



# MONTANA LEGISLATIVE BRANCH

## Legislative Fiscal Division

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Legislative Fiscal Analyst  
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DATE: June 12, 2002

TO: Legislative Finance Committee

FROM: Lois Steinbeck  
Pat Gervais

RE: 2003 Biennium Supplemental Appropriation for Department of Public Health and Human Services

The Legislative Finance Committee (LFC) has reviewed Department of Public Health and Human Services (DPHHS) projected general fund cost overruns and spending reductions for 2003 biennium at its December 2001 and March 2002 meetings. The newest DPHHS cost projections indicate that fiscal 2003 general fund expenditures will be \$3.9 million greater than the appropriation despite spending reductions already implemented.

The Legislative Fiscal Division received a request for LFC review and comment on a transfer of appropriation authority from fiscal 2003 to fiscal 2002 on June 11. There are several issues that the LFC may wish to consider.

### BACKGROUND

The newest budget status report prepared by DPHHS, based on expenditure data through March 2002, shows that it will be about \$3.9 million general fund short and will request a transfer of appropriation authority. Nearly all divisions within DPHHS project general fund shortfalls with the exception of Senior and Long Term Care, which projects a \$1.1 million general fund excess. The most significant shortfalls are in Medicaid hospital, physician services, and mental health services, and child support enforcement services.

At the March meeting, the LFC reviewed a potential fiscal 2003 deficit in the Child Support Enforcement Division (CSED) (\$0.8 million state special revenue, \$2.4 million total funds) due to lower than anticipated federal incentive funds. The LFC also heard that the Montana Supreme Court had issued a decision in the case regarding classification and pay for Child Support Investigators. Due to this decision, DPHHS will be required to reimburse Child Support Investigators at a higher pay classification (grade) level, which will increase the projected deficit about \$0.4 million state special revenue (\$1.2 million total funds). DPHHS has included an estimated deficit of \$1.2 million state special revenue (\$3.6 million total funds) in CSED in the calculation of the supplemental appropriation.

Additionally, Greg Petesch, Chief of Legal Services for the Legislative Services Division, reviewed the written description of a potential Medicaid waiver being considered by DPHHS

that was anticipated to save \$2.8 million general fund. Mr. Petesch issued an opinion that the waiver as described violated state statutes.

## **PLAN TO OFFSET THE SUPPLEMENTAL**

The executive plan to offset the appropriation transfer and subsequent supplemental appropriation request is to “count” additional Medicaid revenue anticipated to be collected for some services provided by the Montana Developmental Center (MDC) from 1996 through the present and deposited to the general fund.

There are two significant issues with this plan:

- 1) It does not comply with statute, which requires a plan to reduce expenditures
- 2) The additional revenue cannot be assumed with confidence

Counting additional revenue to “offset” an appropriation transfer does not comply with statutory requirements that require the approving authority to submit a plan to reduce expenditures in the second year of the biennium to remain within existing appropriation levels (section 17-7-301, MCA). Presumably this statute and other statutory provisions to contain expenditures within appropriated amounts are the reasons that the executive has implemented and proposed cost containment measures for DPHHS beginning in November 2001.

The additional revenues for billing for MDC services are not included in either OBPP or LFD recent revenue projections. Perhaps just as important a consideration is that spending reductions under section 17-7-140, MCA proposed by DPHHS could jeopardize continued Medicaid certification of the Montana Development Center and Eastmont Human Services Center. Loss of certification would result in a significant reduction in general fund Medicaid revenue (\$11 million annually). Even if the plan were in compliance with statute, it may not be realistic.

## **LEGALITY OF \$2.8 MILLION IN SPENDING REDUCTIONS**

One of the most significant 2003 biennium spending reductions already proposed by DPHHS to contain 2003 biennium costs is a waiver of federal Medicaid criteria to tailor a package of Medicaid benefits for “able bodied” adults. The concepts were initially described in a the letter from Governor Martz to Tommy Thompson, Secretary of Health and Human Services requesting expedited assistance for such a waiver. Greg Petesch, Chief of Legal Services for the Legislative Services Division was asked to review the legality of the waiver as described in the letter. Mr. Petesch concluded that aspects of the waiver as described violate state statute.

DPHHS had not prepared a similar analysis and is now reviewing Mr. Petesch’s opinion. DPHHS staff indicated it will continue to review options to request a waiver to reduce Medicaid expenditures and that the final proposal may not closely resemble the initial description of the project.

The DPHHS waiver work group met on June 12, 2002 for a conference call with Jody Kurtenbach, Centers for Medicare and Medicaid (CMS) Denver Regional Office. The call consisted of a question and answer session regarding Montana’s request for a waiver as outlined in Governor Martz’s letter to Health and Human Services Secretary Tommy Thompson. Ms. Kurtenbach indicated that the process of developing and receiving approval for a Medicaid 1115

waiver was not a quick process and would probably take at least 12 months, 6-8 months technical assistance in preparing the formal waiver request and 2-3 months for approval after the formal waiver request is received by CMS. For example, Utah began discussion of its waiver request in April 2001 and will be implementing the waiver as approved effective July 1, 2002. Based upon this information, it is unlikely that Montana could have a Medicaid waiver implemented prior to the end of the 2003 biennium.

## **OPTION FOR FISCAL 2003 SPENDING REDUCTIONS**

The LFC could request that the executive consider further voluntary spending reductions in tobacco control general fund appropriations as one potential general fund offset.

The tobacco control program is funded with \$0.5 million general fund and \$1 million from a federal grant from the Centers for Disease Control (CDC) each year of the biennium. The grant requires a 10 percent non-federal match (\$87,500) that may be provided by local or in kind funds. DPHHS proposes reducing general fund expenditures for the program by \$115,538 in response to section 17-7-140, MCA, leaving a balance of about \$384,000 general fund. It may be possible to eliminate the entire \$0.5 million general fund appropriation for fiscal 2003 as part of a supplemental mitigation plan.

DPHHS stated that impacts would be a reduction of 43 percent in funding available for community grants and awards. The total amount allocated for grants, including the remaining general fund, is \$903,781. The balance of program funds, \$0.2 million from the CDC grant, supports DPHHS personal services and administrative costs for the tobacco control program.

DPHHS expressed concern that it may not be ranked as high as other states to receive continued CDC funding if state effort is reduced or if grant funds are not expended on tobacco control. If the legislature were to recommend this action, it could review continued program funding during appropriation hearings since the \$0.5 million general fund would be included in the base budget.