go to substance abuse treatment and then stopped going.

Sen. Franklin said that many times the tough-to-serve are families that have multi-problems. She asked if the Department has been tracking a pattern of who seems to be most vulnerable to getting sanctioned. Ms. Snedigar said that a 12-month sanction person has found other ways to get on with life on a reduced benefit. If a mental health or physical health issue is involved, the Department has scheduled that in so that they do not get sanctioned. The toughest to serve families are substance abuse families who will not cooperate. Sen. Franklin requested more information on the "properly sanctioned", what it encompasses, and who is tracking the children where all 12 red flags exist. Sen. Franklin asked about the amount of documentation on methamphetamine use. Ms. Snedigar said that the Department knows that it exists and it is present in some of the case files. In these cases, calls are made to Child Protective Services.

Sen. O'Neil asked if a family could be sanctioned if a methamphetamine lab was found in their home. Ms. Snedigar said that would be a felony conviction and an individual cannot be a drug felon and receive TANF benefits.

Rep. Thomas said that during the 2001 Session, the Legislature passed a used-vehicle bill. He asked if these were the cars that the Department was repairing, and if not, can anything positive be said about their use. Director Gray said that all of the used vehicles purchased are on the road but are not the cars being repaired. Most of the cars went to HRDCs who would sell them for a low amount and use the money as a revolving account to purchase more cars. One-half of the vehicles went to the working poor who are not on TANF assistance but at-risk. Director Gray added that having a car available has been one a primary prevention tool that makes people able to participate, particularly in the rural areas where public transportation does not exist. She was unsure of the amount of cars that the program has generated but will provide the information.

Rep. Thomas asked if the bill was a one-time bill. **Susan Fox, Research Analyst, Legislative Services Division** said that the purchase of the first cars from the Department of Transportation was a one-time purchase.

Child Support Enforcement Division (CSED)

Director Gray provided an update on the elimination of the customer service contract with Maximus and the absorption of duties internally. She said that the Division reduced its staff to 19 less than authorized through attrition and it cancelled its annual training conference and all out-of-state travel.

Rep. Lawson what the state has learned from the way it financially supports the CSED. Director Gray said that the Division is supported by federal funds and a very small amount of general fund money. The Department does not feel that this is the time to change it and it will be more conservative in the future.

Director Gray also provided a summary of the Department's bioterrorism grant. (EXHIBIT #9)

Child Protective Services

Chuck Hunter, Child and Family Services Division, DPHHS, provided comparative data on the number and types of reports received by Region for 2001 and 2002. (EXHIBIT #10) He said that there are three reports that get categorized in the system: (1) a CPS report--requires an investigation by field social workers; (2) a CFS report--provides information about a family that may need some type of assistance, but it is not a report, that in and of itself, causes the Department to believe that an investigation is necessary; and (3) a CPI report--an information report that reports issues about children where people are suspecting abuse, but in the Department's statutory view, what is alleged does not constitute abuse and neglect. It was Mr. Hunter's prediction is that next year, the Department will be seeing fewer CFS reports because they will move toward the other reports.

Mr. Hunter added that the Division has completed the first phase of its federal Child and Family Service review that all states are going through. The Department has completed its statewide assessment which will be available soon. Referring to a discussion of refinancing Title IV-E funding to include foster care candidates at the HJR 1 Subcommittee on Public Mental Health held on May 14, 2002, Mr. Hunter said that the Department is already serving a population of at-risk children--those children with in-home service contracts with general fund. If the Department limits its definition of foster care candidate to at-risk youth currently in the system, it will not be expanding the range of eligible candidates and will be financing it with federal funding instead of general fund.

Director Gray provided tables showing the Medicaid eligibles for both children and adults. (EXHIBIT #11) She said that the Medicaid-eligible increase is flattening out. However, the number of people who are eligible because of their income levels or because they are attached to TANF are increasing, along with the number of pregnant women and infants.

