

MONTANA LEGISLATIVE BRANCH

Legislative Fiscal Division

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Minutes

Joint Meeting of the HJR 1 Committee and Children, Families, Public Health and Human Services Interim Committee

May 14, 2002
Helena, Montana

The fourth meeting of the House Joint Resolution (HJR 1) Subcommittee was called to order by **Senator Bob Keenan**, Chairman, on May 14, 2002 at 8:30 a.m., in Room 102 of the Capitol Building.

HJR 1 Committee Members Present

Senator Keenan, Chairman
Senator Franklin
Senator Stonington

Representative Price
Representative Jayne
Representative E. Clark

Senator Pease was excused.

Children, Families, Public Health and Human Services Committee Members Present

Senator Franklin
Senator Grimes
Senator O'Neil

Representative Thomas
Representative Lawson
Representative Schmidt

Senator Pease and Representative Lee were excused.

Staff Present

Pat Gervais, Fiscal Analyst, LFD
Lois Steinbeck, Fiscal Analyst, LFD
Lorene Thorson, Fiscal Analyst, LFD
Susan Byorth Fox, Research Analyst, LSD
Greg Petesch, Director of Legal Services, LSD

Approval of Minutes

Representative Clark moved that the minutes of the February 7 and 8 2002, meeting be approved as presented. The motion carried unanimously.

Lois Steinbeck, Fiscal Analyst, Legislative Fiscal Division, provided several handouts.

Legal opinion from Greg Petesch, LSD (EXHIBIT 1)

Letter from Governor Martz to The Honorable Tommy Thompson (EXHIBIT 2)

Letter sent to the committee about the affect of the 5 percent co-pay (EXHIBIT 3)

AP article regarding an incident at the MSH (EXHIBIT 4)

Mental Health Oversight Advisory Council (MHOAC)

Dr. Don Harr, Psychiatrist, and member of the MHOAC, provided the committee a handout from the MHOAC regarding legislative priorities/concepts (EXHIBIT 5). Dr. Harr discussed children's issues and co-occurring disorders.

Proposed legislation:

- 1) Incorporate state and local multiagency teams (e.g., SB 454) into permanent statue.
- 2) Remove the sunset on the use of alcohol tax funds for treatment of co-occurring mental illness and chemical dependency.

John Lynn, Deputy Director, Western Montana Mental Health Center, discussed commitments and diversion from MSH.

Proposed legislation:

- 1) Make mental health commitments to Department of Public Health and Human Services (DPHHS) or to an entity designated by DPHHS.
- 2) Develop intensive and acute care in community settings.

Senator Cobb asked if MHOAC has discussed how to fund the development of intensive and acute care facilities and how much will it cost. Mr. Lynn stated that the details have not yet been worked out. The CEO of Bozeman Deaconess Hospital is interested in the concept and the possibility of assisting in the development of the facility.

Tom Peluso, member of MHOAC and Gallatin County Local Advisory Council, discussed criminal sentencing law and provider rate increases.

Proposed legislation:

- 1) Amend criminal sentencing law to better address the needs of guilty but mentally ill (GBMI) individuals and give judges a tool to adjust sentencing for GBMI individuals.
- 2) Support provider rate increases and close the gap between rates and the cost of providing services.

Dan Anderson, Administrator, Addictive and Mental Disorders Division (AMDD), DPHHS, provided the committee with a report and list of proposed legislation. (Exhibit 6)

Proposed Legislation:

- 1) Require that mental health commitments be made to DPHHS or an agency it designates for placement in the least restrictive appropriate and available services.
- 2) Allow legal guardians to admit wards to the Mental Health Nursing Care Center.
- 3) Allow alcohol tax revenues to be spent for services for individuals with co-occurring mental illness and chemical dependency.
- 4) Continue mandate for multiagency services for high cost SED youth.
- 5) Allow GBMI MSH patients to be transferred to Department of Corrections custody.

Senator Cobb asked if any money has been saved on high cost youth. Mr. Anderson did not know but said there has been a substantial reduction in the number of children in out-of-state residential treatment.

Senator Keenan reported that about a year ago there were 60 + children in out-of-state treatment and that number is lower than half now.

