



# Children, Families, Health, and Human Services Interim Committee

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

## 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

August 27, 2004

Room 137, State Capitol  
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. GERALD PEASE  
SEN. TRUDI SCHMIDT

REP. EDITH CLARK  
REP. CAROL GIBSON

### 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 minutes from the June 29 and 30, 2004 meeting as written;
- approved that the DPHHS move forward with the five recommendations to revise the public health statute;
- segregated Legislative Request #33 - licensure of unregulated youth residential care facilities;
- approved the Department of Public Health and Human Services request to split its omnibus bill into multiple bills;
- segregated Legislative Request #15 - Tribal Family Assistance Plan;
- approved changing the short title of Legislative Request #33 to authorize the Department of Public Health and Human Services to draft a bill to address unregulated youth residential programs and to allow the Department to determine the scope of the bill;
- approved Legislative Request #33 - unregulated youth residential care programs, as amended;
- approved the remaining Department of Public Health and Human Services Legislative Requests (#'s 3, 10, 16, 21, 24, 26, 31, 34, 38, 39, and 40 - EXHIBIT #2);
- approved LCC&F2 Chief Prevention Officer be approved for drafting as amended, and be a Committee bill;
- approved a request to the Office of Budget and Program Planning to review the administratively created boards or advisory committees;
- approved LCC&F6 resolutions for drafting;
- approved drafting LC0144 - mho issues, as amended;
- approved drafting/continued support of LC0031 -Public Assistance and Felony Drug Offenders: LC0031 for initial review & sponsor - EXHIBIT #18
- approved proceeding with LC0145 - safe haven newborn protection act;
- approved continued support and forward movement of LC0146 - Prescription Drug Program - repeal of SB 473;
- approved a stand alone bill containing the provisions in HJ 3 - representation for parents at child abuse and neglect proceedings; and
- approved a request that the Department of Public Health and Human Services respond to the Code Commissioner's concerns regarding the three proposed rules or to withdraw them.

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

REP. ROBERTS called the meeting to order at 8:32 a.m. The secretary noted the roll, all members were present (ATTACHMENT #3). The minutes from the June 29 and 30, 2004 meeting were approved as written by a unanimous voice vote.

## **DEPARTMENT OF PUBLIC HEALTH & HUMAN SERVICES (DPHHS) REPORTS**

### **Public Health Law Revision - Maggie Bullock , Jane Smilie, & Dr. Larry Gostin**

Ms. Bullock, Administrator, Public Health & Safety Division, DPHHS, reported that public health has evolved into a more unified system of collaborative partnerships to protect public health,

mainly as a result of 9-11-2001 and its aftermath. Large sums of dollars have been infused into the public health system in order to be better prepared to deal with any public health emergency. The Department revisions include:

- moving the Health Policy and Services Division, which included Primary and Acute Medicaid Services, into the Public Health and Safety Division;
- moving Medicaid to Child and Adult Health Resources Division, which includes the CHIP Program;
- examination of the model of the Public Health Statute, led by Jane Smilie with input from Greg Petesch, Legislative Services Chief Legal Counsel, Susan Fox, Research Analyst, the Attorney General's Office, County Attorneys, and local public health departments from around the state. The work has focused on five primary areas:
  - ▶ the mission statement for public health;
  - ▶ defining public health powers for the state and local public health officials;
  - ▶ developing standards for conditions of public health;
  - ▶ how to assure that citizens will have due process in a public health emergency; and
  - ▶ to have a clear understanding of how to plan and prepare for public health emergencies.

Ms. Bullock introduced Dr. Larry Gostin, Professor of Law, Georgetown University Law Center and Professor of Public Health, John Hopkins University. Dr. Gostin also served as one of the drafters of the model public health statute. Dr. Gostin will discuss the need for updating public health statutes and public health statute modernization efforts currently underway in other states.

**Dr. Gostin** distributed copies of his report (*The Turning Point Model State Public Health Act - EXHIBIT #1*) and discussed three different areas:

- why modernization of Montana's public health statutes is necessary;
- recent models that have been developed to address the needs of public health and action being taken by other states; and
- suggestions of how Montana can update its public health statutes.

Dr. Gostin reviewed recommendations for updating public health statutes in Montana, saying that some or all of the recommendations could be adopted:

- to develop a mission statement for public health in order to define what the citizens of Montana can expect that their health department will do to protect public health;
- to look at what public health powers exist under current law and to make sure that all powers necessary to achieve the mission statement are available in order to improve coordination of efforts in state between federal, state, and local health officials;
- prevention and control of conditions of public health importance: identify anything that could be considered a threat to public health and determine if public health agencies have adequate powers to deal with the situation;
- establish due process protection in the Public Health Statutes; and
- planning and preparation for public health emergencies.

REP. ROBERTS commented that public health issues will continue to increase in importance and that efforts need to be directed at prevention, rather than treatment. Preventing disease altogether would result in great savings to the healthcare system.

REP. CLARK asked when the actual revision process would begin. Ms. Bullock said a number of meetings have been held but that the group is still reviewing statutes and trying to decide how much of the statute should be tackled in the 2005 Legislative Session.

SEN. O'NEIL asked Greg Petesch to comment. **Greg Petesch, Staff Attorney, Legislative Services Division (LSD)**, said he agreed with Dr. Gostin's assessment of Montana's public health statutes and that cleanup is long overdue.

SEN. ESP asked if adding due process protections for the public health statutes to the Montana Constitution is a good idea. Mr. Petesch said due process protection is required under the Montana Constitution but for people working in the field of public health administering the law, it is essential to know what steps to take to protect people's rights.

REP. FRANKLIN said in the 2003 Legislative Session the public health statute was tweaked and asked if this action would be more comprehensive. Ms. Bullock said that only a few definitions were revised in 2003. This effort will be much more far reaching and will result in broad changes in the statute. REP. FRANKLIN said that in order for these changes to be implemented, she thought it important that a lot of ground work be done in advance of the 2005 Legislative Session. She encouraged the Department to be well prepared and knowledgeable on any proposed changes, in order to deal with the many questions and concerns the legislators will have. Ms. Bullock agreed with REP. FRANKLIN's suggestion and said that is why the Department asked the Committee for its input on this issue.

SEN. ESP said it is critical that the changes be made very clear and concise so that the citizens of Montana can easily understand them. If not, the changes will be meaningless to the average citizen.

REP. ROBERTS asked that possible scenarios be outlined, in order to show the importance of this reform. Dr. Gostin said this could be done and agreed that it would be helpful in educating the legislators of the importance of this issue.

SEN. SCHMIDT asked if other states have implemented their public health changes in one bill or several. Ms. Bullock said the working group is still discussing what approach would be the best to take. She said her personal preference would be to present all five of Dr. Gostin's recommendations in one bill in 2005 and continue the work again in the 2007 Legislative Session. These recommendations will raise some good discussion and if examples of potential situations are presented, as suggested by REP. ROBERTS, it will clarify the importance of the need for being prepared for any public health disaster that may present itself. The main focus should be to cleanup and define the statute to make clear who is in charge at each level of government, in the event of a disaster. Ms. Bullock noted that Tribal governments have been involved in the efforts also.

**REP. CLARK moved to recommend that the Children & Families Committee recommend to the DPHHS to proceed with all five recommendations for revising the public health statute.**

## **Public Comment**

**Joan Miles, Public Health Officer, Lewis & Clark County** testified that it is important to note that public health officials are not looking for more power or authority, but that old language and terminology makes it difficult to implement the law. Cleaning up and modernizing the statute will make it more clear and concise, thus easier to follow and enforce.

**REP. CLARK's motion to recommend the DPHHS move forward with the five recommendations to revise the public health statute passed on a unanimous voice vote.**

**Director's Report - Gail Gray** updated the Committee regarding:

- staffing changes and awards:
  - ▶ Glenda Oldenberg has been named Superintendent of the Montana Mental Health Nursing Care Center in Lewistown,
  - ▶ Maggie Bullock is retiring from DPHHS after 26 years of service and will be greatly missed,
  - ▶ Michelle Thibodeau, Joe Matthews, and the staff of the Disability Determination Bureau have been honored by the Social Security Administration for their exceptional work;
- Department activities:
  - ▶ staff has participated in several trainings around the state in order to improve service and communications with the Native American population of the state;
  - ▶ meetings have been held regarding the issue of unregulated youth homes and the Department will continue to work with these programs on legislative proposals,
  - ▶ the Medicaid Redesign Project book has been completed and the Governor is reviewing it,
  - ▶ there are ongoing negotiations with Blue Cross Blue Shield regarding its reserve account and CHIP funding, and
  - ▶ Temporary Assistance to Needy Families (TANF) numbers increased slightly in August and the Department is looking at options for the possible expenditure of the reserve account,
- proposed legislation and said that DPHHS staff would present the individual bill requests (EXHIBIT #2). Director Gray noted that Legislative Request #28 has been withdrawn by the Department.

**Maggie Bullock, Administrator, Public Health & Safety Division,** presented Legislative Request #31 - Licensure of Tattoo and Body Piercers (EXHIBIT #2). Ms. Bullock explained that the Department has received requests for licensure from many of the business owners of these types of establishments who are concerned about the possible health risks associated with tattooing and body piercing. There are approximately 150 such establishments operating in Montana. Many of the business owners are in favor of licensure in order to establish some sanitation and safety standards in order to protect the public from possible risks. An establishment that offers either tattooing or piercing would be charged \$125 per license. An establishment that offers both tattooing and body piercing would be charged \$150. Eighty-five% of the licensing fees collected will go back to the local jurisdiction for costs associated with inspecting and monitoring the businesses, 7.5% of the fee will go into the general fund,

and 7.5% will go into a state special revenue account. It is estimated that approximately \$21,000 will be collected annually.

