



Children, Families, Health, and Human Services Interim Committee

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58th Montana Legislature

SENATE MEMBERS

JOHN ESP
JERRY O'NEIL
GERALD PEASE
TRUDI SCHMIDT

HOUSE MEMBERS

EVE FRANKLIN--Vice Chair
DON ROBERTS--Chair
EDITH CLARK
CAROL GIBSON

COMMITTEE STAFF

SUSAN FOX, Research Analyst
GREG PETESCH, Staff Attorney
DAWN FIELD, Secretary

MINUTES

October 31, 2003

Room 102, Capitol Building
Helena, Montana

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 the document.

COMMITTEE MEMBERS PRESENT

REP. DON ROBERTS, Chair
REP. EVE FRANKLIN, Vice Chair

SEN. JOHN ESP
SEN. JERRY O'NEIL
SEN. TRUDI SCHMIDT

REP. EDITH CLARK
REP. CAROL GIBSON

COMMITTEE MEMBERS EXCUSED

SEN. GERALD PEASE

STAFF PRESENT

SUSAN FOX, Research Analyst
GREG PETESCH, Staff Attorney
DAWN FIELD, Secretary

AGENDA & VISITORS' LIST

Agenda, Attachment #1.
Visitors' list, Attachment #2.

COMMITTEE ACTION

The Committee approved the HJR 3 Study Plan unanimously on a voice vote.
The Committee approved the meeting dates of January 22 and 23, 2004, for the next meeting.

CALL TO ORDER AND ROLL CALL

Rep. Roberts called the meeting to order at 8:30 a.m.

Department of Health and Human Services (DPHHS), Gail Gray, Director

Director Gray discussed staffing issues:

- Dan Anderson has announced his retirement and Director Gray commended him for his many years of quality service and dedication to the DPHHS;
- Chuck Hunter has been named as the new bureau chief for Children and Adult Health Resources Division.
- Peter Surdock has been named as the new bureau chief Children's Mental Health.
- Jeff Buska has been named as the Senior Medicaid Policy Advisor.
- Roland Mena has left his position as head of the Addictive and Mental Disorders Division to become Executive Director of the Board of Crime Control.
- Ken Pekoc has left his position as Public Information Officer to work for Rocky Mountain Laboratories.

Director Gray addressed budget issues:

- Montana received bonus Temporary Assistance for Needy Families (TANF) payments of \$3.9 million for two fiscal years for its high level of achievement in the TANF program.
- Disability Determination in the Disabilities Services Division was given a Commissioners Award for excellence.

Director Gray discussed a Medicaid court case in South Dakota relating to reimbursement for tribal services. Ms. Gray said the court decided in favor of South Dakota and that Medicaid expenses would be reimbursed to the tribe at 100%. Director Gray said this ruling could have implications in Montana because Indian health care costs total approximately \$18 million.

Director Gray praised the Fiscal Division by saying she had high hopes for much-improved audit results. She said she believes there has been a significant improvement in agency financial management and said:

- in the two-year period since the last audit, borrowing has been reduced from \$33 million to \$11 million;
- the complex federal cost allocation process has been streamlined;
- many cost-saving measures and automated systems have been implemented;
- operating costs have been reduced;
- the payment processing time has been improved; and
- refinancing of the bond at the Montana Development Center resulted in a savings of \$962,692.

Hank Hudson, Temporary Assistance for Needy Families (TANF), explained that the TANF program pays a cash benefit to low-income families and pays for between 30 and 35 hours of training, education, and work activities per week. It is required that each adult who receives the benefits participate in these activities. The majority of TANF funding is provided through a \$44 million/year federal block grant and the state provides \$14 million of funding, which is called its maintenance of effort.

Mr. Hudson updated the Committee on the TANF case load, budget issues and expenditures, as well as budget projections for FY 2004 and 2005 and a TANF block grant analysis (Exhibit #1).