Jani McCall, representative of Montana Children's Initiative (MCI) Provider Association, provided the committee with handouts on the MCC/MCI Kids Project Summit (EXHIBIT 7); and Montana Children's Initiative Draft Proposal for Legislation. (EXHIBIT 8)

Proposed Legislation:

- 1) Modify and strengthen SB 454 and incorporate the components into permanent statute.
 - o Research all existing statutes on statutory teams for children and youth
 - o Research all existing statutes referencing interdisciplinary, interagency, multi-agency functions for children and youth
 - o Draft legislation that references statutory teams and places interdisciplinary/interagency functions in one section of statute
 - o Determine which statutory teams can be facilitated jointly
 - o Make legislation permissive to allow choice of independent or joint teams where possible
 - o Pursue the option of broadening the definition of children with serious emotional disturbance to “children and youth at risk of out of home placement or currently being served in out of home placements
 - o Maintain and strengthen the State Multi-Agency Children’s Coordinating Committee
 - o Strengthen local planning
 - o Continue interagency and cross departmental unified planning and integrated services for children and youth receiving care and services from multiple agencies
 - o Continue cost saving measures and alternatives for funding including pooling and blending of funds, applying for waivers, multi-agency data collection, pooling of human and fiscal resources and to local agencies on integrated services
 - o Continue inclusion of providers in statute as planning partners and in the development of provider networks
 - o Include families and advocates in the process

Senator Stonington asked what changes have occurred in the treatment of the children on the high cost list. Ms. McCall stated that a significant number of children are coming back from out-of-state placement due to a combination of efforts.

Representative Schmidt asked if there was any part of SB 454 that is too restrictive or unnecessary. Ms. McCall said that at this point nothing has been found to be too restrictive. However, what is frustrating is the lack of support from state leadership.

Senator Cobb asked when the committee could get a copy of the format for cross system outcomes and core indicators. Ms. McCall stated that the MCI Provider Association is working on that and a copy will be provided as soon as it is complete. **Senator Cobb** also asked if the committee has looked at moving money used for children’s mental health back to Child and Family Services Division (CFSD) to be used in a wrap around situation. Ms. McCall stated the movement of those dollars has not been discussed.

Sally Johnson, Health and Treatment Administrator, Department of Corrections (DOC), provided the committee with several handouts regarding proposed Amendments/Legislation. Proposed Legislation for GBMI offenders (EXHIBIT 9); Proposed Amendment to Correctional and Sentencing policy (EXHIBIT 10); and New Section To Give Judges The Ability To Change Sentences (EXHIBIT 11).

Amendments to 46-14-312 would allow individuals to be committed to DPHHS for treatment at an appropriate facility for a definite period of time not to exceed the maximum term of imprisonment that could be imposed under subsection (1) and to provide an avenue to place individuals GBMI who are transitioned to the community under probation or parole. A provision has been added that any time after the offender's sentence is converted to a DOC commitment, DOC may petition the sentencing court and the sentencing court may reduce or suspend all or part of the initial sentence.

Amendments to 46-18-101 would provide for encouraging and permitting a sentencing judge to:

- (i) Consider alternatives to imprisonment for an offender who suffers from mental disorder, disease, or defect
- (ii) Re-consider the sentence of an offender who suffers from a mental disorder, disease or defect after the offender has served a portion of a term of incarceration
- (iii) Consider the costs to the state to incarcerate an offender who suffers from a serious medical condition, and balance the costs with the risk of the offender poses to the community.

A new section is proposed to give judges the ability to reduce or modify a sentences.

Senator Cobb asked who pays when an individual is transferred from one department to another and if the new laws are passed will that change. Ms. Johnson stated that when the individual is in a DOC facility DOC pays for them. If an individual is transferred to MSH the hospital pays for them except for the individuals medical, which is paid by DOC. The costs are being considered but the details have not yet been worked out. Most of the individuals released from corrections will apply for Medicaid or MHSP.

Senator Franklin expressed concern regarding the lack of leadership to implement the policies and the lack of focus on professionalism in the health care area. Ms. Johnson responded that DOC is having a meeting on the 30th to discuss reorganization. Director Slaughter has been provided with guidelines for the management of an adequate delivery system and the Health and Treatment Unit is being looked at for reconfiguration.

Representative Jayne asked what the response is from MHOAC and mental health advocates regarding the proposed amendments and additions to the policy. Ms. Johnson stated that generally the advocates, DPHHS and MHOAC have been supportive of the concepts realizing that there are details to work out.

Senator O’Neil asked how an individual would be put back into the system if the sentencing judge reduced or suspended the sentence and the individual discontinued their medication. Ms. Johnson responded that if a portion of the sentence were suspended a probation and/or parole officer would be supervising the individual. If the individual would not comply and the individual posed a danger to self or others, an onsite hearing would be conducted to determine whether the individual needed to be returned to prison.

Representative Schmidt asked how a “serious medical condition” would be clarified. Ms. Johnson stated that she plans to discuss it with the medical director to define what level of medical severity would describe “serious”.

Kathy McGowan, representative of Commitment Law Rendezvous, explained the group was created to allow people input regarding proposed legislation. Concerns regarding DOC proposals have been raised by the Alliance for the Mentally Ill, MAP, the mental health centers and others. People agree that changes need to be made but there is not a lot of trust in the state agencies and their motives in what is being proposed.