SEN. O'NEIL asked how many cases of blood-born pathogen diseases have been traced back to these types of businesses. Ms. Bullock said she could not give a specific number of illnesses traced back to these businesses because there currently is no way to trace how and where these illnesses start. She said that is one of the major reasons this legislation is needed and if enacted, it would help eliminate that from happening in the future.

REP. FRANKLIN said because there is no surveillance of these businesses, it is impossible for determine how many people are infected from an unsanitary tattoo or body piercing. This legislation would provide that information and allow the health departments across the state to make sure that these businesses are following basic sanitary requirements.

**Chuck Hunter, Child Adult Health Resources Division, DPHHS,** presented Legislative Requests (EXHIBIT #2):

- #10 - Clarify jurisdictional questions between the language in SB 94 and SB 347 regarding the System of Care Model. This legislation would clarify that the Systems of Care Planning Committee is the primary planner for Children's Mental Health and would remove the responsibility from the Service Area Authorities (SAA's).
- #24 - Simplify the CHIP application form. This would create an application form that would allow CHIP and Medicare to share information electronically in order to eliminate the time consuming application form that parents must fill out in order to enroll their children in the program.
- #39 - Allow the Department to implement the HIFA waiver that has been discussed through the Medicaid Redesign Project. This would allow new benefits to currently uninsured populations.
- #40 - Allow a Medicaid waiver for Severely Emotionally Disturbed (SED) children in order to serve more children in home and community settings.

**Karleen Grossburg, Bureau Chief, Public Assistance Bureau,** presented Legislative Requests (EXHIBIT #2):

- #15 - Tribal Family Assistance Plan (EXHIBIT #3). This bill would require that the Legislature make a specific appropriation of general fund for tribes who operate their own TANF programs.
- #34 - Begin the penalty period on the date of application for Medicaid. This request is the result of a recommendation made by the Medicaid Redesign group and provides the authorization to utilize the federal waiver allowing the State to begin the penalty period for asset transfers that were made with less than fair market value at the date of application for Medicaid, instead of at the date of asset transfer. It is intended to encourage those who can pay for their own care to do so, rather than going on Medicaid.

**Joe Matthews, Administrator, Disabilities Services Division, DPHHS,** presented Legislative Requests (EXHIBIT #2):

- #26 - Revise and clarify provider tax on Intermediate Care Facility for Persons with Mental Retardation (ICF/MR). This would clarify language between the licensing of ICF/MR and Intermediate Care Facility for Persons with Developmental Disabilities

(ICF/DD). The request also contains a proposal to increase the 5% tax to 6%, as allowed by the federal government. This would generate more money through Medicaid as a part of the refinancing package.

- #38 - Waiver of deeming proposal. This comes out of the Medicaid Redesign package and deals with people with developmental disabilities, particularly children who receive Medicaid on their own. The issue is that there are people in different disability programs where parental income may be considered in one program, but not another. Waiver of deeming would allow the State to apply a co-pay system and would create a more balanced and fair system. This waiver would have to be approved by the federal government.

**Kelly Williams, Senior & Long Term Care Division,** presented Legislative Requests

(EXHIBIT #2):

- #16 - Power of Attorney. This proposal defines more clearly that an agent who acts in a fiduciary capacity has a responsibility to act on behalf of the principal and to have any benefits that are derived out of that power of attorney to be to the benefit of the principal and for no other purpose.

SEN. O'NEIL asked if this proposal would be applied only to the statutory form of power of attorney or to all forms of power of attorney. Ms. Williams said it would apply only to the statutory form of power of attorney, as defined in 72-31-201, MCA.

SEN. SCHMIDT asked Mr. Petesch to comment on this proposal. Mr. Petesch said this proposal would put a statement of what the law already is into the statute, so that the person accepting responsibility would have a clear definition of those responsibilities.

- #21 - Elder abuse penalty. This proposal would amend the Montana Elder and Persons with Developmentally Disabilities Abuse Prevention Act to delineate and increase the penalty from a misdemeanor to a felony for a person who purposefully and knowingly abuses or neglects an older person or a person with developmental disabilities; and to continue to make negligently abusing an older or developmentally disabled person a misdemeanor. This defines the difference between a person who knowingly commits abuse or negligence from one who does it in a negligent manner.

**Shirley Brown, Administrator, Children & Family Services Division, DPHHS,** said the Committee approved an omnibus bill at its June meeting. When the actual draft for the bill was received, it became obvious that it would be better to divide that omnibus bill into several more narrowly defined bills, as listed:

- various compliance provisions;
- to clarify service of process changes made to the statute in 2003; and
- a proposal to amend the confidentiality statute to allow a limited waiver of confidentiality when parents or people responsible for a child's care make public statements about their cases.

Director Gray presented Legislative Requests (EXHIBIT #2):

- #3 - Medicaid Redesign. This proposal would identify seven different fundamental goals and principals of the redesign and place them in statute. This would provide the basic

principals under which the Department would administer the Medicaid program. The principals are:

- ▶ To give priority to those most in need, as defined by a combination of the severity of their economic, social, and medical circumstances.
  - ▶ To empower individuals to assume increased responsibility for their healthcare.
  - ▶ To recognize the differences in populations served by the Medicaid program and the differences in availability of resources in various parts of the state.
  - ▶ To ensure that quality of care is of primary importance.
  - ▶ To recognize the importance of evidence-based data in any decision making process.
  - ▶ To recognize the importance of effective communication among all parties involved in the Medicaid program, including users, providers, the general public, and the Legislature.
  - ▶ To recognize the explicit responsibility of the Department to be publically accountable for the quality of care provided and the expenditure of public funds.
- #33 - Unregulated youth residential care programs in Montana. Director Gray presented a proposal that would establish mandatory registration in 2005, with the specific components to be determined by a work group. She suggested waiting to address the issue of mandatory licensing until the 2007 Legislative Session. She recommended that the initial language of any licensing proposal initially contain the word "mandatory", in order to ensure that all interested parties would be motivated to participate, but that ultimately, it would be up to the Legislature on whether the licensing would be mandatory or voluntary.

### **Public Comment**

**Patrick McKenna, Owner, Monarch School, Sanders County**, testified that he is opposed to any legislation regarding the licensure of youth treatment homes at this point in time, saying it is a new industry which is still evolving. Mr. McKenna cautioned that media exploitation of specific incidents often causes a state to overreact with legislation that is not well thought out and does not fit the needs of the industry. Careful and thorough research must be done before any legislation is mandated in order to identify what the issues are, what the different programs offer, and what type of licensure and regulation would be best.

REP. CLARK asked Mr. McKenna if he would be amenable to mandatory registration of youth treatment homes. Mr. McKenna said he would not oppose mandatory registration if it was simply to register as a business entity operating in the State of Montana. This would allow parents to more easily access information and resources when trying to find a suitable program for a child. There are some referral entities already in existence, such as the Independent Educational Consultant's Association (IECA), but the state also could refer inquiries to a list of programs, if they were registered with the state.

REP. CLARK asked if the IECA maintains a list of all of the youth residential treatment programs operating in Montana. Mr. McKenna said the IECA keeps a list of only the programs that register with them. The National Association of Therapeutic Schools and Programs (NATSAP) also has a list of all of the schools around the country. It lists all of the schools that are members of NATSAP in Montana. REP. CLARK asked if NATSAP would share that information with Montana. Mr. McKenna thought it would.

REP. ROBERTS asked Mr. McKenna how many children are enrolled in his school and how he obtains his clients. Mr. McKenna said there are 55 students currently enrolled at his school. He said he does not accept adjudicated children in his school and that his students typically suffer from ADD, ADHD, or depression, are usually failing in school, and are struggling with family and trauma issues. Family counseling is provided to the students and their families to help alleviate the problems that exist in their home life.

REP. FRANKLIN stated that Montana is greatly lacking in professional child and mental health practitioners. She asked Mr. McKenna how his school manages the complex medications that are frequently prescribed for the types of students he has enrolled at his school. Mr. McKenna said he employs three psychologists, two psychiatrists, and also uses the students' private health care providers to manage their medications.

SEN. SCHMIDT asked if the family counselors are onsite and if they are licensed professional counselors. Mr. McKenna said the counselors are Master's level therapists.

REP. GIBSON said in the 2003 Legislative Session, she carried a bill to allow children who were not living with their parents to go to school in another district. One of the questions asked by the Education Committee was how to deal with the treatment centers which might wish to send a patient to public school. Registration of the youth treatment homes would facilitate this type of request because in the past, there was no information on these types of programs. It is important to remember that no matter where these children are from, they are vulnerable and must be looked out for.

**John Mercer, NATSAP, & Mission Mountain School,** explained that NATSAP was started in 1999 and its purpose is to bring together schools and programs whose clients are children. NATSAP has ten members from Montana and over 125 members nationwide. Mr. Mercer outlined the four steps taken by NATSAP:

- Step one was to develop a code of ethics out of concern for the care of the children. Mr. Mercer distributed a copy of the code of ethics of NATSAP (Behavior Support Management in Therapeutic Schools, Therapeutic Programs and Outdoor Behavioral Health Programs (EXHIBIT #4).
- Step two was to develop practice standards by establishing principles of good practice that would apply to all programs, schools, and treatment centers. Four meetings were held nationally and involved over 100 different professionals. The goal was to create the best practice standards, in order to deliver quality care to children.
- Step three was to develop supplemental principles of good practices for therapeutic schools.
- Step four was to develop behavioral support programs behavioral support management that specifically revolve around behavior management, also deals with the proper use of restraint, seclusion, and other specialized methodologies that may be used in some programs (EXHIBIT #5).