Director Gray said the Work Contractors were integral to the success the TANF program has experienced, as well as the families who have worked hard to become independent and get off the TANF rolls.

Sen. Esp asked if TANF money is used to subsidize employers who provide work for TANF recipients and if the resources for education includes paying tuition. Mr. Hudson said TANF payments can not be used to subsidize employers or for tuition but that school attendance does count as a work activity.

Sen. Schmidt asked for specific information on the DPHHS survey being conducted to determine TANF statistics for those who have left TANF, as discussed in Exhibit #1, and asked if there was a deadline for completion. Mr. Hudson said he planned to have the information available by early 2004 and definitely would have it completed before the next legislative session. Sen. Schmidt asked Mr. Hudson to present his results at the January 2004 meeting. Mr. Hudson said he would have the information prepared for the Committee.

Sen. Schmidt asked Mr. Hudson if he was tracking the difficulties experienced by TANF recipients in finding housing. Mr. Hudson said he could only track TANF clients who receive housing subsidies or live in public housing. He said that a part of the TANF survey would request information on housing issues.

Rep. Franklin asked Mr. Hudson if there was a concrete way to track homelessness. Mr. Hudson said it could be tracked. He added that his case managers have not reported a lot of homelessness but that the clients frequently move.

Rep. Franklin asked if a TANF client has an outside source of funding for tuition, if that source is counted as income and decreases the client benefits. Mr. Hudson said PELL grants, student loans, payments made by relatives directly to the institution are not counted as income but that a payment made directly to the recipient would be counted as income.

Sen. Schmidt said in Great Falls there has been an effort to develop statistics on the homeless and asked Mr. Hudson if he was aware of that effort. Mr. Hudson said the DPHHS funds the homeless survey. He said the homeless shelters offering assistance to children and families were full before the benefit cut and said he did not have information on if additional TANF families have requested assistance.

Rep. Roberts asked if the unused TANF funds were placed in interest-bearing accounts. Mr. Hudson said the funds were held by the federal government and released as the department requested them.

Sen. Esp asked Mr Hudson to explain the TANF block grant analysis in Exhibit #1. Mr. Hudson said it is a tracking sheet and it lists every TANF block grant expenditure from 2000 through 2003. The last line is the anticipated year-end balance.

Sen. Esp asked if the columns with a zero balance indicate that TANF will not fund that program any longer. Mr. Hudson confirmed this.

Dan Anderson, AMDD, DPHHS, gave a status report on the Montana State Hospital:

- Montana State Hospital (MSH) has the capacity for treating 189 patients and through September of 2003, MSH has averaged 188 patients. The 2003 Legislature funded MSH to serve 175 patients and the additional numbers have presented a challenge for the staff.
- The number of admissions has risen, and there has been a long-term shift from having a majority of civil patients to the majority being forensic patients. This issue needs to be examined in the 2005 Legislative Session.
- The 2003 Legislature passed SB 348, which funded the development of a behavioral health inpatient facility (BHIF). It will serve 175 patients and this facility should take some of the pressure off the MSH. A Request For Proposals (RFP) was put out and while none was received, Deaconess Hospital in Billings did express interest and is working with the department to finalize an agreement. Mr. Anderson said he is optimistic that the proposal will move forward.
- MSH has opened on an as-needed basis a facility for patients who are ready for discharge but have yet been released. It is a supervised program but is not considered a hospital setting. It allows the patient to make living and other arrangements before being officially discharged.

Mr. Anderson also discussed the prescription program for the non-Medicaid mentally ill population:

- This is a population that has a severe mental illness, has an income below 150% of the poverty level, and are not Medicaid recipients.
- This program traditionally has been served by a combination of general funds and federal block grants.
- The 2003 executive budget did not include any funding for this population.
- The Prevention and Stabilization Account was established by the 2003 Legislature to fund this program and it actually improved the coverage by increasing the limit to \$425 dollars. This program serves approximately 1200 people per month, all seriously mentally ill.

