

Legislative Audit Division
Performance Audit Prioritization Process
Fiscal Year 2020

LEGISLATIVE AUDIT DIVISION

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MEMORANDUM

TO: Legislative Audit Committee Members
FROM: Joe Murray, Deputy Legislative Auditor
RE: Prioritization of potential performance audits for fiscal year 2020
DATE: April 24, 2019

We are in the process of compiling the list of potential performance audit topics for FY 2020, which will be provided to the Legislative Audit Committee at its first post-session meeting (late June). As in past years, we are interested in getting input from committee members on their areas of interest. If there are any activities, programs, or agencies you would like to have considered as potential performance audits, please provide us with your input by May 31, 2019. You can provide as much or as little information as you have available, but it is helpful to know if there are specific concerns or questions relative to your areas of interest.

The next committee meeting will include an agenda item to discuss the performance audit list for fiscal year 2020. There will be time available for discussion of the prioritization process and for specific issues or areas of interest. In the meantime, we would be happy to answer any questions you have or discuss any of your ideas for potential performance audits.

The committee prioritization process is very important for workload planning and staff scheduling decisions we will make for the upcoming fiscal year. We certainly appreciate the time and consideration you give this. Please do not hesitate to call or email me at jmurray@mt.gov or Will Soller at wsoller@mt.gov with any questions or comments.

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Fiscal Year 2020 Potential Performance Audits

Priority Ranking

Issue / Subject Area

Audit Title

Low	Medium	High
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Agency Management & Public Policy	Hiring Practices in State Government			
	Retirement System Administrative Consolidation			
Economy & Jobs	Board of Medical Examiners			
Education	Contingent Faculty in Higher Education			
	Physical Space Management on College Campuses			
	Special Education Dispute Resolution			
Fisheries & Wildlife	Habitat Montana & Conservation Easements			
	Wildlife Population Counts			
General Government	Architecture & Engineering Division			
	State Warrant Printing and Mailing			
Justice & Corrections	Judicial Standards Commission			
	Probation and Parole Division			
Natural Resources & Environment	Board of Milk Control's Regulatory Structure			
	Petroleum Release Compensation Program			
	Montana Sage Grouse Habitat Conservation Program			
Public Health & Human Services	Health Insurance Pharmacy Benefit Management			
	Verification of Residency for Medicaid			
	Medical Marijuana Act			
	Child Care and Development Fund			
	Adult Mental Health Services			
Taxation & Revenue	Tax Return Preparer Fraud			
Transportation	Motor Carrier Services			
	Winter Highway Maintenance			
	MDT Aeronautics Division Operations			

***Denotes a formal request from a citizen, state agency, or legislator via a letter, legislative resolution, or legislative request for a performance audit in that area.**

Agency Management & Public Policy

Hiring Practices in State Government

Montana administrative rules describe the Montana state government as committed to attracting and retaining a highly qualified workforce based on competencies and job-related qualifications and using a competitive recruitment process to select individuals for employment. Despite this commitment, audit work within various state agencies has identified potentially questionable or inappropriate hiring practices across state government. Examples of issues identified include hiring processes that may not be designed to identify the most qualified candidates, limited documentation on how hiring decisions were made, and hiring of possibly unqualified individuals. The LAD hotline often receives calls related to potential hiring practice violations, in both the executive branch and the universities. At least 21 calls of this nature have been logged since 2013. Hiring and recruitment practices across the state play an important role in trust in government, agency efficiency and effectiveness, ability to meet state goals, and employee retention and turnover. Potential audit work in this area could review hiring processes used by state agencies, examine whether these processes are designed to hire the most qualified candidates, determine if hiring practices comply with state law and regulations and if state policy provides clear direction, and assess the level of oversight that exists over state agency hiring practices.

Retirement System Administrative Consolidation*

In Montana, two main state government administrative bodies are responsible for the oversight of retirement benefits for public employees. The Montana Public Employee Retirement Administration (MPERA) administers eight different retirement systems, including those for public employees, judges, game wardens, firefighters, and various law enforcement professionals. Presently, MPERA has more than 32,000 active members and almost 21,000 retirees. Assets for MPERA totaled more than \$6 billion in FY 2018. The Montana Teachers' Retirement System (TRS) serves active and retired teachers, administering their pension plan. TRS currently has membership of nearly 20,000 and manages approximately \$4 billion in assets. Collectively, these two administrative bodies are responsible for about 90 percent of state employee pensions. MPERA and TRS maintain separate administrative structures and offices, including separate staff and oversight boards. Currently, TRS employs 21 FTE to manage its activities, while MPERA has 47 FTE. In 2019, the Montana Legislature passed House Joint Resolution 39, requesting a performance audit to examine potential cost savings from combining these two administrative bodies that manage retirement assets for public employees in the state. Similar administrative duties performed by both MPERA and TRS include functions related to legal guidance, enrollment and collection of contributions, benefit disbursement, communication outreach, and information technology (IT). For example, both MPERA and TRS recently made significant upgrades to their individual IT systems used to manage employee pensions, totaling approximately \$16 million between the two organizations. A potential performance audit could examine whether there are opportunities for the consolidation of these two administrative bodies that manage pension assets, including identifying areas of potential overlap and duplication, such as IT systems and benefit calculation and distribution. A performance audit could also examine

whether there are opportunities to merge any or all of the multiple retirement systems managed by the two administrative bodies.

Economy & Jobs

Board of Medical Examiners

The governor-appointed 13-member Board of Medical Examiners (BOME) is charged with protecting the health, safety, and well-being of Montana citizens through the licensing of health professionals and by the regulation of the related practices to promote the delivery of quality health care. The board issues at least 17 different license types in several medical practice areas, including emergency medical technicians, acupuncturists, and medical doctors. The Board also contracts with the Montana Professional Assistance Program (MPAP), which assists healthcare professionals with substance abuse issues. In addition, the BOME decides matters of medical scope through the administrative rule process. As of May 2019, the Department of Labor and Industry reported there were 12,616 active licensees, including 4,073 who reside out-of-state, with total Board revenues reaching \$2.1 million in FY 2018. A Board sub-committee reviews complaints regarding unprofessional, incompetent, or unlawful practice. In FY 2018, the Board received 136 new complaints and suspended nine licensees. In the past, complaints related to several doctors suspected of over-prescribing pain medications have been reviewed by the Board. According to a recent news article, a lawsuit filed against the BOME alleges the board knew or should have known about a physician who was involved in 11 malpractice lawsuits before being licensed in Montana. The article also cites a 2016 Consumer Reports study that ranked Montana as “one of the lowest” in the nation for failing to provide easy access to disciplinary records of doctors licensed to practice in the state. A performance audit could consider whether the Board has effective complaint and investigative processes in place, whether it issues licenses in a timely manner, and how the board evaluates and monitors in-state and out-of-state applicants and decides matters of scope.

Education

Contingent Faculty in Higher Education

In 2016, 73 percent of teaching positions at U.S. higher education institutions nationwide were non-tenure track positions, also known as contingent faculty. These instructors are typically adjunct faculty or graduate teaching assistants who teach primarily on a part-time basis. A recent newspaper article demonstrated the same trend can be found in Montana: 52 percent of Missoula College UM’s current faculty workforce is non-tenured. Per the U.S. Government Accountability Office, part-time contingent faculty are paid 75 percent less per course than full-time, tenure-track faculty; full-time contingent faculty are paid 40 percent less. Higher education institutions employing a high percentage of contingent faculty leads to concerns about the overall health of the learning and research environments, as well as the working conditions of the contingent instructors. A performance audit of the use of contingent instructors could seek to identify trends across the Montana University System (MUS) related to the employment of contingent instructional and non-faculty staff, and whether these trends have affected the quality of instruction across the MUS. Audit work could also involve assessing differences in qualifications between tenured and contingent instructional staff; any impacts on the roles and duties of full-time faculty; whether there are identifiable differences in outcomes for students enrolled in courses taught by contingent instructors; best practices related to the balance between full-time

faculty, contingent instructional staff, and administrative staff; and the cost implications of any changes in the use of contingent instructors.

Physical Space Management on College Campuses*

Colleges and universities are designed and managed as open and accessible institutions. Consequently, on each of the 13 Montana University System campuses governed by Montana Board of Regents as well as the state's three community college campuses, students, faculty, staff, and members of the public share access to a variety of multi-purpose physical spaces. Resource management includes the practice of planning, tracking, and optimizing the utilization of resources. On college campuses, this includes the scheduling and assignment of classrooms, laboratories, conference rooms, office spaces, residence halls, and general use facilities. The facility scheduling process involves planning and managing tasks such as checking the resource's availability, scheduling start and end dates, managing resourcing conflicts or dependencies, and monitoring over time to adapt to changes and ensure space standards and target utilization rates are met. For campuses, these strategies typically occur within a decentralized environment in which multiple stakeholders across the institution may be responsible for different types of scheduling efforts, sometimes for the same physical spaces. Each of the 16 higher education institutions in the larger Montana University System are responsible for numerous buildings with considerable square footage. For example, Montana State University's Bozeman campus is comprised of more than 200 buildings, 51 of which are state-funded and maintained academic buildings encompassing nearly 2 million gross square feet. A performance audit in this area could look at facility and room scheduling policies and procedures used on various campuses in Montana, investigate how different campuses undertake facility inventory, and assess adherence to best practices related to the resource management of physical spaces.

Special Education Dispute Resolution

The federal Individuals with Disabilities Education Act (IDEA) requires states and entities receiving IDEA funding to make available dispute resolution processes. Dispute resolution processes are in place to provide an avenue for parents of children with disabilities to resolve complaints regarding a school district's provision of special education services. In Montana, the Office of Public Instruction (OPI) is responsible for ensuring that children with disabilities receive a free and appropriate public education (FAPE) in accordance with the provisions of the IDEA, including administering dispute resolution processes to resolve conflicts between parents and educators. Nationally, relationships between school districts and the parents of special education students are notoriously adversarial, with conflicts frequently arising over the implementation of a special education student's individual education program (IEP), which defines the learning objectives for a child with disabilities. A recent nationwide study of special education dispute resolution found that during the 2005-2006 school year, more than 19,000 due process hearings were requested, and nearly 5,400 went to a fully adjudicated hearing, compared to only 1,574 adjudicated hearings in 1992. It is estimated that districts nationwide spend more than \$90 million per year on conflict resolution, with most of that money spent on special education cases. In Montana, questions have arisen regarding the role of OPI in ensuring a FAPE, due to a local school district segregating a child with a disability in a basement without education services. In this case, despite a formal parental complaint, the child allegedly went for nearly two years without any education services from the local school district or OPI. In October

2017 OPI and the local district reached a settlement with the student's family for more than \$1 million, with most of the money going to the student's education with a neuropsychology expert in Denver. A potential performance audit could examine how OPI administers dispute resolution processes in compliance with the IDEA, including the results of conflict resolution on the delivery of a free and appropriate education for children with disabilities.

