



# Children, Families, Health and Human Services Interim Committee

## 57th Montana Legislature

### SENATE MEMBERS

EVE FRANKLIN  
DUANE GRIMES  
JERRY O'NEIL  
GERALD PEASE

### HOUSE MEMBERS

BOB LAWSON  
MICHELLE LEE  
TRUDI SCHMIDT  
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.**

Second Meeting of Interim  
Room 137, State Capitol  
November 16, 2001

### COMMITTEE MEMBERS PRESENT

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

### COMMITTEE MEMBERS EXCUSED

Rep. Bill Thomas

### STAFF PRESENT

Susan Byorth Fox, Research Analyst  
David Niss, Attorney  
Lois O'Connor, Secretary

### VISITORS

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

### COMMITTEE ACTION

- Approved the minutes from the August 9, 2001, meeting
- Approved that Committee staff draft a letter on behalf of the Children, Families, Public

Health, and Human Services Interim Committee to the Law and Justice Interim Committee stating that public health care is the Committee's focus, that it is concerned about the status of inmate health, the legal ramifications of the Department of Correction changes, that the financial implications of health care for inmates is considerable, and that the Law and Justice Interim Committee make this issue an item for its review and report back to the Committee

- Approved that staff write a letter to the Legislative Council declining the SJR 8 study
- Approved February 12 and 13, 2002, as its next meeting dates

### **CALL TO ORDER AND ROLL CALL**

The meeting was called to order by Rep. Schmidt, Chair, at 8:05 a.m. Roll call was noted,

Rep. Lawson **moved** that the minutes from the August 9, 2001, meeting be approved. Motion passed unanimously.

### **Old Business/New Business and Rules and Procedures**

**Susan Fox, Research Analyst, Legislative Services Division**, said that there has been a recent reorganization of the Department of Correction, specifically in the Professional Services Division, regarding health services of inmates under the jurisdictions of the Department. Concerns about this were particularly expressed by the regional correctional facilities. Following the prison riot, the Department was placed under a consent decree and had a settlement agreement with the Department of Justice. From that, came many changes including a medical director and health services manager in charge of health and mental health services at the Montana State Prison (MSP). Since the Department's reorganization, it has been unclear who is fulfilling those positions. All of the contact people at the Department who were acting as the liaisons to the regional correctional facilities are no longer with the Department. The state holds liability for providing adequate health and mental health service to inmates even if they are in a regional correctional facilities. Although the Department is not under the Committee's jurisdiction, Ms. Fox asked if the Committee wanted to make any formal request to the Law and Justice Interim Committee about this issue.

Sen. Franklin said that all of the health care divisions are currently under the warden's supervision at MSP. She was concerned about the quality of health care and what it would mean legally. She supported a statement from the Committee that the issue requires attention-- what are the implications legally and financially to the state, what health care services are inmates receiving or not receiving resulting in possible inmate litigation, and the financial implications. Sen. Franklin **moved** that Committee staff draft a letter on behalf of the Children, Families, Public Health, and Human Services Interim Committee to the Law and Justice Interim Committee stating that public health care is the Committee's focus, that it is concerned about the status of inmate health, the legal ramifications of the Department of Correction changes, and that the financial implications of health care for inmates is considerable and that the Law and Justice Interim Committee make this issue an item for its review and report back to the Committee. Motion passed unanimously.

Ms. Fox provided an overview of the rules, procedures, and guidelines for legislative interim committee activities adopted by the Legislative Council. (EXHIBIT #1)

Rep. Lawson asked if the Committee would be giving its thumbs up or down on any agency legislation in May or June of 2002 or would it be a courtesy pass through period only. Ms. Fox said that the Committee is not under any obligation to commit to the proposed legislation. It was only intended to help the agencies begin the bill drafting process. Endorsement of any proposed legislation could be done later in the year.

Sen. O'Neil asked if the Committee could say no. Ms. Fox said yes, although it was not in the spirit for which it was intended. However, if the Committee had strong reactions to proposed legislation, it would be an indication to the agencies that they may have trouble with it.

Rep Lawson said that he was uncomfortable with the process and expressed his concerns about the Committee losing one meeting because of a predetermined agenda. He said that if a piece of legislation is controversial, the Committee could talk it to death. He asked what the goal of the Legislative Council was in making interim committees the vehicle for the review of draft legislation. **Dave Bohyer, Director, Office of Research and Policy Analysis, Legislative Services Division** said that the Legislation Council did not make this change unilaterally. The change was included in SB 11 that was considered in the 2001 Session. SB 11 states that each of the interim committees shall review legislation proposed by the agencies. With this language, the Legislative Council understood that some process needed to be spelled out in advance so that both the committees and agencies would understand what the process was for compliance. He said that until six years ago, the Executive Branch Agencies would commonly request local Helena area legislators to request their legislation. As a result, many Helena-area legislators would have 50 to 100 bill draft requests. The media would pick up on this and state that they were responsible for most of the legislation. As a courtesy to the Executive Branch and as an effort to facilitate the early drafting of what are primarily housekeeping legislation, the Legislative Council agreed three interims ago to act as the requestor for Executive Branch bills and that they would also review those requests. As time passed, there came 300 or more requests for agency bills, the Legislative Council just rubber-stamped them without any preview. In the last interim, the Legislative Council agreed that the interim committees were the better position to conduct the preview of agency requests because they were the subject area experts. As a result, the process was delegated to each interim committee. If the Department comes before the Committee with an idea, the Committee could have the bill drafted. It will enter the process by request of the Committee. If the Department comes before the Committee with legislation that the Committee does not want to have drafted, the Committee could say no and the Department would have to identify its own legislator to request the legislation.