These standards meet or exceed all existing state standards NATSAP is aware of and also represent a consensus view among some of the best programs in the country on developing and managing standards and practice principles for these types of programs. Mr. Mercer said NATSAP would support voluntary registration and said that NATSAP would like to assist in developing the standards for registration.

REP. FRANKLIN asked Mr. Mercer to clarify that NATSAP is a private accrediting body, not a governmental entity; and also asked how many schools in the industry belong to NATSAP. Mr. Mercer said that nationally, the numbers of schools and programs belonging to NATSAP has grown from 15 in the first year, to over 125 currently. All of the schools and programs that enjoy a national reputation are members of NATSAP. There may some gray area with some of the higher end treatment centers that may be satisfied with their accreditation through Joint Commission on Accreditation of Healthcare Organizations (JCAHO) JCAHO or another healthcare association they belong to. The differentiating factor is going to revolve around the integration of the different components of a treatment program which are: residential, therapeutic, educational, recreational, and psychiatric, which Mr. Mercer characterized as the "five food groups of therapeutic programs". Within the framework of schools that have all five of these components, Mr. Mercer said about 85% of the schools are members of NATSAP.

REP. FRANKLIN asked if NATSAP, like JCAHO, accredits hospitals. Mr. Mercer said NATSAP does not accredit hospitals but that a number of NATSAP behavioral programs are accredited by JCAHO. Also, NATSAP is working with JCAHO to develop an accreditation track for therapeutic schools, as well as with the Council on Accreditation (COA) and the Commission on Accreditation of Rehabilitation Facilities (CARF) as potential accrediting organizations. NATSAP decided what was needed first was to develop the ethical standards, best practice standards, and get consensus on that; and then find ways to incorporate these into an accreditation or licensure process.

Mr. Mercer asked to comment additionally that the Mission Mountain School was established in the 1990s and was initially licensed by the Department of Family Services as a child care agency. After several years, it became obvious that that license was not appropriate for the services the Mission Mountain School offered and the decision was made to let the license go. However, the School is subjected to an incredible amount of scrutiny from the parents of the students, many of whom are highly educated and expect the highest standards of treatment for their children. Even with that, the Mission Mountain School would willingly participate in mandatory registration, so long as the standards recognize the needs of the schools and is workable for the industry.

**Penny James, Director, Exploration School,** suggested that the Committee involve those who have been in the industry for a number of years and utilize their resources and knowledge. Ms. James offered her personal assistance and said she would also encourage others to participate in discussions regarding registration and/or licensure of programs. Based on her experience in the industry, Ms. James cautioned that a year is not ample time to research and craft workable legislation.

**Jacqueline Rutzke, Public Relations Coordinator, Spring Creek Lodge Academy,** said in the course of the meetings held, it became obvious that a major missing component was information. Ms. Rutzke distributed an outline of a study proposal with which to gather the needed information in order to make an informed decision on how or whether licensure is needed (EXHIBIT #6). Ms. Rutzke said what is known about the programs is that:

- These programs deal with children that the public schools can't serve, so they are not competing with public schools.
- These programs provide an important service by taking children from a dangerous situation and give them the opportunity and the tools to heal and grow.

- The programs provide a tremendous amount of community service to Montana because community service by the students is mandatory in many of the programs.
- There is a lot of money and jobs tied to this industry. For example, in Sanders County, between 8% and 10% percent of the jobs are related to this industry.

What is yet to be determined is:

- How many programs are operating in Montana?
- What are the different approaches? Ms. Rutzke reported that she has identified 18 different terms that schools apply to themselves and that very few people know what these terms mean.
- How do these programs address concerns about safety and ethics?
- How does this industry affect public education? Is it a burden? Does it create problems or solutions?

Ms. Rutzke said the work group agrees on two things:

- any program that isn't willing to comply with mandatory registration shouldn't be a program; and
- the programs that send students to public schools are willing to discuss tuition or agreements with school districts.

She said the work group understands the need for legislation and supports it, so long as the people experienced in the industry are recognized as experts and allowed to contribute to the process.

**Judy Smith, Women's Opportunity and Resource Development (WORD), Missoula,**

testified regarding TANF benefits. Ms. Smith said recently released new statistics show that poverty has increased nationally, including in Montana, and that it is highest among children of single parent households. Ms. Smith said it is her opinion that that the cut in TANF benefits is a major cause of the increase in poverty rates in Montana. She said that TANF was originally established to help those struggling with poverty issues and yet, the rolls have decreased as poverty rates have increased.

Ms. Smith, referring to past testimony at previous Committee meetings regarding the importance of shelter in dealing with the poverty issue, said she wanted to discuss several options for addressing housing needs. Ms. Smith distributed information explaining the details of the assistance programs:

- EXHIBIT #7 - homeWORD 2003 brochure - the annual report for the programs as they are set up in Missoula and Billings;
- EXHIBIT #8 - Montana Revolving Loan Account Down Payment Assistance program results from January 2003 through August 2004;
- EXHIBIT #9 - Montana Revolving Loan Account (MRLA) Down Payment Assistance program highlights.

Ms. Smith said the point she wished to make is that there are many ways to approach the shelter issue. Ms. Smith invited the Committee members to attend the opening of a new housing project in Billings, saying the old Acme Hotel was purchased and remodeled into 19 affordable units.

Ms. Smith stressed that all who work with TANF clients, particularly those clients who have lost their TANF benefit, know that shelter has emerged as a primary issue. The Department has not addressed this, nor has it offered a solution. Ms. Smith urged the Committee to ask the

Department to act on this situation, saying action should target programs that will stabilize families who are eligible for TANF and the reserve should not be used for any other program.

SEN. ESP commented that the poor economy in 2003 was a likely factor in the increase in poverty rates. He said his theory has always been to save money when times are good for when times get bad. He commented that Ms. Smith's philosophy contradicts his and said that it is a delicate balancing act to satisfy everyone's needs. He asked Ms. Smith if she would agree that there needs to be a reserve account and if so, to indicate an amount that she felt would be adequate. Ms. Smith agreed that maintaining a reserve account is prudent and said that \$10-\$12 million dollars is a reasonable amount to hold in reserve.

REP. FRANKLIN asked Ms. Smith to discuss her thoughts on childcare, as it relates to TANF. Ms. Smith said childcare is essential but does not agree with the Department's decision to fund childcare with money that, in her opinion, would be better spent on housing TANF families.

REP. FRANKLIN asked Director Gray to clarify what the Department's intentions are regarding the TANF reserves. Director Gray said nothing has been finalized to date. She agreed that housing is key element in helping the poverty situation and said the Department is considering all information. Increased job training, additional money for food banks, increasing benefits, and other possibilities are all being considered. The Department is also considering establishing incentives for TANF clients to encourage them to achieve their goals.

REP. FRANKLIN asked Mr. Hunter to explain where negotiations stand with Blue Cross Blue Shield (BCBS) regarding CHIP funding. Mr. Hunter said negotiations are ongoing and that the Department has proposed to BCBS to receive a portion of the reserve that is out there. BCBS has taken the Department's request under consideration but there has been no official response at this point.

SEN. ESP asked Director Gray if work would continue on Legislative Request #28 (administrative hearing representation), since it was withdrawn from the list of proposals for consideration by the Children & Families Committee. Director Gray thought work would continue on the proposal and said she would find out.

### **Committee Comment and Action on Proposed Legislation**

SEN. PEASE expressed concern, regarding Legislative Request #15 (Tribal Family Assistance Plan - EXHIBIT #2), that the proposed bill could impact current efforts being made by Tribes in taking over their own TANF programs or tribally-operated TANF programs already in existence. He said he would also like to know if the State-Tribal Relations Interim Committee planned to address this issue. Ms. Grossburg said she was not aware of any proposed legislation from the State-Tribal Relations Committee regarding this issue and that she did not foresee any factors arising from this bill that could complicate a tribe's efforts to administer their own TANF program. The Department fully supports the Tribes efforts to take over their own programs but feels it is necessary to address and clarify funding issues. SEN. PEASE asked when the proposed legislation, if enacted, would take effect. Ms. Grossburg said it would take effect in 2007 and that this proposal primarily addresses the funds that go to the Fort Belknap and Rocky Boy Tribes. SEN. PEASE asked if the Salish-Kootenai Tribe operates its own TANF

program. Ms. Grossburg said it does and the reason that it does not receive state MOE general fund is because it has chosen to serve a different population.

SEN. O'NEIL requested that Legislative Request #33 - licensure of unregulated youth residential care programs - be segregated from the other proposals. He said he supports mandatory registration but not mandatory licensure.

**SEN. SCHMIDT moved to segregate Legislative Request #15 - Tribal Family Assistance Plan, and #33 - licensure of unregulated youth residential care facilities. The motion passed on a unanimous voice vote.**

**SEN. SCHMIDT moved to allow DPHHS to split the omnibus bill into multiple bills, as requested by Director Gray. The motion was approved by a unanimous voice vote.**

SEN. SCHMIDT said she segregated Legislative Request #15- Tribal Family Assistance Plan, in order to give SEN. PEASE to time to investigate his concerns regarding this issue. SEN. PEASE said he would follow the progress of this proposal and that he would personally carry the bill, if it meets the needs of the Tribes he represents.

REP. CLARK pointed out that the proposal has not yet been approved for drafting and that before SEN. PEASE could carry the bill, it would have to be officially approved to move forward in the drafting process. Ms. Fox said there will be a draft regardless of whether the Committee approves it or not, because it has already been approved by the Office of Budget and Program Planning (OBPP) and that the Department can find a requestor outside the Children and Families Committee, if it wishes to.