Fisheries & Wildlife

Habitat Montana & Conservation Easements*

Habitat Montana (HM) is a program established by the 1987 legislature to protect and enhance wildlife habitat by encouraging wildlife-friendly land-use practices. The legislature gave the Department of Fish, Wildlife & Parks (FWP) the authority to purchase interests in land, while directing the department to attempt conservation easements or leases before fee title acquisitions. Conservation easements are voluntary legal agreements with landowners in which FWP may compensate a landowner approximately 45 percent of the land's value, with the landowner agreeing to keep the land in agricultural use, implement practices that assist wildlife, and relinquish future land development rights. Most easements also provide public hunting access. HM annually receives \$5-6 million in funding, with 92 percent coming from nonresident hunting licenses. While the legislature primarily wants revenues spent on conservation easements, fee title acquisitions are commonplace, as landowners play a role in determining which method is in their best interest. From 2009 through 2018, HM attained 20 conservation easements and 25 land fee acquisitions, using \$40.5 million in HM funds, \$64.9 million in federal funds, and \$24.7 million in other funds (i.e. the Montana Fish & Wildlife Conservation Trust). These totaled nearly 150,000 acres. As of December 2018, FWP holds 56 HM easements covering 293,239 acres. While the majority these easements are established without controversy, recent proposed easements have drawn a great deal of public interest. Performance audit work could include determining how FWP obtains recommendations for conservation easements as well as the process by which these proposed easements are identified, appraised, assessed, and finalized. Audit work could also evaluate how the department notifies the hunting public on how it can access conservation easements.

Wildlife Population Counts*

The Department of Fish, Wildlife & Parks conducts population counts for deer, elk, antelope, upland birds, and some non-game wildlife. This helps FWP monitor trends in wildlife populations across the state for better management. For example, FWP surveys for elk in most hunting districts across the state. Elk surveys are almost always complete coverage surveys to enumerate all the visible elk in each surveyed area. Elk surveys also gather data on calves per 100 cows and bulls per 100 cows. Most surveys are conducted by fixed-wing aircraft, in the winter, and on an annual basis. For deer, the agency observes a specific area and generalizes that information to an entire hunting district. There are different protocols for each of the wildlife counts conducted by FWP. These counts can have a large effect on how FWP manages the state's wildlife. The counts can influence season setting, inform sportsman and landowners of population trends, or influence comments regarding oil and gas leases. This process affects stakeholders such as ranchers, sportsman, and outdoorsmen. HB509 was introduced in the 2019 legislative session to require periodic verification of these wildlife population counts. The bill was introduced to address public concern regarding the accuracy and consistency of FWP's statewide wildlife counts. The bill died in committee. Potential audit work could include review

of FWP's process for counting Montana's big game populations, reviewing the consistency of count processes across regions and biologists, accuracy of counts and population projections, and processes for counting populations on both private and public lands and how these are incorporated into population objectives and season-setting decisions.

General Government

Architecture & Engineering Division

Located within the Department of Administration (DOA), the Architecture & Engineering Division assists state agencies in the design and construction of facilities, repairs and alterations of existing facilities, and planning for the governmental and university system facility needs. The division manages the remodeling and construction of state buildings. The division's functions include: planning new projects and remodeling projects; advertising, bidding and awarding construction contracts; administering contracts with architects and contractors; disbursing building construction payments; and providing design services for small projects. The program also formulates a Long-Range Building Program for legislative consideration, oversees the adoption of standards for state-owned buildings, and manages a statewide facility condition assessment process. In FY 2018, the division was responsible for 132 active projects with a total capital projects budget of \$327.5 million. A capital project is a project to maintain or improve state government infrastructure, which can include new construction, expansion, renovation, or the replacement of an existing facility. The division is funded entirely with state special revenue funds. Funds are transferred from a long-range building capital projects fund to the state special revenue fund, which was established for administrative expenses related to the support of the state Long-Range Building Program. Personal services were approximately \$1.6 million or 73.3 percent of total FY 2019 appropriations. A potential performance audit could examine the activities of the division, including the fee-based services it provides to state agencies and whether there are opportunities for the division to do more project oversight or to outsource some of these services to private entities.

State Warrant Printing and Mailing*

The Department of Administration provides numerous services to state agencies, local governments, and Montana citizens in several areas, including warrant printing and mailing services for state government. These activities are supported through proprietary funds that are approved as rates within HB2. Warrant writing includes management of the state payment processes for vendors, with the department providing payment processing services for most state agencies, including the university system. Operating revenue for warrant writing services is budgeted at \$692,240 for FY 2020. Revenues are derived from monthly billing based on the number of actual warrants issued. Budget authority to pay these costs is a fixed cost item in state agency budgets. A potential performance audit could examine the rate structure for warrant writing and print and mail services, including the types of services provided by the department and whether there are cost-effective opportunities to outsource these activities to the private sector.

Justice & Corrections

Judicial Standards Commission

An effective judicial oversight entity is vital to maintain a fair and impartial judiciary and limit the potential for judges to abuse or misuse their power. The Montana Judicial Standards

Commission was established in 1973 and is responsible for hearing complaints against state judges and other judicial officers. The commission is responsible for hearing these complaints, conducting investigations into the complaints, and making recommendations to the Montana Supreme Court regarding disciplinary actions. The commission is a five-member group made up of two district judges, one attorney, and two citizens appointed by the governor. A recent performance audit of a comparable California commission found that judicial investigators failed to pursue allegations thoroughly and ignored signs of ongoing misconduct; that the structure and proceedings of the commission were not aligned with judicial best practices; and that the commission had not taken sufficient steps to improve its public transparency and accessibility. Although Montana's commission's proceedings are generally considered confidential, statute provides specific authority for legislative audits to assess the complaint process. HB 486 from the 2019 Legislative Session attempted to make the proceedings of the commission matters of public record, but was ultimately tabled. A performance audit of the Judicial Standards Commission could assess whether complaint investigations are conducted thoroughly, impartially, and in accordance with statutory requirements; whether the commission enforces standards for disclosure and confidentiality; and whether the Commission's structure and proceedings conform with best practices to ensure impartiality.

Probation and Parole Division

The Probation and Parole (P&P) Division within the Department of Corrections (DOC) supervised around 60 percent of Montana's offender population (almost 10,000 felony offenders) at the end of FY 2018. The P&P Division is funded primarily by the general fund, and operates on an annual budget of around \$70 million. Offenders in the community are supervised by a P&P officer in one of six regions according to the standards of supervision ordered by the court, the Board of Pardons and Parole, or the DOC. When offenders violate the requirements of supervision, the DOC decides or has input on decisions on appropriate sanctions, such as jail time or even revocation of community supervision. Because these offenders are living and working in Montana communities, supervision under P&P plays an important role in public safety and in reducing recidivism. The Legislative Audit Division recently received informal allegations of negligence on the part of P&P that led to additional criminal activity by some offenders. A performance audit of the P&P Division could determine whether offenders are being supervised according to proper protocol and could examine the consistency and effectiveness of P&P practices among the various P&P regions in the state. Another growing concern related to P&P is the caseload of P&P officers. Caseloads are reportedly high and are continuing to increase, with none of the six P&P regions having caseloads lower than 60-90 offenders per parole officer. One P&P office has an offender-to-officer ratio as high as 182 offenders to one officer. High caseloads may decrease the amount of resources dedicated to individual offenders, which might result in increased risk to public safety and increased costs to the state. Best practices indicate supervision is most effective when focused on offenders who are most likely to reoffend. A performance audit of the P&P Division could also determine whether P&P resources are being assigned effectively.

Natural Resources & Environment

Board of Milk Control's Regulatory Structure*

The Board of Milk Control, administratively attached to the Department of Livestock and its Milk Control Bureau, consists of five members and is responsible for maintaining a stable and

fair market for the state's dairy producers. A bill during the 2019 legislative session would have allowed changes to the regulatory pricing structure for milk producers in the state of the Montana. The bill passed the House but was tabled in the Senate Agriculture, Livestock, and Irrigation Committee. Currently, there is a single, statewide "pool" of dairy producers, regulated by the Board of Milk Control. This pool ensures that every producer is paid the same rate per unit of milk, regardless of the facility that processes the milk, and protects individual dairy producers from unexpected milk processing facility closures. In 2018, the Board of Milk Control contracted for a study of dairy economics and management to identify potential areas of future policy improvement. One of the many recommendations in the resulting report was to make changes to the state's single, statewide pool. HB 529 would have allowed for the splitting of the current, single pool into multiple pools throughout the state. The bill was contentious; it was backed by the Montana Milk Producers' Association, and some dairy producers, and was opposed by the Board of Milk Control and other dairy producers. A potential performance audit of the Board of Milk Control and/or the Milk Control Bureau could assess current and proposed regulatory policies and structures, including pricing controls, pooling, and the use of daily quotas for producers. It could determine whether current or proposed laws and policies disproportionately favor some dairy producers at the expense of others, and whether the legislature should be actively involved in any upcoming dairy regulatory policy changes.

Petroleum Release Compensation Program*

The Petroleum Tank Release Cleanup Fund (Fund) was established by the 1989 Legislature to provide financial resources and effective procedures through which tank owners and operators may undertake—and be reimbursed for—cleanup of petroleum contamination and payment to third parties for damages caused by releases from petroleum storage tanks; to assist tank owners and operators in meeting financial assurance requirements under state and federal law governing operation of petroleum storage tanks; to assist in protecting public health and safety and the environment by providing assistance for cleanup of petroleum tank releases; and to provide tank owners with incentives to improve petroleum storage tank facilities in order to minimize the likelihood of accidental releases. A board was also established in 1989 to administer the Fund in accordance with the provisions of the law, including the payment of reimbursement to owners and operators. To meet the intent and purpose established by the legislature, the board indicates it directs its efforts toward fiscally responsible management of the cleanup fund. As part of fund administration, the board aims to ensure that funding is available to obligate to all petroleum releases ranked in the highest priority by the Waste Management and Remediation Division of the Department of Environmental Quality (DEQ). Often these high priority releases are known to have environmental concerns. The Board also aims to reimburse completed claims for obligated corrective action within established time frames. A performance audit could determine if the department meets those timeframes for reimbursement, and if funding is directed to the highest priority releases as identified by DEQ. A performance audit could also determine if the processes and procedures DEQ uses to select high priority releases are consistently used and are based on best practices. The program is funded by a \$0.0075 gas tax, its budget is \$3.2 million per biennium.

