



# Children, Families, Health and Human Services Interim Committee

## 57th Montana Legislature

### SENATE MEMBERS

EVE FRANKLIN  
DUANE GRIMES  
JERRY O'NEIL  
GERALD PEASE

### HOUSE MEMBERS

BOB LAWSON  
MICHELLE LEE  
TRUDI SCHMIDT  
BILL THOMAS

### COMMITTEE STAFF

SUSAN BYORTH FOX  
RESEARCH ANALYST  
DAVID NISS  
STAFF ATTORNEY  
LOIS O'CONNOR  
SECRETARY

## MINUTES

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Committee tapes are on file in the offices of the Legislative Services Division. **Exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of documents.**

Third Meeting of Interim  
Room 102, State Capitol  
February 13, 2002

### **COMMITTEE MEMBERS PRESENT**

Rep. Trudi Schmidt, Presiding Officer  
Sen. Duane Grimes, Vice Presiding Officer  
Sen. Jerry O'Neil  
Sen. Eve Franklin  
Sen. Gerald Pease  
Rep. Bob Lawson  
Rep. Bill Thomas

### **COMMITTEE MEMBERS EXCUSED**

Rep. Michelle Lee

### **STAFF PRESENT**

Susan Byorth Fox, Research Analyst  
Valencia Lane, Staff Attorney  
Lois O'Connor, Secretary

### **VISITORS**

Visitors' list, (ATTACHMENT #1)  
Agenda, (ATTACHMENT #2)

### **COMMITTEE ACTION**

- Agreed to move the May 3 meeting to May 14 and 15, 2002

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

The meeting was called to order by Rep. Schmidt, Chair, at 8:00 a.m. Attendance was noted; Rep. Lee was excused. (ATTACHMENT #3)

### **DIRECTOR REPORTS, DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES (DPHHS)**

**John Chappius, Deputy Director, DPHHS**, provided an overview of an organizational chart for the Department's new Fiscal Services Division; an overview of the Department's fiscal year 2002 budget status report; and an overview of All Medicaid Eligibles, 2001: All Children and Adults. (EXHIBITS #1, #2, and #3 respectively) He stated that the new Fiscal Services Division focuses on finances and accounting and that the Department is working very hard on the legislative audit issues. It has hired an internal auditor to find problems and strengthen internal controls. The largest budget problem for the Department is in Medicaid because it continues to grow at a rate that was higher than expected.

Sen. Grimes asked about the cost of aged and disabled population residing in institutions. **Mike Hanshaw, Administrator, Senior and Long Term Care Division, DPHHS**, said that the average cost of Medicaid for an individual residing in a nursing home is approximately \$29,900 or \$80 per day for the state share.

Sen. O'Neil asked why the number of Medicaid-eligibles was increasing and if the increase in the disabled population was caused by lifestyle. Mr. Chappius said that the increase in the Medicaid-eligible population was mainly due to changes in federal regulations that have accelerated the process, particularly in the disabled population. Those changes have made it possible to bring people into the system faster and have changed the designation of disabled. He added that information could be provided on whether the increase in the disabled population was caused by lifestyle but that it would take a great deal of staff research to find it.

Rep. Thomas asked if Medicaid funding changed to coincide with the changes in federal regulations. Mr. Chappius said no that the federal percentage has moved but not as a result of the changes.

Sen. Grimes requested information on the demographics of the disabled population. Mr. Chappius said that most of the disabled population reside in larger counties and he would provide demographic information to the Committee by county.

Mr. Chappius provided a summary of the budget reduction options experienced by the Department. (EXHIBIT #4)

Sen. Franklin asked how the transfer of \$100,000 of general fund from the CHIP to primary Medicaid would affect the CHIP waiting list. **Maggie Bullock, Administrator, Health Policy and Services Division, DPHHS**, said it did not affect the waiting list at all. The \$100,000 in general fund came from the Department's administration and operations for CHIP. Her Division had to bear the largest share of the cuts, and it chose to take the funds from CHIP so that it did not take all of the cuts from Medicaid.

Sen. Franklin said that her local mental health centers that treat the non-seriously mentally ill are concerned about the requirement of prior authorization for outpatient therapy sessions beyond 24 session per person per year. She requested clarification. Mr. Chappius said that the requirement allows for 24 sessions per year per person without prior authorization. If a visit is medically necessary, the local health centers should call the contractor who authorizes for that center, and it should receive prior authorization to ensure that people who do have the need receive those services. It should not be restricting in that way. Mr. Chappius will provide further information on this issue.

Rep. Lawson asked if the shifts within the Department had the potential to shift costs to other departments in state government; and if the state was not paying its fair share in Medicaid, has the Department projected a potential shift of those costs to hospitals, providers, or other private sector entities. Mr. Chappius said that he was unaware of any cost shifting among other agencies due to the shifts within the Department but that there was always a potential for a cost shift. Medicaid pays approximately 90% of the hospital costs. It is much harder to know the amount related to doctors' offices. Medicaid pays approximately 55% of doctor charges. However, there is a big difference between charges and costs. By reducing some of the costs, it would exacerbate that situation. Whether it would be a direct cost shift, it is possible, but a full analysis has not been conducted.

Sen. Grimes asked if information was available on whether the number of self referrals to emergency rooms was increasing. Ms. Bullock said that emergency room visits are increasing, and it is part of the increase on the Medicaid-budget side. Mr. Chappius added that emergency room usage by individuals has increased 29%, and the Department will discuss the issue with the Montana Hospital Association to see what can be done to stop it. It is not abuse of the system per se, but just that emergency room usage is that much higher.

Sen. Franklin asked which care coordination services would be reduced and which population of individuals did it involve. Mr. Chappius was unsure but would have Dan Anderson, DPHHS, provide the Committee with further details.