**SEN. PEASE moved to reconsider Legislative Request #15 - Tribal Family Assistance Plan, and to place it back on the list for drafting. REP. FRANKLIN made a substitute motion to vote on #15 in a segregated form, in order to highlight SEN. PEASE's concern about this request. REP. FRANKLIN's motion passed on a unanimous voice vote.**

REP. CLARK commented, regarding the unregulated youth residential care programs, that the programs are working with DPHHS to come together on a consensus proposal and that she was confident consensus would be reached. She urged the Committee to approve the bill request and said the exact wording could be worked out later.

SEN. SCHMIDT asked REP. CLARK to clarify if the proposal would be for mandatory registration or mandatory licensure. REP. CLARK said the title of the bill proposal is for mandatory licensure but that she would prefer to focus on mandatory registration at this time.

REP. FRANKLIN asked Mr. Petesch if the Committee could change the short title of the bill to draft legislation for mandatory registration only. Mr. Petesch said the short title could be changed.

**REP. FRANKLIN moved that the short title of Legislative Request #33 be changed to reflect that the Department may draft a bill to address unregulated youth residential programs and to allow the Department to determine the scope of the bill.**

SEN. O'NEIL said he did not support allowing the Department that kind of latitude in drafting this bill and would vote against it. SEN. ESP said he would like the minutes of this meeting to reflect that this Committee does have concerns regarding whether or not to proceed with mandatory licensure at this point and that the Department should take those concerns into consideration when drafting this proposal.

Ms. Fox said it was her understanding that, when Director Gray presented this request, it was the Department's intent to pursue mandatory registration in 2005 Legislative Session and to consider mandatory licensure in the 2007 session. SEN. SCHMIDT said that was her understanding as well.

**REP. FRANKLIN's motion to approve Legislative Request #33 - unregulated youth residential care programs, passed 7-1 on a voice vote, with SEN. O'NEIL voting no.**

**SEN. ESP moved to approve the remaining Legislative Requests (#'s 3, 10, 15, 16, 21, 24, 26, 31, 34, 38, 39, and 40 - EXHIBIT #2) for drafting. The motion passed on a unanimous voice vote.**

### **SJR 11 STUDY ON DRUG AND ALCOHOL POLICY: PREVENTION, INTERVENTION, TREATMENT, & INCARCERATION**

**Jean Branscum, Governor's Office**, provided a recap of the Governor's Summit on Methamphetamine Summit, held on August 25, 2004 (EXHIBIT #10). Ms. Branscum reviewed each of focus areas discussed at the Summit: Child Protective Services, treatment and clean-up, law enforcement and criminal justice, media and business, prevention, and youth, courts, and education. Ms. Branscum said the focus areas were chosen from the survey which was conducted at the June meeting in which participants and state task force members were asked to rank both the importance and level of feasibility of 78 recommendations (EXHIBIT #11).

Ms. Branscum explained six cross-cutting priorities, as identified by the Summit participants:

- establish a statewide coordination mechanism for all affected agencies and organizations;
- develop interagency training and protocols;
- launch a statewide public awareness campaign;
- survey other states for best practices;
- develop a drug endangered children model
- regulate the sale of precursor chemicals; and
- develop and expand a methamphetamine treatment model.

Ms. Branscum concluded her remarks by saying the Governor's Office supports the Committee's efforts in establishing a "drug czar" position and would like to work with the Committee on the development of the position.

SEN. SCHMIDT asked what legislative draft recommendations the Governor plans to introduce. Ms. Branscum said the Governor is interested in working with legislators and this Committee on some particular legislative pieces and related issues:

- Regarding the Chief Drug Officer, whatever that position might be named or entail, the Governor would like to have input;

- There is a need for further consideration of how to control precursor methamphetamine materials. The Governor's Office will launching a new program called "The Meth Watch Program", which is a voluntary program aimed at a cooperative approach between retailers and law enforcement to monitor precursor materials in stores.
- Montana State University Extension Service has offered its services to establish a List Serve and to house a directory for it.
- Mini-grants may be made to 10-15 communities to combat meth issues. Training and support will be provided for the communities who participate in this program.
- A public awareness campaign working with all types of Public Information Officers from all state agencies within the state will be implemented to help increase awareness of the issue.

REP. FRANKLIN asked the Governor's Office to highlight its role in developing a drug endangered children model, saying she didn't think enough has been done to change the way children in these situations are responded to. They are in an extremely dangerous situation and are at grave risk. Ms. Branscum agreed that more needs to protect children in meth homes. The Board of Crime Control is cooperating with Executive Branch agencies in working on the model and the Department of Justice is planning a conference which will also discuss the issue of children and methamphetamine.

SEN. ESP referred to a document highlighting Washington State's model for handling children who are the victims of meth labs. (EXHIBIT #12 - *Children at Clandestine Methamphetamine Labs: Helping Meth's Youngest Victims*) and suggested that Ms. Branscum contact the Washington program to investigate how it is operated and if it is effective. Ms. Branscum said she has contacted the Washington State program and that the Washington program will be providing training in Montana in the near future. She said this program isn't the total answer, but it is a start to building coalitions in the communities. She agreed to pursue it further, as requested by SEN. ESP.

### **Ellie Greenwood - Update on Treatment Court Activity**

Ms. Greenwood said she was appearing before the Committee as a representative of a coalition of treatment courts in Montana. Treatment courts are nonadversarial and were established to create comprehensive collaborations among the systems that would work with the substance-abusing, drug-addicted, or delinquent family members. The major components of a treatment court include the judicial system, child welfare, treatment providers, and law enforcement, and community and educational resources. The idea is to get all the significant players in the same room at the same time to agree on an appropriate treatment plan, which is an immense challenge. It is also interesting to watch professionals come together in an interdisciplinary format to make it all work. Judges learn about addiction, treatment providers learn about the judicial system, and social workers learn about the trajectory of treatment. This results in fewer conflicting goals, which promises a much brighter future for the addict.

Ms. Greenwood stated that because there is such intensive supervision involved in treatment courts, there is a much lower level of recidivism. National research has shown that treatment courts have taken recidivism rates as low as 10%, but the rate averages about 28%, which is still very good. The national recidivism rate for offenders processed through the traditional court system approach is approximately 48% and costs about costs \$20,000 - \$50,000 per

case. The average cost to process an addict through the treatment court system is between \$2,000 and \$4,000. This is a significant savings and it should be acknowledged that when a treatment court is run effectively, there is a tremendous savings.

Ms. Greenwood said that at this point in time, treatment courts in Montana are not coordinated on a statewide basis. A number of states do coordinate treatment courts through the state level and it can be more effective and efficient to do that, in terms of the sharing of and use of resources. Montana treatment courts are always looking for funding sources. While the treatment court coalition is not currently asking for funding, it hopes to discuss that possibility in the future. The coalition also supports and appreciates any and all efforts made by this Committee and the Legislature to further coordinate and organize prevention and treatment efforts in order to deliver the best possible services to children, families, and adults who are struggling with these issues.

SEN. O'NEIL asked why there couldn't or shouldn't be just one system that would handle all of the courts, rather than separate resources and that the protocol used by the treatment courts may be useful in treating many different types of problems. Ms. Greenwood said she would be very supportive of that type of approach and that there are several such programs already in existence nationwide. The programs are called "problem-solving courts" and it is hoped that people will see this as a model as a way to bring people through the system and provide them the help they need to become healthy and productive members of society.

#### **COMMITTEE ACTION ON BILL DRAFT PROPOSALS**

Ms. Fox asked the Committee to refer to:

- EXHIBIT #13 -- LCC&F2: Chief Coordinator of Drug Prevention and Treatment and Statewide Coordination of Drug Prevention and Treatment Programs;
- EXHIBIT #14 -- LCC&F6: a joint resolution urging the Governor, the DPHHS, and the Department of Corrections to continue efforts towards intra-agency and interagency prevention coordination;
- EXHIBIT #15 -- comments on both bill drafts from interested parties; and
- EXHIBIT #16 -- comments on both bill drafts from interested parties.

Ms. Fox said all parties have had an opportunity to comment on the two proposed bills, the Committee has heard the recommendations from the Meth Summit, and that she would like the Committee to give its input on how it wished to proceed. Ms. Fox reviewed the major points of each bill proposal and the related comments with the Committee members.

Ms. Fox said the purpose of this legislation would be reinforced in the Final Report to the Children and Families Interim Committee, which would be completed soon. She said contacts for the different departments would be listed in the report and that she would also include information on the Committee's proposed legislation in the Interim newsletter.

#### **LCC&F2 - Chief Coordinator of Drug Prevention and Treatment Programs**

SEN. SCHMIDT asked Ms. Fox to explain how she would incorporate the suggestions contained in EXHIBIT #'s 14 and 15 into LCC&F2 (EXHIBIT #13). Ms. Fox said many of the suggestions would be simple to incorporate and would not significantly increase the length of

the bill. She added that at some point there would have to be a specific title given to this position.

SEN. SCHMIDT suggested naming the position "The Office of the Drug Control Commissioner". REP. FRANKLIN suggested incorporating the term "risk behaviors" because it is a common term in the public health field and has a different nuance than just addiction.

REP. ROBERTS thought the size and makeup of the committee should be discussed. He suggested it be limited to five members because a smaller committee can generally work more efficiently than a large one. Ms. Fox said the AMDD had suggested as potential members the Department of Transportation, the Department of Military Affairs, and the Department of Revenue. Other agencies that attended the Summit that would also be good candidates are the Department of Commerce, the Department of Labor and Industry, the Department of Agriculture, and the Department of Environmental Quality. By naming specific agencies, the Chief Prevention Officer would have a clearer idea of whom to work with and what resources are available.