Montana Sage Grouse Habitat Conservation Program*

The Montana Sage Grouse Habitat Conservation Program works to sustain viable sage grouse populations and conserve habitat in Montana. The greater sage grouse is an upland game bird

native to Montana. Due to habitat loss and fragmentation, the population of sage grouse has declined across its range in 11 western states. In response, the Montana Legislature passed the Greater Sage Grouse Stewardship Act (Act) in 2015, establishing the Montana Sage Grouse Oversight Team and the Stewardship Fund Grant Program. Also, the governor signed an executive order in 2015 that, along with the Act, establishes Montana's Sage Grouse Conservation Strategy to address population decline and habitat issues proactively and collaboratively. The program is administered by the Governor's Office and the Department of Natural Resources and Conservation (DNRC). As part of the Act, the Legislature also authorized \$10 million for a Stewardship Fund Grant Program. Eligible projects include sage-brush habitat restoration, leases, and term or permanent conservation easements. The grant program has disbursed three grants since its creation. Current disbursements from the program total \$2.9 million. The purpose of the fund is to provide a resource for conservation efforts, primarily on private lands, and mitigate any disturbance to sage grouse habitat resulting from project development activities. Disturbances are referred to as debits. Conservation efforts are referred to as credits. Both land disturbances and conservation efforts are calculated to evaluate vegetation and environmental conditions related to the quality of sage grouse habitat. At present, DNRC has not developed a formal method to track and maintain the number of credits and debits available and used. Based on a recent program brochure, the conservation projects funded by Stewardship Grant Funds have generated 958,353 credits to offset future development. Current accounting guidance does not specifically address accounting for emissions credits, renewable energy certificates, emissions offsets, or similar allowances such as the sage grouse program credits. A potential performance audit could examine how the sage grouse program operates, including whether the program has successfully sustained sage grouse populations and habitat in Montana. An audit could also examine how DNRC accounts for disturbances and conservation (debits and credits) efforts on sage grouse habitat in the state.

Public Health & Human Services

Health Insurance Pharmacy Benefit Management*

A pharmacy benefit manager (PBM) is a third-party administrator of the prescription drug programs for health insurance plans, including plans for state government employees, self-insured employer plans, and Medicaid. The purpose of a PBM is to negotiate discounts and rebates between drug manufacturers, insurance companies, and government health plans regarding the supply of medication for patients, with the intent of lower drug costs for consumers. It is estimated that PBMs participate in the administration of drug benefits for more than 266 million Americans with health insurance. Traditional models include the PBM retaining a fee or keeping a portion of the rebate and charging the client more than the pharmacy was paid. Critics of PBMs indicate that these companies essentially work as middlemen and make a profit at the expense of the consumer as a drug passes from a pharmacy to a consumer. For example, a PMB may pay a retail pharmacy \$50 for a medication but then charge an insurance company \$100 for the medication, ultimately increasing costs for the consumer. In Montana, several government entities have oversight responsibilities for various health insurance products, such as the State Auditor's Office, the Department of Public Health and Human Services, or the Department of Administration. In some circumstances, these entities have indicated that they do not have authority over PBMs or their contractual relationships with insurance companies. PBMs have recently draw the attention of lawmakers both in Montana and nationwide. There were several bills put forth in the 2019 Session attempting to provide more regulation and

transparency regarding the practices for PBMs, with Senate Bill 83, establishing allowable and prohibited practices for PBMs, becoming law. A potential performance audit could examine the oversight of PBMs by insurance regulatory agencies in the state, including how these regulatory entities ensure that the involvement of PBMs does not lead to an increase in prescription drug costs for consumers.

Verification of Residency for Medicaid*

The 2019 Legislature implemented many reforms to the Medicaid program. One of these reforms related to the verification of recipient eligibility. As of July 1, 2019, one of the codified non-financial eligibility requirements for health care coverage under Medicaid expansion will be Montana residency. The law now states that the Department of Public Health and Human Services (DPHHS) shall require applicants to provide proof of residency and shall establish rules related to the documents to be used for this purpose. Concerns were raised about the risk for nonresidents receiving health care benefits prior to the reforms from the 2019 session. Additionally, a past performance audit of efforts by DPHHS to mitigate fraud, waste, and abuse in Montana Medicaid identified risks in other areas of recipient eligibility verification. Audit work could evaluate the department's processes for verifying Montana residency and could determine whether the program is sufficiently protected from nonresidents enrolling and receiving benefits. A potential performance audit would coordinate with federal compliance testing conducted as part of financial-compliance auditing work.

Medical Marijuana Act*

Medical marijuana has been legal since 2004, and the program is administered by the Department of Health and Human Services (DPHHS) Quality Assurance Division. In November 2016, voters passed Ballot Initiative 182, which expanded the Medical Marijuana Program. As a result, the 2017 legislature created the Montana Medical Marijuana Act, which contained many changes, including: repealing the limit of three patients for each provider; requiring a seed-to-sale tracking system; establishing requirements for testing labs; and creating licenses for providers. It also required the annual inspection of each registered dispensary, the premises for cultivation or manufacture of marijuana, and testing laboratories. New rules were put into effect in March 2018. Since the Act was revised, the program has experienced rapid growth. As of October 2018, there were 29,080 licensed cardholders, up from 7,785 before the 2016 initiative. While providers have decreased from 522 to 388, many now oversee more than three patients. A performance audit of the program could evaluate whether the department is timely in its application processing and issuance of identification cards and if the department is conducting inspections of registered premises and testing laboratories as required. A potential performance audit could also examine if physicians have a bona fide doctor-patient relationship with their patients as directed under law and how the department verifies application information for cardholders, providers, and labs.

Child Care and Development Fund*

Located within the Montana Department of Public Health and Human Services (DPHHS), the mission of the Early Childhood Services Bureau (ECSB) is to improve the quality, affordability, and accessibility of early child care and education in Montana. The activities of the ECSB focus on coordinated systems to best meet the needs of young children, their families, and the professionals who work on behalf of young children and families. The bureau oversees numerous

programs, including the Child Care Development Fund, which is the primary federal funding source devoted to providing low-income families that are working or participating in education and training with help paying for child care and improving the quality of care for all children. The fund provides child care financial assistance, including supporting early childhood education. Through the fund, families and childcare providers have access to scholarship funds, a complaint process, resource and referral services, and childcare licensing inspection and monitoring information. A potential performance audit could examine Montana's use of the fund to determine if all parents have equal access to licensed or registered child care providers, including an examination of child care reimbursement rates provided through the fund and how DPHHS ensures that licensed daycare facilities in the state are safe for children. Any potential performance audit would coordinate with federal compliance testing conducted as part of financial-compliance auditing work.

Adult Mental Health Services*

The Department of Public Health and Human Services' (DPHHS) Mental Health Services Bureau is responsible for the development and oversight of the state's system for delivering and reimbursing publicly funded adult mental health services. House Joint Resolution (HJ) 63 in the 2019 session would have established an interim study of access to and best practices for adult mental health services in the state. Such a study would have evaluated the state's current role in the mental health continuum of care available to Montana citizens, including the areas of crisis care, institutionalization, and community providers. The joint resolution died in the House Human Services committee. Currently, mental health providers in the state indicate that more providers and changes in regulations are necessary to meet the needs of Montanans with mental illness, particularly in rural areas. The U.S. Substance Abuse and Mental Health Services Administration's Behavioral Health Barometer reported that an annual average of only 48 percent of adult Montanans with a mental illness received mental health services from 2011-2015. Further, Mental Health America's 2019 report *The State of Mental Health in America* ranks Montana 45th in the nation in successfully meeting the needs of adults with mental illnesses. (Lower ranking indicates adults have a higher prevalence of mental illness and lower rates of access to care in their state.) A potential performance audit on state adult mental health services could examine the availability of inpatient care, out-patient care, and crisis services for those experiencing a mental health emergency. The audit could evaluate current laws, administrative rules, policies, and practices related to involuntary commitment and involuntary medication for the treatment of mental illness. Further, a performance audit on mental health services could focus on the roles of the DPHHS and the Montana State Hospital within the state's current continuum of care for individuals with mental illness. A performance audit could also study other states' best practices surrounding adult mental health care systems, especially those related to crisis intervention strategies and serving individuals in rural areas through telemedicine or other modalities.

Taxation & Revenue

Tax Return Preparer Fraud

In FY2017, Montanans filed more than 650,000 individual income tax returns, and paid nearly \$1.2 billion in individual income tax. A significant portion of these returns were prepared by paid tax preparers. According to the Internal Revenue Service, tax return preparer fraud is "the preparation and filing of false income tax returns by preparers who claim inflated personal or

business expenses, false deductions, unallowable credits, or excessive exemptions on returns prepared for their clients.” The IRS routinely includes preparer fraud on its “Dirty Dozen” watch list of common tax scams. When the IRS detects inaccuracies or fraud on tax returns, it is the taxpayer, not the tax preparer, who must pay the additional taxes, interest, and penalties. In 2006 the GAO conducted a secret shopper study of paid tax preparers. The GAO found many issues with return accuracy and ethical standards of tax return preparation businesses. Similar studies have been conducted across the country, and all identified widespread errors and omissions on tax returns. One such study conducted in Florida and North Carolina reported errors in 93 percent of their secret shoppers’ tax returns. Regulation of tax return preparers is the responsibility of the states, and Montana Code and administrative rule are silent on the qualifications for or oversight of paid tax preparation. Aside from clear requirements for CPAs, Montana does not require any training or licensing for paid tax preparers, which could leave consumers vulnerable to fraud and decreased ability of the state to collect income taxes. An audit could investigate if there is a problem with tax return preparer fraud in Montana by evaluating controls in place by the Department of Revenue (DOR) to screen for this type of fraud, and reviewing what protections and assistance exist for consumers from DOR or through the Department of Justice's Office of Consumer Protection.

Transportation

Motor Carrier Services

The Montana Department of Transportation’s (MDT) Motor Carrier Services Division (MCS) enforces state and federal commercial motor carrier laws, including laws on vehicle size and weight, insurance, licensing, and vehicle and driver safety. MCS staff include approximately 90 motor vehicle inspectors who work in 15 remote weigh station facilities across the state. MCS also provides licensing and permitting services for commercial vehicles owned by Montana-based carriers, and permit services for all carriers who wish to travel on Montana's highways but whose vehicles are size- and/or weight-noncompliant. The program is funded through a combination of highway state special revenue and federal special revenue. The total appropriated budget for the 2019 biennium for the program was \$23.9 million. According to a recent MDT report, in 2018, MCS conducted 27,319 commercial vehicle inspections (down from 42,264 in 2015) and issued 70,863 permits, which netted \$6.47 million in revenue. In recent years, MCS has reported challenges in attracting and retaining qualified workers in areas of the state that are remote or high-cost, and has experienced high turnover of compliance officers. MDT has responded by increasing workloads on existing staff through overtime and offering alternate shift options. Staffing challenges increase the risk of unsafe commercial vehicles operating on Montana roadways, which could include vehicles exceeding highway weight restrictions or being poorly maintained, or drivers not complying with “hours of service” requirements, both of which increase the risk of accidents. A performance audit could seek to determine how management policies and practices ensure commercial vehicles meet weight, maintenance, and driver safety requirements, and how fines for infractions are calculated and collected. An audit could also assess whether the division uses traffic data when scheduling officer work hours to maximize available personnel, and whether it has established performance goals and measures.