Mr. Chappius provided an overview of the changes within and the reductions taken within the FAIM Phase IIR Program. (EXHIBIT #5)

Sen. Franklin requested an overview of the effects of the programming cuts in TANF. **Hank Hudson, Administrator, Human and Community Services Division, DPHHS**, said that the cuts in the TANF program have been very difficult because the programs were operating very well and were addressing the major issues. One-half of the money was targeted toward working poor families to move them further away from poverty. A portion of the money was also allocated toward educational activities. Some people in the educational activities were enrolled in 1- and 2-year programs. The Department attempted to honor all of the commitments that were made particularly in the 1-year programs. Another large allocation of funds went to the Tribes who were just beginning to bring programs on board. The cuts eliminated much of the work that they had planned on doing. Most of the funds that the Tribes have left (one-third of the allocation), are being used for employment training activities. In addition, the Children's Trust Fund has had to turn away and serve fewer and fewer people.

Mr. Hudson said that the impact has been largely on the working poor people below 150% of poverty. The basic services for cash-benefit eligible people remain in place. The cuts have also been very disruptive for contractors and clients. Sen. Franklin said that the Legislature has reason to be concerned in the 2003 Session because this was a positive action on the state's part, and now, it ends up giving with one hand while taking away with the other.

Referring to testimony from the September 12, 2002, meeting, Sen. O'Neil asked if Mr. Hudson agreed that the Tribes received only \$240,000 from the TANF grant. Mr. Hudson said that he did not agree with those figures. He said that the state receives a \$44 million block grant each year of which \$34 million is used for cash benefits. One-half of the benefit funds are paid to tribal members because approximately one-half of the TANF caseload is Native American. The second largest line item of the Department comes from its maintenance of effort general fund spending and is used for work activities (approximately \$7 million). One-half of the \$7 million goes to serve Native Americans. The third largest line item is \$6 million which is operations and indirect costs which go to support all 5,300 TANF clients, one-half of which are Native Americans who live on reservations.

Mr. Hudson added that one-half of all of the major line items are spent proportionate to the caseload. In the last session, there was a \$26 million reserve fund and the Legislature allocated \$5.4 million to tribes only. Every other line item in FAIM IIR, except for the Head Start Program, is available to all citizens of the state regardless of whether they are Native American or not. There was also a separate \$200,000 line item that went directly to tribal governments so that they could hire people to plan on whether they wanted to become TANF tribes. This biennium the Department discontinued those funds and replaced it with tribal-specific projects. He felt that the state spent proportionately as much on the tribes as it did on those who are not tribal members. In addition, Mr. Hudson said that the Department is concerned about the staffing levels in the counties that have the highest TANF caseloads and that it needed to be reviewed.

Sen. Grimes said that testimony was also heard that the proportionate cut disproportionately effects Native Americans because of the circumstances on the reservations (i.e. unemployment and the lack and availability of jobs) and that those circumstances were other considerations that needed to be made when the Department decides to scale back state support. Mr. Hudson said that the cuts made by the Department were those that were called for in HB 2. HB 2 specifically states that the cuts had to be proportionate. He did not believe it appropriate to allocate money by persons on public assistance. There is also a good argument for spending additional funds on reservations because of their difficult situations. The Department's intent was to make the cuts proportionate.

Mr. Hudson added that one of the most significant steps forward in the welfare reform process was to allocate TANF funds to Tribal/NEW programs. Tribal/NEW programs allow tribal members living on reservations to receive their employment training services from a tribally operated program; they reinforces tribal sovereignty; they allow the tribes to begin the process of operating their own welfare reform system; and they assist the state because it counts 100% toward meeting the federal requirements. Each tribes needs to make its own decision as to whether to operate their own TANF program.

Sen. Grimes commented that self-referrals to emergency rooms should be eliminated entirely. If the state begins to make cuts, people with Medicaid cards will self-refer. He felt that if self-

referral was not stopped, it would explode beyond the 29% and it would become a major problem. Sen. Grimes also felt that the Legislature needed to be much more careful about who it promised money to and needed to be much more conservative in its estimates. Mr. Chappius said that the projections that the Department made are statistical and where the TANF caseloads bottom out is hard to tell. The Department did not expect the caseload increase (\$20 million or more in total dollars) that it received, and it did not leave room in budget for spikes in cases.

Mr. Chappius added that the Department is also applying for a health planning grant which will address some of the uninsured problem in the state. The potential is up to \$1.3 million in the first year and the application will be sent April 4, 2002. There is also a bioterrorism preparedness grant potential of over \$7 million. The application will be sent in April as well. In addition, the Department has some possibility of refinancing Medicaid dollars for some general fund dollars currently being spent on schools. It will not cost the state any money, and it has the potential of receiving a Medicaid match that would go to the schools.

### **Governor's Task Force on HC Workforce Shortage**

Mr. Hanshew said that the demand for health care workers of all types exceeds the supply, particularly in the nursing field. Providers of all types are bidding against each other for the diminishing supply of health care workers, in part, because that whole work force is aging. The average nurse is approximately 45 years of age and they are not being replaced by younger people going into that type of work. The Governor appointed a Task Force made up of providers and provider organizations to address the issue. The Task Force is trying to address budget compensation, education, and work environment issues. It will produce in early summer a document that lays out exactly what Montana is facing and recommendations in the three areas.

### **ICC Update: Tobacco Prevention Report**

**Nan Lefebvre, Public Relations Office, DPHHS**, provided an overview of a series of tobacco prevention reports. (EXHIBIT #6)

### **Legislative Budget Analysis**

**Pat Gervais, Fiscal Analyst, Legislative Fiscal Division**, stated the following:

- Although HB 2 did not require that the Department to reduce funds in FAIM IIR, it did provide the Department the ability to review expenditures within its base budget as it looked for funds to address the increased caseload if certain conditions were met.
- An issue within the Human and Community Services Division of DPHHS which may be impacting Medicaid caseloads is outreach. Department staff has indicated that eligibility staff is currently conducting community outreach in various community settings regarding eligibility for the public-assistance related programs.
- The cash-assistance benefit caseload was budgeted at \$24 million a year for each year of the biennium.
- The Department currently estimates that this year's cash-assistance cost will be \$30 million and \$33 million a year in fiscal year 2003.
- One of the service reductions in the Child and Family Services Division is the elimination of payment for room and board costs for children in therapeutic family care and therapeutic group home settings.
- This item has the potential to shift costs to the Child and Family Services Division and the Department of Corrections.