Some of the main concerns with DOC proposals:

- o Adequate victim notification and involvement
- o Probation officers level of training and education regarding serious mental illness
- o Desire for a team approach in assessing individuals being considered for release
 - o What kind of crime was committed?
 - o How serious is the mental illness?
 - o Is the individual eligible for services in the community?
- o Individual's eligibility for services
- o Funding and resources
- o Pre-release work requirements
- o Time needed for SSI eligibility process

At this time, there are no legislative proposals from the Commitment Review Committee. Informal subcommittees are working on the proposals from DPHHS and DOC.

Representative Jayne asked who would be on the team assessing individuals being considered for release and who would coordinate the team. Ms. McGowan stated the details have not yet been worked out.

Additional Items for Legislative Consideration

Art Heffelfinger, Chairman and Spokesperson for the Montana State Council of Vietnam Veterans of America, commented on:

- o State legislative action to assist in addressing coordination between state facilities and the Federal Government.
- o Add a veteran representative to the MHOAC
- o Needs and resource assessment

Bonnie Adee, Mental Health Ombudsman, commented on:

- o Front end mental health services in correctional system
- o Diversion of mentally ill before placement in correctional system
- o Exit and return to community

Anita Roessmann, Attorney for MAP, commented on:

- o Commitment statute
- o Post commitment process on top of K.G.F. process, time while waiting for commitment hearing, and minimizing costs to the county
- o Probation and parole system not trained to manage mental health cases

Staff Comments

- o Commitment law concerns
 - o Due process
 - o Representation
 - o Definition of mental disease or defect

Mental Health Budget – Addictive and Mental Disorders Division

Lois Steinbeck, LFD, provided the committee with a report from DPHHS in response to Budget Director Swysgood’s request that agencies submit 3 and 10 percent general fund budget reduction items. (EXHIBIT 12)

Current Biennium Budget Status

Dan Anderson, Administrator, AMDD, DPHHS, reported that as of January 2002, AMDD projected deficit is about \$900,000. Since then an additional budget problem has become obvious. The two biggest sources of revenue for the state facilities are Medicaid and Medicare. The legislature appropriated Medicaid revenue to run programs and Medicare revenue goes to the general fund. The Medicaid revenue is much lower than anticipated and it increases the deficit for the division by almost \$1.0 million.

Mr. Anderson explained the additional cuts that will take place July 1 (EXHIBIT 13). The four additional program changes are: 1) Eliminate frontier rate differential; 2) Eliminate all room and board payments; 3) Eliminate or refinance school-based services; and 4) Eliminate “full day” day treatment for adults with serious mental illness.

Senator Cobb asked if the department would need a rule change to implement the additional cuts and can an emergency rule be used. Mr. Anderson stated that for most of the changes a rule change is needed but the department is not using the emergency rule.

Senator Franklin asked how many people the day treatment payments will affect. Mr. Anderson stated that about 50 people are receiving “full day” day treatment.

Representative Schmidt asked for clarification regarding the room and board payments. Mr. Anderson explained that the department would continue to pay therapy costs but would no longer pay for the room and board. If the child is in the custody of Child and Family Services Division (CFSD), CFSD would pay for the room and board.

Senator Franklin asked how many children would be affected by the elimination of room and board payments. Mr. Anderson stated that the department was billed room and board for 77 children on the day before the initial policy went into effect January 11th. Almost all of those children were in group homes.

Representative Schmidt asked how many children would be affected by the elimination or refinancing of school based services. Mr. Anderson reported that only the non-Medicaid children would be affected, about 58 children.

Senator Keenan asked what was causing the budget shortfall. Mr. Anderson stated that the number of people eligible for Medicaid, the number of people receiving mental health services, and the cost per person has increased. Also, there were forty percent more Medicaid eligible children per month this year than two years ago. **Senator Keenan** also asked if the cost overruns are primarily in the children’s services. Mr. Anderson stated that children and adult services are not budgeted separately so that information cannot be determined. But the growth in costs is most pronounced in the children’s Medicaid program.

Representative Thomas asked how the department measures the effectiveness of programs and how they know the cuts are appropriate. Mr. Anderson stated the department does not have a

way to measure outcomes. In terms of the cuts, the department tries to maintain a safety net of services.

Lois Steinbeck, LFD, provided the committee with two handouts from the Legislative Fiscal Report regarding AMDD's budget. Table 38 shows the entire AMDD budget including chemical dependency. (EXHIBIT 14) It also shows the 2001 biennium appropriation made by the legislature compared to the 2003 biennium. Without considering the supplemental, the general fund increase was about \$16 million over the biennium and this does not include the 2003 biennium pay plan. Table 42 shows the adjustments proposed by the executive and how the supplemental was mitigated. (EXHIBIT 15) Medicaid services last biennium were responsible for 43 percent of the supplemental.

