

DEPARTMENT OF
PUBLIC HEALTH AND HUMAN SERVICES



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January 13, 2010

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Subject: Responses to comments and questions
Children, Families, Health, and Human Services Interim Committee
MAR Notice 37-491

Dear Ms Jackson;

Thank you for your November 23, 2009 letter summarizing the Committee's comments and questions on the proposed rules implementing House Bills 130 and 131 (HB130 and HB 131). Please accept this letter as the Department's response. The official comment period was extended to the close of business December 17, 2009. As promised, however, the Department will allow the Committee to review and comment on this letter before adopting final rules.

Please let me know if you or any member of the Committee has any questions about the responses.

COMMENT #1: It is unclear which categories of commitment will be reimbursed by the Department under the proposed rules. Will matching fund grants be available for voluntary commitments, involuntary commitments, emergency commitments and court ordered detentions?

RESPONSE: The Department proposes that the number of all admissions to Montana State Hospital be used in calculating the match rate. House Bill 130 (HB 130) uses inconsistent terminology, employing the term "admissions" when describing how grant amounts should be determined and "commitments" when describing how the sliding scale should work. However, both the preamble and the stated goal for the matching grant program refer to a reduction in emergency and court ordered detentions. These are among several kinds of admissions that may or may not qualify as commitments.

By interpreting the term “commitments” broadly, the Department proposes to include data about all forms of mental health detention, evaluation, and treatment needs in the grant determination and to harmonize all parts of the statute so that each provision will be given effect. Development of community based treatment resources would not only divert mentally ill persons from incarceration and relieve some of the pressures on Montana State Hospital (MSH), but would result in better treatment outcomes for persons with mental illness.

COMMENT #2: Why can't the Department use the matching grant formula established in HB 130?

<u>County population</u>		<u>Commitments per county</u>
State population	AND	Total commitments in state

Compare these two figures and a high-use county (commitments higher than population) will receive a lower percentage of matching funds. Please state why the Department's proposed formula is preferable.

RESPONSE: Proposed new Rule III (1) states that the Department "will base the matching fund grants . . . on the criteria specified in 53-21-1203, MCA." One provision of the Montana Administrative Procedure Act (MAPA), specifically 2-4-305(2), MCA, prohibits rules from unnecessarily repeating statutory language. Mindful of that prohibition, the Department concluded that 53-21-1203, MCA should be the only standard for calculating match rates.

The Department used the formula established in HB 130, now codified as 53-21-1203, MCA, but defined “commitments” to include all admissions to the Montana State Hospital; which may include court ordered detentions, emergency detentions, involuntary commitments, commitments ordered by tribal courts to Indian Health Services, voluntary commitments, inter-institutional transfers, court ordered evaluations, fitness to proceed evaluations, guilty but mentally ill sentences, and not guilty by reason of mental illness sentences. As explained in the response to the previous comment, 53-21-1203, MCA uses the terms “admissions” and “commitments” inconsistently. The preamble to HB 130 and the stated goal for the matching grant program refer to a “reduction in emergency and court ordered detentions.”

The Department proposes to use a ratio of admissions to population to compute the match rate. By using the larger total number (admissions = 739, commitments = 262) the incremental change factor is reduced. For example, in FY 2009, Chouteau County, a low utilization county, had one involuntary commitment, which equals a ratio of .190 commitments per 1000 residents. This is less than the statewide average ratio of .194 commitments per 1000 residents. If Chouteau County had only two involuntary commitments in FY 2010 it would become a high utilization county with .380 commitments per 1000 residents. Using admissions, however, adding one admission to Chouteau County's FY 2009 total of 2 admissions would increase its utilization ratio from .38 to .70 admissions per 1000 residents and it would remain a low utilization

county when compared to the statewide average of .77 admissions per 1000 residents. The Department confirmed that the use of a ratio of admissions to population was within the intent of the legislature with the sponsor of HB 130, Rep. Ron Stoker prior to publication of the proposed rules.

COMMENT 3: The Department's proposed method of fund disbursement in Rule IV (when the amount requested exceeds legislative appropriation) calling for distribution of available funding on a pro rata basis by county population conflicts with the HB 130 language requiring a two-part sliding scale (based on population and commitments together). Why couldn't the Department complete its calculation using the elements of the formula established in HB 130, then distribute on a pro rata basis, rather than just distributing off the top using population?