- The Child and Family Services Division has already experienced calls from concerned parents looking to relinquish custody of their children so that they could receive services by becoming a child in custody of the state.
- In these cases, if the Child and Family Services Division takes custody of the children, it would become responsible for the room and board payment for therapeutic group home care whereas the Addictive and Mental Disorders Division (AMDD) would be responsible.
- Recently, the Child Support Enforcement Division (CSED) was notified that it would be receiving a federal incentive award grant for fiscal year 2000.
- The award is \$2 million a year less than what was included in the budget for the 2003 biennium. While the revenue shortfall in state special revenue is a concern, each of those dollars is matched with federal dollars.
- The \$2 million shortfall per year in revenue equates to a \$6 million a year shortfall in the CSED budget.
- The total budget for CSED is approximately \$10 million a year.
- The Department has undertaken several actions to mitigate the problem, such as the elimination of the customer service unit contract which supported 14 FTE and took all of CSED-related phone calls.
- The phone calls will now be taken at the regional office level with existing staff.
- In fiscal year 2000, the customer service unit received 177,000 calls.
- The potential impact to existing staff taking the calls could be substantial although it is unknown to date what that impact will be.
- The phone calls will be taken by investigators whose primary function has been to collect child support. The elimination of the call center could have an adverse impact on the amount of child support collected.
- The Department is also eliminating staff through attrition.
- There is a concern about the Department's revised revenue estimates for the 2003 biennium because they may be more generous than the actual revenue collected.
- The Department has estimated an increase of approximately \$300,000 in revenue collected on TANF cases and an additional \$500,000 in federal incentive funds.
- The importance is that these funds are matched with federal funds.
- The Department estimated that at the end of the biennium, it may have an \$800,000 shortfall in the CSED. If its revenue estimates prove to be too generous, that shortfall may be larger than the current estimate.

**Lois Steinbeck, Fiscal Analyst, Legislative Fiscal Division**, stated the following:

- When the Department first projected a shortfall, it was approximately \$4.5 million in general fund and mostly in the Medicaid areas.
- At that time, it did not include the CSED shortfall which, if back filled with general fund, would have added an additional \$2 million a year in order to maintain the current budget.
- The economic stimulus bills before Congress are currently dead; but if revived, amendments to two of them would increase the federal share of Medicaid payments which is almost enough to offset the reductions.
- Also, if the bills are revived, she would question whether it would be legal to cut services under current statute if the appropriation is sufficient to fund that level of services.
- There are about 70 children a month moving from CHIP to Medicaid.
- The current CHIP waiting list is 276 families involving approximately 580 children.

- An increase in co-pays frequently leads to a rate reduction for providers because, under Medicaid, services must be provided whether or not people have the ability to pay the co-pay. This includes hospitalization whether authorized or not.
- Proposed provider rate decreases also comes with the potential loss of providers.
- The Department almost lost an important provider who provided in-home nursing services for severely ill children in the Missoula area with the 2.6% rate reduction in the Health and Policy Services Division (HPSD).
- The alternative for these children if they are unable to receive in-home nursing services is to be placed in a nursing home or hospital.
- In the Senior and Long-Term Care Division, in-home nursing services were paid at a much higher rate than in-home nursing care for children provided by the HPSD.
- Under the potential rate reduction, in order to not lose that provider, the HPSD granted a rate increase for children in-home nursing services.
- If the economic stimulus bills are revived, the Department will implement the rate reductions so that they can be easily offset.
- During the 2001 Session, the state expected annual CHIP grants for approximately \$15 million. The current federal grant is \$10 million.
- Together with the state match, it generates approximately \$13 million which is about what the state will spend on the current number of children covered under CHIP.
- There is currently some carry over grant funds left.

In answer to Sen. Grimes question regarding where the Legislature may have left the Department in a vulnerable position by not estimating the spikes in Medicaid, Ms. Steinbeck said that the Appropriations Subcommittee granted the Department's Medicaid request with one exception--the difference between staff estimates and Department estimates over the level of bed days in nursing home care.

#### **LEGISLATIVE RULE REVIEW ISSUES**

Mr. Hudson, provided a summary of the advocate and tribal meetings regarding the TANF sanction process. (EXHIBIT #8) Currently, the Department has no rule in place regarding sanctioning but is attempting to have new rules in place by July 2002.

**Valencia Lane, Staff Attorney, Legislative Services Division**, provided a summary of DPHHS' rule submissions. (EXHIBIT #9) She said that there is clear legislative intent that provider rate increases would be granted and that if the interest income on the tobacco settlement trust fund were not sufficient to cover them, the Department should look to other sources to fund them. The question then becomes can the Department actually reduce provider rates. She is looking into the issue and will provide an answer at a future meeting.

Ms. Steinbeck added that the Department indicated that it fully expended the tobacco funds when the rate increases were granted as Medicaid match. Even if it had not done that, it could have transferred all of the tobacco state special revenue to the nursing home program for rate increases. The most current budget status report of the Department, even with the reductions, shows an additional \$3 million general fund overrun. If it decides to reduce provider rates further in order to accommodate the reduction, she will have to meet with the Department and legal staff on how to determine whether those rates would meet legal muster and to ensure that the current methodology used is correct.

Rep. Schmidt asked if the Department could find alternative funding sources. Ms. Steinbeck yes, but the extent to which those funding sources would be adequate to offset the rate increases may be problematic. She is unsure whether the Department has maximized all of the existing intergovernmental transfer potentials. Intergovernmental transfers allow state Medicaid agencies to use money expended by local governments for certain public Medicaid services as match to draw down additional federal funds. She was unsure of the significance of the alternative revenue source.

Sen. Grimes asked if the state was okay with the provider rate decreases and what would the repercussions be if the state was not on solid ground. Ms. Steinbeck felt that the state was in compliance with statute and the constitution as it relates to the interest from the tobacco trust. Rate increases were granted for the first six months of this fiscal year and were funded partially from the tobacco tax income and partially from the general fund. If there are ongoing rate increases in the second year of the biennium, there are questions that need to be investigated. She said that she has not asked for a legal opinion on whether the Department could reduce provider rates.