Mr. Anderson updated the Committee on the status of SB 347/SAA's:

- The 2003 Legislature passed SB 347, which directed the department to enter into a planning process to share management of the public mental health system with locally organized regional entities called Service Area Authorities (SAAs).
- SB 347 lists eleven functions and the plan is for the department to turn as many of those over to local entities (SAAs) as is possible over the next four years.

Mr. Anderson discussed the status of the Montana Mental Health Nursing Care Center in Lewistown:

- The population has been reduced, with residents being placed in a home environment.
- A new group home has been established in Great Falls and the residents seem very happy.
- There are plans for additional facilities in Billings, Butte, and Glendive.

Rep. Franklin said, in relation to the BHIF plans being developed with Deaconess Hospital in Billings, she was concerned that the only community to make a bid on the facility already has this type of service available. Mr. Anderson said he did not know why other communities did not bid. He said these facilities must be licensed as hospitals which requires infrastructure and staffing resources that only the larger communities have. He also said that whatever location the facility is built in, it would be expected to serve a large surrounding area and not just the community.

Rep Franklin asked if it would be possible for the Committee to review the RFP. Mr. Anderson said he would provide copies.

Sen. Esp asked when the budget was established for the BHIF if a date for completion had been set. Mr. Anderson said originally the date was set by October 2003.

Sen. Schmidt asked Mr. Anderson for an update on the Service Authority Areas (SAA) in Montana and if there was still a lot of controversy occurring. Mr. Anderson reported the Central SAA momentum has remained strong while the East and West regions have not been as strong. He said a new director has been named and she is working to strengthen all three regions.

Sen. Schmidt asked if Mr. Anderson had concerns about the SAAs. Mr. Anderson said he did, mainly the cost of implementing the program.

Sen. Esp said the biggest challenge of SAAs is convincing others of its merit and what the benefits will be. He said the department must be on board in order for them to work.

Rep. Roberts asked if there had been any discussion on including the drug abuse concerns in the SAAs. Mr. Anderson said there has been discussion but with all of the silos in existence and the separate programs operating, it will take a gradual process to accomplish this.

Director Gray updated the Committee on the status of the CHIP program (Exhibit #2).

Director Gray also discussed proposed DPHHS rule changes (Exhibit #3).

Director Gray reported that the DPHHS would be seeking legislative action to eliminate the requirement for a coordinated budget for prevention programs in the 2005 Legislature. She said theoretically this type of budget is a good idea but is complicated and difficult to execute. Director Gray said it was her opinion there were more efficient avenues to accomplish the desired outcome.

Director Gray discussed the budget issues of:

- Cash Assistance reductions (TANF);
- vacancy savings challenges, particularly in the Child & Family Services department.

Rep, Franklin asked Mr. Hunter to share the future plans for the Children and Adult Mental Health Resources Division. Mr. Hunter said the plans included:

- input into the Medicaid redesign project because of the potential for major impacts on the division;
- developing a holistic children's health system; and
- continued efforts to build the up the CHIP program.

Bonnie Adee, Mental Health Ombudsman, Governor's Office, distributed copies of the *Montana Mental Health Ombudsman Report - 2003* (Exhibit #4) and discussed the issues and recommendations for changes contained in the report.

Ms. Adee also reported that the Ombudsman Office has experienced difficulty in obtaining access to information since the implementation of the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA). HIPAA does not take into account the needs of an office such as hers and she would like HIPAA to recognize the Ombudsman Office as a "health oversight entity" that would allow access to the information her office needs to be an effective advocate.

Rep. Roberts asked Greg Petesch, Legislative Services Legal Director, to address this. Mr. Petesch said under Montana statutes, the Mental Health Ombudsman Office is eligible to receive the information and it is simply a matter of misinterpretation of statutory language.

Rep. Franklin asked how the Committee could help Ms. Adee find a solution to this problem. Mr. Petesch said if the Committee requested him to do so, he would provide a written analysis that the Ombudsman could take to the federal entities to influence their decision. Rep. Franklin asked Mr. Petesch to complete an analysis for Ms. Adee.