Winter Highway Maintenance

The Montana Department of Transportation’s Maintenance Division is responsible for maintaining state roadways throughout the winter. Maintenance includes ice prevention and

snow and ice removal, activities that are equipment- and labor-intensive. The division spends more than \$120 million annually, over half of which is expended on winter activities. There are obvious risks to public safety and commerce activities inherent in winter roadway maintenance. If roads are not cleared in a timely and effective manner, the risk of accidents and delays increases. Given the quantities of salt and deicing chemicals used – in a typical winter, the division applies over 9 million gallons of liquid de-icer and over 7 million pounds of sand/salt to Montana roadways – there is also risk to the environment, notably to water quality in streams and rivers close to highways. As of FY 2018, the division had 856.55 FTE (including 123 in the Equipment Bureau and 61.55 winter seasonal FTE). To meet the demand for plowing during storms, the department allows the use of overtime for its employees. While overtime must be distributed fairly among employees according to the maintenance employees' collective bargaining agreements, the risk remains that employees in specific areas or sections could use more overtime than necessary, or that other labor abuses could occur. A performance audit could evaluate the division's snow plowing routes to determine if plowing is prioritized appropriately and occurs to standards and weather patterns, and if the use of contracted county or private plows could assist in certain locations. An audit could assess the 117 maintenance sections and ten maintenance area boundaries to ensure that the division's structure enables plowing and other winter maintenance to occur cost-effectively.

MDT Aeronautics Division Operations*

The Aeronautics Division of the Montana Department of Transportation (MDT) is responsible for facilitating the maintenance of airports, registering aircraft and pilots, coordinating aviation safety programs, and administering a municipal government loan and grant program to fund airport development and improvement projects. It also owns, operates, and maintains 15 public-use, rural airports. The largest and most prominent of these airports is the Yellowstone Airport in West Yellowstone. One mile from Yellowstone National Park, this airport receives seasonal scheduled commercial service, in addition to private flights. The airport has several commercial tenants, including a restaurant and car rental companies. When the airport's land was transferred to the state from the federal government in 1968, deeds restricting development of hotels and advertising signs and guaranteeing free use by the federal government (it is currently used as a fire control center by the U.S. Forest Service) were included in the transfer. MDT has in recent years sought to ease the development restrictions, as it loses money operating the airport in most years. The Yellowstone Airport operates via an enterprise proprietary fund, which means that the legislature does not appropriate its funding. Meanwhile, infrastructure maintenance of rural airports depends on aviation fuel taxes, the burden of which is largely borne by airline carriers at larger airports. A performance audit of state-owned airports could generally examine the activities of the aeronautics division, including the financial impacts of ownership and management of airports on MDT, and determine whether privatization of airports would be feasible and/or cost-beneficial. An audit could establish whether there are entities likely to desire operating such enterprises, and assess whether there are other opportunities for streamlining airport operations or generating revenues.

Additional Performance Audit Request from Senator Flowers and Representative Mercer.

Professional Development Center

Located within the Department of Administration's State Human Resources Division (SHRD), the Professional Development Center (PDC) was established to deliver high-quality training through research-based curricula, class participation, and instructor knowledge. The PDC provides training and other professional development services to Montana state government and other organizations, in areas such as leadership, management, communication, self-management, and administrative issues. The PDC offers training directed towards improving state practices, meeting state and federal regulations, and providing professional services such as facilitation, mediation, or curriculum design. The majority of the SHRD's operations are supported by proprietary funds. The PDC is supported through fees in the form of tuition paid by state agencies that enroll employees in various classes provided by the PDC and fees for other services offered by the PDC. This fund is considered and approved as rates charged to other state agencies. Funding for the PDC is generated through two rates, including open-enrollment fees, which are a per-person tuition charged for attendance. These tuition rates are based on projected attendance and competitive prices. The amount per person varies by length of the course and number of people attending from a single agency. The second rate is contract fees, which are a flat fee charged for providing a service. The amount per service varies by length of the service and number of services arranged in a single contract. These rates are approved by the legislature and are the maximum the program may charge during the biennium. The program has 3.00 FTE. In the 2019 legislative session, there were legislative discussions within HB2 initiating a transition of all statewide workforce training from the PDC to the private sector, universities, or colleges by the end of the 2021 biennium. However, this language was amended from HB2 and not included in the final bill. Nonetheless, a potential performance audit could examine the training content provide by the PDC, including the manner in which the rates charged to state agencies are established and how those rates compare with similar training opportunities available in the private sector. A potential performance audit could also examine how much training for state employees is currently sourced from third-party vendors and if current PDC course offerings could be cost beneficially sourced from third-parties.

HOUSE JOINT RESOLUTION NO. 39

INTRODUCED BY T. BURNETT

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A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT THE LEGISLATIVE AUDIT COMMITTEE PRIORITIZE A PERFORMANCE AUDIT OF ADMINISTRATIVE OPERATIONS AND COSTS OF THE TEACHERS' RETIREMENT SYSTEM AND THE MONTANA PUBLIC EMPLOYEES' RETIREMENT ADMINISTRATION FOR POTENTIAL SAVINGS IF ADMINISTRATION WAS COMBINED AND THAT THE LEGISLATIVE AUDITOR PRESENT THE FINDINGS TO THE 67TH LEGISLATURE.

WHEREAS, administration of the Teachers' Retirement System and the systems administered by the Montana Public Employees' Retirement Administration involves similar activities, such as contracting for actuarial services, maintaining information technology systems and infrastructure, receiving contributions, tracking membership and service credits, and paying benefits; and

WHEREAS, both administrative entities have similar operational and personal services needs for accounting and payroll for staff; and

WHEREAS, administrative expenses as reported in the January 2019 financial compliance audit report of the Legislative Audit Division were about \$6.5 million for the Montana Public Employees' Retirement Administration and about \$2.8 million for the Teachers' Retirement System; and

WHEREAS, a deeper examination of these administrative activities and expenses would provide insight into whether there is unnecessary duplication and whether consolidating the administration of the Teachers' Retirement System and the Montana Public Employees' Retirement Administration would produce efficiencies and cost savings and, if so, how much.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Audit Committee be requested to prioritize a performance audit addressing the methods and costs of administering Montana's public employee retirement systems and that the audit include but is not limited to:

- (1) examination of the administrative structures and expenses of the Montana Public Employees'



- 1 Retirement Administration and the Teachers' Retirement System;
- 2 (2) evaluation of whether combining the two administrative entities into one would save money or result
- 3 in other operational efficiencies; and
- 4 (3) development of recommendations based on the findings.

5 BE IT FURTHER RESOLVED, that the final results of the performance audit, including any findings,
6 conclusions, comments, or recommendations be reported to the Legislative Audit Committee and the 67th
7 Legislature.

8 - END -



The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

REPRESENTATIVE TOM BURNETT
HOUSE DISTRICT 67

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RECEIVED
MAY 09 2019
LEGISLATIVE AUDIT DIV.

COMMITTEES:
APPROPRIATIONS
HEALTH & HUMAN SERVICES
JOINT SUB-COMMITTEE

Dear Mr. MacIver:

I request an audit of utilization of classrooms, laboratories, and computer labs in the University System's sixteen units during Spring and Summer semesters; MSU-Bozeman, Gallatin College, MSU-Billings, City College, UM-Missoula, Missoula College, Bitterroot, UM-Western, UM-Montana Tech, Highlands, UM-Helena, MSU-Northern, MSU-Great Falls, FVCC and its Libby extension campus, Dawson Community College, and Miles Community College.

The audit could look at scheduled uses as well as actual occupancy of scheduled rooms. How many students are registered for the class in scheduled rooms? How many attend? A room may be scheduled and used, but only have a small number of students using the space. For example, the calendar posted beside the door showed a lecture hall at MSU-Northern with about 200 seats to be in use during only three class periods a week, at noon M-W-F. An observer stopped by on April 17 at 12:30 to see how many students were present for the 12:00-12:50 class but found the room empty.

Thank you,

Rep. Tom Burnett, HD 67

April 29, 2019

Montana State Senate



The Treasure State

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APR 16 2019

LEGISLATIVE AUDIT DIV.

**SENATOR FRED THOMAS
MAJORITY LEADER**

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EMAIL: fthomas@paynewest.com

April 16, 2019

Director Angus Maciver
Legislative Audit Division
1301 East Sixth Avenue
Helena, MT 59601

Director,

A handwritten signature in blue ink, appearing to read "Angus", written over the printed name "Director, Angus Maciver".

Elected officials on both sides of the aisle understand that conservation easements are a critical land management tool in Montana. While the majority of the easements sought by the State are without controversy or confusion, a handful of recently proposed easements have drawn our attention. I would like Legislative Audit to provide the legislature with a better understanding of the processes and decisions that preceded these proposals. Specifically we would like to know how Fish Wildlife and Parks obtains recommendations for conservations easements and makes decisions to prioritize and move easements forward.

As the Montana Legislature we have a responsibility to every Montanan to insure that our public lands and public monies are responsibly managed. The process by which these proposed easements were identified, appraised, assessed, and finalized impacts all Montanans. Without the land board to provide oversight for specific projects, it is up to the Legislature to ensure that the entire process is done in a responsible, transparent, and accountable manner.

I am confident these easements were reached in good faith; but the Legislature has a responsibility to examine the entire process so future easements can proceed without controversy. I would appreciate a response by the 15th of May, so this information will be available to the Interim Committees.

With Regards,

A handwritten signature in blue ink, appearing to read "Fred Thomas", written over the printed name "Senate Majority Leader Fred Thomas".

Senate Majority Leader Fred Thomas

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APR 10 2019

LEGISLATIVE AUDIT DIV.

April 10, 2019

To: Members, Legislative Audit Committee

Copy: Angus Maciver and Joe Murray, Legislative Audit Division

From: Representative Gordon Pierson, HD 78

Subject: Request for Performance Audit of Montana Fish, Wildlife, and Parks Process to Count Big Game Populations

I respectfully request the Legislative Audit Committee prioritize a performance audit of Montana Fish Wildlife and Parks (FWP). FWP is responsible for conducting big game population counts which affect big game management across the state.