Ms. Steinbeck added that the statutory framework for which the Department has to match the HB 2 language is very complex. First, statute says that a Department can be criminally prosecuted for overexpending its budget. Second, if a Department is going to incur cost overruns in the first year of the biennium, money can be transferred from the second year of the biennium. Departments are also charged with developing plans so that they live within their appropriations. Statute also states that the Department may reduce the amount, scope, or duration of Medicaid services if the appropriation is insufficient to cover the services. She was unsure of any case law that is applicable to interpreting appropriation statutes. HB 2 language cannot conflict with substantive law and it cannot be substantive or it is illegal.

Ms. Lane added that the rate reduction and attempts to amend the rules are a good faith effort on the part of the Department to stay within their statutory and constitutional restrictions. The Committee is only speaking of rate reductions for the next six months. It is speculative to question what is going to happen to the tobacco trust fund money in the next fiscal year. There could be questions down the road, but for right now, the Department is in no violation of statute. Sen. Grimes requested that the Committee re-review the issue at the end of the 6-month period.

Sen. Grimes asked if other interim committees were providing feedback to the Department on this issue. **Susan Fox, Research Analyst, Legislative Services Division**, said that the Committee is the only interim committee to review the administrative rules of DPHHS. To the extent that they affect its budget would fall under the purview of the Legislative Finance Committee. If it is a rule issue, it is incumbent upon the Committee to track it.

Ms. Steinbeck said that there needed to be a lot of coordination between the Committee and the Legislative Finance Committee. She said that they are two parts of the whole. If the Committee had programmatic input, she would incorporate it in her report to the Finance Committee.

Sen. Grimes asked what level of feedback, support, or decisionmaking should the Committee be involved in. Ms. Lane said that the Committee has a certain amount of power and it can be fairly proactive in the rule review process. Sen. Grimes asked if Ms. Lane had reviewed the restrictive language on the use of the tobacco settlement trust fund. Ms. Lane said yes and the best that

she can determine, is that there is not a problem for the next six months in what the Department is doing. She also felt that the Committee should be kept informed of what is being done by rule.

### **PUBLIC COMMENT ON FAIM SANCTIONS**

**Mary Caferro, Working for Equality and Economic Liberation ( WEEL)**, provided written comments in opposition to potential changes to the FAIM sanctions. (EXHIBIT #10) She requested that when a policy is written that it not include full-family sanctions or case closures.

Rep. Lawson asked if the meeting held on December 4, 2001, fulfilled what it was supposed to do between the state, advocacy groups, and the tribes. Ms. Caferro said that although she did not attend the meeting, she had a representative attend. The Committee must bear in mind that when there is public input, people are there because they either work with welfare recipients or they have a concern for them. It does not necessarily mean that the people come prepared and have done the research necessary to make decisions. She was concerned when policies are made based upon the input from that meeting. After the meeting, nothing else was done. People did not receive minutes and she was unsure whether formal minutes were taken. Ms. Caferro said that she is frustrated because she has tried to be a part of the process and has not received the response that she wanted.

Rep. Lawson asked what the next step was in the process, and after the tentative rules are written, would the Department inform the Committee. Mr. Hudson said that in this case, there is general agreement on how to proceed, except for the issue of case closure. When the draft rules are written, the Department would once again meet with interested parties to reach consensus. If a consensus is not possible, The Department must make the decision on case closure and proceed with the rules. Currently, there is a sanction policy in place that works, but it does work as well as it could. Rep. Lawson requested that the issue be an agenda item for the May meeting.

**Hilda Moss, Northern Cheyenne Tribal Council**, said that the Tribe is going to be hit very hard by the sanction policy. The Northern Cheyenne Reservation has a high unemployment rate, and families have suffered because of the lack of transportation on the Reservation. It is very hard for families to make it to their appointments. She said that welfare reform is not going to be an overnight thing for tribes. Tribal members need a voice. She will also provide more information to the Committee at its May meeting.

### **DIVISION OVERVIEWS**

#### **Disability Services Division**

**Joe Mathews, Administrator, Disability Services Division, DPHHS**, stated the following:

- In the early 1990s, Montana chose to receive federal Title XX social services block grant funds to serve its developmentally disabled population in exchange for state general fund.
- The past several years have witnessed a steady decline in the amount of Title XX funds received which has limited the Division's ability to stay whole.
- The Legislature has dealt with this issue on two occasions and asked the Department to backfill the loss of the fund with either Medicaid or TANF funds.
- A funding issue that the Legislature addressed the most was the crisis in direct-care staff.
- The Division has 52 not-for-profit providers in various Montana communities providing services to children and adults with developmental disabilities; and in the last several

- years, providers voiced their concerns about their ability to provide quality work and do business well given the increase in costs that they were incurring.
- As a result, the Legislature appropriated a 9% provider rate increase in the first year of the biennium and approximately 5% in the second year for direct-care staff.
  - The Division is finding, both in its residential facilities and in the communities, that it is able to find and recruit significantly more direct-care staff than before.
  - As Medicaid and as home- and community-based options expand, the Medicaid waiver that the Division operates under has given it some opportunity to use Medicaid dollars where before they were restricted.
  - The Division refinanced the Medicaid dollars to match general fund dollars into Medicaid which freed up approximately \$1.4 million of general fund which was used to bring people out of the residential facilities and off of the community waiting list.
  - In developmental disability and rehabilitation services, the Legislature capped the amount of money it could spend based on how much general fund is given and federal authority.
  - Although the Division is not over budget, it is also not meeting the needs of all people who need its services.
  - When the Medicaid crisis hit the Department, the \$1.4 million amount of money was looked at as expansion.
  - As a result of the Division's efforts to refinance its dollars, some of the money was taken away or used to offset the deficits that entire Medicaid program is experiencing.
  - The Division ended up with \$450,000 to continue bringing people out of the residential facilities.
  - Fifteen to 18 people from both the Montana Developmental Center (MDC) and Eastmont have been referred to the community for services as well as a few people from its community waiting list.
  - Unless the federal FMAP rate changes, only one-half of those people will be able to be brought out.
  - Another issue is that the Division did not receive any expansion dollars from the Legislature for developmental disabilities resulting in waiting list increases.
  - Available slots are crisis driven.
  - There are 92 residents at the MDC and 33 at the Eastmont Human Services Center.
  - The Legislature requested that it get the whole number down in this biennium to mediate total. Unless something significant changes, the Division is not going to make the target.
  - Since the year 2000, the MDC has had 26 new admittances while Eastmont had none. The Courts commit them to the facilities.
  - The Division is trying to meet federal regulations and is developing an Olmstead Plan.
  - Currently, the Division is seeing many more people with developmental disabilities who have legal issues and predatory behaviors.
  - The question is when the Travis D. v. Eastmont Human Services lawsuit comes to trial, will the Court order the state to move a certain number of people out of the residential facilities.
  - It is the Department's hope that it reaches a structured, negotiated settlement with the Montana Advocacy Program (MAP) in the lawsuit and it is reviewing the current commitment laws.