Ms. Adee announced that a Children's Mental Health Symposium is scheduled for November 13 and 14, 2003.

Legislative Fiscal Analysts' Report, Pat Gervais and Lois Steinbeck, Legislative Fiscal Divison (LFD)

Pat Gervais, Legislative Fiscal Analyst, LFD, presented a summary that highlighted fiscal issues related to DPHHS (Exhibit # 5):

- Montana Developmental Center;
- Portability of Benefits-Freedom of Choice;
- Closure of Eastmont;
- Pending Legal Actions;
- Medicaid Redesign; and
- TANF/Child Care.

Lois Steinbeck, Legislative Fiscal Analyst, LFD, presented information relating to (Exhibit #5):

- Interim Study Topics;
- Role of Legislative Staff;

- Medicaid Redesign;
- Mental Health Service Reductions; and
- CHIP.

Rep. Franklin asked Ms. Steinbeck to comment of the status of BHIF funding. Ms. Steinbeck said as of the beginning the current fiscal year, BHIFs were funded. Ms. Steinbeck said BHIFs in Oregon have been extremely effective in reducing the state hospital population. Ms. Steinbeck also made available a letter from Deaconess Hospital in Billings addressing the BHIF RFP and the RFP (Exhibit #6).

Sen. Schmidt asked Ms. Steinbeck to report on Medicaid redesign, health advisory committees and other related issues at every Committee meeting. Ms. Steinbeck agreed to do this and said the information was also available on the website.

Youth Risk Behavior Survey

Rick Chiotti, Office of Public Instruction (OPI), discussed the results of the Youth Risk Behavior Survey to the Committee. He distributed a folder of information containing (Exhibit #7):

- 2003 survey results;
- a comparison table listing 2003 data for different groups of students in Montana;
- trend data for 1991-2003; and
- data comparing Montana statistics to national data.

Mr. Chiotti said there was additional information available on the OPI website.

Rep. Gibson asked how many schools participated in the survey. Mr. Chiotti said 212 Montana schools covering 20,000 students participated in 2003 and both rural and urban students were included.

Rep. Franklin asked how the data was used. Mr. Chiotti said the information was used to refine and improve school programs, gather information on specific population needs such as Native American students, to pursue federal grant funds, and for a variety of other purposes.

Interim Study on House Joint Resolution No. 3

Ms. Fox presented the HJR 3 Study Plan on Indigent Family Representation (Exhibit #8) which directed the study of child abuse and neglect proceedings in order to determine how to provide representation for indigent families and to determine the appropriate earliest opportunity for presentation.

Shirley Brown, Division Administrator, Child and Family Services (CFS), DPHHS, explained a flowchart detailing the procedure and time lines followed when a family enters the Child Protective Services system (Exhibit #9). She said it was important for the Committee members to have an understanding of the existing process in order to make recommendations for changes.

Sen. O'Neil asked how the passage of HB 90, which gave parents the right to have an advocate present at proceedings, has impacted the situation. Ms. Brown said HB 90 is put into play if there has been a substantiation of abuse or neglect and the family is willing to work with CFS on

a voluntary basis and not under the auspices of a judicial order. Ms. Brown said the voluntary services protective plan is reviewed with the family and it plainly states that the family has been advised they can have an advocate present when they meet with CPS.

Ms. Fox continued her discussion of the legal statutes and issues related to the HJR 3 Study Plan (Exhibit #8, pages 6-10) and said the bottom line must be what is in the best interest of the child: the whole system is developed around protecting the children and this is what must be kept at the forefront of the process. Ms. Fox noted the difference between a Youth In Need of Care (YINC) is the result of an adult's actions and a Youth in Need of Intervention or Delinquent Youth is the result of the youth's actions. She said this was an important distinction for the Committee to be aware of in this study.