FWP conducts population counts for deer, elk, antelope, upland birds, and some non-game wildlife. This helps FWP monitor trends in wildlife populations across the state for better management. For example, FWP surveys for elk in most hunting districts across the state. Elk surveys are almost always a complete coverage survey to enumerate all the visible elk in the surveyed area. Elk surveys also gather data on calves per 100 cows and bulls per 100 cows. Most surveys are conducted by fixed-wing aircraft, in the winter, and on an annual basis. For deer they observe a specific area and generalize that information to an entire hunting district. There are different protocols for each of the wildlife counts conducted by FWP. These counts can have a large effect on how FWP manages the state's wildlife. The counts can influence season setting, inform sportsman and landowners of population trends, or inform comments regarding oil and gas leases. This process affects stakeholders such as ranchers, sportsman, and outdoorsmen. I introduced HB509 in the 2019 legislative session to require periodic verification of these wildlife population counts. The bill was introduced to address public concern regarding the accuracy and consistency of FWP's statewide wildlife counts.

My main interest area is in FWP's process for counting Montana's big game populations. Potential audit work could include reviewing the consistency of count processes across regions and biologists, accuracy of counts and population projections, and processes for counting populations on both private and public lands and how these are incorporated into population objectives and season setting decisions.

Thank you very much for the committee's consideration of this important topic.

Rep. Gordon Pierson
HD 78



OFFICE OF THE GOVERNOR
BUDGET AND PROGRAM PLANNING
STATE OF MONTANA

STEVE BULLOCK
GOVERNOR



CAPITOL BUILDING - P.O. BOX 200802
HELENA, MONTANA 59620-0802

May 29, 2019

Mr. Angus Maciver
Legislative Auditor
Legislative Audit Division
State Capitol, Room 160
Helena, MT 59620

RECEIVED
MAY 29 2019
LEGISLATIVE AUDIT DIV.

Re: Privatization Review and Proprietary Fund Listing
Section 2-8-304(3), MCA

Dear Mr. Maciver:

In accordance with section 2-8-304(3)(a), MCA, we are attaching a listing of all programs accounted for in either an enterprise fund or an internal service fund during the 2019 biennium.

In addition to the proprietary fund listing provided, the following two programs are forwarded for potential privatization consideration, in accordance with section 2-8-304(3)(b), MCA:

- 1) West Yellowstone Airport
- 2) State Warrant Printing and Mailing

Information regarding these two programs was provided to your office previously, as part of our proprietary fund listing and privatization proposals for the 2013, 2015, and 2017 biennia.

Please contact me if you have questions regarding the above two programs proposed for privatization or any of the other proprietary programs identified on the attached report.

Sincerely,

A handwritten signature in blue ink that reads "Tom Livers".

Tom Livers
Budget Director

**Enterprise and Internal Service Funds
2019 Biennium**

SetID	Fund	Descr	Budgetary Only	Date	Attribute	Attribute Value	Description
STATE	06001	State Lottery Fund	N	5/23/2019	CAFRFUND	60050	STATE LOTTERY
STATE	06002	MHS Publications Enterprise	N	5/23/2019	CAFRFUND	60501	HISTORICAL SOCIETY PUBS
STATE	06003	State Nursery Enterprise Fund	N	5/23/2019	CAFRFUND	60020	STATE NURSERY
STATE	06005	Liquor Division	N	5/23/2019	CAFRFUND	60010	LIQUOR STORES
STATE	06007	Yellowstone Airport	N	5/23/2019	CAFRFUND	60030	WEST YELLOWSTONE AIRPORT
STATE	06008	MUS Group Insurance Program	N	5/23/2019	CAFRFUND	60523	MUS GROUP INSURANCE
STATE	06009	MUS Flexible Spending Account	N	5/23/2019	CAFRFUND	60507	FLEXIBLE SPENDING ACCOUNTS
STATE	06010	CHE Wellness Account	N	5/23/2019	CAFRFUND	60523	MUS GROUP INSURANCE
STATE	06011	License Plate Production	N	5/23/2019	CAFRFUND	60091	OTHER ENTERPRISE
STATE	06012	FFA Loan Program	N	5/23/2019	CAFRFUND	62020	HEALTH FACILITIES AUTHORITY
STATE	06013	SHPO ENTERPRISE FUND	N	5/23/2019			
STATE	06014	BOI Municipal Finance Programs	N	5/23/2019	CAFRFUND	60060	ECONOMIC DEVELOPMENT BONDS
STATE	06015	Facilities Finance Authority	N	5/23/2019	CAFRFUND	62020	HEALTH FACILITIES AUTHORITY
STATE	06016	Beginning Farm Loans	N	5/23/2019	CAFRFUND	60091	OTHER ENTERPRISE
STATE	06019	Lexis Proprietary Account	N	5/23/2019	CAFRFUND	60091	OTHER ENTERPRISE
STATE	06021	MT Shared Catalog	N	5/23/2019	CAFRFUND	60091	OTHER ENTERPRISE
STATE	06022	MHS Education Enterprise Funds	N	5/23/2019	CAFRFUND	60501	HISTORICAL SOCIETY PUBS
STATE	06023	Credit Card Clearing	N	5/23/2019	CAFRFUND	60501	HISTORICAL SOCIETY PUBS
STATE	06024	BSD Accela	N	5/23/2019			
STATE	06026	MT Veterinary Diagnostic Lab	N	5/23/2019	CAFRFUND	95100	EMPLOYEE DEFERRED COMPENSATION
STATE	06027	Flexible Spending Funds	N	5/23/2019	CAFRFUND	60507	FLEXIBLE SPENDING ACCOUNTS
STATE	06030	BOH Financial Program Fund	N	5/23/2019	CAFRFUND	62010	HOUSING AUTHORITY
STATE	06031	Housing Trust Fund	N	5/23/2019	CAFRFUND	62010	HOUSING AUTHORITY
STATE	06032	Mortgage Loan Servicing	N	5/23/2019			
STATE	06033	Prison Ranch	N	5/23/2019	CAFRFUND	60502	PRISON INDUSTRIES
STATE	06034	MSP Institutional Industries	N	5/23/2019	CAFRFUND	60502	PRISON INDUSTRIES
STATE	06035	New Fund	N	5/23/2019	CAFRFUND	62030	WORKERS COMP - NEW FUND
STATE	06036	MSF Scholarship Fund	N	5/23/2019	CAFRFUND	62030	WORKERS COMP - NEW FUND
STATE	06038	State Fund Scholarship Fund	N	5/23/2019			
STATE	06039	Old State Fund	N	5/23/2019	CAFRFUND	62040	WORKERS COMP - OLD FUND
STATE	06040	Subsequent Injury-Trust Fund	N	5/23/2019	CAFRFUND	60512	SUBSEQUENT INJURY FUND
STATE	06042	Local Govt Svcs Audit&Reportng	N	5/23/2019	CAFRFUND	60516	LOCAL GOVERNMENT AUDITS
STATE	06051	Montana Career Info System	N	5/23/2019	CAFRFUND	60091	OTHER ENTERPRISE
STATE	06052	Hail Insurance	N	5/23/2019	CAFRFUND	60514	HAIL INSURANCE
STATE	06053	Sec of St Business Services	N	5/23/2019	CAFRFUND	60518	SEC OF STATE BUSINESS SERVICES
STATE	06066	Surplus Property	N	5/23/2019	CAFRFUND	60519	SURPLUS PROPERTY
STATE	06067	Advanced Drivers Education	N	5/23/2019	CAFRFUND	60091	OTHER ENTERPRISE
STATE	06068	MFWP Visitor Services	N	5/23/2019	CAFRFUND	60091	OTHER ENTERPRISE
STATE	06069	UI Tax Benefit Fund	N	5/23/2019	CAFRFUND	60520	UNEMPLOYMENT INSURANCE
STATE	06071	Merchandise - Historical Soc	N	5/23/2019	CAFRFUND	60501	HISTORICAL SOCIETY PUBS
STATE	06072	MHS Photo Archives Enterprise	N	5/23/2019	CAFRFUND	60501	HISTORICAL SOCIETY PUBS
STATE	06073	Historical Society Management	N	5/23/2019	CAFRFUND	60501	HISTORICAL SOCIETY PUBS
STATE	06074	SEC 8 Project Based	N	5/23/2019	CAFRFUND	60524	HUD SECTION 8 HOUSING