Budget Report,, EPP, and Legislative Proposals

John Chappius, Deputy Director, DPHHS, provided an overview of the Department's budget status and shortfall mitigation efforts. (EXHIBIT #12)

Director Gray said that the Department is concerned about the cuts. If the Department takes a 3% cut, the cuts would be \$8.4 millions of general fund, but with so many federal matching areas it would mean an economic impact of \$18.1 million in total funds. If a 10% cut is taken, it means \$27.7 million with an economic impact of \$58 million in total funds. The cuts are painful both to the Department's providers and clients. She added that since January 1, 2001, the

Department has made five major program cuts: (1) to meet the supplemental shortfall from the last biennium; (2) an \$18 million in the FAIM-IIR program cuts for the increase in the TANF cash-assistance caseload; (3) the CSED services; (4) most areas of Medicaid other than nursing homes and in the mental health services plan, included but not limited to the 2.6% provider rate reduction and a 5% client cost sharing; and (5) an 80% reduction in payments of therapeutic room and board for children and the pharmacy rate related to the wholesale price of pharmaceuticals. Director Gray emphasized that DPHHS and the Department of Corrections has the responsibility to administer facilities that are open 24 hours a day 7 days a week; and with the vacancy savings requirement imposed by the Legislature, it is impossible to make the cuts across the board. Cuts cannot be made in direct-care staff.

Director Gray said that the Department will receive some increase in the collection of Medicaid and Medicare from Montana Development Center and the Montana State Hospital. However, it cannot automatically go into other programs to mitigate the problem. Although the Department has brought in money for state, it has not helped the problems within the Department. The Department has been working with OBPP in the hopes that it can use some of the funds, but it will have to make supplemental request and come to the Legislature with a way to pay for it.

Sen. Franklin asked what affect will the Medicaid reductions have on able-bodied clients. Mr. Chappius said that the reductions affect adults, either TANF adults or adults, who are not disabled, not age 65 or older, and who are considered to be able bodied. This group could be limited in terms of Medicaid service package. They would receive mandatory services, but the waiver would limit what could be allowed in terms of pharmacy services, dental services, and a variety of other services. It could save \$2.8 million in general fund. The Department is finding that in this group, there are many mental health problems. The Department may offer a package that includes some optional services. Sen. Franklin was concerned about the long-term impact on Montana's health care infrastructure in general that could be affected by the reductions. She felt that the impact will change mental health as Montana knows it and she anticipated that many ambulatory-care mental health centers will close.

Director Gray added that many of the reductions require waiving compliance with certain requirements that they have in the Medicaid program from the federal government. It takes years to get waivers approved. It is hard for the Department to know exactly what the federal government will approve or not approve. She said that every reduction is a bad decision for someone, there is no good scenario. The Department lost 23 doctors with the 2.6% provider rate reductions. They will no longer accept Medicaid patients, and the Department can expect much more of it. The Department will review leveraging federal dollars but it is going to take discussions among all stakeholders.

Rep. Schmidt asked about the impact of the letter written by the Governor Martz to Secretary Thompson, Secretary, U.S. Department of Health and Human Services that outlined the reasons for the waivers. (EXHIBIT #13) Mr. Chappius said that the Department is currently meeting on the impacts of the letter. It will attempt to craft a proposal that will mitigate some of the concerns. Rep. Schmidt asked about the reimbursement rate reductions on critical access hospitals. Mr. Chappius said that all critical access hospitals will be reimbursed based on their costs. Medicaid will pay their share at 100%. In the meantime, the Department pays an interim rate and is trying to approximate the interim rate back to cost based on prior cost reports. The interim reimbursement rate will be reduced.

Lois Steinbeck, Senior Analyst, Legislative Fiscal Division, provided an overview of the DPHHS budget status and actual and potential programmatic changes. (EXHIBITS #14 and #15 respectively) Ms. Steinbeck said that bottom line DPHHS budget reductions will be available after May 24, 2002, and that there has been a \$5 million improvement in the its general fund picture over the last two months.