RESPONSE: As discussed in the responses above, the Department proposes the use of population and admissions data to calculate a match rate (the Department will match each dollar of local investment on a sliding scale from \$0.50 to \$0.70). 53-21-1203 (2), MCA directs the Department to establish the match rate based upon population and commitments. Grant amounts, however, must be based on available funding, must take into consideration the prospect of cost savings to the state, and must be awarded to each eligible county.

The Department solicited information (Letters of Intent) from interested counties about the estimated cost of their anticipated proposals. The responses indicated a demand that was 3 times the available appropriation. The Department considered using a first come basis allocation as well as a flat reduction of 66% to all estimated grant amounts. However, 53-21-1203, MCA directs the Department to make grants to "each eligible county" and does not stipulate that the grants be competitive, or distributed on a first come basis, so the Department chose not to do so. Considering estimates from the counties, a flat 66% reduction would have resulted in significant budget shortfalls for 16 of 24 Letters of Intent received (note: some counties submitted collaborative Letters of Intent).

The Department proposes a prorated distribution formula that would consider the number of residents in all the counties submitting a letter of intent and would divide this total by the total amount of funding available. (\$1.50 per person = maximum potential grant amount.) This approach encourages regional collaboration, as illustrated by the partnership of Yellowstone County with 10 neighboring counties. Population totals are combined when evaluating regional proposals and maximum potential grant amounts are calculated – subject to local investment matching requirements.

Under 53-21-1203, MCA, the Department must evaluate each plan proposal to determine whether it will, if implemented, reduce admissions to the state hospital for emergency and court-ordered detention or evaluation and will ultimately result in cost savings to the state. A county with an existing program would not necessarily receive a larger grant than one with a startup proposal. However, the existence of a "track record" would make it easier for the Department to evaluate the effectiveness of a

program as well as the likelihood of future cost savings. On the other hand, an existing program that could not document fewer per capita commitments to the State hospital would have a more difficult time receiving a grant approval.

COMMENT 4: The committee discussed using "admissions" for the funding formula versus "commitments." DPHHS clarified it was using "admissions" for its calculations. HB 130 uses the word "commitments." The department's rule is contrary to the statute. Please comment.

RESPONSE: The Department does not believe its proposed rule is contrary to the statute. As explained in the response to comments #1 and #2 above, the Department proposes using the number of all admissions to Montana State Hospital in calculating the match rate. 53-21-1203, MCA uses inconsistent terminology when it describes how the sliding scale should work. However, both the preamble and the stated goal for the matching grant program refer to a reduction in emergency and court ordered detentions. The Department's proposed Rule III is an attempt to harmonize and give effect to all provisions of the statute.

COMMENT 5: Several legislators expressed concern over whether the Department's planned reimbursement scheme is accurately reflecting the Legislature's intent on reimbursement. Clarify whether grant amounts will be distributed across the state or directed towards specific areas that may already have programs in place. Please address the concern voiced by several legislators that the money was intended to go towards counties with models that are already working, not be spread across the state.

RESPONSE: 53-21-1203, MCA directs the department to make grants to "each eligible county" and does not stipulate that grants be competitive, or prioritized in any way. The Department believes a first come distribution methodology or a preference for existing programs would be a direct contradiction of the statute. Considering estimates from Letters of Intent, the Department rejected a flat 66% reduction because it would have resulted in significant underfunding of estimated requests from two thirds of the Letters of Intent. The Department proposed a prorated distribution formula by considering the number of residents in all the counties submitting a letter of intent and dividing this total by the total amount of funding available (\$1.50 per person = maximum potential grant amount). This approach encourages regional collaboration, as illustrated by the partnership of Yellowstone County with 10 neighboring counties. In such instances, population totals would be combined and maximum potential grant amounts calculated based on the totals. All grants would be subject to local investment matching requirements, according to the statutory formula.

COMMENT 6: The Department has stated crisis intervention team training and crisis response team expenditures will be eligible for match under the proposed rules. Please state your basis for this.

Response: 53-21-1203 (3)(b) refers to "development" of jail diversion and crisis intervention services under counties' strategic plans – and charges the Department with

evaluating prospects that plans submitted “will, if implemented” reduce admissions to the state hospital. The Department believes this language states the legislative intent that matching grants be used for the development or expansion of crisis intervention and jail diversion capacity, thereby reducing the current level of admissions for court ordered and emergency detentions. Crisis intervention teams (CIT) and crisis response teams are effective in crisis intervention and jail diversion. Counties that have developed and supported these activities may consider that as an element of local investment in applying for matching funds.