**Enterprise and Internal Service Funds
2019 Biennium**

SetID	Fund	Descr	Budgetary Only	Date	Attribute	Attribute Value	Description
STATE	06075	Section 8 Vouchers	N	5/23/2019	CAFRFUND	60524	HUD SECTION 8 HOUSING
STATE	06076	MHS Library Enterprise Funds	N	5/23/2019	CAFRFUND	60501	HISTORICAL SOCIETY PUBS
STATE	06077	MHS Museum Enterprise Funds	N	5/23/2019	CAFRFUND	60501	HISTORICAL SOCIETY PUBS
STATE	06078	Housing Montana Fund	N	5/23/2019	CAFRFUND	62010	HOUSING AUTHORITY
STATE	06079	Revolving Loan Fund - TANF	N	5/23/2019	CAFRFUND	62010	HOUSING AUTHORITY
STATE	06080	MVD/State Information Portal	N	5/23/2019	CAFRFUND	60091	OTHER ENTERPRISE
STATE	06082	MUS Self-Funded Workers Comp	N	5/23/2019	CAFRFUND	60503	MUS SELF-FUNDED WORKERS COMP
STATE	06083	61-3-118 MVD E-Commerce	N	5/23/2019	CAFRFUND	60091	OTHER ENTERPRISE
STATE	06085	Section 8 Mod Rehab	N	5/23/2019	CAFRFUND	60524	HUD SECTION 8 HOUSING
STATE	06086	Board of Public Accountants	N	5/23/2019			
STATE	06096	Stay at work/return to work	N	5/23/2019			
STATE	06500	Agency Legal Services	N	5/23/2019	CAFRFUND	65901	JUSTICE LEGAL
STATE	06501	Duplicating Center	N	5/23/2019	CAFRFUND	65904	FWP SERVICES
STATE	06502	Equipment Enterprise Fund	N	5/23/2019	CAFRFUND	65904	FWP SERVICES
STATE	06503	F & G Warehouse Inventory	N	5/23/2019	CAFRFUND	65904	FWP SERVICES
STATE	06506	Motor Pool - Int Svc	N	5/23/2019	CAFRFUND	65010	MOTOR POOL
STATE	06508	Highway Equipment - Int Svc.	N	5/23/2019	CAFRFUND	65907	HIGHWAY EQUIPMENT
STATE	06509	DEQ Indirects	N	5/23/2019	CAFRFUND	65923	DEQ INDIRECT COST POOL
STATE	06510	Personal Services Contingency	N	5/23/2019			
STATE	06511	SABHRS	N	5/23/2019	CAFRFUND	65040	SABHRS FINANCE & BUDGET BUREAU
STATE	06512	Indirect Cost Pool	N	5/23/2019	CAFRFUND	65913	OPI CENTRAL SERVICES
STATE	06522	ISD Proprietary	N	5/23/2019	CAFRFUND	65030	CENTRAL DATA PROCESSING
STATE	06523	2013 HB 10 LRTP DOA GSD	N	5/23/2019	CAFRFUND	65914	MAIL & MESSENGER
STATE	06525	Intergovernmental Training	N	5/23/2019	CAFRFUND	65915	PERSONNEL TRAINING
STATE	06527	Investment Division	N	5/23/2019	CAFRFUND	65916	INVESTMENT DIVISION
STATE	06528	Rent And Maintenance	N	5/23/2019	CAFRFUND	65080	BUILDINGS & GROUNDS
STATE	06530	Print & Mail Services	N	5/23/2019	CAFRFUND	65060	PUBLICATIONS & GRAPHICS
STATE	06532	Agency Insurance Int. Svc.	N	5/23/2019	CAFRFUND	65027	ADMIN INSURANCE
STATE	06534	Management Services	N	5/23/2019	CAFRFUND	65015	ADMIN CENTRAL SERVICES
STATE	06535	Continuity Emergency Mgmt	N	5/23/2019	CAFRFUND	65901	JUSTICE LEGAL
STATE	06538	Air Operations Internal Svc.	N	5/23/2019	CAFRFUND	65919	AIRCRAFT OPERATION
STATE	06539	Indirect Costs OCHE	N	5/23/2019	CAFRFUND	65016	ADMIN PURCHASING SERVICES
STATE	06540	DFWP Aircraft	N	5/23/2019	CAFRFUND	65904	FWP SERVICES
STATE	06541	Grounds Maint & Snow Removal	N	5/23/2019	CAFRFUND	65080	BUILDINGS & GROUNDS
STATE	06542	Commerce Centralized Services	N	5/23/2019	CAFRFUND	65912	COMMERCE CENTRAL SERVICES
STATE	06545	Prison Indust. Training Prog	N	5/23/2019	CAFRFUND	65930	PRISON INDUSTRIES
STATE	06546	Commissioner's Office/CSD	N	5/23/2019	CAFRFUND	65920	L&I CENTRAL SERVICES
STATE	06547	L/CSD - Direct Charge	N	5/23/2019	CAFRFUND	65920	L&I CENTRAL SERVICES
STATE	06552	Admin Services	N	5/23/2019	CAFRFUND	65920	L&I CENTRAL SERVICES
STATE	06554	CSC Collection Services	N	5/23/2019	CAFRFUND	65011	BAD DEBT DIVISION
STATE	06559	Group Benefits Claims A/C	N	5/23/2019	CAFRFUND	65014	EMPLOYEE GROUP BENEFITS
STATE	06563	HR Info Services	N	5/23/2019	CAFRFUND	65018	PAYROLL PROCESSING
STATE	06564	Warrant Writing	N	5/23/2019	CAFRFUND	65019	WARRANT PROCESSING

**Enterprise and Internal Service Funds
2019 Biennium**

SetID	Fund	Descr	Budgetary Only	Date	Attribute	Attribute Value	Description
STATE	06568	Technical Services	N	5/23/2019	CAFRFUND	65920	L&I CENTRAL SERVICES
STATE	06572	MCE License Plate Production	N	5/23/2019	CAFRFUND	65930	PRISON INDUSTRIES
STATE	06573	MSP - Cook Chill	N	5/23/2019	CAFRFUND	65930	PRISON INDUSTRIES
STATE	06574	BSD Hearings	N	5/23/2019	CAFRFUND	65920	L&I CENTRAL SERVICES
STATE	06575	Workers Comp Mgmt Program	N	5/23/2019	CAFRFUND	65016	ADMIN PURCHASING SERVICES
STATE	06578	Technical Services Direct	N	5/23/2019			
STATE	06599	CAFR ISF Lookback	N	5/23/2019			

Montana State Senate



The Treasure State

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APR 24 2019

LEGISLATIVE AUDIT DIV.

Senator Mike L. Lang
Senate District 17

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Phone: (406) 654-7357
Mike.Lang@mtleg.gov

From: Senator Mike Lang, SD 17

April 24, 2019

Subject: Request for Performance Audit of Board of Milk Control's
Regulatory Structure and Policies

I respectfully request the Legislative Audit Committee prioritize a performance audit of the Board of Milk Control, administratively attached to the Department of Livestock and its Milk Control Bureau. The five-member Board of Milk Control is responsible for maintaining a stable and fair market for the state's dairy producers.

Put forward during the 2019 legislative session, House Bill (HB) 529 would have allowed changes to the regulatory pricing structure for milk producers in the state of the Montana. The bill passed the House but was tabled in the Senate Agriculture, Livestock, and Irrigation Committee. Currently, there is a single, statewide "pool" of dairy producers, regulated by Board of Milk Control. This pool ensures that every producer is paid the same rate per unit of milk, regardless of at which facility their milk is processed, and protects individual dairy producers from unexpected milk processing facility closures. In 2018, the Board of Milk Control contracted a study from dairy economics and management consultant Dairy Technomics to identify potential areas of future policy improvement.

One of the many recommendations made by the resulting report was to make changes to the state's single, statewide pool. HB 529 would have allowed for the splitting of the current, single pool into multiple pools throughout the state. The bill was contentious; it was backed by member-organization the Montana Milk Producers' Association, and some dairy producers, and was opposed by the Board of Milk Control and other dairy producers. A potential performance audit of the Board of Milk Control and/or the Milk Control Bureau could assess current and proposed regulatory policies and structures, including pricing controls, pooling, and the use of daily quotas for producers. It could determine if current or proposed laws and policies disproportionately favor some dairy producers at the expense of others, and whether the legislature should be actively involved in any upcoming dairy regulatory policy changes. This audit needs to contain data on whether producers were over or under paid and help develop of such reporting.

Thank you very much for the committee's consideration of this important topic.

Gratefully,



Senator Mike Lang
SD 17
Malta, MT 59538



May 23, 2019

Angus Maciver
Legislative Auditor
Legislative Audit Division
P.O. Box 201705
Helena, MT 59610-1705

RECEIVED
MAY 23 2019
LEGISLATIVE AUDIT DIV.

Dear Mr. Maciver,

In response to your April 25, 2019, letter soliciting suggested audit considerations, I would note that, during hearings on HB451, introduced by Rep. Keane to eliminate the Petroleum Tank Release Compensation Board, a recommendation for an audit of the PTRCB was raised by some opponents to the bill. Should the Audit Committee choose to pursue an audit of the PTRCB, the Department of Environmental Quality would certainly be able to speak to DEQ's interaction and coordination with the PTRCB through our leak prevention and petroleum tank cleanup programs.

Sincerely,

A handwritten signature in blue ink, appearing to read "S. McGrath", is written over the word "Sincerely,".

Shaun McGrath
Director

Request of Senator Mike Lang, SD-17

The Montana Sage Grouse Habitat Conservation Program works to sustain viable sage grouse populations and conserve habitat. The intent of the program was to have a State managed program to avoid a potential listing of the Sage Grouse by the U.S. Fish and Wildlife Service (USFWS) and at the same time to continue to allow economic and natural resource development in core areas which are primarily located in central and eastern Montana.

The program began with an Executive Order 10-2014 by Governor Bullock in September of 2014. The subsequent 2015 Legislative session passed Senate Bill 261 called the Greater Sage Grouse Conservation Stewardship Act that established the Montana Sage Grouse Oversight Team (MSGOT) and establish and fund a Stewardship Grant Program. The Program is administered by the Governor's Office and the Department of Natural Resources and Conservation (DNRC).

I am requesting an audit on the Montana Sage Grouse Conservation Program to provide a complete accounting of all revenue and expenditures for the sage grouse program from its inception in the 2015 Legislature. At a minimum the audit shall include an accounting for the following:

- The original \$10 million stewardship account funding that was dedicated to maintain, enhance, restore, expand or benefit sage grouse habitat or populations for the Heritage of Montana and its people.
- The additional appropriation for the 2016 biennium for the creation and administration of the Sage Grouse Conservation program.
- How HB 228 in the 2017 Legislative Session impacted both the program funding and the Stewardship account.
- The total amount of funds by year transferred from accounts under the Board of Oil and Gas to fund any sage grouse administrative function or grant.
- A complete accounting of grant disbursements by recipient. Currently disbursements total \$2,877,500.
- A complete accounting and status of grants that have been approved, but funding not yet disbursed.
- A complete accounting and status of compensatory payments to the State by project proponent. Assurance that all compensatory mitigation payments were deposited into the Sage Grouse Stewardship account in the State Special Revenue Fund.

At present DNRC has not developed a formal method to track and maintain the number of credits and debits available and used.

Based on the a recent program brochure, the conservation projects fund by the Stewardship Grant funds have generated 958,353 credits to offset future development. Program staff also indicated that each credit has a value of \$13, with the value based on the appraisal value of the land used in the conservation projects.

Current accounting guidance does not specifically address accounting for emissions credits, renewable energy certificates, emissions offsets or similar allowances such as the sage grouse program credits. Some private entities account for these types of credits as intangible assets or inventory. However, this is an emerging practice area and future guidance from the Government Accounting Standards Board relation to can and trade transactions may provide a clear model for accounting for these activities. A potential performance audit could examine the manner in which the sage grouse program operates, including if the program has successfully sustained sage grouse populations and habitat in Montana.

The program has been developed to protect sage grouse and the habitat for the bird in Montana. That being said, the Montana taxpayer and businesses needing a permit for projects in sage grouse habitats, have, through the government of Montana, provide funds and exchanged funds for the processes of avoidance and minimization to sage grouse and their habitat functions.

It will be to the benefit of the program to have an audit which will lead to proper disbursement and accountability of program and Montana Sage Grouse Oversight Team (MSGOT) funds.

Gratefully,

Senator Mike Lang

SD-17 Hill, Blaine, Phillips, Valley, Daniels, Roosevelt and Sheridan counties

COMMISSIONER OF SECURITIES & INSURANCE

MATTHEW M. ROSENDALE, SR.
COMMISSIONER



OFFICE OF THE MONTANA
STATE AUDITOR

May 31, 2019

Angus Maciver
Montana State Capitol
Room 160
P.O. Box 201705
Helena, MT 59620

RECEIVED
May 31, 2019
LEGISLATIVE AUDIT DIV.