## **AGENCY MONITORING**

### **Department of Public Health and Human Services**

**Gail Gray, Director, Department of Public Health and Human Services**, said that this has been the first time since January that the Department's management team has been fully staffed. She said that September 2001 budget status report shows that the Department has a bottom-line general fund deficit of \$4.5 million for the biennium. The Department is implementing cost-cutting measures to decrease the deficit. The Human and Community Services Division is projecting a \$500,000 deficit after the cuts from the FAIM II-R programs. Most of the deficit will be taken care of through a cost allocation plan of more charges to the federal government. There is also a projected deficit of \$777,000 in the Director's Office. As a result of federal A-87 audit requirements, all of the money for the termination cost for staff was placed into the Director's Office. As the people retire, the money is paid to the office. In addition, the largest deficit is \$3.3

million due to the growth in the Medicaid program under the Health Policy and Services Division which is above the budgeted levels. Discussions are underway to control Medicaid costs and reduce the deficit. Prescription drugs prices are also on the rise. There is an \$800,000 general fund surplus in the Senior and Long-Term Care Division. The Addictive and Mental Disorder Division is projecting a deficit of \$660,000.

Ms. Gray said that health and human service programs are being reduced on a nationwide level. All but six of the states nationwide are having to make cutbacks at the appropriation levels. The Legislative Audit Division will meet with the Department to discuss its preliminary findings on the financial and compliance audit for the last two fiscal years. The Department expects a significant change in two years when it has its next audit. She added that since September 9, 2001, the State Public Health Laboratory had 97 recorded bio-terrorism threats. About one-half of the threats have required testing. Although they have all been negative, the Laboratory works weekends and non-regular hours to ensure that the people of Montana receive a response.

**Temporary Assistance for Needy Families (TANF) Report on the Block Grant**

**Hank Hudson, Administrator, Human and Community Services Division, DPHHS**, provided an update on DPHHS' 2003 biennium TANF block grant spending. (EXHIBIT #2) He said that Montana receives a \$45 million a year TANF block grant to operate its public assistance programs. During the 2001 Session, it had a \$28 million of unspent TANF funds from previous block grants. The Legislature authorized the expenditure of those unspent funds under FAIM II-R because it wanted to ensure that the funds were spent before the federal act was reauthorized. The funds for FAIM II-R are obligated. The only unobligated FAIM II-R money is for tribal employment and training services because they are annual contracts that are not formally obligated until the start of the next contract year. The Department will be going to the Office of Budget and Programming (OBPP) to certify that the Division needs \$9 million of TANF funds into the benefit line item and out of FAIM II-R based on August caseloads. In August, the caseload number was 5,246; in September, it dropped; and in October it increased to 5, 278 cases.

Rep. Lee asked if the Department was still planning on using the housing money. Mr. Hudson said yes.

Sen. Grimes asked what the projected number of caseloads was to be at this time. Mr. Hudson said that the Department projected a flat caseload. The Legislature made provision which allowed the money to be used on good programs and projects while, at the same time, allowed the Department to recover some of the money if caseloads increased.

Rep. Lawson asked about the possibility of creating a health care and health insurance ombudsman or advocate within the DPHHS. Ms. Gray said that an ombudsman is a legitimate issue for discussion. The Department is participating as a member of the audience that the Insurance Commissioner is conducting throughout the state on issue related to health care. She expected that there would be some recommendations from those discussions. Committee discussion of the possibility of a health care and health insurance ombudsman will be an agenda item for one of the Committee's future meetings. Rep. Lawson asked if the Montana Advocacy Program was on board with the Olmstead planning. Ms. Gray said that she did not want to pretend that the final Olmstead plans would be satisfactory to everyone, but she hoped that they will reflect long-term planning and reflect on the needs of people with disabilities in terms of getting the least restrictive environment for their living conditions.

**Jonathan Windy Boy, Chairman, MT WY Tribal Leaders Council, Chippewa Cree Tribal Council Member**, asked if the state had submitted a TANF reauthorization position and, if so, is it open for review by tribal leaders. He provided written comments on the TANF-HB 2 budget cuts, written comments on the policy roundtable discussions on TANF reauthorization, and a copy of recommendations for TANF reauthorization. (EXHIBITS #3, #4, and #5 respectively) Mr. Hudson said that the state has not submitted a formal reauthorization position but it was generating ideas. The Department will participate in a forum in Missoula in November which will include tribal representatives and advocates. A set of proposed guidelines and principles were sent to all tribal chairman in November along with the recognition that the Tribes may want to submit individual reauthorization recommendations or a consolidated tribal position. Referring to Exhibit #4, Mr. Windy Boy said that the invited participants of the policy roundtable discussions on TANF reauthorization did not include any tribal government. Yet, Montana Tribes reports 47% to 53% of the total TANF caseload. Of the \$45 million in TANF funds that the state received, the Tribes received only \$290,000 of the total budget (.01%) He said that by being left out of the loop in many of these forums was disheartening. Mr. Hudson said that the forum in November was sponsored by the University of Montana. The Department did not put together the list of participants and is not the sponsor of the forum even though the Department did suggest that it have tribal representation. Mr. Windy Boy asked about the \$5.6 million of the rainy day fund that was suppose to be devoted to the Tribes. He understood that the state was under the assumption that there was an increase in the caseload. Knowing since June that the caseload increase was projected, the Tribes have not been notified. Non-notification violates the proclamation signed by the Governor. (EXHIBIT #6) He said that when the Tribes are not notified, it becomes a crisis situation for them.

#### **Report from the Quality Assurance Division**

**Mary Dalton, Quality Assurance Division, DPHHS**, provided an overview of the organization and primary responsibilities of the Quality Assurance Division and provided an update on the implementation of Senate Bills #420, 476, and 477. (EXHIBIT # 7)

Sen. Franklin asked how the Division received referrals of Medicaid clients in the Audit and Compliance Bureau--Third Party Liability Unit. Ms. Dalton said that the third part liability happens when the Division first signs people up for Medicaid. The Division will ask if they have insurance and encourages them to keep it. For a typical Blue Cross Blue Shield of Montana (BCBSM) policy through the state, the Division pays for the premium. When the bill comes in, BCBSM pays its 80% and Medicaid pays the deductible portion.