### **Public Comment**

**Dr. Don Nauts, Great Falls,** testified that there are several language issues in the bill drafts of concern to him. He said using the word "drug" is restrictive and that in the treatment field, and the mental health field, the term used is "substance use disorders". Dr. Naut's preference would be to use "substance control" because it is a broader, more inclusive term. The other issue is regarding the terminology "addictive behaviors". When healthcare providers speak of addictive behaviors, they are really talking about clinically defined behaviors that support a diagnosis of addiction or dependence. Gambling, for instance, is a process addiction or compulsive disorder. Dr. Naut said he would rather not have them labeled. He said the bill is otherwise a good and he supports it.

**Peg Shea, Missoula,** testified she is in full support of the bill. She agreed with Dr. Nauts' suggestions. Ms. Shea said that the creation of this position will be an evolutionary process and as the complexities of the office are better understood, changes can be made. She said she is confident that with concrete leadership that is supported, solutions can be found.

**Joan Cassidy, Bureau Chief, Chemical Dependency Bureau, AMDD,** said that even if the Committee does not bring forth legislation, it is very important to note that the awareness level has been raised. The AMDD appreciated the opportunity to participate in the process and will continue to work with the Committee to get any proposed legislation passed. It is also important that the efforts of the Prevention Resource Center have been recognized. It has impacted a great many people and has been consistent in its efforts.

SEN. ESP agreed with Ms. Shea's comments that the position of the Chief Prevention Office will evolve as different elements and aspects come to light and said he liked the fact that the broad language of the bill draft would allow for that.

Ms. Fox said she would like specific guidance from the Committee as to how it wanted the language of the bill to read, such as whether the duties of the office be clearly listed or left more

broad, and if the position should have a specific title. She said she would send out copies of the draft to allow final comments from the Committee members.

REP. GIBSON suggested calling the position "Commissioner" and said she had written a title for the bill as follows: A Bill for an Act entitled: "An Act providing for a commissioner of substance abuse, prevention and treatment and statewide coordination...".

REP. FRANKLIN said Sen. Mike Cooney had brought it to her attention that bill does not contain adequate an evaluative component. New Section 8 terminates new Section 3 and gives the commissioner a year to formulate and present a long-term plan to the Governor and the Legislature, but there is no component to look at objective outcome measures in order to determine if the position has been effective. REP. FRANKLIN suggested using a sunset provision.

REP. ROBERTS asked that semi-annual presentations to the Children and Families Committee be made a requirement, along with a sunset option in three years. REP. FRANKLIN thought a four-year sunset date would be more appropriate because it will take some time for the position to establish itself and get organized.

Mr. Petesch said, as Code Commissioner, he discourages the use of sunsets provisions in multiple versions of statutes. He explained the sunset would happen with the Board of Crime Control piece and with any other piece that may be amended. If terminations are included, it causes multiple versions of statutes.

REP. FRANKLIN said there is time to explore this issue and that an immediate decision was not necessary. Ms. Fox said putting in an evaluation piece would not be difficult. REP. FRANKLIN asked to include a cost-benefit analysis.

Ms. Fox asked if the issue of an advisory committee needs to be more specific or if the Committee wanted to allow the Governor some flexibility so that if other departments and resources are available, they can be tapped. Ms. Fox also asked how the Committee wanted to address the issue of interagency coordinating mechanisms (EXHIBIT #14, Page 5, Section 2 (3)). She said the language currently says the new chief or commissioner "may create" these mechanisms, but that the language could be changed to "shall create". Another option is to allow the Governor to create the coordination mechanisms. The Committee agreed it should be the duty of the commissioner to create interagency coordinating mechanisms.

REP. ROBERTS said he was hesitant to mandate the inclusion of too many departments or agencies on this committee because in many instances, there may be only an occasional need for assistance from a particular department or agency. Leaving this decision up to the commissioner would allow the freedom to adapt the advisory committee to the needs of the program.

**SEN. SCHMIDT moved to designate the position be called the Office of the Commissioner of Substance Abuse, Prevention, and Treatment. The motion passed on a unanimous voice vote.**

**SEN. SCHMIDT moved that LCC&F2 be approved for drafting, as amended and be a formal bill draft request and a Committee bill. The motion passed on a unanimous voice vote.**

**LCC&F6 - Resolution Urging Continued Support of the Prevention Resource Council and Interagency and Intra-agency Coordination**

Ms. Fox said reviewed the comments contained in EXHIBITS 14 and 15 regarding LCC&F6. Ms. Fox said the bill draft requirements could be as specific or general as the Committee wished them to be.

REP. ROBERTS recommended leaving it as written and said if there is a need to redirect efforts, the Legislature can make the changes.

REP. CLARK said she had a suggestion on how to fund these bill requests. There are about 158 different types of councils in state government, some of which are statutorily or federally required. Many of these could be consolidated or combined and still fulfill their duties.

REP. FRANKLIN supported that suggestion, but thought that it may have already been considered. Mr. Petesch said professional and occupational licensing boards were reviewed but that advisory boards had not. The OBPP could be directed to review the creation of advisory boards under the general statute and the resources that are being dedicated to them and report to the Legislative Finance Committee.

**REP. CLARK moved that the Children and Families Committee request the Office of Budget and Program Planning to review the administratively created boards or advisory committees, analyze their funding sources, and consider the possibility of combining councils or boards for the purpose of financial savings. The motion passed on a unanimous voice vote.**

**REP. FRANKLIN moved to approve LCC&F6 for formal drafting. The motion passed on a 7-1 voice vote, with SEN. ESP voting no.**

**COMMITTEE LEGISLATIVE PACKAGE DEVELOPMENT & ACTION**

**Mental Health Ombudsman issues: LC0144 for initial review & sponsor - EXHIBIT #17**

Ms. Fox explained the concepts of the bill draft and said the Department has also reviewed this bill. LC0144 will not change the status of how the Mental Health Ombudsman (MHO) will be allowed to access the Medicaid information but language was put in reflecting the Code of HIPAA Federal Regulations language, in case the interpretation changes at the federal level. The bill also clarifies that the Mental Health Ombudsman is a health oversight agency for the purpose of HIPAA, so that the MHO can get information. The Department has said that sometimes it also has difficulty getting information, even though it is authorized, so this isn't a perfect fix, but this will at least give the MHO some statutory authority. The Department and the Governor's Office has been working on this issue and has developed a Memorandum of Understanding (MOU) that is in the draft stage. The Department believes that the MOU will

suffice and that LC0144 is not necessary. Ms. Fox reminded the Committee that LC0144 is already an official bill draft request in the system, but it can be withdrawn.

**Nan LeFebvre, DPHHS**, distributed copies of the MOU prepared by the Department's Chief Legal Counsel, Russ Cater (EXHIBIT #18). She said it has been submitted to Bonnie Adee, MHO, for review and that the Governor's Office attorney who reviewed it is in agreement with the Department that the MOU will accomplish what the Ombudsman wishes to accomplish through LC0144. Ms. LeFebvre said that in addition to herself, the MHO has been given direct access to two staff members and that each of Ms. Adee's three requests have been responded to in four hours or less. The Department is trying very hard to accommodate Ms. Adee's needs and the needs of the MHO Office and the MOU would formalize that relationship. Ms. LeFebvre emphasized that any information requested by Ms. Adee is provided to her, even if it is based on a verbal authorization from the client but; based on federal law, the request must be followed up with a written authorization from the client. Ms. LeFebvre also noted that, should the legislation move forward, the Department will request several amendments to the bill.

REP. CLARK asked Ms. Adee to state her opinion on if LC0144 is needed or if the MOU would adequately address her needs and concerns. Ms. Adee stated she has not had enough time to study the MOU and that she has asked an attorney with whom she has worked closely with to review it. Until that attorney has had time to give an opinion, Ms. Adee did not want to comment further on whether the MOU would be sufficient. and whether LC 0144 is needed.

REP. ROBERTS asked Mr. Petesch to comment on whether the MOU would take care of the issue at hand, or if LC0144 was still necessary. Mr. Petesch said LC0144 addresses more than just the data access issue. Provisions that clarify that the ombudsman can employ staff and that address the duties of the ombudsman are also contained in LC0144. Mr. Petesch also questioned, that with a new administration imminent, if the MOU would be binding.

**SEN. SCHMIDT moved that LC0144 continue forward in the legislative process.**

SEN. ESP asked Ms. LeFebvre if the MOU would be binding on the next administration. Ms. LeFebvre said she thought it would be binding because the persons designated to sign the MOU are not subject to the administration change. The Department will approach the MOU with the mindset that it will be binding.

SEN. O'NEIL said he appreciated the effort behind the MOU but still supports LC0144 and thought the Committee should move forward with it.

SEN. ESP said, as a point of order, that LC0144 was approved for drafting at the June meeting so there did not to be action taken, unless it was to vote to withdraw it.

Ms. Fox said the Department has concerns about the bill draft and asked how the Committee wanted to handle those concerns. The Committee may allow those concerns to be addressed in the bill now or later in the legislative process during session.

REP. CLARK said she would like to hear from the Department regarding its concerns. Ms. LeFebvre said the Department recommended the following changes:

- Page 2, Section 1 (5) - to add the language "with written authorization from the client" after "confidential" in the first sentence. This is in compliance not only with HIFA, but also with Medicaid confidentiality laws.
- Note that language in Page 3, Section 1 (9) would not change access to online information based on current Medicaid interpretation. Medicaid rules require written authorization.

SEN. SCHMIDT asked how the MHO office is funded. Ms. Adee said for the current biennium, the MHO budget was combined with the Board of Visitors and that both programs are eligible for Medicaid money.

REP. CLARK asked if the amendments requested by Ms. LeFebvre would have an impact on the Medicaid funding for the MHO. Ms. Adee said she didn't know if they would or not. Ms. LeFebvre said the Medicaid funding would be jeopardized if the language requiring written authorization from the client is not included. REP. CLARK asked if the language would risk DPHHS Medicaid funding. Ms. LeFebvre said funding would not be at risk if the language was added.