Ellen Bush, Court-Appointed Special Advocate/Guardian ad litem (CASA/GAL)

Coordinator, presented several handouts explaining how the CASA/GAL programs operate nationally and in Montana, the purpose of the CASA/GAL programs, and other related issues such as statutory requirements, funding, and training requirements (Exhibit #'s 10,11, and 12). Ms. Bush said the purpose of a CASA/GAL volunteer is to represent and protect the best interest of the child. Ms. Bush concluded her presentation by asking the Committee to keep its focus on the needs of the child.

Sen. O'Neil asked Ms. Bush when CASA/GAL gets involved in a case. Ms. Bush said a judge designates the child as a YINC and appoints a CASA to assist in the case. Sen. O'Neil asked if the CASA appears in court with the child to testify to findings made. Ms. Bush said the CASA usually appears in court on behalf of the child, in addition to other duties.

Sen. Esp asked how CASA volunteers are selected. Ms. Bush said the volunteers must go through an extensive screening process and if selected, are required to complete thirty hours of training. A mentor is assigned to them to assist with the training and orientation to the process.

Rep. Clark asked how a family is determined to be an "indigent family". Ms. Bush said the family fills out an affidavit and the judge determines whether or not they are indigent. She also said that even though a family may be designated indigent, there is still a lot of variation among the District Courts as to when representation is actually appointed for the family.

Rep. Clark asked if there was information on what the optimum time was for appointing representation. Ms. Bush said she did not have that information.

Ms. Fox called Committee's attention to the April 2003 issue of Child Courtworks, Volume 6, Issue 1, which discusses Washington State's Office of Public Defense's pilot program in two juvenile court systems for quality representation of parents (Exhibit #13).

Ms. Fox also informed the Committee that Jim Oppedahl, Supreme Court Administrator, is working on developing a standard form for determining indigency for the Court's use.

Ms. Fox reviewed several important points with the Committee:

- A CASA is assigned to one child, whereas a CFS caseworker may be assigned to as many as 30-50 cases and said this is why there needs to be an advocate for the child separate and apart from the division.

- The Citizen Review Board exists statutorily but was not funded in the last legislature.
- The Foster Care Review Committee is covering the Citizen Review Board functions, but some District Court Judges have created their own hybrid form of the Citizen Review Board.
- State assumption of District Court costs have complicated the issue and made it more difficult to sort out.
- The Cascade County Law Clinic pilot program is alternative program that is working successfully in Cascade County and suggested having the program coordinator present at a future meeting.

Ms. Fox said she recommended the Committee have the Billings Treatment Court evaluator present at a future meeting because this court is set up specifically for handling child abuse and neglect cases.

Ms. Fox also related statistics provided to her by the Court Assessment Project on the national status of parental representation:

- Fourteen of twenty-five states report that public defenders never represent parents in child protection and parental rights termination cases.
- Four of twenty-five states report that public defenders represent parents in nearly every case of child protection and parental rights termination cases.
- Seven of twenty-five states report that public defenders sometimes represent parents in these cases, usually on a county-by-county basis.

Ms. Fox distributed a draft memo from the Law and Justice Interim Committee regarding coordination of efforts on public defender issues (Exhibit #14). She said the lack of public defense in Montana is the reason this situation exists and she will continue to monitor the Law and Justice Committee's work on the public defender issue.

PUBLIC COMMENT

Diana Hansen, Helena testified to the Committee on the need to restore TANF funding and related how the cuts have had a dramatic impact on her life. Ms. Hansen related that:

- She recently separated from her husband, leaving her a single mother of three children.
- She plans to become employed but needs assistance while she attends school and has an appointment on November 3, 2003 to apply for TANF funds.
- Her TANF benefits will total only \$454 per month and she is very concerned that this amount will not be adequate for covering housing, food, childcare, and the other needs of her family.
- God's Love has provided temporary housing and she has had to depend on family and friends for other needs such as diapers and formula.