Rep. Lawson asked if the adjudicated issues related to Medicaid, public assistance, child care, and public health activities were set in statute or Department rules. Ms. Dalton said that the fair hearing process is set up in federal regulations and there are state rules that govern it as well. The Division looks at questions of existing programs and appeals cannot be forwarded to the Fair Hearings Office if they do not pertain to issue that are covered. Rep. Lawson asked for an example of an appeal related to the Child and Family Services Division. **Roy Kemp, Licensing Bureau Chief, DPHHS**, said that the fair hearings process is statutory. The majority of the Child and Family Services hearings are of a protective nature. The process allows for an administrative review. After the internal process is completed, it moves into a fair hearing. If the Department denies someone a license in the child licensing arena because of something in their background, statute requires a fair hearing for negative action taken toward a provider. Rep. Lawson asked if the fair hearing process was offered only to providers and not parents. Mr.

Kemp said that the hearing could very easily have something to do with the parents involved. When an individual has an allegation of child abuse, they are entered into the CAPS system and notified indicating that they have been put in the system and that it may prohibit them from offering child care. They have an opportunity to appeal and must notify the Department within 30 days. This is internal through administrative review, the Department then offers a fair hearing. Rep. Lawson asked if parents could ask for hearing by Division if accused or entered into the system, denied a license, or if they felt that they had been wronged. Mr. Kemp said yes.

Rep. Lee asked about the significant decrease in hearing requests between 1999 and 2000. Ms. Dalton said that part of the decrease relates to the fall in the number of people on Medicaid, TANF in particular. One out of eight cases will proceed from administrative review into the fair hearings process. Rep. Lee asked if the Department was currently seeing an increase in hearings. Ms. Dalton said yes, and hearings will continue to increase as the Medicaid and TANF cases rise again.

Rep. Schmidt asked for an explanation of the certificate of need program. Mr. Kemp said that the certificate of need (CON) program looks at the demographics of a particular area to determine whether there is an existing need in a particular area for a particular service. The key are being focused on by the CON program is nursing homes and what is happening in the individual communities. Every facility is required to provide occupancy information on an annual basis to determine nursing bed needs. Rep Schmidt asked for an explanation of complaints regarding nursing facilities. Mr. Kemp said that most nursing home complaints come from family members who feels that the nursing facility is not treating them properly. The Department gauges the severity of the complaint and gages its actions as they relate to the complaint.

Rep. Lawson asked if base line data was available to determine cost of service through the CON program. Mr. Kemp said that some information is available and he would followup on it.

**Rose Hughes, Executive Director, Montana Health Care Association**, said that there are issues and problems within the Quality Assurance Division related to nursing home providers and the certification and survey processes. There have been providers who have lost Medicare and Medicaid payment over a payments over a period of time due to staffing issues where staff could not get back out to resurvey. Nursing home facilities are struggling and they question the quality of the survey and survey reports. They are also concerned about due process issues in terms of the inability of a facility to say that they disagree. They have very little recourse. The MHCA hopes that the issues will resolve themselves in time.

Rep. Schmidt asked for an opinion of SB 420 and SB 476. Ms. Hughes said that the MHCA is working on SB 420 with the agency. SB 476 and SB 477 were bills that the MHCA brought to the Legislature and it is supportive of the legislation, particularly the patients' and families' right to ask for things such as bed rails. Rep. Schmidt requested a response to the issues brought up by Ms. Hughes. Ms. Dalton said that there are areas where the Division has state flexibility. Under SB 476, the Division is contacting other states to see what they have done in the area of dispute resolutions. She hoped to establish a process that is better for all Montana citizens.

#### **Health Policy Services Division, DPHHS**

**Maggie Bullock, Health Policy Services Division, DPHHS**, provided an overview of the Health Policy and Services Division. (EXHIBIT #8)

Sen. Franklin asked about the CHIP waiting list and why people were leaving the CHIP program. **Mary Noel, DPHHS**, provided a copy of the report Montana Health Agenda 2000 and a copy of a report entitled Why Some Parents Didn't Renew CHIP: Findings From the CHIP Survey. (EXHIBITS #9 and #10 respectively) She said that there are between 150 and 200 children who leave the CHIP rolls each month. The reasons vary. Some children become eligible for Medicaid, some children turn 19 years of age, some children get other health insurance coverages, and some children move from the state. However, the biggest reason is that the parents do not re-enroll them. As children leave the CHIP rolls, the Division is enrolling children from the waiting list. At the same time, new applications are coming in and the waiting list increases. At the end of each month, there is between 800 and 1,000 children on the waiting list. Sen. Franklin asked how many children are coming off of the waiting list. Ms. Noel that earlier in the year, between 300 and 400 children were taken off the waiting list each month but it has since slowed because the program is coming close to the cap of 9,300 children.

Sen. Grimes requested statistics in hospital physician Medicaid cost increases. Ms. Bullock will provide information but the question is what is driving the costs. Many times physicians will order as many tests as necessary to protect them from litigation and medical science comes up with better ways to treat diseases or conditions. She has also been noticing an increase in mental health care costs. Sen. Grimes was more concerned about over utilization rather than over prescription, particularly when it is questionable whether some tests are needed. **Lois Steinbeck, Fiscal Analyst, Legislative Fiscal Division**, said that there has been an increase in the number of eligibles, particularly those who are disabled. The highest cost person served under Medicaid is under that eligibility category. During the Appropriations Subcommittee hearings, it became aware of several Court decisions that would have an impact on the number of people who become eligible for SSI. The Subcommittee anticipated between 400 to 500 additional people would become eligible under the disabled category. It added funds for the 400 to 500 but the number of eligibles was closer to 900. These are very expensive people. In the mental health arena, the Department is estimating a \$1.5 million general fund cost overrun. It is proposing cuts children's mental health services, primarily in Medicaid. The number of children in high-end, out-of-home services is over 1,000. The most recent budget status report for the Department is a \$4.5 million general fund shortfall Department wide. Sen. Grimes asked if there was a correlation among the newly eligible individuals diagnosed with catastrophic illnesses that the Legislature did not expect. Ms. Steinbeck said that when individuals become catastrophically ill, they are sometimes eligible for SSI coverage and the Subcommittee expected the Court cases to expand SSI as it relates to catastrophic illnesses. She added that there are many factors that the state has no control over that will impact entry into the Medicaid program.