Terry Johnson, Principal Fiscal Analyst, Legislative Fiscal Division, stated the following:

- When the 2001 Legislature adjourned, the projected ending fund balance was \$54 million at the end of 2003.
- Once fiscal year 2001 was over, there was an overall ending fund balance improvement of approximately \$63 million made up primarily of revenue improvements and unanticipated audit activity.
- Based on that information and if further adjustments were not made to the 2003 revenues or expenditures, the 2003 biennium could end up with approximately \$116 million balance.
- The first indication of revenue deterioration was at end of November, and the Legislative Fiscal Division expressed its concerns to the Legislative Fiscal Committee and the Revenue and Transportation Interim Committee on the revenue trends.
- Based on the report he prepared for the Revenue and Transportation Committee in early April, revenue had declined significantly from the revenue estimates contained in the revenue estimating resolution (HJR 2).
- The revised projection was \$28 million by the end of 2003.
- Going from \$53 million to \$28 million is not all that bad, but the key is that in 2001, the Legislature had unanticipated additional revenue and fund balance of \$62 million.
- The \$62 million has gone away in the process. This forecast is based on information received as of the end of March 2002.
- The reasons for the reduction in revenue is what has happened at the federal level and the equity markets and how they relate to capital gains income recorded on individual income tax returns.
- The Legislature estimated revenue based upon the higher capital gains income and with declining income in other areas, it is a dangerous combination of factors.
- Another reason was the September 11, 2001, WTC attack that had a national economic impact on interest rates which has a profound impact on the amount of interest income that the state received in the general fund.
- The third factor is the federal economic stimulus package indicates that Montana could see as much as a \$30 million reduction of state general fund revenue because the package provides an increase of depreciation expense for businesses that purchases qualifying equipment.
- During the 2001 Session, the Legislative Fiscal Division pointed out that it was balancing the budget because it had a higher fund balance. However, if it looked only at ongoing revenue and ongoing disbursements, it was overspending its budget by approximately \$58 million causing a structural imbalance in the budget.

Mr. Johnson summarized tax legislation passed since 1995 that has had an accumulative effect on the Department's budget. (EXHIBIT #16) He said that the LFD's preliminary projections indicate that the \$57 million could explode to as much as \$130 million in this biennium. He added that he would not venture a guess, but individual income taxes are not coming in at the level projected.

Sen. Franklin asked what triggers budget reductions. Ms. Steinbeck said that the budget reductions at DPHHS relate to two different statutes. Everything up to the budget reductions submission responds only to the Department's potential cost overrun. If the ending fund balance trigger is met, they are the reductions that the Department is going to have to make. The 3% and 10% reductions are based on other triggering legislation. Mr. Johnson added that the 17-7-140, MCA, trigger mechanism is defined as 2% of the second year's appropriation. If the projected balance is projected to fall below \$26.1 million (the 2%), the cuts would go into effect. Another calculation pertains to how far back the Department have to go in terms of a projected balance which is based on 1% of the biennial appropriation (\$28 million).

Sen. O'Neil asked about the ending fund balance if the 10% reductions were taken. Mr. Johnson said that if the preliminary number defined by OBPP as the base number that a cut can be applied to, 10% is in the \$80 million range. There would have to be a projected deficit of a negative \$52 million in order for the 10% cuts to be implemented. Until the final analysis is complete, no one is ready to say what the level of cuts will be.

DISABILITIES SERVICES DIVISION (DSD)

Joe Mathews, Division Administrator, DPHHS, stated the following:

- The MDC and the Eastmont Human Services Center are funded up front with state general fund and reimbursed with Medicaid.
- Medicaid survey is conducted annually on both centers, but the Division was put on a fast track of corrective action at the MDC.
- The MDC has staff and population who are considered to be in imminent danger from the more aggressive population.
- The Division created a secure-care unit within the MDC which gives the ability to separate clients to maintain Medicaid certification.
- The Division is seeing more client-to-client abuse, and it is trying to alleviate it through programming.
- There is still a potential that the federal government will conduct a look-behind survey.
- The Division has a compliance plan in place and three people have been moved into the secure-care unit.