Sen. O'Neil asked if the \$450,000 took into consideration the savings when people are moved out of the residential facilities. Mr. Mathews said yes, but the cost of serving people when they come into the community varies. The residential facilities must maintain Medicaid compliance and there is a delicate balance between keeping the residential facilities whole and moving people into communities. Even though there are some cost reductions, the move from residential facility to community has no cost savings related to some of the people they move.

Rep. Schmidt asked what was being done with the commitment laws. Mr. Mathews said that the 2001 Legislature asked that the Division review commitment laws. Courts generally make the commitments and they are usually 1-year commitments. The Division is looking at a better way to do this. The Department received its first criminal commitment to the MDC. The question is how to deal with that and what does it mean for the Department in terms of if the person is able to leave the facility, where would the person go--to jail or elsewhere. The Department needs the ability for a more free-flowing process.

Sen. Franklin asked if the slant of the discussion was to make it easier for a continuum of care. Mr. Hanshew said yes. The idea is to have a place for people to go when they are in crisis. However, that process requires an array of services. The Department's goal is to settle with MAP.

Rep. Schmidt requested an update on the issues (i.e. the waiting list, means testing, and other proposals) at the May meeting.

#### **Montana Advocacy Program Response**

**Bernadette Franks, Executive Director, Montana Advocacy Program**, provided an update on the Travis D v. Eastmont Human Services litigation brought forward by MAP. (EXHIBIT #11)

**Andree LaRose, Attorney, MAP**, said that MAP filed the Travis D. v. Eastmont Human Services lawsuit in 1996 to seek community services for those who are unjustifiably institutionalized and those on the waiting list in the communities and not receiving services. MAP raised the claim under the Americans with Disabilities Act (ADA), the Medicaid portion of the Social Security Act, and section 504 of the Rehabilitation Act. MAP filed the lawsuit only after the 1995 Legislature turned down the Department's proposal to close Eastmont and reallocate those resources into community services. At that time, the Department identified 73 people as people who could be served in the community and did not need to be in an institution. The biggest barrier to moving them out was the statutory requirement that an institution could not be closed without legislative approval. Under the lawsuit, MAP is seeking what the law requires, what the state professionals say is best for people with developmental disabilities, and what is humane and respectful of people's dignity and their right to be participants in community life.

MAP's biggest barrier to a settlement has been the paralysis of action. The Department believes that it cannot act without legislative action first. MAP has not asked for the closure of Eastmont Human Services, but it is financially practical enough to realize that when the Department recommends more than one-half of the people in the institution for community services, that it must review what is the viability and the sense of continuing to spend resources on a facility when the need is in another place. She requested that the Committee direct or encourage the Department to engage in settlement negotiations to develop a plan that identifies what it would take to settle the lawsuit and bring the plan back to the Committee's May meeting.

Sen. Grimes said that he was unsure whether MAP was really seeking negotiations or willing to be conciliatory in its negotiations because many would disagree on what the law says and what is best for people. He could not agree that MAP should decide what is best for people when the people themselves prefer institutions or when their parents or guardians may want them in a residential facility as opposed to the community. However, the Committee could give some guidance for those who were inappropriately held in an institution or those who were inappropriately coerced into going into a community setting. The Legislature would probably disagree with MAP as to what extent civil rights have been violated. The Committee could explore the options and give some direction to the Department, but the Legislature has never shown an interest in going as far as what it thinks the intent of MAP's agenda is. Ms. Frank said that to not allow the opportunity to enter into formal settlement negotiations would not help anyone, and the state would miss the opportunity to create a system by which all parties compromise on what the system should look like. MAP is very sincere at coming together with a settlement. The other alternative would be to allow the Court to decide for Montanans what should happen. Through negotiation, MAP and the Department could create a system on behalf of Montana citizens that could suit it needs better. Sen. Grimes said that he was just pointing out the gulf that exists between the entities involved. Even though it would be advantageous to find ways to service people within the Department's budget constraints, but agreement would have to be reached over what is legal, best, or civil for people.

Ms. Lane believed that the Department could not settle in a sense that it would be binding on the state and particularly the Legislature to fund whatever they agree to. A Court could impose restrictions on the state, but if she were a Department attorney, she would not be comfortable in advising the Department to go into settlement negotiations in good faith thinking that the state or Legislature could be bound. She said that MAP wants, in good faith, to sit down with people who care, who can make things happen, and create a new system. However, creating a new system is the job of Legislature not the Department, and the Department cannot create a new system unless it could get settlement authority from the Legislature or if the parties bring a package to the Legislature that states that the system is broken, that it needs to be fixed, and here is how the parties suggest it be done. She was unsure that what MAP was asking for was feasible in terms of the settlement of the lawsuit.

Mr. Mathews said that when he talked with Ms. Frank, he felt that a legislative proposal was needed and that the Division needed to bring any proposal before its own Department and the Governor's budget office. He was comfortable in developing a road map for recommendations to see if the Department and MAP could agree on a legislative package that can be brought forth to the Executive Branch and then the Legislature. The Developmental Disabilities Division has no authority to settle, but he would like the opportunity to try to come up with a solution. An endorsement or some direction from the Committee to do that was very important.