Rep. Lee asked if there was a way to immediately use the health care money that states receive under the federal economic stimulus package. Ms. Bullock said that the Department had a number of questions about the economic stimulus package, one being the match. Another concern is that the package it is a short-term, quick infusion of money. The Department has been reviewing the Health Insurance Flexibility and Accountability Initiative (HIFA) that allows states to acquire a waiver to expand health care coverage. She understood that under the waiver states had to establish a benefit package that was comparable to an insurance plan that is offered to an HMO.

Ms. Steinbeck said that the first question about anything requiring a match should be where does the money come from. The Department is already in a deficit situation, and according to statute,

if an agency is in a deficit situation, the executive must prepare a plan to show how it will reduce expenditures in the first year of the biennium to live within expenditures in the second year of the biennium. Statute also states that if the appropriation for Medicaid is inadequate to cover cost, the Department may reduce the amount, scope, and duration of benefits in eligibility. Ms. Steinbeck added states cannot have a waiting list on CHIP to have a HIFA package. HIFA also requires that states reduce the level of their uninsured population. In addition, states can expand populations under HIFA. If states want, for example, to expand health insurance coverage to certain groups of people, states can offer lesser benefits. However, before this is done, other things must be done that would cause spending to increase. Depending on whether Medicaid or the CHIP allotment is used, the cost neutrality options can become difficult. If states are not cost neutral in Medicaid, the states must pay back any of the amount that the federal government would have paid in excess of what it would have paid without the waiver. Rep. Lee said that 300 people were laid off in her county, she was concerned about what to do when there is already cost overruns. Ms. Steinbeck said that there were other avenues to take such as extending Title IV-E funds. The Executive Branch also has the ability to transfer general fund appropriations among agencies as long as the original purpose of the appropriations is maintained.

**Cheri Seed, DPHHS**, reported on the dental summit. (EXHIBIT #11)

Sen. Franklin asked when the strategies from the last dental summit will be distributed. Ms. Seed said that the Department is still compiling the outcomes and it will have a formal report that will be submitted to the Committee.

Committee members requested that they be put on interested persons's list to receive any Medicaid changes and to be kept informed about any budget shortfalls.

Sen. Grimes requested some information or options on what the Committee could do to help and support the Department.

**Mike Cooney, Executive Director, Healthy Mother Healthy Babies**, said that Montana will not see the rate of uninsured or underinsured people decline over the next several years nor will the cost of medical care. He asked that the Committee keep in mind that Montana has made substantial progress through CHIP and he asked that the Committee think of some creative ways to expand CHIP so that no ground is lost.

Rep. Lawson asked if the Department had explored expanding the CHIP benefit package to be a more catastrophic safety net. Ms. Noel said that the benchmark for CHIP is the state employees' health insurance package. CHIP benefits are as limited as they can be.

Sen. Grimes requested that the Committee receive a personal call for participation in the next dental summit.

#### **Child and Family Services Division**

**Chuck Hunter, Child and Family Services Division, DPHHS**, provided an overview of the Division and its operating budget by fund type. (EXHIBITS #12 and #13 respectively)

Sen. Grimes was concerned about the information that the field social workers receive from centralized intake and whether the information was accurate. Mr. Hunter said that intake

personnel are the best and most competent field-level workers who have the knowledge and insight to make the best judgment as to whether a report of abuse should be investigated. Intake personnel will use a series of questions to ask the caller. Depending upon the nature of the call, intake personnel are trained to recognize the key clusters of types of abuse and neglect. The intake worker will take the information and enter the Department's database to see if any other reports or allegations have been made about a particular child or family. Sen. Grimes asked about the confidentiality of the information, and if the information is false, could it be cleansed from the system. Mr. Hunter said that a concern that the Department regularly hears is that the child protective system builds false histories of abuse. The Department believes that having a scripted series of questions along with the statutory definition of what constitutes abuse and neglect will allow the Department to screen in information that alleges a statutory violation and screen out information that are merely allegations that a person passes along about another person simply because the person does not like the other person.

Sen. Pease questioned whether a licensed, foster care home existed on any Montana reservation and how did the Department establish the foster care rates. Mr. Hunter said that Tribal Social Services is responsible for foster care licensing on the reservations not the Department, and he was unsure whether there was a foster care home on any reservation. He said that the rates were set years ago at a much lower amount. The Department knows that the foster care rates are much less than the true cost of raising a child. Sen. Pease asked about the cost of out-of-state placements. Mr. Hunter said that out-of-state placements are made in situations where a child in care may have treatment needs for severe emotional abuse or sex offender treatment or mental health needs, for example, that are not available within the state. However, in order to place a child out of state, the Department must first look for and be turned down by an in-state provider.

Rep. Lee asked if there was parental support paid on out-of-state care and was there any after-adoption services offered by the Department. Mr. Hunter said that the Department does, in some cases, look to recover costs of out-of-state care when available. However, he was unsure of the amount received to support the placements. He added that currently, the state provides Medicaid services for adopted children. However, for a family as a unit, there is no direct access to services that results from an adoption. Many of the children, particularly the older children, present huge challenges for families. As the Department sees the families coming to crisis, it often times takes children back into the system because families do not have the services that they need.