**SEN. ESP moved to amend LC0144 to include the change that the Ombudsman must have written authorization from the client to access information.**

SEN. O'NEIL said, since the Ombudsman is an oversight agency for individuals who are affected by the Department, he would like the MHO to be able to perform spot checks on certain populations to see if how they are being treated. He said it would be time consuming for the MHO to have to contact individuals and gather signatures and wondered if that would be possible under this provision. Ms. Adee said all of her requests and investigations are at the request of an individual. She clarified that there are rare instances when it is not clear who can give authorization or that the person who could give it legally is either not available or there is a problem which prevents the MHO from getting authorization.

SEN. ESP asked Mr. Petesch to suggest proper wording for the amendment to accomplish the purpose of the law and what has been requested by Ms. Adee regarding access to Medicaid records. Mr. Petesch said he would add a separate sentence in subsection 5 on page 2, stating that "written authorization is required for access to confidential Medicaid information". **SEN. ESP moved to include that language in the bill and request that it be drafted that way.**

SEN. O'NEIL asked if this issue could require a court by-pass. Mr. Petesch said he would have to investigate the matter further that before he could answer that.

Ms. Fox said some sections that are not interrelated do give the MHO the right to receive information from healthcare providers without authorization (Section 2 - Disclosure without patient's authorization -Page 3, EXHIBIT #17). There are some mechanisms in the bill for the MHO to receive information. Medicaid and HIPAA are federal laws and the state can't circumvent those, but since the MHO has been given statutory authority to at least ask for the information, this shouldn't require a judicial bypass.

**SEN. ESP made a substitute motion to draft LC0144 with Mr. Petesch's suggested language "written authorization is required for confidential Medicare information" inserted. The motion passed on a unanimous voice vote.**

SEN. O'NEIL, pending reelection, and SEN. SCHMIDT volunteered to sponsor LC0144.

**Public Assistance and Felony Drug Offenders: LC0031 for initial review & sponsor - EXHIBIT #19**

Ms. Fox reminded the Committee that LC0031 was approved for drafting by the Committee at the June meeting. She said there some changes were made regarding requirements which gives the Department the authority to adopt rules:

- Page 3 and 4, Section 1 (2)(t)- regarding Department authority for random drug testing and reporting; and
- Page 5, Section 2 (3) - compliance and participation requirements.

Ms. Fox thought the concerns expressed at the last meeting have been addressed in this draft of the bill and said LC0031 is ready to have a sponsor assigned.

**REP. GIBSON moved to proceed with this bill draft and to be the sponsor, pending reelection. The motion passed on a unanimous voice vote.**

**Safe Haven Newborn Protection Act: LC0145 for initial review & sponsor - EXHIBIT #20**

Ms. Fox said this bill was an issue raised to the Code Commissioner by LSD editors. There is a temporary section of law that disappears but there are internal references to it. The Code Commissioner can take care of it in the Code Commissioner bill, but if he does, we lose some of the language, so if the Committee carries this bill, unless it has amendments to it, all it needs is a sponsor. Mr. Petesch has asked for permission to include LC0145 in the Code Commissioner bill. Ms. Fox said she planned to strike the subsections that are amended here and asked permission to draft a coordination section that says if this bill passed and approved, that section in the Code Commissioner bill is void.

**SEN. SCHMIDT moved to proceed with LC0145, as requested by Mr. Petesch. The motion passed on a unanimous vote.**

SEN. ESP offered to carry LC0145.

**Prescription Drug Program (SB 473) Repeal: LC0146 for initial review & sponsor - EXHIBIT #21**

SEN. ESP offered to carry LC0146. Ms. Fox said the reason the Department didn't go forward with this bill is because of the federal Medicare bill that was passed. Lois Steinbeck, Legislative Fiscal Analyst, Legislative Fiscal Division, very recently informed Ms. Fox that the rules came out and that many states that are changing their pharmaceutical assistance programs. There may be more information coming and perhaps there will be a new approach to this issue to consider in the future.

**REP. ROBERTS moved the legislation and the Committee approved it unanimously.**

## **OTHER LEGISLATIVE ISSUES FOR CONSIDERATION**

### **Developmental Disability Commitment Costs: SB 35 Revisited: No Legislation Required**

Ms. Fox said SB 35 regards criminal commitments of persons with developmental disabilities. She said she still is not completely clear on this issue, but that she has looked at the issue numerous times, and for the issues specific to SB 35, there doesn't appear to be any fixes that need to be done legislatively. Therefore, the request that the Committee made last time for a bill is not required. Ms. Fox advised the Committee that the civil commitment costs are still an issue between the State Court Administrator's Office and the DPHHS. The Public Defender bill being drafted by the Law and Justice Interim Committee (LJIC) will be very explicit and will clarify those costs, so this Committee does not have to address this issue any further.

### **LCC&F4 (EXHIBIT #22) and LCC&F5 (EXHIBIT #23) - Study on AMDD and Other DPHHS Facilities**

Ms. Fox reviewed that this issue had originally been presented as a bill draft request, but had been withdrawn by the DPHHS because it plans to conduct a departmental study within the Addictive and Mental Disorders Division (AMDD) regarding facilities and the mission of the program. After discussion at the June Children and Families Committee meeting, the Committee asked that two parallel resolutions be drafted: one to encourage the Department to do the study and report to this Committee (LCC&F4 - EXHIBIT #21) and one to assign this as an interim study (LCC&F5 - EXHIBIT #22).

Ms. Fox cautioned that other Divisions share similar issues and that the Developmentally Disabled Division, for example, also has a forensic population and a facility which has had its use changed. Paulette Kohman, an attorney at DPHHS dealing with these issues, said it has become solely a budgetary issue because staff has to keep converting the Developmental Center at Boulder to accommodate the separation of the different clients for their safety. It has been difficult for the Center to keep up because it doesn't know how many of these types of patients to plan for which creates budgetary issues. Ms. Fox said she thought it was important that both the AMDD and the DD divisions be looked at that.

Ms. Fox said both bills both reference Developmental Disabilities. Also, both bills are resolutions and are only a request for the Department to do something. DPHHS doesn't have to follow the resolution but have always been cooperative in the past.

SEN. ESP commented that Joyce DeCunzo has appointed someone within AMDD that will deal only with the facilities within AMDD and that he assumed that there will be some cooperative effort to consider how this issue can be addressed. SEN. ESP didn't think it was necessary to make the issue an interim study.

The Committee decided to take no action at this time.

### **Child Protective Service Issues: HJ 3 Stand Alone - EXHIBIT #'s 24, 25, and 26**

Ms. Fox distributed a Child Protective Services Policy Training Agenda at the invitation of Shirley Brown, Child Protective Services Division, DPHHS (EXHIBIT #24).

Ms. Fox said HJR 3 contained the recommendation that parents receive legal representation at the initial proceedings and that the recommendation had been forwarded to the Law and Justice Committee (LJIC). The LJIC has incorporated the recommendation into its Public Defender bill. Ms. Fox referred to two newspaper articles mailed to members regarding Child Protective Services (EXHIBIT #'s 25 and 26) and how the costs in the Public Defender bill may become an issue. Ms. Fox said, as a safeguard in the event the Public Defender bill doesn't pass, the Committee may wish to consider a stand alone bill with the recommendation from HJ 3. If that is the Committee's wish, Ms. Fox said she would work with Sheri Heffelfinger to create a mirror bill of the Public Defender bill. This would ensure that if the Public Defender bill is passed, the Children and Families bill will coordinate with it. If the Law and Justice bill doesn't pass, the HJ 3 provision would still go forward.

SEN. PEASE said the Public Defender bill is lengthy and that the LJIC is anticipating that at least six bills will come behind it to assist the main bill. He supported Ms. Fox' suggestion, saying it is important these issues remain in place and move forward to the full legislature.

**SEN. ESP moved to develop a bill as a mirror image of the LJIC's Public Defender bill. The motion passed on a unanimous voice vote.**

#### **Videotape Testimony**

SEN. O'NEIL said it was possible that this issue could be dealt with through rulemaking authority rather than legislation.

REP. CLARK said SEN. SCHMIDT and herself had served on the Child and Family Services Advisory Council and had instructed the Council to formulate a policy for conducting videotape testimony.

REP. ROBERTS said, if this measure could help reduce the costs of conducting child abuse and neglect proceedings, a policy would be to the state's advantage.

SEN. O'NEIL asked that the Committee be notified when the policy is complete and that he would like to review it. REP. CLARK said SEN. O'NEIL or the Committee could request copies of the policy as it is being developed or when it is completed. SEN. O'NEIL asked to be notified when meetings are to be held on this issue.

#### **LC 9009 - DPHHS Requirement and Obligations**

SEN. ESP asked Ms. Fox to discuss the meth lab cleanup bill from the DPHHS (EXHIBIT #27 - LC 9009). Ms. Fox reminded the Committee that Larry Mitchell, Legislative Environmental Policy Office (LEPO) had presented a report to the Committee on meth lab issues at the June meeting. The Environmental Quality Council (EQC) is drafting a bill based on the report but

since the Council doesn't meet until September, it is not known if it will be adopted. If the EQC doesn't adopt it as a bill, REP. HARRIS has expressed interest in sponsoring it.

Ms. Fox explained that LC 9009 mandates that the DPHHS is authorized to establish minimum standards for training and certification of contractors and employees for cleaning up meth labs. Ms. Fox noted that the EQC bill draft will include exterior clean up only and that there are also requirements for landlord cooperation. She noted that that some provisions will be mandatory and others will be discretionary. DPHHS thought that since the Children and Families Committee has oversight of the Department, this issue would be of interest to the members. Ms. Fox said this is a minimalist approach but is a good start.