COMMENT 7: The CFHHS Interim Committee would like to know which counties have responded with a letter of intent to seek state matching grants and the Department's proposed funding numbers accordingly.

RESPONSE: MAR notice 37-491 at 2009 MAR issue 20, page 1877 referred interested persons to the Department's web site, www.dphhs.mt.gov/amdd/services where a matrix demonstrating the proposed distribution methodology is posted. For those without internet access, the notice also stated that interested persons can obtain a copy of the matrix by writing the Department's Addictive and Mental Disorders Division at P.O. Box 202905, Helena, MT 59620. The matrix demonstrates that the Department calculated the match rates by comparing the number of admissions by county to total admissions and the population of each county to the state population. Copies of the matrices are attached.

Under the Department's proposed rules, letters of intent will be accepted up to two weeks following publication of the notice of adoption of the final rules. Therefore, the information on matrices #1 and #2 is incomplete and subject to revision.

COMMENT 8: Will the Department commit half of the biennial appropriation for this program in the FY 2010 base budget year? If not, please comment as to ongoing funding to implement the matching grants program. Is it sustainable?

RESPONSE: The biennial appropriation is allocated to fund HB130, HB131 and HB132 collectively, without guidance as to distribution. The department has allocated approximately 50% of this biennial appropriation to funding these programs in FY2010. Unspent funds will be available for program implementation in FY2011. The Department expects that the matching grant requests for FY2010 will not exceed 50% of the appropriation, but has the ability to use more than 50% of the appropriation during the first year if the requests merit.

The appropriation for matching grants was included in HB 2 and was not designated as one-time-only funding. The Department will provide data to the 2011 Legislature to demonstrate the effectiveness of this funding. The sustainability of the program will depend on future appropriations.

COMMENT 9: The Department's preliminary state matching grant award figures indicate that some counties are slated to receive a larger grant amount than was asked for. Please explain.

RESPONSE: No county will receive a larger grant amount than it requested. In order to access the amount calculated, the county must have sufficient local investment to match the grant funding.

The Department will revise its final rules to clarify that grant amounts will not be greater than the amount requested.

COMMENT 10: HB 130 directed the Department to adopt rules for implementation by August 1, 2009 and fully implement the grant program by September 1, 2009. Please address the delay in both these areas.

RESPONSE: The Department believes that the grant program was fully implemented by the September 1, 2009 deadline. All counties received information on matching grant availability, the application process, and were asked to submit proposals in an August 4, 2009 letter to Harold Blattie, Executive Director of the Montana Association of Counties (MACO). The Department is now receiving proposals from counties and applications for matching funds. Several additional proposals from across the state are in the development stage.

The Department acknowledges it did not meet the August 1 deadline for adoption of Administrative Rules. The deadline barely allowed sufficient time for the Department to file proposed rules and complete the rulemaking process. 2-4-302 (4), MCA requires an agency to "afford interested persons at least 20 days' notice of a hearing and at least 28 days from the day of the original notice to submit data, views, or arguments, orally or in writing." Notices of proposed and final rules must be submitted to the Secretary of State at least 10 days before publication. HB 130 became law on May 9, 2009. The latest the Department could submit a proposal notice to the Secretary of State would have been May 18, 2009. The proposal notice would have been published May 28, 2009. The earliest a public hearing could have been held would have been June 18, 2009 and comments would have had to be accepted at least until June 26, 2009. The adoption notice could have been filed until July 6, 2009, in which case the earliest final effective date would have been July 16, 2009. This does not take into consideration the time necessary to draft proposed rules, have them reviewed, edited, and approved by the program officer, division administrator, Department director and the Governor's office. It does not allow for the possibility that interested persons will ask that the comment period be extended. Instead of drafting proposed rules, the Department chose to concentrate its limited resources on implementation, as described in the preceding paragraph.

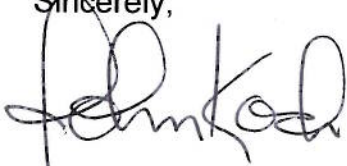
The proposed rules were filed with the Secretary of State on October 19, 2009 and a public hearing was conducted November 23, 2009. The Department received requests to extend the comment period and did extend it to December 17, 2009. The

Department will respond to all comments, including those of the Interim Committee, as quickly as possible.

The delay in rulemaking has not adversely affected the availability of funds to county grant applicants. As of the date of this letter, the Department has received grant applications from Yellowstone County (and ten partner counties), Missoula County, and Lewis & Clark County (and three partner counties). The Department has a signed contract with Yellowstone County and is waiting for requested information on the county's intent to subcontract with the Billings Community Crisis Center.