SJR 3 Study Plan Wrap-up

Ms. Fox said she is working closely with the research analyst for the law and Justice Committee because it is important that the legislature have coordinated effort in this work.

Ms. Fox said the Committee must make a determination on the following:

- if the "status quo" is sufficient or if earlier appointment of public defenders would be in order;
- the viability of other options such as the Cascade County pilot program;
- estimated costs of implementing any program;
- how the determination of indigency is made;
- should it be a county-based public defender system or should there be a separate bank of attorneys;
- how will training be addressed to ensure that there is equality in representation;
- if providing representation for parents is going to compete with other resources in the system;
- keeping the best interest of the child as the main focus of the process; and
- do the proposals take into consideration that the parents and child may be involved in both criminal and civil court proceedings.

Ms. Fox proposed having another panel presentation and discussion at the January meeting to complete the information-gathering process, use the March and May meetings to draft the plan and consult with the Law and Justice Committee, and have the bill draft proposal finalized at the August meeting.

Rep. Clark asked if the Committee budget had funding available for additional meetings, in the event the Committee felt it needed additional time to study this issue. Ms. Fox said the spending history of this Committee has been very conservative and if the Committee requested additional funding from the Legislative Council, it likely would be made available.

Sen. Schmidt **moved** to adopt the proposed HJR 3 Study Plan. The motion passed unanimously on a voice vote.

Rep. Roberts asked for discussion on the next meeting dates of January 22 (full day) and 23 (half day), 2004. The Committee agreed to these dates.

Administrative Rule Review

Mr. Petesch said he was preparing several rules issues that the Committee would have to address at the January meeting but that it was premature at this time to discuss them.

ADDITIONAL PUBLIC COMMENT

Judy Smith, Women's Opportunity and Development, Inc. (WORD), Missoula, testified to the Committee of her group's concerns that the recent TANF cut has caused incredible hardship. She said she is alarmed by the drop in the TANF caseload because the people on TANF are not people who are prepared to enter the job market. These people often have special or unique circumstances that prevent them from taking a job and they have no place else to turn for help. Ms. Smith said WORD has determined that a large number of these people are homeless. She said she is frustrated that DPHHS has done little to determine what has happened to the people who have dropped off the TANF caseload. Ms. Smith urged the Committee to talk to low-income advocates to see what is happening to these people and to work to restore TANF funding.

Melissa Worthan, Missoula, testified to the Committee on behalf of her family and on her experience with Child Protective Services (CPS) (Exhibit #15). Ms Worthan said she has lost the custody of her children and has become indigent as a result through this process and said she does not believe she has received due process of law in her dealings with CPS.

Abby Russell, Sweetgrass Hills, testified to the Committee of her difficulties in dealing with Child and Family Services that resulted in the loss of custody of her children (Exhibit #16).

Roxy Weaver, Butte, testified to the Committee of her experience with Child and Family Services that resulted in the loss of custody of her daughter, the difficulties her daughter experienced while she was a ward of the state, and of the fact that she has not seen her daughter in nearly two years; in spite of the fact that the Supreme Court restored her parental rights and custody of her daughter (Exhibit #17). Ms. Weaver urged the Committee to conduct an investigation of DPHHS and its policies concerning child abuse proceedings.

Kandi Matthew-Jenkins, Missoula, testified to the Committee on policies and procedures used by DPHHS' Child Protective Services and the difficulties she has experienced both as a parent and as an advocate for other families dealing with CPS (Exhibit #18). Ms. Matthew-Jenkins stated the implementation of HJR 3 would allow families a voice in these proceedings that they do not have now.

Sen. Esp said he would like to see an ombudsman or some type of assistance be made available to those who testified to help sort things out. He suggested Ms. Russell contact Bonnie Adee, Mental Health Ombudsman, and said he would make sure she had the information on how to contact her.

ADJOURNMENT

Rep. Roberts adjourned the meeting at 1:35 p.m. The next meeting will be January 22 and 23, 2004, in Helena.

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