**REP. CLARK moved to amend a motion** she made earlier in the meeting regarding her request requesting that the Office of Budget and Program Planning review advisory councils. She said it was her intent that any savings found from a review be directed to the Commissioner's Office of Substance Abuse. **Her request for modification passed on a unanimous voice vote.**

### **PUBLIC COMMENT**

**Kandi Matthew-Jenkins, Missoula,** said she recently learned that a gentleman who has struggled with the DPHHS regarding custody of his grandson had passed away. Ms. Matthews-Jenkins alleged that the reason Mr. Steve Crawford's heart condition worsened and eventually died was partially due to the stress of fighting the Department of Family Services.

Ms. Matthews-Jenkins also presented testimony regarding the use of videotape testimony, stating that it is the right of a citizen to audiotape conversations under 45-8-213, MCA. She said she would like to see that Child and Protective Services (CPS) write in its policies that, if families bring in an audiotape recorder to tape conversations with caseworkers, they not be denied that right. Ms. Matthew-Jenkins said she supported the use of videotape testimony and said allowing audio and videotape testimony would help get rid of the "he said, she said," component of court cases and would ensure that neither the citizen nor the caseworker is misquoted.

**Jennifer Young, Great Falls,** testified regarding the Safe Haven Newborn Protection Act (EXHIBIT #20). She read Page 1, Section 1(1) of LC0145 and said she objected to the use of the words "without a court order" as written in subsection (1). She said she agreed with the statement in general, except for allowing a baby to taken into protective custody with a court order. Ms. Young said parents who are willing to give their children up should be informed of what they are getting into and that it should be noted in the court files that the baby has been taken without a court order. DPHHS should not be allowed to come into a hospital and take a baby from its parents and claim that the parents gave the baby away. It should have to be documented.

SEN. ESP clarified that the bill, on Page 2 in Section 2(b), does inform the parent, if possible, that they have 60 days to petition the court to regain custody of the infant.

SEN. O'NEIL said the bill does not specifically mention contacting the father and wondered if language could be added to specify that the father must be contacted. REP. ROBERTS pointed out that on Page 3 in Section 3(e), that issue is addressed.

**Angelina Young, Great Falls**, testified that her young granddaughter had been removed from her home by CPS on May 13, 2002, when she was six weeks old. She alleged that social workers pressured her daughter, the infant's mother, to allow them into the house. Once in the house, the social workers, along with a deputy, took pictures of the infant and went through the home. Ms. Young said she was not allowed to testify on her daughter's behalf and that her character was assassinated by CPS in the ensuing custody battle. She said she feels "completely aggrieved" by this experience. The reason her daughter and the baby were living in her home was because Ms. Young knew her daughter needed help. Ms. Young said it was her intention to provide care for her granddaughter until her daughter was able to care for the baby herself. She stated that this situation could have been prevented, had the interviews and encounters been videotaped.

**Steve Yeakel, Executive Director, Montana Council for Maternal and Child Health**, testified that the Council works as advocates for children and children's health issues. He outlined the Council's legislative agenda for the 2005 Legislative Session and said the following areas would be focused on:

- increasing access to care for children;
- the CHIP program and maximizing the dollars available;
- the HIFA waiver situation and to determine the benefits and challenges;
- the public health infrastructure and to defend appropriations for current programs;
- medical malpractice reform and the impact malpractice suits have had on access to care;
- highway injury and death prevention issues, such as a graduated driver's license and a primary seatbelt enforcement law; and
- tobacco use prevention.

SEN. SCHMIDT asked if the Council had a particular plan in mind regarding the CHIP dollars and how they should be spent. Mr. Yeakel said what must be identified is the total number of dollars and what is manageable and sustainable for the long term.

**Colleen Murphy, Executive Director, Montana Chapter of National Association of Social Workers (NASW)**, said she would be bringing a bill before the 2005 Legislature which would create a multi-level licensure requirement for all social workers in Montana. She said under current law, anyone can use the title "social worker" and claim to be engaged in the practice of social work, even if they have not met nationally recognized standards of education, training, ethics, and experience. Vulnerable Montana citizens need protection from physical, psychological, mental, social, or financial harm.

Ms. Murphy said all of Montana's neighboring states all license social work practice at several levels. A definition suggested by the Montana Chapter of NASW of a social worker is a professional who has a degree approved by the Council on Social Work Education and has training, ethics, and experience. NASW is in the process of talking to stakeholders and the legislation has been written with the state licensure board.

Ms. Murphy said New Mexico spearheaded this in 1994 because civil suits were being brought against employees in its Health and Human Services Department and the suits were often successful. Ten years later, there are four schools of social work in New Mexico and all human services positions are held by licensed social workers from accredited schools. There is no reason Montana can use the New Mexico model to adopt a similar approach.

Ms. Murphy, in response to a question from SEN. O'NEIL, said Montana does not have a licensure board for all levels of social workers but does have the Montana Board of Social Work Examiners and Licensed Professional Counselors. It licenses Master's level social workers at the clinical level only and licensed clinical professional counselors.

Ms. Murphy said NASW is proposing to add a licensed baccalaureate in social work and licensed masters in social work - non-clinical for people who work in hospital settings, nursing homes, any other setting not in mental health requiring an assessment or diagnosis and use of the DSM diagnostic statistical manual.

REP. ROBERTS asked if the new requirements would be managed through an existing board and if it would be self-funded. Ms. Murphy said members would be added to the existing board, which is independent, and that it would remain self-funded.

**Collette Gray, Community Advocate, Opportunities Inc., Great Falls**, said as an advocate for the low-income families, she would like to urge Committee support for several issues of interest to her program:

- to support Director Gail Gray's recommendations for expenditure of the TANF reserve and that it should be used to strengthen TANF families;
- financial support for the CASCO Youth Project.

REP. ROBERTS asked if Great Falls was experiencing problems with "same day loan" businesses, has the Committee had previously heard from the Missoula community. Ms. Gray said her agency is seeing an increase in families using these businesses and that the families experience even more financial difficulties as a result.

**Minkie Medora, Food Policy Council of the Montana Food Bank Network**, thanked the Committee for its support of LC0031 regarding public assistance for drug felons. Recently the Food Policy Council conducted a survey of hunger at seven food bank sites throughout the state. In depth interviews were held with about 350 people. Results are preliminary, but it was found that many people come to food banks because they are sanctioned from food stamps for multiple reasons, including felonies. There were many others who came to the food banks who were receiving food stamps and still could not make it. If implemented, this bill will help many families.

REP. GIBSON asked Ms. Medora to provide contact information to her because her legislative district has a very active food bank and she would like to coordinate efforts to support this bill. Ms. Medora agreed to REP. GIBSON's request.

REP. ROBERTS informed the Committee that Ms. Fox has a copy of the CHIP survey giving information on the status of CHIP. Anyone who wishes to have a copy may contact Ms. Fox.

## **ADMINISTRATIVE RULES - GREG PETESCH, CHIEF LEGAL COUNSEL**

Mr. Petesch reported that he has had no significant rule review for consideration by the Committee because DPHHS has, to date, agreed with his comments made on the administrative rules that he has reviewed.

Mr. Petesch said the Department has recently disagreed with his comments on three rules:

- a rule to establish levels of substantiation of suspected child abuse - Level One and Level Two;
- a rule dealing with deferred substantiations of abuse; and
- a rule dealing with the disclosure of reports and that deferred substantiations will never be disclosed.

Mr. Petesch said if the Committee wishes to take action on this issue, it must do so at this meeting, since it is the last meeting scheduled in this interim.

Mr. Petesch explained that the rules pertain to the substantiation of child abuse and neglect and fair hearing rights. He said the reasons for his comments were, that in order to have a valid administrative rule, there are some requirements that are statutory:

- the Department has to have been given authority to adopt the rules;
- the rule has to implement a provision of law and it has to implement that provision of law in a manner that is consistent with and not in conflict with the statutory provision that is implemented; and
- the rule has to be reasonably necessary to be put in place.

Mr. Petesch explained that the first rule he commented on deals with rules to establish levels of substantiation of reports of suspected child abuse. A Level One substantiation characterizes child abuse and neglect or exploitation that is resulted in or likely to have resulted in physical or psychological harm to a child with a moderate risk of future child abuse. A Level Two is the same thing, but that has resulted in serious physical or psychological harm with a high risk of future child abuse.

The second rule Mr. Petesch commented on deals with what the Department calls "deferred substantiation". After an investigation, the Department says it may defer a substantiation determination if the incident in the report of child abuse, neglect, or exploitation, was a one-time occurrence, resulted in or was likely to have resulted in a minimal physical or psychological harm to the child, and has a low risk of reoccurring, due to preventative measures taken by the subject of the report. Those reports that the Department classifies as "deferred substantiation", will never be disclosed under any circumstances. The person who is the subject of a deferred substantiation only gets one deferred substantiation in a lifetime. A subsequent report will be classified as a Level One or a Level Two under the first rule described.

Mr. Petesch said the third rule deals with the disclosure of reports and that deferred substantiations will never be disclosed. Level One determinations of substantiation will be disclosed for five years past the date of the Department's final determination. Level Two determinations will be disclosed for 25 years past the date of the determination.

Mr. Petesch said he objections to these rules because there is no statutory provision that addresses deferred substantiation reports. The statutes deal only with substantiated reports and unsubstantiated reports. In the case of unsubstantiated reports, the Department can keep the report for three years and the report must be destroyed, unless there is another report within that time period. The statute the Department claims it is implementing deals with disclosure exceptions because there is a presumption that the case records of the Department are confidential. The statute then says that the records can be disclosed to certain entities upon certain conditions.