I look forward to hearing the committee's comments and suggestions. If I can provide further information, please contact me directly. My telephone number is (406) 444-4095 and my e-mail address is jkoch@mt.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "John Koch", written over a horizontal line.

John Koch
Staff Attorney

Attachments: 2

JCK/jk

MSH Admission by County and Commitment Type - FY 09

County of Commitment	TOTAL	CO DET	EM	INVOL	I.H.S.	Vol	ITT	COE	UTP	GBMI	NGMI	7/1/08 Pop	TOTAL	MATCH
Beauregard	12	4	4	1	1	0	3	0	0	0	0	8,804	1.36	0.60
Big Horn	2	0	0	0	1	0	0	0	0	0	0	12,798	0.16	0.70
Blaine	7	0	0	4	3	0	0	0	0	0	0	6,550	1.07	0.65
Broadwater	2	0	2	0	0	0	0	0	0	0	0	4,590	0.44	0.70
Carbon	0	0	0	0	0	0	0	0	0	0	0	9,721	0.00	0.70
Carter	0	0	0	0	0	0	0	0	0	0	0	1,268	0.00	0.70
Cascade	43	10	0	26	0	1	0	1	3	2	0	81,775	0.53	0.70
Chouteau	2	1	0	1	0	0	0	0	0	0	0	5,254	0.38	0.70
Custer	19	13	0	5	0	0	0	0	0	1	0	11,188	1.70	0.55
Daniels	0	0	0	0	0	0	0	0	0	0	0	1,650	0.00	0.70
Dawson	6	1	0	3	0	0	0	0	1	0	0	8,558	0.70	0.70
Deer Lodge	18	4	9	0	0	5	0	0	0	0	0	9,852	2.03	0.50
Fallon	2	1	1	0	0	0	0	0	0	0	0	2,696	0.74	0.70
Fergus	6	1	1	3	0	1	0	0	0	0	0	11,181	0.54	0.70
Flathead	38	1	0	31	0	1	0	0	5	0	0	86,844	0.44	0.70
Gallatin	67	2	62	2	0	1	0	0	0	0	0	87,359	0.77	0.65
Garfield	0	0	0	0	0	0	0	0	0	0	0	1,215	0.00	0.70
Glacier	9	1	0	0	0	0	0	0	0	0	0	13,382	0.67	0.70
Golden Valley	0	0	0	0	0	0	0	0	0	0	0	1,125	0.00	0.70
Granite	0	0	0	0	0	0	0	0	0	0	0	2,852	0.00	0.70
Hill	12	0	0	7	0	0	0	2	2	1	0	16,568	0.72	0.70
Jefferson	6	0	2	0	0	0	4	0	0	0	0	11,121	0.54	0.70
Judith Basin	1	0	0	0	0	0	0	0	0	1	0	2,048	0.49	0.70
Lake	37	7	16	3	6	4	0	1	0	0	0	28,438	1.30	0.60
Lewis & Clark	86	29	47	6	0	0	1	0	1	2	0	59,598	1.43	0.55
Liberty	0	0	0	0	0	0	0	0	0	0	0	1,796	0.00	0.70
Lincoln	12	0	1	11	0	0	0	0	0	0	0	18,885	0.64	0.70
Madison	4	1	1	0	0	0	0	1	1	0	0	7,425	0.54	0.70
McCone	1	0	1	0	0	0	0	0	0	0	0	1,724	0.58	0.70
Meagher	0	0	0	0	0	0	0	0	0	0	0	1,900	0.00	0.70
Mineral	0	0	0	0	0	0	0	0	0	0	0	3,895	0.00	0.70
Missoula	103	29	59	7	0	1	0	2	3	1	1	105,650	0.97	0.65
Missoula/Hell	0	0	0	0	0	0	0	0	0	0	0	4,494	0.00	0.70
Musselshell	20	0	17	1	0	2	0	0	0	0	0	16,099	1.24	0.60
Petroleum	0	0	0	0	0	0	0	0	0	0	0	16,099	0.00	0.70
Phillips	2	0	0	1	0	0	0	0	1	0	0	438	0.51	0.70
Pondera	0	0	0	0	0	0	0	0	0	0	0	3,948	0.00	0.70
Powder River	0	0	0	0	0	0	0	0	0	0	0	5,943	0.00	0.70
Powell	8	1	7	0	0	0	0	0	0	0	0	1,698	0.00	0.70
Prairie	1	0	0	1	0	0	0	0	0	0	0	7,118	1.12	0.60
Ravalli	21	14	3	3	0	0	0	0	1	0	0	1,044	0.96	0.65
Richland	8	6	0	2	0	0	0	0	0	0	0	40,395	0.52	0.70
Roosevelt	13	2	0	1	9	0	0	1	0	0	0	9,182	0.87	0.65
Rosebud	1	0	0	0	1	0	0	0	0	0	0	10,148	1.28	0.60
Sanders	13	1	12	0	0	0	0	0	0	0	0	9,182	0.11	0.70
Sardis	4	1	0	2	0	0	0	0	0	0	0	11,033	1.18	0.60
Sheridan	4	1	0	2	0	0	0	0	0	0	0	3,373	1.18	0.60
Silver Bow	63	2	50	0	0	5	5	0	2	0	0	32,552	1.93	0.50
Stillwater	1	0	0	0	0	0	0	0	0	0	1	8,660	0.12	0.70
Sweet Grass	0	0	0	0	0	0	0	0	0	0	0	3,807	0.00	0.70
Teton	3	3	0	0	0	0	0	0	0	0	0	6,023	0.50	0.70
Toole	5	3	0	2	0	0	0	0	0	0	0	5,144	0.97	0.65
Treasure	0	0	0	0	0	0	0	0	0	0	0	651	0.00	0.70
Valley	8	0	0	5	3	0	0	0	0	0	0	6,899	1.16	0.60
Wheatland	0	0	0	0	0	0	0	0	0	0	0	1,983	0.00	0.70
Wibaux	1	0	0	1	0	0	0	0	0	0	0	898	1.11	0.60
Yellowstone	72	0	2	55	0	0	7	0	2	4	0	139,936	0.51	0.70
Total	739	138	296	186	31	31	12	8	22	13	2	957,861	0.77	