Mr. Mathews said that the Travis D. litigation is scheduled to begin September 4, 2002. The Department and the Montana Advocacy Program (MAP) have agreed on a mediator to try and settle the case before it goes to trial.

Rep. Thomas asked about the reason for the increase in hostile behaviors. Mr. Mathews said Division is seeing a whole different population coming into its residential facilities. The typical individual with a developmental disability is living in the community. However, there are people who have predatory behaviors and severe aggression. The Division has behavioral plans in place to address the problems.

Sen. Franklin asked about the population at MDC. Mr. Mathews said that there are 92 individuals at the MDC, the population is increasing, and the Division needs expansion to move people into the community. Sen. Franklin asked if any red flags exist related to the changes in behavior or has the survey focused on behavior more. Mr. Mathews said that it is a combination of both. The federal government is focusing on client safety issues while the Division had individuals intermingling that caused the situation.

Sen. O'Neil asked what types of policy changes would be needed to make a major change. Mr. Mathews said major changes would be limiting commitments to MDC and continue the expansion of DD community services. Sen. O'Neil asked if any client had committed a crime before being sent to the MDC. Mr. Mathews said that several individuals had committed misdemeanors and one individual was criminally sentenced to the MDC by the Court. With the secure-care unit, the Department anticipates that there will be more criminal commitments because the forensic population is increasing.

Jeff Sturm, Program Director, Developmental Disabilities Program, said that the people currently coming into the MDC are sexual predators or individuals with dual diagnoses (a mental health and a DD diagnosis). It averaged 17 admissions a year for the last three years, and is running close to a full facility. Over the last three years, there have been 51 admissions, 44 of which went to the cottage side of the facility. The Division anticipates that it will reach capacity because people are currently waiting for commitment. At the same time, MDC has fewer and fewer people leaving the facility. It has taken some of its non-Medicaid dollars and refinanced them into Medicaid dollars to move some people into the community, but it does not anticipate any new dollars coming into the system. With new commitment laws, MDC anticipates more criminal convictions, and people with civil commitments are much more aggressive.

Sen. Franklin asked about individuals who come to MDC for a brief period for behavior management and then go back into the community. Mr. Sturm said that very few individuals return to the communities quickly. The problem is the system. The system is set up of private non-profit corporation providers that need to fill slots. If in six months an individual is ready to leave, they are put on a waiting list for sometimes years because there are no slots in the community.

Rep. Lawson asked about the commitment issues and how they could be changed. Mr. Sturm said that there are criminal and civil commitments. A committee was formed to review the commitment laws. Some recommendations from the committee are that the DD commitment laws mirror the mental health law, conditional release to a community provider or to the Warm Springs State Hospital, and community commitments. Another question raised by the Committee is whether there is a need for shorter commitments.

Ms. Fox provided policy implications regarding criminal proceedings for developmentally disabled individuals and a legal opinion written to Senator John Cobb from **Greg Petesch, Legal Director, Legislative Services Division**, related to the criminal commitment to MDC. (EXHIBITS #17 and #18 respectively) Ms. Fox asked if the Committee would like to further pursue issues concerning criminal proceedings for developmentally disabled individuals.

Mr. Petesch provided an overview of his legal opinion to Sen. Cobb and said that it was his opinion that Montana's statutes do not allow for criminal commitment to the MDC, and he did not believe that one occurred if the Committee was discussing the same case. In reviewing the specific commitment to MDC, the sentencing judge sentenced the defendant who was convicted of two counts of sexual intercourse without consent on young minors. It appears that the person was sentenced pursuant to Section 46-14-312, MCA, where the person is guilty but mentally ill. There is no statute that governs guilty but developmentally disabled, and there is no

definition in the code of mental disease or defect. However, the definition adopted by the Court in the Worster case was in effect at the time the individual was convicted and sentenced.