Review of 3% and 10% Reductions

Lois Steinbeck, LFD, referred to the letter from Budget Director, Chuck Swysgood, regarding fiscal year 2003 budget reductions under 17-7-140, MCA (EXHIBIT 16). The letter is a request for agencies to submit proposals to further reduce general fund spending by 3 and 10 percent.

Mr. Anderson, Administrator, AMDD, DPHHS, gave a brief overview of the Fiscal Year 2003 Reduction Form – Planning Document (EXHIBIT 12).

Legal Opinion

Greg Petesch, Director of Legal Services, LSD, responded to a request from Lois Steinbeck for an analysis of several questions regarding limitations in Medicaid services, payments to Medicaid providers, and Medicaid eligibility. (EXHIBIT 1)

Public Mental Health Issues and Veterans' Affairs

Sheri Heffelfinger, Research Analyst, LSD, provided the committee with two handouts; Outline of Public Mental Health Issues and Veterans' Affairs (EXHIBIT 17) and Montana's Total Veteran Population by County: 2000 (EXHIBIT 18). Three issues were identified; 1) look at ways to keep pressure and spotlight on VA; 2) find ways to bring VA to the table to coordinate

with community mental health providers; and 3) consider emergency subsistence grant program.

Options open to HJR 1:

- o Support a letter to the VA Director and to Montana's Congressional Delegation outlining committee concerns, requesting federal-level actions related to the following:
 - o Emergency Subsistence Grant Program
 - o Enhance coordination and cooperation with VA
- o Add a veteran representative to MHOAC by amending Section 53-21-702, MCA
- o Give special mention to veterans in the statutory responsibilities of the Mental Health Ombudsman by amending Section 2-15-210, MCA
- o Send a committee letter to the Veterans' Affairs Subcommittee requesting that it sponsor committee legislation (or the HJR committee could sponsor legislation).

Committee Discussion of Committee Issues/Options

Susan Fox, Research Analyst, LSD, explained the Summary of Issues and Options (EXHIBIT 20) is a compilation of issues that were derived from staff. The summary is intended as a discussion guide for the committee to identify issues it wishes to further refine.

- 1) Persons convicted as guilty but mentally ill and committed to MSH. – No action by this committee. Commitment Law Rendezvous will continue to work on proposals. Senator Franklin will be contact person.
- 2) Not guilty by reason of mental defect or disease – Consider statutory alternatives and see what other states are doing.
- 3) K.G.F. decision – Send a letter to the Supreme Court enumerating concerns and the impacts of K.G.F. decision.
- 4) Community Commitments – Review statute regarding 90 day v. 6 month commitment.
- 5) Licensure and scope of practice issues for chemical dependency (now addiction) counselors and mental health professionals (Title 37, MCA). No action by this committee. Recommendations from Governor's work force task force will be forwarded for review.
- 6) Right to jury trial for involuntary commitments. No action by this committee.

- 7) Potential for appeal or sentence review process for forensic commitments to MSH. Clarify whether the appeal provisions do or do not apply to forensic patients. Defer until after DOC proposals for legislation. Senator Keenan will be contact person.
- 8) Persons in the care and custody of DOC who also have a mental illness. Defer to Commitment Law Rendezvous to modify statutes to allow courts an avenue to allow for early release of inmates with a mental illness with intense supervision. Susan Byroth Fox will be contact person.
- 9) Alcohol earmarked tax funding for treatment of co-occurring disorders of mental illness and chemical dependency. **Action:** Continue funding for dual diagnosis programs from alcohol tax at a specified level. Senator Stonington will be contact person.
- 10) Definition of mental disease or defect. **Action:** Seek recommendations for draft legislation to define mental disease or defect. Vicki Stull will present option to MHOAC.

Mental Health Issues and Veterans' Affairs

- 1) **Action:** Letter from the committee to VA Director and to Montana's Congressional Delegation regarding coordination and cooperation with the VA.
- 2) **Action:** Senator Keenan will begin process to add VA representative to MHOAC.
- 3) **Action:** Senator Keenan will begin process to give special mention to veterans in the statutory responsibilities of the mental health Ombudsman.
- 4) **Action:** Senator Keenan will include discussion in bill draft regarding creating a veterans' ombudsman within MVAD.

SB 454 Statutory Changes

Remove sunset and make SB 454 permanent. Senator Stonington will be contact person.

Senator Cobb requested a legal review from Mr. Petestch regarding Medicaid waiver request.

Next HJR 1 Subcommittee Meeting

The next committee meeting is August 6th & 7th.

Adjournment

Meeting adjourned at 4:25 p.m.

Sen. Bob Keenan, Chairman

Diane McDuffie, Committee Secretary