0.77

37< .77
19 >= .77

County and Commitment Type - FY 09

<u>County of Commitment</u>	<u>7/1/08 Pop</u>	<u>Max @ \$1.50pp</u>	<u>Total LOI - \$\$</u>	<u>Grant Amt</u>
Big Horn	12,798	\$19,197 Y		
Broadwater	4,590	\$6,885 L		
Carbon	9,721	\$14,582 Y		
Cascade	81,775	\$122,663	\$500,000	\$122,663
Dawson	8,558	\$12,837	\$27,300	\$12,837
Fallon	2,696	\$4,044	\$3,805	\$4,044
Fergus	11,181	\$16,772 Y		
Gallatin	87,359	\$131,039	\$200,000	\$131,039
Garfield	1,215	\$1,823	\$700	\$1,823
Golden Valley	1,125	\$1,688 Y		
Jefferson	11,121	\$16,682 L		
Judith Basin	2,048	\$3,072 Y		
Lewis & Clark	59,998	\$89,997	\$231,500	\$116,414
Liberty	1,796	\$2,694	\$3,500	\$2,694
McCone	1,724	\$2,586	\$3,362	\$2,586
Meagher	1,900	\$2,850 L		
Missoula	105,650	\$158,475	\$355,550	\$158,475
Musselshell	4,494	\$6,741 Y		
Park	16,099	\$24,149	\$106,615	\$24,149
Petroleum	438	\$657 Y		
Pondera	5,943	\$8,915	\$7,000	\$8,915
Powder River	1,699	\$2,549	\$140	\$2,549
Powell	7,118	\$10,677	\$25,000	\$10,677
Ravalli	40,396	\$60,594	\$248,500	\$60,594
Roosevelt	10,148	\$15,222	\$90,000	\$15,222
Rosebud	9,182	\$13,773	\$10,080	\$13,773
Sanders	11,033	\$16,550	\$70,000	\$16,550
Sheridan	3,373	\$5,060	\$11,698	\$5,060
Silver Bow	32,652	\$48,978	\$350,000	\$48,978
Stillwater	8,660	\$12,990 Y		
Sweet Grass	3,807	\$5,711 Y		
Teton	6,023	\$9,035	\$9,641	\$9,035
Toole	5,144	\$7,716	\$67,500	\$7,716
Wheatland	1,983	\$2,975 Y		
Wibaux	898	\$1,347	\$353	\$1,347
Yellowstone	139,936	\$209,904	\$900,000	\$294,287
Total	714,281	\$1,071,422	\$3,222,244	\$1,071,422