Mr. Petesch assumed the person was sentenced pursuant to the guilty but mentally ill statute because he was sentenced to the Director of the DPHHS for placement in an appropriate correctional or mental health facility. The sentencing order contained a recommendation that the person be placed in the MDC. A mental health facility is not defined for purposes of criminal placement. However, a mental health facility is defined for purposes of the DPHHS and that is who the individual was sentenced to. Mental health facility definitions do not include the MDC. Mr. Petesch believed that there is no legal authority to sentence anyone in criminal conviction to the MDC. It may be, based on the condition of the individual convicted, that MDC was the most appropriate place for treatment, but that is not in conformity with his interpretation of the statutes.

Sen. O'Neil asked if creating a new Department of Institutions, consisting of the MSP, the MDC, the MSH, and other institutions, would give more power and flexibility to the Director regarding individuals who were sentenced to it. Mr. Petesch said that the statutes could be modified so that it would be legal, but he would not venture an opinion as to whether it would be a good idea. It would provide additional flexibility for the Department that the person was sentenced or committed to.

Sen. Franklin was unsure whether lumping all institutions into one new Department would solve anything while Sen. O'Neil felt that the new Department of Institutions proposal and the possibility of modifying sentencing statutes should at least be studied or discussed.

Ms. Fox said that when there are criminal populations and civil populations, individuals rights and proceedings are different. Although all institutions were together at one point in time, there was not the range of residential services that there are today. She felt that the Committee should start at a smaller stage rather than reorganizing institutions because it has not delved into the differences between a person's rights under a civil proceeding versus a criminal proceeding. She added that even when there was a Department of Institutions, the Director never had the ability to make the determination as to which type of facility an individual would be sent to. It has always been a judicial decision.

PUBLIC COMMENT

Chris Volinkaty, Executive Director, Comprehensive Developmental Center (CDC), Missoula, said that respite care has been a highly successful program in keeping children with their families at home, and many state agencies rely on respite care. Current companionship legislation does not address the issues of wage an hour and overtime for respite-care workers. It means keeping extensive records of hours worked and sleep time if a child is dropped off for a weekend and minimum wage and workers compensation must be paid. In western Montana, this means 400 more employees that she never sees. She added that the responsibility of being happy with providers has always been left with the family who determines who is appropriate to care for their child. When an analysis was run on the change, CDC is looking at a 30% increase in the cost of the current program and most of the increase is going for administrative costs. Senator Baucus has assigned an attorney and a staffer to the CDC to work out the national problem while Sen. Dale Mahlum has requested research information for a bill draft that would ask that respite workers be exempt from minimum wage and overtime under the federal

companion law. She requested the Committee's support in getting the legislation passed in the 2003 Session.

Joan Grauman, LifeSpan Respite, provided an overview of the Montana Lifespan Respite Project Request Justification for New Proposal. (EXHIBIT #19) She said that there has been national bipartisan LifeSpan Respite legislation that has been introduced by Senator Hillary Clinton which will provide an infrastructure piece for every state and funding for local community projects nationwide. LifeSpan has presented an EPP request to DPHHS to provide continuation funding for existing programs and to provide an infrastructure piece to conduct a statewide study on what services are being provided by respite care to avoid duplications. She requested a sponsor for the two pieces of LifeSpan legislation.

Kandi Matthew-Jenkins, Missoula, said that for the last 5 months, she has been conducting research on DPHHS, particularly in the Protective Services Division. One problem that she has found in the Division is that there have been many errors in following family services policy. Most of the policies surround the efforts to keep children in their homes. In the lack of following procedure in violation of statutory law, the state has incurred great costs to the federal government and Medicaid. By not following the policy, the state has many children who are being taken out of their homes without a preponderance of evidence for the need of that taking. She recommended that the Committee review the adherence of case workers, social workers, judges, attorneys, and the different people involved with families to see how closely they are following the policies and laws. She also suggested an oversight committee who could review each case individually and where parents can go and feel that they will not be threatened with severe retaliation.

DPHHS LEGISLATIVE PROPOSALS

Director Gray, provided an overview of the Department's prioritized 2003 legislative proposals. (EXHIBIT #20) Interagency Coordinating Council legislation is not included.