Rep. Lawson asked about the difference between what was currently being proposed and what was attempted through the Consensus Council in last interim. Ms. Frank said that the biggest difference is that MAP would be invoking a formal process under federal court rules. There would be an agreed-upon mediator, each would present their sides, and it would be under the protectiveness of the Court to come up with a settlement proposal.

Sen. O'Neil asked why the issue had not been settled in the Consensus Council. Mr. Mathews said that the Department tried to put together a group that represented all of the stakeholders.

Even though there was a lot of work done, there were many anecdotal things going back and forth, and they could never arrive at a structured plan for what needed to be done. The recommendation of that group was status quo for the time being.

Ms. Fox said that the Committee must keep separate the Consensus Council study and the lawsuit because the issues in the lawsuit are much more defined and there is only two parties involved. It was not a direct part of the lawsuit that the Consensus Council tried to help and it is not the same thing as the mediation being talked about. The Consensus Council process is built on consensus. The litigation is too far along in the process and she sees no purpose for the parties to go back to the Consensus Council for a possible solution. She added that the proposed mediation brings to bear all of the weight of the Court. If in fact it cannot be resolved through a structured settlement procedure, the Court would make the decision. She felt it appropriate to leave the process where it is at present and let the parties see if they can negotiate.

Sen. Grimes said that the Committee could not necessarily say "Go forth and do good" when it does not know what the goals and objectives are. It would make the Committee more comfortable if it was allowed to have input on where the center is.

### **Child Support Enforcement Division**

**Lonnie Olson, Administrator, Child Support Enforcement Division (CSED), DPHHS,** provided an overview of the Child Support Enforcement Division (EXHIBIT #12) he also stated the following:

- The CSED collected in excess of \$50 million for fiscal year 2001.
- Currently, there are 39,000 open cases with the Division which is staffed with 171.75 FTE.
- CSED recently suffered a budget shortfall.
- In 1998, the manner in which child support was funded in the nation was changed to a performance-incentive based system. Funding would be tied to a competitive process whereby each state must meet certain performance qualifiers in order to participate in incentive funding, and thereafter obtain a certain percentage of that performance base.
- Montana drew more funds than was allocated under the formula.
- Prior to drawing any funds, CSED asked its federal counterparts whether its methodology was correct. CSED was informed that although it should take caution in the amount that it drew, the federal government saw nothing wrong with CSED's methodology.
- On October 11, 2001, CSED found out that it drew too much because the information related to the final calculation that requires the comparison between the performance-incentive base of Montana and the sum of the performance-incentive from all the states was not released until two years after the analysis was undertaken and the initial performance-incentive withdrawal was made.
- As a result, there is a debt due and owed (\$1.1 million) by CSED to the Office of Child Support Enforcement. The shortfall is significant.
- CSED also believes that there is an overdraw in federal fiscal year 2001 withdrawals. The amount is not known.
- The Department has reverted funds to pay the \$1.1 million over four quarters without the assessment of any interest.
- Because of the budget shortfall, CSED has been required to take certain cuts.

- It was required to rescind a contract with a private vendor (Maximus Corporation) that provides customer service for CSED clients.
- CSED receives 30,000 telephone calls per month and there are 39,000 active cases.
- These services have been undertaken by CSED employees.
- CSED is in the process of developing base-line data as to the affect of the termination of the contract.
- Mr. Olson cautioned that if more cuts were made in addition to those already taken by the Division, it would be unable to fulfill its functions.
- Seventy-eight percent of the CSED caseload have formerly received or who are currently receiving public assistance, which makes CSED services essential otherwise public welfare roles will increase.
- CSED services are also important because the Social Security Act's Title IV-D system is tied to the payment of TANF benefits under Title IV-A. If CSED does not meet the certain audit requirements and qualifications put upon it by the federal Office of Child Support Enforcement, there can be no Title IV-A payments made to the state.
- CSED met every qualifier to fully participate in performance incentives, but it cannot meet the competition that includes the number of total cases or the total dollars that a state can collect. For example, Montana collected \$50 million in child support and has 39,000 active cases while California has over 1 million active cases and collected over \$1 billion.

Rep. Lawson asked if any changes have been made in the social security number requirement. Mr. Olson said that the developments that he is aware of do not center out of Washington D.C. but various states who have also sought exemptions from the social security number requirement for drivers and recreational licenses. Montana petitioned the Office of Child Support Enforcement for an exemption, but the proposal was denied. Currently, the Division has obtained approval from Director Gray to review whether CSED should renew that exemption request.

**Amy Pfeifer, Attorney, CSED, DPHHS**, added that CSED is in the process of gathering information from other states about what their exemption requests are composed of and how much they are different from Montana's. The Department believes that it could have some success on the exemption request regarding caseload clients under 16 years of age. CSED is also working with the Department of Fish, Wildlife, and Parks to interface with FWP's automated system. CSED, with permission from the Governor's Office, will pursue the exemption as best it can. To date, efforts to repeal the requirement nationwide have not gone anywhere.

### **Operations and Technology Division**

**Mike Billings, Administrator, Operations and Technology Division, DPHHS**, provided an overview of the Operations and Technology Division and the state's automated system for DPHHS and provided an update on the child and adult protective services (CAPS) system. (EXHIBITS #13, #14, #15)

Referring to a question by the Committee regarding how allegations of child abuse were purged from the CAPS system, Mr. Billings said that on the 20th working day of each month, information is purged from CAPS if the allegations of child abuse are unfounded as required by law.

Sen. Grimes asked if the statute also applied to county information. Mr. Billings said that the data is kept at the local level and is sent to the central data base. The central data base is then purged if allegations are unfounded.

Sen. O'Neil asked if unsubstantiated cases and unfounded cases were the same thing. Ms. Fox was unclear about the appropriate terminology but said that some cases require investigation and some are gleaned out before and after an investigation. She would provide the Committee with the information. Mr. Billings believed that the unsubstantiated cases would be judged to be unfounded and, therefore, purged.

Rep. Lawson asked if rural Montana could avail itself of the electronic benefits transfer (EBT) cards. Mr. Billings said that EBT card works in all EBT-only stores, such as Albertsons and Safeway, and if a store does not have a swipe card unit, the Department provides an EBT reader to them.