Dear Auditor Maciver,

In response to your letter asking for agency audit recommendations. It is my understanding that the Montana Medicaid Program is already being audited but I would like to request that an audit be done specifically into the Medicaid prescription drugs program. Please let me or Kris Hansen, Deputy State Auditor know if we can provide any information that you might need.

Sincerely,

A handwritten signature in blue ink, appearing to read "Matthew M. Rosendale Sr.", is written over a faint, larger version of the same signature.

Matthew M. Rosendale Sr.
Montana State Auditor



Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

Representative Brad Tschida
Majority Leader
House District 97

RECEIVED

APR 26 2019

LEGISLATIVE AUDIT DIV.

April 23, 2019

To: Members, Legislative Audit Committee

Copy: Angus Maciver and Joe Murray, Legislative Audit Division

From: Representative Brad Tschida, HD 97

Subject: Request for Performance Audit of Residency Verification for Medicaid

During the 2019 Legislative Session, the Legislature implemented many reforms to the Medicaid program, both Expansion and traditional Medicaid. One of these reforms related to the verification of recipient eligibility. As of July 1, 2019, one of the codified, non-financial eligibility requirements for health care coverage under Medicaid Expansion will be Montana residency. The law now states that the Department of Public Health and Human Services (DPHHS) shall require applicants to provide proof of residency and shall establish rules related to the documents to be used for this purpose.

Concerns were raised about the risk for nonresidents receiving health care benefits prior to the reforms from the 2019 Legislative Session. Additionally, a past performance audit of efforts by DPHHS to mitigate fraud, waste, and abuse in Montana Medicaid identified risks in other areas of recipient eligibility verification. Because of this, I respectfully request that the Legislative Audit Committee prioritize the Legislative Audit Division to conduct a performance audit of the verification of Montana residency for Medicaid recipients. Audit work could evaluate the department's processes for verifying Montana residency and could determine whether the program is sufficiently protected from nonresidents enrolling and receiving benefits.

Sincerely,

A handwritten signature in blue ink, appearing to read "Brad Tschida".

Representative Brad Tschida, HD 97
House Majority Leader

LEGISLATIVE AUDIT DIVISION

Angus Maciver, Legislative Auditor
Deborah F. Butler, Legal Counsel



Deputy Legislative Auditors:
Cindy Jorgenson
Joe Murray

February 14, 2019

Representative Daniel Zolnikov
Montana House of Representatives
P.O. Box 200400
Helena, MT 59620-0400

Dear Rep. Zolnikov:

You recently asked our office for information regarding the process used to inspect medical marijuana for pesticides. Enclosed you will find a memorandum related to your request.

If you would like further assistance, or have questions regarding the information provided, please do not hesitate to contact me at 444-3122.

Sincerely,

Angus Maciver
Legislative Auditor

S:\Admin\Correspondence\LegReq-19\19L-4264-mw-Zolnikov-ltr.docx/djr

Enclosure

LEGISLATIVE AUDIT DIVISION

Angus Maciver, Legislative Auditor
Deborah F. Butler, Legal Counsel



Deputy Legislative Auditors:
Cindy Jorgenson
Joe Murray

MEMORANDUM

TO: Angus Maciver, Legislative Auditor
FROM: Margaret Wallace, Performance Auditor
DATE: February 14, 2019
RE: Montana Medical Marijuana provider and inspection processes related to pesticides;
Legislative Request 19L-4264

The following memo is a response to a legislative request for information on the process used to inspect medical marijuana for pesticides. There are three components to pesticide management: medical marijuana provider responsibilities; laboratory testing requirements; and inspections by the Department of Public Health and Human Services (department). The following sections provide information on the history of medical marijuana in Montana, statutory and regulatory requirements, and department processes and procedures, as they pertain to pesticides.

Background

Medical Marijuana has been legal in Montana since 2004. In response to a high number of individuals authorized to use medical marijuana, the Legislature repealed the Medical Marijuana Act in 2011 and replaced it with the Montana Marijuana Act. The Montana Cannabis Industry Association (MCIA) sued after the 2011 Legislature repealed the 2004 voter initiative to legalize medical marijuana. The Legislature enacted numerous additional restrictions that MCIA claimed were unreasonable and overly burdensome. After several years of court proceedings questioning the constitutionality of the law, in 2016 the Supreme Court upheld all but one provision of the 2011 Montanan Marijuana Act, rejecting most of the arguments by the MCIA that the Act was unconstitutional.

In November 2016, Montana voters passed Ballot Initiative 182, which expanded the state's Medical Marijuana Program. Existing laws were edited, and new laws were implemented as part of SB 333 during the 2017 Legislative Session. As a result, new department rules were also created and put into effect in April 2018. The revised and renamed Montana Medical Marijuana Act contained many changes, including: repealing the limit of three patients for each licensed provider; requiring a seed-to-sale tracking system; establishing requirements for testing labs; and creating new licenses for providers. The revised law also requires the department to inspect annually each registered premises and testing laboratory to ensure compliance with statute and rules. The inspection requirements include how pesticide use is documented by providers and testing by laboratories, and are outlined in department rules that were adopted in April 2018, as required by law. According to the law, the department shall report biennially to the children, families, health, and human services interim committee concerning the results of unannounced inspections. We expect the department's report to be provided to the committee around April 2020.

Provider Responsibilities

Per administrative rules, marijuana and marijuana-infused products provider license requirements include establishing a written standard operating procedure (SOP) to produce marijuana. The SOP must include

when and how all pesticides or other chemicals are to be applied during the production process. Licensees must also maintain on the registered premises the original label or a copy of all pesticides, fertilizers, or other agricultural chemicals used in production, and a log of all pesticides, fertilizers or other chemicals used in production. Additionally, a licensee must separate each harvest lot of usable marijuana into no larger than 5-pound test batches, and sample increments from each of these batches must be analyzed for quality control by a testing laboratory. A licensee must submit for testing every test batch from marijuana and marijuana-infused product, extracts, and concentrates intended for use by a registered cardholder prior to selling or transferring the marijuana item to a registered cardholder. Marijuana samples consisting of dried leaves and flowers must undergo a pesticide screening among other tests. Marijuana concentrate, and extract samples must also be tested for pesticides prior to sale at a dispensary. All marijuana products must be tested before sale at a dispensary. Existing inventory (harvested or created before the effective date of the rules) does not need to be tested. Product harvested after April 10, 2018, needs to be tested. Additionally, per state law, if the licensee has ten or fewer registered cardholders, the licensee is not required to submit marijuana items for testing until 2020. Because of the new regulatory regime that requires testing of new marijuana inventory, there may be providers whose inventory predates the regulatory requirements. Since only licensed providers with more than 10 cardholders are required to submit marijuana items for testing, this may contribute to perceptions of inequitable treatment of providers by the department.

Testing Lab

A testing laboratory is a qualified person, licensed by the department, who provides testing of small samples of marijuana and marijuana-infused products; and provides information regarding the chemical composition, the potency of a sample, and the presence of molds or pesticides in a sample. Labs are responsible for testing usable marijuana, including trim and manicure, and extract/concentrates, and must be accredited by the International Organization for Standardization (ISO) within a year of licensure. The ISO general requirements are standards for which most labs must hold accreditation to be deemed technically competent. There are currently four laboratory licenses in Montana responsible for testing marijuana and marijuana-infused products. According to the department, inspectors have just recently visited all testing laboratories, and there are no licensed laboratories that send samples out of state.

Pesticides are included as part of the product testing requirements. Product test results are entered into the department's statewide monitoring system for marijuana tracking, inventory, and verification through the Marijuana Enforcement Tracking Reporting & Compliance (METRC) system. The state sets up the criteria of what test types are required for testing in METRC. Then all testing is entered into METRC. Pesticides are given a "pass" or "fail" status. If a pesticide exceeds the limit in parts per million set by the department for a particular substance, the sample fails the quality assurance test. If "fail" is selected the lab must select the substance that failed, then select fail and enter the specific value detected as parts per million in the quantity field. If more than one substance failed, then each is entered as its own result. Because of public input provided during the rulemaking process including concerns about the cost and complexity of pesticide testing the number of substances tested went from 60 to 19. The modified panel reflects the accepted cannabis practice as described in the American Herbal Pharmacopoeias Standards of Identity, Analysis and Quality Control available at the time the rule was issued. As set forth in administrative rules regarding quality assurance testing requirements the following substances are tested: Abamectin, Acequinocyl, Bifenazate, Bifenthrin, Chloromequat Chloride, Cyfluthrin, Daminozide, Etoxazole, Fenoxycarb, Imazalil, Imidacloprid, Myclobutanil, Paclbutrazol, Pyrethrins, Spinosad, Spiromesifen, Spirotetramat, and Trifloxystrobin. The department indicated it is not opposed to increasing the testing panel, and that laboratories the pricing for testing would not increase as a result.

To validate test results, licensees and certified labs may elect to do multiple quality assurance tests on the same lot or testing for mycotoxin, pesticides, or heavy metals. If a sample fails any initial test, provider

must request re-test within 7 days and the lab must reanalyze sample within 30 days. METRC sends a notification of failed tests to the department. Per the department's quality assurance testing protocols, upon the request of the department, a licensee or a certified lab must provide samples of marijuana or marijuana products or samples of the growing medium, soil amendments, fertilizers, crop production aids, pesticides, or water for random compliance checks. Samples may be screened for pesticides and chemical residues, unsafe levels of heavy metals, and used for other quality assurance tests deemed necessary by the department. The Legislative Audit Division has an information systems audit planned for METRC in the fall of 2019.

Department Inspections

The law states during the annual inspection the department shall collect samples and submit them to a testing laboratory for testing as provided by the department rule. Administrative rules further state that the department may conduct inspections at initial application, annual renewal, unannounced inspections and complaint inspections, to determine compliance with rules and statutes. The department conducts inspections for providers at cultivation facilities and chemical manufacturing facilities. These are providers who are growing marijuana products or "cultivation facilities," and providers producing marijuana-infused products, concentrates or extracts, or "chemical manufacturing facilities." At harvest providers separate crops into 5-pound samples which are then sent for testing by a laboratory, unless the product will be chemically manufactured, then it will be tested at that level. Inspectors review provider business practices for the following.