Director Gray and Deputy Director Chappius provided a summary of the general fund reductions that would be taken by DPHHS at the 3% and 10% rates. (EXHIBIT #21)

Sen. Franklin asked if the 3% reduction in optional services for adults was over and above the waiver requesting the narrowing of services for Medicare recipients who are able-bodied. Mr. Chappius said yes, for all non-disabled adults over 21 years of age, including those over 65 years of age living in the community. Sen. Franklin asked what the "0" reflected under the 10% reduction column. Mr. Chappius said that the cut under the optional services age 21 or over category would not be part of the 10% because it would not be big enough. However, the 10% cut under the elimination of the medically needy program shows what cuts are needed in order to get to the 10%, which is very severe. The amount would probably be higher than the 10% and what amount would be available in just the services under the Health Policy Services Division. There may also be other effects such as cost shifting.

Rep. Thomas asked what the total amount in matching funds would be under both the 3% and 10% scenarios. Director Gray said the 3% cut would total \$8.4 million with a total economic impact of over \$18 million and the 10% would total over \$27 million with a total economic impact of over \$58 million because the Department receives \$3 for every \$1 it spends in some of its programs. Rep. Thomas asked what the federal government was going to do with all of the

revenue that they cannot give to the states as matching funds. Director Gray said that she hoped that the federal government would change Montana's matching rate. If it changes the matching rate even by 1%, many of the cuts will not have to be made. Even a 3% cut to DPHHS is difficult after the other cuts that have not yet been fully implemented. The Department cannot paint a pretty picture on any of this.

Sen. Franklin expressed her concern about the AMDD's cut limiting adult services to individuals that are SDMI. She said that the impact would make it very difficult to keep mental health services open anywhere. Director Gray agreed, and said that it would also be very difficult to eliminate cost shifts to the more expensive options. She added that it may be more valuable for the Committee to re-review the cuts after the Governor has decided which cuts to take.

RULE REVIEW

Valencia Lane, Staff Attorney, Legislative Services Division, provided a summary of the most recent DPHHS rule submissions. (EXHIBIT #22)

OTHER REPORTS

Rep. Lawson requested more information regarding the Governor's Task Force on Alcohol, Tobacco, and other Drug Control Policy and how the process is going. Committee staff will provide reports from the Task Force.

Gordon Higgins, Research Analyst, Legislative Services Division, said that June 12, 2002, is the next meeting of SJR 22 Subcommittee. Specific issues to be discussed are more in-depth and detailed requirements for the multi-state purchasing pool, such as West Virginia's and eight other states have, to expand the population of eligible people to incorporate Medicaid populations and low-income seniors; a discussion on the Medicaid Pharmacy Programs and the cost saving measures that it may have in place; and a discussion related to the proposed advanceable and refundable tax credit for purchasing health insurance. The Subcommittee will also discuss the possibility of a standing Legislative committee to deal health care policy.

Ms. Fox said that when health care issues are being dealt with by multiple committees, it is very confusing and difficult. She requested that the Committee review where the role of the Child and Families Committee exists and if it should be rolled into the proposed health care policy committee. When we take Medicaid and CHIP out of the Committee's discussions and mental health out and leave it under the auspices of the Legislative Finance Committee, there is not much left of the Children and Families Committee. Instead of having a number of committees studying interrelated issues, it may be wise for the Committee to think about its role as an interim committee in the event that a super committee on health care policy is proposed.

Ms. Fox provided a brief update on the Legislative Audit Division's completed and ongoing performance audits on the DPHHS (EXHIBIT #23)

Committee Bill Draft Requests for August Meeting

Ms. Fox provided proposed procedures for the Committee's review of DPHHS legislation and requesting bill drafts on the DPHHS's behalf. (EXHIBIT #24)

- **Should criminal commitment for individuals with developmental disabilities exist?**

Ms. Fox proposed that staff draft legislation based on the assumptions discussed in Mr. Petesch's previous legal-opinion testimony, with only the purpose of soliciting comment from interested persons to find out whether there are strong feelings either way.