## **RELATED INDEPENDENT PRESENTATIONS**

### **Lifespan Respite**

**Billie Miller, Family Outreach**, provided an overview of Montana Lifespan Respite. (EXHIBIT #16)

**Joan Grauman, STEP, Inc.**, said that STEP is a private, nonprofit corporation that provides services to families who have children with disabilities and adults with disabilities. She provided an overview of Supporting All Families Efficiently contained within Exhibit #16.

**Sylvia Danforth, Lifespan Respite**, provided an overview of the Lifespan Respite Project: Where Do We Go From Here contained within Exhibit #16.

Sen. O'Neil asked what the state would be gaining by providing Lifespan Respite services that it would not be gaining through private providers such as Westmont. Ms. Grauman said that Lifespan Respite puts families in contact with respite providers which cuts the cost of care in half for families. Many of the people who access the Westmont program and other private providers are on Medicaid. Lifespan Respite is open to everyone, not just to people on Medicaid. Instead of going through an agency that pays a middle man to provide this service, private payers would pay at the minimum wage instead of the \$11 to \$15 an hour range.

Ms. Danforth added that all private and public services are funding options for people needing respite. But the frustration for people is that there is duplication of effort within communities to recruit, train, and match respite providers. Lifespan Respite takes away all of the duplication by providing all of that at one level.

Ms. Miller said that Lifespan Respite also make contacts with a wider variety of respite-care providers. When a person is working in an agency that deals with one category of need, there is a pool of people who are used over and over again. It is difficult to expand beyond that pool. Lifespan Respite has been able to develop a pool of providers in a very short period time who have a wider variety of skills than what it would have as a categorical agency. Lifespan Respite provides a service that fits what a family needs.

Sen. O'Neil asked how the fee for services was being paid and about the difference between Lifespan Respite and Westmont. Ms. Grauman said that Westmont can provide respite services through a Medicaid waiver program or it can be paid on a private pay basis, but it is expensive. Respite providers are considered to be employees of Westmont, and all administrative fees involved with Westmont cover the extras for the employee plus whatever money they make.

Lifespan Respite just puts families in direct contact with respite providers. The family pays them or it accesses a funding source that they may have already set up. The issues of social security, unemployment, and workers compensation for respite providers need to be discussed at the legislative level.

### **Montana Transportation Partnership**

**Marlene Disburg, Montana Transportation Partnership**, provided a summary of the Montana Transportation Partnership and the need for more coordinated transportation efforts for people with disabilities. (EXHIBIT #17)

**June Hermanson, Montana Center on Disabilities**, spoke of her personal experience as a congenitally legally blind person and about life in the day of a transportation-dependent individual. (EXHIBIT #18)

**Debra Swingley, Developmental Disabilities Planning Advisory Council**, outlined what is meant by transportation coordination. (EXHIBIT #19)

Ms. Hermanson added that the Partnership would like to see the development of a policy or law that ties something to coordination whereby if a transportation provider wants a new bus, that it will have a coordination plan tied to it, in addition to having some way to ensure that coordination is taking place.

Sen. O'Neil said that Montana has an existing law that is intended to ensure that Montana does not have more transportation than it needed. He asked if a certificate of need was needed, why should the state subsidize more transportation with public funds when it has been established that more transportation was not needed. Would the Partnership be willing to support abolishing the certificate of need program? Ms. Disburg said that there is an existing Public Service Commission (PSC) law that prohibits people from setting up a transportation system without going through the certificate of need process. However, the Partnership continues to hear that there is a need because, at times, those services are not accessible to people with disabilities. Private providers can choose to operate when they want and can choose who they want to pick up. In addition, the cost is often prohibitive for people with disabilities and seniors who are on very limited or fixed incomes, and in many parts of the state, there is no transportation system after 5 p.m. or on weekends. Ms. Disburg added that some parts of the state have tried to establish a transportation system for people with disabilities and seniors, but it was blocked by the certificate of need process or the PSC law.

Ms. Swingley added that it was not the intent of the Partnership to create a new system. It just wanted to have the most efficient use of all the vehicles that currently exist.

Ms. Hermanson added that one of the biggest challenges between private and public entities is what private entities have to go through with the PSC. Individuals, such as herself, can only purchase transportation from a taxi service, but she cannot go from community to community.

### **STANDING REPORTS**

Responding to an earlier question by Sen. O'Neil, **Chuck Hunter, Child and Family Services Division, DPHHS**, said that if an employee has marked a case as unfounded, it is purged from

the CAPS system after 20 days. The difference between unfounded, unsubstantiated, and substantiated cases are as follows:

- Unfounded is a statutory definition and the only one defined in the MCA. It means, that upon investigation, a worker has determined that the abuse or neglect did not occur. It is a concrete finding.
- Unsubstantiated is a category that is not a statutory definition. The working definition in the Department's policy is that following an investigation, a worker is unable to determine if abuse or neglect occurred. The criteria for both unsubstantiated and substantiated cases is preponderance of evidence.
- Substantiated cases are those that have a preponderance of evidence and goes into the record.

Mr. Hunter said that the purging of unsubstantiated data is different from substantiated data. There is no statutory schedule for the purging of unsubstantiated information. It remains in the CAPS system according to policy until the oldest child in the home reaches 23 years of age. It is viewed as information that is potentially valuable in cases where there are subsequent reports of abuse or neglect in the same families and build what may be a history or pattern of incidents. From a practical perspective, purging information at 23 years of age is very hard to do and it is not an easy standard for the Department to follow. Often times, there are children born into those families that the Department is unaware of and employees change. This is an area that could benefit from statutory clarification of how long and in what places and forms should that information be maintained.

Sen. O'Neil said that 11% of the referrals are found to be substantiated leaving 89% that are unsubstantiated. He asked how many of those cases will remain on the system. Mr. Hunter said that the calls that are a matter of abuse or neglect will remain in the system as either CPS, CFS, or CPI calls. The unfounded referrals, upon investigation, will remain in the system until someone purges them which is very difficult to do. There are records existing that are very old and it is an issue for the Department. The Department is currently studying the substantiation issue. It has written to other states to see what they are doing, and there are only a few that have a purge requirement with a time frame for unsubstantiated reports.