One of those conditions is that they can be disclosed to the enumerated entities, unless the report would be harmful to a person who is the subject of information contained in the records. One of the entities who is able to get information, if the Department in its discretion, determines to give it to them, is a person who is carrying out background employment-related or volunteer-related screening of current or perspective employees, who may have unsupervised contact with children through their employment or volunteer activities. One statute says the Department may give out this information to these people and another statute says that says if an employer receives that information, and if the employer chooses not to hire the individual based on the information received, that the employer can't be sued for discrimination.

The Department has made a conclusive determination that it will not give out those records for the deferred substantiations. It will release information on Level One determinations for five years and information on Level Two determinations for 25 years. The Legislature has mandated that this information be available from the Department, but the Department has made the blanket determination that it is not going to do it. Mr. Petesch said he believed that is tantamount to changing the statute.

Mr. Petesch said he has suggested to the Department that these changes represent a major shift in policy which would be better dealt with by the Legislature. He said the Department's response had been to cite a Department of Justice (DOJ) case dealing with rules the DOJ had adopted regarding procedures. Mr. Petesch said what the DPHHS failed to note is that the DOJ system was already statutorily in place, so it merely piggybacked on the existing statute. That is not the case with DPHHS. Administrative agencies enjoy only those powers specifically conferred upon them by the Legislature. Mr. Petesch stated that administrative rules must be strictly confined within the applicable legislative guidelines and the statute can not be changed by administrative regulation, and that, that in his opinion, is what the three rules he commented on attempt to do.

**Shirley Brown, Administrator, Child and Family Services Division,** commented that the Department has been working on this process for about a year and a half. The genesis of these rules was the Department's belief that people can change and that an individual's constitutional right to liberty and ability to earn a living can be compromised under current rules. This is an attempt by the Department to come up with a system where it has balanced safety for children with the individual's constitutional rights. The Department feels that if the person has addressed all of the issues which led a substantiation, then it shouldn't harm them employment-wise. Ms. Brown said the Deferred Substantiation could be can changed to a Level One and the Level One would correspondingly change to a Level Two, and Level Two to a Level Three, if Mr. Petesch thought that would help.

**Michelle Maltese, Staff Attorney, DPHHS,** said she has been involved in the substantiation process for three years and that it has been a very frustrating process. She said the original purpose of the rules was to not penalize a parent for one mistake and that it would not be a problem to make term changes, such as calling a deferred substantiation a Level One. Ms. Maltese disputed Mr. Petesch's argument that the Department did not have the authority to make the changes and cited its rule making authority, as found in 41-3-208, MCA, and in 41-3-205, MCA. Ms. Maltese assured the Committee the Department is not trying to go beyond its authority, that she had researched this issue thoroughly and that in her opinion, the rules have a solid legal basis.

REP. ROBERTS asked Ms. Maltese how the Committee should reconcile her interpretations with Mr. Petesch's. She said she didn't have an answer for that and that it was her understanding that the Committee has the final authority.

Mr. Petesch said the Children and Families Committee does not have final authority. The authority to adopt these rules or not rests with the Department. This Committee may only object to the rules. If the Committee objects to the rules, the Department is required to file a written response to the objection. If the Committee is satisfied with the Department's response, the Committee can withdraw the objection. If the Committee feels that the Department's response does not adequately address Committee concerns, the Committee can file its objection and the Department's response with the Secretary of State. The objection will then be printed with the rules; and the burden of proof of the validity of the rules shifts from the party (the Committee) challenging the rules to the Department, to maintain it in the event of litigation. If the party who challenges the rules is successful, it is entitled to get costs and attorneys fees. So the choices the Committee has before it are:

- to request that the Department withdraw the proposed rules and to submit legislation to achieve what it is trying to achieve through rule changes; or
- to file an objection to the proposed rule changes with the Secretary of State and instigate litigation to challenge the validity of the rule, should it be adopted by the Department.

SEN. O'NEIL supported the ideas of withdrawing the proposed rule changes and pursuing the changes through bill draft requests. He said there are some good points to what the Department is trying to accomplish, but it should be a public and legislative process.

Ms. Fox asked the Department if it would be willing to change the rules to comport with Mr. Petesch's interpretation. She said it is her understanding that the Department does have the authority to determine levels of response to substantiations, but whether or not it has the authority to determine which records to disclose and how seems to be an issue. If the Department is willing to continue to work on the proposed rules, there may be a way for all involved to reach an agreement. Clearly, statutory authority would be the most effective way to handle it.

SEN. ESP said he has examined the particular section of statute that both attorneys mentioned and said it does read "substantiated and unsubstantiated" and asked Ms. Brown to refresh his memory as to what the Legislature did. Ms. Brown said that when CPS does an investigation, it must make a determination as to whether the abuse occurred or not. The statute defines the term "unsubstantiated" as "if there is not a preponderance of evidence to show that it happened, then it is unsubstantiated". A substantiation requires a preponderance of the

evidence, which means it is more likely that it did happen, given all the facts. That is also the level that is required under statute for the Department to get a child adjudicated a Youth In Need of Care. SEN ESP asked Ms. Brown to clarify that the term "unsubstantiated" is statutorily defined, but that "substantiated" is not. Ms. Brown said that was correct, that the bill defined "unsubstantiated" only and states that if there is an unsubstantiated report and there is no either prior or subsequent substantiation, then within 30 days of three years after the date of the unsubstantiated determination, the record is expunged.

Mr. Petesch commented that the while proposed rules may be a good idea, his job is to determine if the rules conform with the implemented statute and the express guidelines laid down by the Legislature.

Ms. Petesch said it troubled him that the Department plans to disclose a Level Two substantiation for 25 years only, because the conduct that results in a Level Two substantiation may result in a criminal conviction that requires the individual to register as sex offender of the remainder of his/her life. Not disclosing that information from the Department's records after 25 years is not consistent with the policy determined by the Legislature that if a person is such a threat, that the person must register and have his/her name and location published in the paper forever.

REP. FRANKLIN asked Mr. Petesch to clarify that the issue he is particularly concerned about is that there is no statute governing disclosure. Mr. Petesch said there is a statute governing disclosure and that is what the Department contends is that it is implementing. However, the Constitution requires that in balancing the right to know and the right to privacy, the decision is made on a case-by-case determination. The Department's proposed rules seem to violate that same concept because the Department has made a blanket determination that after a deferred substantiation, a person is never a risk; that five years after a Level One substantiation a person is no longer a risk; and 25 years after a Level Two substantiation, a person is no longer a risk. There is no balancing procedure to examine substantiations on a case-by-case basis, the Department has simply made a blanket determination on how to handle all cases.

SEN. SCHMIDT asked if adding the additional step of making rules of determination would take care of this discrepancy. Mr. Petesch said if that was done, he would not have the same comments concerning these proposed rules.

Ms. Fox asked if the Department would have to withdraw some of the current proposed rules. Mr. Petesch said the rules have not been adopted yet, that is why it is timely for the Committee to act. Thee rules have been noticed, the hearing has been held, and adoption is pending.

**SEN. O'NEIL moved to request DPHHS to withdraw that rule and to submit a bill draft request in order to accomplish the objectives. Public involvement, more discussion.**

REP. CLARK asked Ms. Brown if there was a possibility that the Department would reconsider the rules and rewrite them. Ms. Brown said the Department would take Mr. Petesch's comments under advisement and try to make changes.

**REP. FRANKLIN made a substitute motion that the Department withdraw its current proposed rules, address the substantiation level and disclosure issues that Mr. Petesch brought up, and then re-notice and re-hear the proposed rules.**

Ms. Brown said she was not sure if there was adequate time to begin the entire process over.

REP. CLARK asked if the changes would be more easily done through statute or through rule. Ms. Brown said she didn't know which approach would be the easiest. The statutory approach concerned her because of the possibility of amendments being made.

SEN. ESP asked if it was possible for the Department to make the changes and get the rewritten rules through the process in time to meet the deadline for rules changes to be completed. Mr. Petesch replied because this involved only three of the proposed rules that he believed it was possible.

SEN. ESP asked the Committee to defeat the substitute motion. He suggested making a new motion which would request that the Department rewrite the three rules or, in the absence of the ability to do that, to withdraw them. REP. FRANKLIN withdrew her motion. SEN. O'NEIL withdrew his motion as well.

**REP. FRANKLIN moved to have the Department respond to the Code Commissioner's concerns regarding the three proposed rules or to withdraw them.**

Mr. Petesch said the Department is required by statute to respond and asked if the Committee wanted the Department to concur with his comments.

**REP. FRANKLIN amended her motion to "that the Department concur with the Code Commissioner's concerns about implementing the statute and rewrite the rules accordingly for those three points". The motion passed on a 7-1 voice vote, with SEN. O'NEIL voting no.**

SEN. SCHMIDT asked Mr. Petesch if he was satisfied with the decisions made. Mr. Petesch said he believed the action was to request that the Department concur in the comments, which will mean that when the Department respond to the comments and that it will change the rules to reflect those concerns. If the Department doesn't, then the Committee will take further action. The Committee agreed with Mr. Petesch's statement.

Ms. Fox said REP. ROBERTS volunteered to sponsor the Code Commissioner bill and asked for sponsors for both the resolution supporting the prevention efforts and for the HJ 3 stand alone bill, which will mirror the representation for parents in child abuse and neglect proceeding from the LJIC's Public Defender bill. REP. FRANKLIN offered to take the resolution for continued support of prevention efforts. SEN. ESP volunteered to take the bill that would mirror the Public Defender/parental representation bill.

## **ADJOURNMENT**

With no further business before the Committee, REP. ROBERTS adjourned the meeting at 4:48 p.m.

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