Rep. Lawson asked how legislators were going to know if the centralized intake system worked. Mr. Hunter said that the Department on a monthly basis will review how many calls are coming into the system, how many investigations resulted from those calls, and how many referrals there are at all data on a monthly basis. The Department will also talk to the people who called about the satisfactory level of services received. Rep. Lawson requested an update on the data at a future meeting.

Sen. Grimes asked if some providers were more efficient and doing a better job with the Department's clientele than others. Mr. Hunter said that it was likely so but the issue has not been subjected to a great deal of analysis. The Department does need to review the providers.

### **Public Comment**

**Representative Norma Bixby, House District #5, Lame Deer**, sponsored HJR No. 32-- requesting an audit of the child protective services system. She expressed her concern about the centralized intake process because it needed to have a way of eliminating cases that have no merit. She said someone could continue to call about another person. If the other person's name keeps coming up, it raises many red flags even though it may not be a true case. Rep. Bixby said that the Department is taking children away from families and it is critical that the Department be careful when it does. She also felt that money should be spent on prevention programs rather than taking children away from families.

**Shirley Folkwein, CASA--Children's Special Advocate--Program, Yellowstone County**, said that the average caseload of social workers in Montana is 36 while the Child Welfare League of America has the standard of 15 cases per social worker. This is a great concern because there is not sufficient time for social workers to provide the services to families and children and to make sure that parental treatment plans are carried through. She said that she was also concerned about the experience level of social workers and their turnover rate. Ms. Folkwein felt that lawmakers gave a mandate to the child protective system to protect children and inadequately funded it.

**Toni Plummer, Cherish Our Indian Children**, said that Cherish Our Indian Children provides advocacy and support for Indian families in FAIM transition. She expressed her concern about the centralized intake system as it related to the jurisdictional issues of contacting tribes about Indian children who are in potential urban placements and what role the Tribes would serve in claiming their children and entering the process. With her Office's support and its resource and referral system, it can stop the system from intervening in families, support families, and be in constant communication with social workers on the initial intake process to benefit the families and keep them out of the system. She did not see how this would be possible if the intake process is centralized in Helena and she questioned how and when she would be approached in her community as an advocate for Indian families. Ms. Plummer also questioned how the TANF fund were being spent.

**Diane Flaamo, Family Services Advisory Council, Glendive**, said that as an educator and no matter what quality of an educational system the state has, the system cannot teach a child who comes to school hungry, scared, or worse. She requested that the Committee address the need that the Division has for more case workers because she was very concerned about the case worker turnover rate, their over work, the fact that many case workers are new to the system. She was also concerned about the lack of children and family services throughout the school system.

**Brenda Schye, Private Citizen Advisor, Glasgow**, said that the recruitment and retention of case workers is a growing problem across the state. She requested that the Committee consider the Division's budgetary needs and flexibility because its work is vital.

**Jonathon Windy Boy, Chairman, MT WY Tribal Leaders Council**, asked that the Department respond to the tribal leaders in writing regarding the list of questions on central intake and TANF tracking (See Exhibit #20).

**Colleen Murphy, National Association of Social Workers**, said that the Association's major concern is the recruitment and retention of qualified social workers and the number of cases

each has. She said that the Division's mission is to protect children and to preserve families, but its primary mission is to protect children.

Mr. Hunter will respond to Mr. Windy Boy questions and provide copies of the responses to the Committee.

### **RULE REVIEW: POTENTIAL CHANGES TO FAIM SANCTIONS**

**Mary Caferro, WEEL**, provided written comments regarding DPHHS' study of its sanctions policy and the impact that they have on families. (EXHIBIT #14)

**Tony Plummer, Montana Tribal Welfare Reform Consortia**, said that there is no specific language in SB 353 passed in the 1999 Session that addresses Tribes and to study Tribes and the tribal impacts to sanctioning even though the Tribes hold the highest caseload in the state. She added that since Indian women carry the highest sanctioning rate in the state and have since the inception of FAIM, it seems only necessary that there be a specific tribal study in the area of sanctions with the oversight of the tribes.

**Hank Hudson, Administrator, Human and Community Services Division, DPHHS**, said that the Division and a large number of interested parties are scheduled to re-review the sanctioning policy changes on December 4. The Division's goal is to not sanction people. Last year, approximately 5% of the TANF/FAIM cases had a sanction associated with them. Since that time, the Division implemented the following policies:

- A document had to be submitted to the Department stating what efforts were taken to not sanction a person;
- A fair hearing and review process was established;
- The Department does not sanction Medicaid or food stamps;
- Resources are made available to the Division's workers to provide services to families to help get past whatever issue it is that is causing the sanction;
- Home visitations are required in the Divisions contracts;
- Recipients are allowed to continue to receive child care, treatment services, and job training even while they are under sanction; and
- The Division moved enough money to the Tribes to provide employment and training activities to tribal members so that they are only receiving training activities from tribally operated programs.

Mr. Hudson said that there were 252 cases sanctioned in 2001 of which 161 of the cases had multiple sanctions (third, fourth, or fifth sanctions) which means that they are losing benefits for a year. He said that either the Department is not helping these people embrace the program or the people are making a conscience decision to say that they can live with a reduced grant more easily than they can live with the Department's involvement in what they do for 30 hours a week. The dilemma is what is a good strategy to use sanctions, not as punishment or something negative, but to use them as intended which was to create a situation where there are consequences to making decision about not participating within the rules of the program.