The department uses a Cultivation Facility inspection process to document compliance with the following by licensees:

- Standard Operating Procedures (SOP) that includes when and how pesticides, other chemicals are applied, water usage and wastewater disposal, and a waste disposal plan.
- Records on premises for:
 - Material Safety Data Sheet (MSDS) for all pesticides, fertilizers, or other Ag chemicals used in the production of marijuana
 - the original label or copy thereof for all pesticides, fertilizers, or other chemicals
 - a log of pesticides, fertilizers, or other chemicals used
- Record that usable marijuana samples consisting of dried leaves and flowers must be tested for:
 - Cannabinoid profile
 - Moisture analysis
 - Foreign matter screening
 - Microbiological screening
 - Pesticides screening
- Marijuana concentrate, and extract samples must be tested for the following:
 - Cannabinoid profile
 - Microbiological screening
 - Residual solvents screening
 - Pesticide screening

The department Processing/Manufacturing Facility inspection document includes a place to document compliance with:

- ARM 37.107.407(2):
 - Cannabinoid profile
 - Moisture analysis
 - Foreign matter screening

- Microbiological screening
- Pesticides screening
- Marijuana concentrate, and extract samples must be tested for the following:
 - Cannabinoid profile
 - Microbiological screening
 - Residual solvents screening
 - Pesticide screening

If during an inspection the department determines the applicant is not in compliance with applicable licensing requirements or Montana statute, the department will notify the applicant of the specific deficiencies or errors. The provider responds to the notice of deficiencies with a corrective action plan, and the department inspector then verifies the corrective action plan for the provider, and follows up with the provider after a set amount of time to ensure the deficiencies have been corrected. Additionally, inspectors work with city officials regarding ordinances, local zoning laws, and other local jurisdiction requirements. The Montana medical marijuana program is divided into five program regions. There are currently seven inspectors throughout five program regions, and according to the department, they are currently recruiting more inspectors for a total of ten inspectors. Department personnel noted that one provider could have several licenses, and each licensure must be inspected. For example, a provider could have 10 dispensary licenses and each registered premise would require inspection.

According to the department the following inspections have been completed as of January 18, 2019. One should keep in mind that since there are follow-up inspections for the same licensee, there will always be more inspections than licensees. The department indicated that most of the licenses that remained to be inspected were smaller, and some can be difficult to contact.

- 730 inspections in five regions – (including initial inspections, complaint inspections and follow-up compliance inspections)
- 238 of 384 provider licenses (62%)
- 234 of 313 dispensary licenses (75%)
- 145 of 168 MIPP licenses (86%)
- 4 of 4 laboratories

According to the department all 238 providers who have been inspected thus far are actively testing for pesticides, and every inspection has had at least one compliance issue that needed to be corrected. The most common compliance issues are advertising, labeling and packaging. A failed pesticide test does not mean that a provider is not in compliance with law or rules. Per administrative rules, the provider may remediate the product and submit it for reanalysis by the laboratory. However, a provider is not permitted to sell or transfer marijuana items that have failed testing. The seed to sale tracking system does not allow for product to be moved to another location or to be sold until it has passed the minimum testing requirements or has been remediated and tested again. The department reports out of 3,116 samples 196 have failed pesticide testing. The lab can enter a test result in two ways indicating the sample has failed the panel of testing or indicate the specific pesticide test that failed. Sixteen tests have been remediated and passed the second test. The following table illustrates the specific pesticides tests that failed, and the number remediated.

Table

Pesticide	Number of Fails	Number Passed Retest
Abamectin	n/a	1
Acequinocyl	n/a	1
Bifenazate	8	2
Chloromequat	n/a	1
Cyflurthrin	9	1
Daminozide	n/a	1
Etoxazole	n/a	1
Fenoxycarb	n/a	1
Imazalil	n/a	1
Myclobutanil	22	1
Paclobutrazol	7	2
Pyrethrins	22	0
Spinosad	21	0
Spiromesifen	14	1
Spirotetramat	n/a	1
Trifloxystrobin	2	1

Source: Compiled by the Legislative Audit Division from department records.

The department also indicated that some providers have been slow to utilize METRC as required by rule. This does not mean that the provider is not testing products as required by law, but that the provider is not following department rules that require use of a department inventory tracking system (METRC). The department indicated it is in the process of notifying providers who are not complying with the rules. If providers do not begin corrective action to comply with rules within a timely manner, the department will begin the process to revoke licensure.

Maria Weyrauch

[REDACTED]
[REDACTED]
[REDACTED]

May 21, 2019

RECEIVED
May 21, 2019
LEGISLATIVE AUDIT DIV.

Rep. Tom Burnett
4143 Rain Roper Drive
Bozeman, MT 59715

Dear Rep. Burnett:

This letter is to formally request a performance audit by the Legislative Audit Committee of issued daycare licenses and federal funds prerequisites and utilization.

The purpose of this audit request is for the Legislative Audit Division to objectively:

1. Evaluate federal funds available and utilized for child care in MT and to ensure that certain federal and state regulations are being met;
2. Recommend any areas for improvement of the quality, affordability and access to child care in MT;
3. Identify any misuse of the child care licensing program by any State or City-County Health Departments in accordance of the MT Child Care Act § 52-2 Part 7. (Total child care funds used in MT were \$131 million for FY 09-13.)

To encompass the purpose outlined above, the following areas would be prudent to audit:

I) Identify total available federal funds, along with MT state matching funds, under the Child Care and Development Fund (CCDF). Quantify the funds utilized for the last 3-5 years broken down by Federal and State. Identify any transfer amounts from the TANF (Temporary Assistance for Needy Families) block grant allotment to the CCDF. Compare funding totals to number of children served (annually) and break down by County and type of state program.

II) Determine if all parents have equal access to licensed or registered child care providers as outlined in the MT Child Care Act and in CCDF § 98.3 Parental Choice and provide recommendations for correction.

III) Identify and quantify (in funding terms) any misuse of licensing program by DPHHS and/or City-County Health Departments and/or childcare providers licensed or registered per the laws in the MT Child Care Act and provide recommendations for correction.

IV) Compare the child reimbursement rate to state law and CCDF. It appears the subsidy sets a market minimum for child care, which means that if any licensed daycare facility has at least one child on the subsidy payment, that daycare must charge the rate set by DPHHS - or higher - for all other children. By what regulation is DPHHS allowed to set minimum child care costs for families not receiving any subsidy? Could the subsidy result in the licensee having to raise prices for those that are not on the

subsidy?

V) {Optional} Determine by what criteria the DPHHS licensing division and City-County Health Departments ensure that licensed daycares are safe for children? Are regulations per CCDF for safe childcare met? Identify any areas for improvement to ensure the continued public trust and integrity of the licensed child care program.

Thank you for your careful consideration and I trust the Committee sees the merit to make this a priority.

Sincerely,

Maria Weyrauch

cc: Legislative Audit Committee Members

Angus Maciver, Legislative Auditor & Division Director

RECEIVED

MAY 23 2019

LEGISLATIVE AUDIT DIV.

May 23, 2019

To: Members of the Legislative Audit committee

CC: Angus Maciver and Joe Murray, Legislative Audit Division

From: Representative Jim Hamilton HD 61

Re: Request for Performance audit of State Adult Mental Health Services

I respectfully request the Legislative Audit Committee prioritize a performance audit of state adult mental health services.

Put forward during the 2019 legislative session, House Joint Resolution (HJ) 63 would have established an interim study of access to and best practices for adult mental health services in the state. Such a study would have evaluated the state's current role in the mental health continuum of care available to residents here in Montana, including the areas of crisis care, institutionalization, and community providers. The joint resolution died in the House Human Services committee.

The U.S. Substance Abuse and Mental Health Services Administration's *Behavioral Health Barometer* reported that an annual average of only 48% of adult Montanans with a mental illness received mental health services between 2011-2015. Further, Mental Health America's 2019 report *The State of Mental Health in America* ranks Montana as 45th in the nation in successfully meeting the needs of adults with mental illnesses. (Lower rankings indicate adults have a higher prevalence of mental illness and lower rates of access to care in their state.)

The Department of Public Health and Human Services' (DPHHS) Mental Health Services Bureau is responsible for the development and oversight of the state's system for delivering and reimbursing publicly funded adult mental health services. Currently, mental health providers in the state indicate that more providers and changes in regulations are necessary to meet the needs of Montanans with mental illness, particularly in more rural areas. Like HJ 63, a performance audit on state adult mental health services could examine the availability of inpatient care, out-patient care and crisis services for those experiencing a mental health emergency. The audit could evaluate current laws, administrative rules, policies, and practices related to involuntary commitment and involuntary medication for the treatment of mental illness. Further, a performance audit on mental health services could focus on the roles of the DPHHS Mental Health Services Bureau and the Montana State Hospital within the state's current continuum of care for individuals with mental illness. A performance audit could also study other states' best practices surrounding adult mental health care systems, especially those related to crisis intervention

strategies and serving individuals in rural areas through telemedicine or other modalities.

Thank you very much for the committee's consideration of this important topic.



Fiscal Year 2019

Performance Audit Priority Ranking

Audit Title	Score
Montana Developmental Center Closure	4.17
Public Defender Contracted Attorneys	4.17
Fire Protection Assessment Program	3.83
Treasure State Endowment Program (TSEP)	3.5
Real Property Tax Exemptions	3.5
Collegiate Athletics	3.5
Agency Internal Audit Functions	3.5
Disaster and Emergency Services Division	3.33
Fishing Access Site Maintenance	3.33
Hiring Practices in State Government	3.17
Part-Time Instructional Staff in Higher Education	3.17
Montana Board of Outfitters	3.17
State Crime Laboratory	3.17
Innovative Contracting Practices	2.83
Special Education Dispute Resolution	2.83
Deferred Retirement Option Plan (DROP)	2.83
Motor Carrier Services Division	2.83
State Cabin Lease Sales	2.67
Board of Medical Examiners	2.67
HELP-Link Workforce Training Program	2.67
Special License/Permit Bonus Point System	2.67
Aeronautics Division	2.33



Fiscal Year 2018

Performance Audit Priority Ranking

Audit Title	Score
Foster Care	4.33
Public Versus Private Adult Correctional Facilities	4.17
Office of the Commissioner of Higher Education	4.17
Charity Care in Montana's Nonprofit Hospitals	4
Lodging and Rental Vehicle Tax Collection	4
Nonprofit Drug Treatment Programs	4
State Agency Purchasing Card Use	3.83
Real Property Tax Exemptions	3.83
HELP-Link Workforce Training Program	3.83
Public Defender Contracted Attorneys	3.83
State Employee Termination Settlement Payments	3.67
Bed Tax Tourism Grants	3.5
Agency Internal Audit Functions	3.5
Part-Time Instructional Staff in Higher Education	3.5
Montana State Hospital Population Management	3.33
Deferred Retirement Option Plan (DROP)	3.17
Special Education Dispute Resolution	3.17
Special License/Permit Bonus Point System	3.17
Fishing Access Site Maintenance	3.17
Montana Board of Outfitters	3
Alternative Investment Strategies and Costs	3
Pipeline Safety Program	2.83

Tax Return Preparer Fraud	2.83
Lease vs. Build	2.83
State Trust Lands Royalty Audit Program	2.83
Fire Protection Assessment Program	2.5

Montana Legislative Audit Division - Audit Life Cycle Database 5/29/2018 8:56