Mr. Petesch added that currently, there is a commitment, in the Department's mind, to the MDC for a term of years. Individuals cannot be placed in a residential treatment facility unless they are determined to be seriously developmentally disabled. That commitment is for no longer than a year with subsequent reviews and re-commitment possibilities. In this case, in addition to a commitment to the MDC for a term of years, the state has a condition that the offender must successfully complete sex offender treatment. In reality, it is an open-ended commitment to the MDC which has never been allowed anywhere in the history of the facility.

Ms. Fox added that numerous attorneys from DPHHS and the Montana Advocacy Program (MAP) had reviewed the orders but did not come to the same conclusion, partly because of the pressure being placed upon the Department by the County Attorney and the Judge from that part of the state. They felt that it would be better for the individual to be in MDC than in jail, they just did not follow the law to get there. It may or may not be an issue, but the question is whether this would open a flood gate of future commitments from County Attorneys who have a problem person that happens to have a developmental disability can get sentenced to a 20-year term to MDC that is not equipped to handle it. This is a policy issue.

Following a brief discussion, the Committee decided that it was too premature for a formal bill draft request but decided to move forward with Ms. Fox's research discussion draft proposal with the understanding that it would be used for soliciting comments only at this time.

- **Should there be the reestablishment of a Department of Institutions?**

Mr. Petesch said that if the Committee wanted to recreate a Department of Institutions, it would be a massive undertaking. The correctional and human services titles of the code would have to be totally rewritten.

Sen. O'Neil asked if a study could be conducted on whether the recreation of a Department of Institutions would save a significant amount of money. Ms. Fox said that the Legislative Services Division did not have sufficient staff to conduct an economic impact analysis. She hoped that the Committee would be very serious about this proposal before it continued on.

Mr. Petesch added that the magnitude of this issue would require a full-blown interim study and suggested that Sen. O'Neil could request a resolution for an interim study.

Following a brief discussion, the Committee decided that this issue was not appropriate for a Committee bill at this time.

Sen. O'Neil withdrew his request.

- **Support legislation for the continuation of LifeSpan Respite funding and legislation on a study of services across DPHHS? (Sen. Mahlum)**

Ms. Fox said that LifeSpan Respite is currently going through the EPP process. If it falls out of that process, the issue can be re-reviewed at the August meeting. Committee staff is also working on an information request by Sen. Mahlum regarding wage-an-hour legislation related to respite care. She said that the Committee could postpone its decision until it receives Sen. Mahlum's research request, which would probably include a discussion bill draft, and after more information is known whether LifeSpan Respite survived the EPP process.

Rep. Lawson asked is there was an advantage to it being a committee bill. Ms. Fox said that Sen. Mahlum made his request an information request because he was not prepared to request a formal bill draft nor was he prepared to carry a bill of that nature. He is requesting this on behalf of his constituents. A formal bill draft would give his constituents time to find either a Committee or a legislator to carry it for them.

The Committee requested draft legislation.

- **Medicaid submittal of bills.**

Ms. Fox said that agencies have up to 12 months to submit claims to Medicaid. Sen. Grimes proposed moving the time line from 12 months to a 6-month period of time. Staff will request information on the issue from NCSL.

The Committee took no action on this issue.

- **The FAIM car program.**

Ms. Fox said that the program will be ongoing because the original cars are out in the communities. Those are revolving funds that communities can use to purchase other cars. If the Committee wanted to double the number of cars, it would require legislation for the appropriation to purchase new cars.

Committee staff will clarify the issue in a memo (i.e. whether it is in the base budget, whether it is a new proposal, and whether there is funding the agency for it in the future) to update the Committee.

- **Legislation establishing an interim committee on health care policy.**

Committee members decided to wait to see what recommendations came from the SJR22 Subcommittee on Health Care and Health Insurance before making any decision on this issue.

The Committee approved August 23, 2002, as its next meeting. It also discussed the possibility of moving the proposed August 15, 2002, SJR 22 Subcommittee to August 22, 2002, to coincide with the Children and Families Committee meeting.

Their being no further business; the meeting adjourned at 5:00 p.m.

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