**Jonathan Windy Boy, Chairman, MT WY Tribal Leaders Council**, provided background information on tribal welfare reform and provided comments on the financial crisis faced by the Tribes regarding FAIM II-R. (EXHIBITS #15 and #16) He also provided a copy of the 2003 Biennium TANF Report, comments from the Tribal Welfare Reform Consortia regarding

potential changes to FAIM sanctions, a copy of SANCTIONS POLICY--A STUDY, and a list of questions addressed to Mr. Hunter regarding central intake and TANF tracking (EXHIBITS #17, #18, #19, and #20 respectively) and stated that figures within the TANF Report as they relate to the Rocky Boy Reservation are inaccurate. He requested that the sanction policy be tabled based upon the lack of tribal consultation.

Mr. Hudson said that the study was mailed to every tribal council and all data gathered on the reservations was gathered by tribal members. The survey document was approved by every tribal council where the study took place and not all of the reservations participated. He added that the Division took great pains with the federal government to ensure that no information was gathered from any tribal member except by another tribal member followed by tribal approval of the entire survey document. Mr. Hudson added that one-half of the FAIM II-R caseload in Montana is Native American so one-half of the benefit budget goes to Native Americans. When the Department was asked to submit a revised FAIM II-R plan to spend all of the money, all tribal money was included. Mr. Hudson said that the sanction study was not scientific rather an analysis of what was going on with sanctioning. The Department tried to stop sanctions but they cannot get rid of them legally because they are required by federal law. He felt that the Department could provide up-front services, sanctions could be lowered.

**David Niss, Staff Attorney, Legislative Services Division**, provided an overview of 53-4-606, 53-4-717, and 2-4-405 MCA, that relate to sanctions. (EXHIBIT #21) He said that there is no question that the Department has the authority to propose and adopt administrative rules under MAPA on the subject of sanctions. If the Committee has a legal concern about whether the Department has the authority to propose and adopt a rule amendment to its current rules on sanctions, the Department has the legal authority to do that and, in fact, are required to apply sanctions. Ms. Niss said that under 2-4-405, MCA, a rule review committee could request an economic impact statement or a family impact note on the proposed rule. Department rule proposals that have not reached the MAPA stage--those that have not been submitted to the Secretary of State for publication--are a moving target. In this case, there is no proposed rule only an idea. When the idea is just a concept, the question arises--what would the Committee ask that an economic impact statement evaluate or be based on when there is nothing to evaluate. As an alternative, the Committee, may, by contract, prepare the economic impact statement or family impact note itself.

Mr. Hudson will provide an update on the sanction proposal at the Committee's February meeting.

## **SPECIAL TOPICS**

### **Mental Health Reports**

**Dan Anderson, Administrator, Addictive and Mental Disorders Division, DPHHS**, provided an update on the mental health budget, children's mental health services, and the multi-agency children's initiative (SB 454). He also provided a list of the members of the Mental Health Oversight Advisory Council and provided an update on the CHIP waiting list and the mental health services plan. (EXHIBITS #22, #23, and #24 respectively)

**Lois Steinbeck, Legislative Fiscal Division**, provided an update on House Joint Resolution 1--the study of mental health services. She stated the following:

- The Legislative Finance Committee directed staff to prepare a study plan that was not duplicative of other study groups working on mental health.
- The HJR 1 study focuses on adult mental health services offered by the Montana State Hospital (MSH) and the Montana State Prison (MSP), how the two institutions coordinate, how people get into the mental health system, how discharge plans are made, and how linkages with community services are made.
- The HJR 1 Committee is also charged with oversight of mental health issues and it will be monitoring children's services and Olmstead Planning.
- In August 2001, the Montana Supreme Court chose its In re Mental Health of K.G.F. decision to establish standards of attorney practice for attorneys who represent respondents in mental health commitment hearings. The Court repeatedly tells attorneys that they must represent what their clients want not what they think is in the best interest of their client, the proceedings must be adversarial, they must request continuances in order to prepare an adequate response, and Judges must accommodate that.
- As staff, her initial reaction to the case was that she thought that lengths of stay in community services prior to commitment hearings will increase which could have both good and bad outcomes.
- A good outcome is that it may be that fewer people will be committed to the MSH.
- Bad outcomes are that it increases the length of stay in community services and it increases costs to counties because counties bear those costs. She was unsure whether that would come back to the Legislature in District Court assumptions.
- Other potential bad outcomes are that hospitals will begin to refuse admission. Admission for stays prior to commitment hearings may go to the MSH.
- The Legislature accepted the Executive recommendation to budget the MSH at 165 average daily population (ADP). The Legislature also added a \$2 million biennial appropriation in case the estimate was too low.
- The MSH has reached capacity levels and, currently, its ADP is at about 170.
- Along with Medicaid, the Legislature has the MSH contributing to the budget overrun.
- The HJR 1 Subcommittee will be reviewing budget projections at its next meeting.
- In a preliminary analysis of the budget, Legislative Fiscal Division staff believes that some of the reductions have the potential to have a general fund cost impact to foster care, the Department of Corrections, schools, and potentially local governments.
- According to previous testimony by Chuck Hunter, CFS, DPHHS (See Page 5 of Exhibit #13), if residential treatment facilities build extra beds beyond the level in-state, the state will be placing children in those facilities anyway.
- AMDD is also going to limit the room and board payments for residential treatment for certain Medicaid children which means that there will be a certain class of children who cannot receive residential treatment or the residential treatment facilities will provide treatment at below cost.
- If there is another room-and-board payer by foster care, it may be paying the room and board out of 100% general fund instead of the 28% general fund-78% federal funds or schools could pay it.
- In addition, if there is a waiting list for services and foster care needs a place but the children should not be placed out of state and if foster care ends up placing the children out of state when in-state placements can be provided, there is a chance that the cost of the out-of-state placement will be a 100% general fund hit.

- Unless the Legislature carefully plans and considers the systemic impacts, it could cause the general fund costs of other agencies to increase. One man's budget cut can become another man's cost overrun.
- Referring to Page 2 of Exhibit #22--eliminate outpatient therapies--AMDD's proposed benefit change will eliminate outpatient therapy for children who have been involved in domestic violence cases--they may not be mentally ill or seriously emotionally disturbed-- and it may potentially eliminate outpatient therapy for foster care children who are not seriously emotionally disturbed to the extent that the services still need to be provided. Those services are provided through the general fund.
- Ms. Steinbeck provided a partial copy of House Bill #2 related to out-of-home services for emotionally disturbed children (EXHIBIT #25)
- Some legislators have the understanding that there was general fund money added that would fund services for high-cost children returning from out-of-state placements.
- This money cannot be used to bring children home from out of state. It must be used for children who are MHSP eligible, not Medicaid, and who are in their homes and, it must be used to prevent placement in out-of-home treatment. Sen. Cobb asked during the HJR 1 Subcommittee meeting if the Department was going to competitively contract to award the \$480,000 to the mental health provider coalitions.
- The Department is exempt from all competitive procurement requirements.
- However, when Medicaid funding is introduced into the equation, states have to competitively procure. If not, there is limited provider selection which cannot be done without a waiver; and in order to limit freedom of choice among providers, states must competitively procure and get a waiver.
- Her concern is that the state is starting up services or service networks with general fund while at the same time trying to fund the services with Medicaid funds which cannot be done.
- The HJR 1 Subcommittee also raised a concern about the Olmstead planning related to inter-Division collaboration or cross-Divisional input regarding people with co-current disorders.
- The HJR 1 Subcommittee requested that it be allowed to review all mental health legislation for comment. It would not supercede the Committee's review.

**Bonnie Adee, Mental Health Ombudsman**, provided an overview of the Mental Health Ombudsman Office Annual Report and a copy of the general public version of the annual report. (EXHIBITS #26 and #27 respectively) Ms. Adee expressed her concern about mental health care access for children. The mental health care system is a patchwork system that has gaps and delays and does not function seamlessly at all. She requested that the Committee review overall barriers to mental health care access because if benefits or services are reduced or restricted, people will look for a back door method to get their children treatment.

**Denise Griffith, Program Manager, Intermountain Children's Home**, provided an overview of the Montana Multi-agency Children's Services Initiative (SB 454). (EXHIBIT #28)

**Chuck Hunter, DPHHS**, said that service or provider reductions could pose a problem to the Division if there is a scope of services that are available in Montana but beds are not available within the facilities. The Department must directly absorb the cost of care or bump children into higher levels of care because the proper level of bed is not available.

**Steve Gibson, Juvenile Division, Department of Corrections**, said that the two major issues within the Juvenile Division are: (1) more and more seriously mentally ill youth are entering the corrections system and (2) the reintegration of its sex offender population back into the community. The sex offender program was established 1 1/2 years ago; it has been full ever since; and it would be double capacity if a new facility were built. He said that what needs to be addressed is what "high cost" really means. A program may cost \$100 but is done once. On the other hand, a program may cost \$50 but is done ten times. The Juvenile Division must carefully review how state and private programs perform. The goal of the Juvenile Division is to promote public safety and the most important component to public safety for juveniles is treatment.

Sen. Pease said that part of the Law and Justice Interim Committee's (LJIC) study plan is the implications of certain sentences on mental health issues. He asked if there was a connection between the LJIC's and the HJR 1's study plans. Ms. Steinbeck said that she planned to talk to the HJR 1 Subcommittee about this issue. The LJIC's meeting on sentencing alternatives for people who are mentally ill and in the criminal system would occur before the Legislative Finance Committee. She intended to ask that the members of the Finance Committee who also sit on the HJR 1 Subcommittee could attend the LJIC meeting and the rest of the members would be connected via teleconference call so that they can discuss the proper forum for that topic. The question is what happens to people once they are committed to the MSH. The HJR 1 Subcommittee has found that there is a growing forensics population at MSH and it is above the bed capacity. When patients have reached maximum treatment, the only way to discharge them and get them into parole situations is to commit them to the Department of Corrections where they go into the prison system. The HJR 1 Subcommittee intends to review the issue.

Ms. Fox added that the HJR 1 Subcommittee planned to visit the MSH. At that time, she would make a presentation regarding the various sentencing categories. The sentencing statutes have not been reviewed for some time as to how people get into and out of the different systems and how they transfer between the systems. Committee staffs are trying to coordinate between the Committees to avoid duplication. Ms. Fox said that in order to more clearly define which Committee who is reviewing what topic, she suggested that the Committee could send letters to both the HJ1 Subcommittee, the LJIC, and the Governor expressing the Committee's concerns regarding children's services, specifically mental health services, and the integration of mental health services for children that appear in different Executive Branch agencies. Reports to the Committee could be received on a regular basis.

Sen. Grimes said that most of the coordination is between the LJIC and HJ1 Committees. He suggest that the Committee just request further updates on the topic so that it can monitor its interest in the topic from a children and family perspective.

Rep. Lee was concerned about any proposed legislation that may come about from the other two Committees. Ms. Fox said that staff could send a letter to the two Committee's requesting that they share any mental health legislation with the Committee.

## **STUDY RESOLUTION UPDATES**

### **SJR 22 Subcommittee On Health Care and Health Insurance**

**Gordy Higgins, Research Analyst, Legislative Services Division**, said that to date, the SJR 22 Subcommittee gathered and discussed general information related the two goals that the Subcommittee adopted-- to establish strategies to increase health insurance coverage in

Montana and to review the access to quality, affordable health care in Montana, while keeping in mind how intertwined the system is.

The Subcommittee received presentations from David Kendall, Health Care Policy Specialist, Progressive Policy Institute who talked about tax credit ideas for purchasing health insurance and has offered his services if the Subcommittee decides to move in that direction. policy assistance. It also heard from Joyce Brown, Employee Benefits Bureau, Department of Administration, who spoke about purchasing pools. Current statute allows for purchasing pools to be formed for small and large employer markets. Ms. Brown brought up potential design flaws that other states that have purchasing pools have found are difficult to overcome. So difficult, in fact, that the small group purchasing pool concept in Montana has not been effective. Larger purchasing pools, such as the Montana Power Company, the state benefit plan, and other larger employers seems to be doing fine. Because of the design flaws, insurance carriers are reluctant to go forward with providing a product, particularly as it relates to standardizing the rating structure.

Mr. Higgins said that the Subcommittee discussed the underlying cost drivers that relate to health care and health insurance, such as aging population, increased medical technology and prescription drugs, and issues with how consumers are beginning to expect and how they use the health care system. It also discussed state regulatory provisions in state law and how they effect insurance costs as well as legislative mandates for coverage.

The Subcommittee's November meeting will focus on prescription drugs, in particular the Maine program which started off the movement toward developing a state programs that provide reduced prescription drug cost for certain populations. Other agenda items will be a presentation from Chuck Butler, Blue Cross Blue Shield of Montana on the Montana Comprehensive Health Association's high-risk health insurance pool, discussions on recent actions in Congress to affect health insurance coverage through an economic stimulus package, tax credits, and way to build on existing programs.

#### **DPHHS Legislative Audit Updates**

Ms. Fox said that 7 of 12 Performance Audit staff of the Legislative Audit Division have been assigned to DPHHS audits. Planning meetings will be held soon on the Medicaid and Child Protective Services audits. The audits should be completed by the Committee's February meeting and the Audit Division staff will provide an update on the audits at that time.

#### **Senate Joint Resolution 8--Study of the Privatization of Foster Care and Adoption Services**

Ms. Fox said that the SJR 8 has not been accomplished because of her other assigned duties. The study was ranked 9th by the legislative study survey. Lois Menzies, Director, Legislative Services Division is willing to find additional assistance to complete the study because she is unable to do so, a "white paper" could be prepared using outside contract services, keeping in mind that a person is needed to write a proposal and monitor a contract which she is also unable to do, or it could decline to conduct the study. In order to decline a study, the Committee could write a letter to the Legislative Council declining the study. The Council can either transfer the study or send it back and tell the Committee to conduct the study.

Sen. O'Neil felt that the study topic was important and that it should be studied, while Sen. Grimes felt that there may not be enough time or staff resources to get anything meaningful done. Sen. Grimes **moved** that staff write a letter to the Legislative Council declining the SJR 8 study. Motion passed on a 3 to 2 vote with Senators Pease and O'Neil voting no.

### **OTHER BUSINESS**

Sen. Pease asked if the next Committee meeting could be a 2-day meeting. Ms. Fox said that there is enough on the agenda that a 2-day meeting could be warranted but the date would have to change.

Agenda items for the February meeting are the following:

- reports from the Child Support Enforcement Division, the Disability Services Division, and the Operations and Technology Division of the DPHHS;
- updates on Olmstead issues and where the Montana Advocacy Program may come into play;
- a request from Lifespan Respite to be put on the agenda;
- tribal issues that have been raised;
- George Heavy Runner requested that the Committee review cooperative agreements related to human services between the state and the tribes to improve the government to government relationship; and
- monitoring of the standard reports--TANF, FAIM II-R, sanctions, mental health, and SJR 22 Subcommittee.

Sen. O'Neil questioned when the Committee had time to solve any of the problems. Sen. Grimes said that the interim process has changed and it is relatively new. In the past, interim committees were more focused. He said the purpose of an interim committee is for legislators to give the Departments some constructive direction, to put thought into public comment, and be a forum for citizen complaints about an agency. Sen. Grimes requested that Rep. Schmidt work with Ms. Fox to get a 2-day meeting scheduled in February.

He asked if Ms. Fox had time for a 2-day meeting. Ms. Fox said no, but that it was the Legislative Council's responsibility to provide staff support to the interim committees. She will take the issue to Ms. Menzies. She added that if the Committee is assigned additional staff, it could pursue a January meeting.

Sen. Grimes said that given the critical nature of Medicaid budget within the DPHHS, he **moved** that the Committee draft a Committee recommendation to the Department stating that recognizes the budget difficulties before the Department in Medicaid, that it encourage the Department to find all available opportunities to replace the shortage of general fund with federal funds or matching funds, and that the Department fulfill its fiscal mandate to reduce expenditures. He said that the reduction of expenditures was a legislative mandate and the Department is going to receive a lot of "flack" for doing it. Anything the Department does is controversial and the Committee should stand behind them.

Sen. Franklin opposed the motion because the Department has statutory authority, and even with the legislative mandate to cut its budget, it will be a part of the entire Executive Branch budget package. She felt that the Department did not need permission or a policy direction to cut its budget in a vacuum.

Sen. O'Neil was uncomfortable with Montana going to the federal government asking it to fund the state's programs.

Sen. Grimes felt that the Committee needed to step up to the plate and his intention was not that the Department find more money. His intention was that the Department maximize the dollars that it is already using for match purposes. He said that legislators are always critical of the Department for making choices that the Legislature mandates that they make. He amended his motion to state that the Committee recognizes the difficulties that the Department has before it and that the Committee recommends that the Department fulfill its fiscal mandate to reduce expenditures.

Sen. Franklin said that the larger legislative decisions made are made in the context of budgeting and appropriation. Departments are mandated to present a balanced budget within the context of the Executives and the Legislatures other decisions. She felt that the DPHHS knows what it has to do and it will do it. The Legislature will then review the whole picture and make decision both from the appropriation revenue and the budgetary piece.

Sen. Grimes withdrew his motion.

The Committee decided to hold a 2-day meeting on February 12, and 13, 2002, an may meet in an additional meeting between May and September 2002., and staff will provide a courtesy call to Sen. Christiaens regarding the SJR 8 study.

There being no further business, the meeting adjourned at 5:40p.m.

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