**Dan Anderson Addictive and Mental Disorders Division, DPHHS**, said that the Mental Health Oversight Advisory Council met and adopted a set of working principles which will be used to evaluate various initiatives and proposals of the Department and other entities. The Council also made a recommendation on the funding for the regional mental health service area authorities, and it adopted a new committee structure. The Council has been working with the Division on the service area authority initiative, and it decided to have one committee that deals with adult service issues, one that deals with children's services issues, and a third that is solely responsible for working with the Division on the service area authority project. The Council has also formed a legislative task force to bring forward ideas that people have for legislation.

Rep. Schmidt asked about cost shifting. Mr. Anderson said that as part of the overall Medicaid cuts in DPHHS, some of the cuts were in the mental health program. Any time provider rates are cut or anytime services are made less accessible to consumers, there is the opportunity and probability of cost shifting to other programs. The biggest fear is in the Department's decision to limit the number of youth for whom the Department will pay room and board in foster care and group care settings. There has been some discussion that if the Department will not pay room

and board for some children, their parents will try to give up custody of their children. The Department has provided a rich array of outpatient services which allows a child to stay in his or her own home and receive services. Room and board costs have tripled since July of 1999, and it a cost increase that the Division cannot continue to bear.

Sen. Franklin asked for clarification on the authorization of 24 outpatient therapy sessions. Mr. Anderson said that the first 24 sessions are free, and after that, all sessions need to be preauthorized. If a person needs additional services beyond the 24 session, the Division's utilization contractor will authorize them. He felt that there would be a minimal impact on seriously mentally ill adults and children. The Division is trying to encourage or force providers to provide a shorter series of therapy sessions for individuals who are not seriously mentally ill.

Sen. Franklin asked what was meant by "a rich array of outpatient services for children". Mr. Anderson said that the Department created a service called comprehensive school and community treatment which is an in-school intensive service where two, full time mental health workers work with only 12 children. The Department also took the concept of therapeutic foster care and allowed the service to be provided in the child's home and case management services for the Medicaid population has been expanded in addition to the whole list of therapies, the different mental health professionals, day treatment, and partial hospitalization. The frustration is that the Department developed these new categories of outpatient services, and it has seen a dramatic rise in the cost of those services. The anticipation was that the costs would be offset by a decrease in the out-of-home types of services. However, it has not happened. The Division is reviewing its budget to decide whether it wants to cut outpatient services or does it want to make changes in the higher-end services. This is what was done with regard to the room and board issue. Sen. Franklin requested an update on what the cost shifting might look like and who it may affect.

**Bonnie Adee, Mental Health Ombudsman**, provided an update on the contacts and issues brought to her attention, particularly the area of the room-and-board emergency rule. (EXHIBIT #20)

Sen. Franklin asked if Ms. Adee had heard anything about the 24 visits to mental health facilities. Ms. Adee said that she has heard some comments, but it has not been in the numbers as other issues. It was her perception that some of it was misunderstanding and misinformation. She has not heard about anyone being denied the continued authorization for visits.

**Jani McCall, Montana Children's Initiative**, provided a summary of the status of the KIDS Project and the efforts of the Montana Children's Initiative (EXHIBIT #21)

Rep. Schmidt asked if the sunset on SB 454 needed extending. Ms. McCall said that the Mental Health Oversight Advisory Council legislative committee has included SB 454 as one of the bills that should be extended.

Ms. Fox said that at its last meeting, the HJR 1 Subcommittee developed a list of proposals and the Subcommittee's areas of interest. Staff is developing the lists and trying to figure out how best for the Subcommittee to consider them. Some further research is needed on some of the proposals. Staff would like to propose a joint day where the HJR 1 Subcommittee and the

Children and Families Committee could meet to hear all of the mental health legislative proposals.

Sen. Pease said that there is a lot of possible legislation coming up regarding the mental health issue.

### **CONFIRMATION OF NEXT MEETING DATES AND FUTURE AGENDA ITEMS**

The Committee agreed to move the May 3 meeting to May 14 and 15, 2002, in order to review the mental health legislation. Ms. Fox said that by moving the meeting, it will also dovetail well with any budget or legislative proposals that the DPHHS may have. She suggest that the Committee identify specific issues that it wants to know if they are included in the Department's budget packet or legislative proposals. She also requested authorization for staff to work with Lois Steinbeck on how this proposal will work. The Committee approved staff coordination. The meeting date of August 23, 2002, will be tentative.

Sen. Grimes requested a further exploration of the Department's budget cut dilemmas and how they apply to the tribes.

Sen. Pease said that according to Pat Gervais's testimony, the Department could have gone elsewhere to make the cuts. In order to be on FAIM IIR, a person has to be 150% below poverty level. It is not just the tribes who are being affected by these cuts.

Sen. Grimes asked given Mr. Hudson's testimony, would there be an accounting way to shift less from tribes and proportionately take more from the other programs. Mr. Chappius said that if the Department cut into the FAIM IIR contracts, it had to cut them proportionately. What Ms. Gervais was alluding to was that the Department could take from other programs, such as child care, but wherever the Department takes from, somebody is going to get hurt. Other options may exist to do something but the decision was made to not do them that way. All of the Department's money is committed to programs. Sen. Grimes said that the Committee's hands were tied unless it wants to redo the appropriations process from the 2001 session which is outside of its realm of responsibility or authority.

Sen. Franklin asked about the amount of the FAIM IIR cuts. Mr. Chappius said that the amount is approximately \$18 million out of \$29 million (approximately two-thirds).

Ms. Caferro said that If the Department was going to take budget cuts from FAIM IIR, it must be done on an equal basis. However, there are TANF transfers from the original TANF budget. WEEL believes that the money was intended for TANF families. This is an area that could be reviewed in the future.

Ms. Fox will work with Ms. Gervais to provide the Committee with more information on the FAIM IIR cuts and TANF transfers.

Sen. Franklin **moved** that a letter be written to the Executive Branch regarding the Committee's concern that the testimony has been compelling that there is a disproportionate amount of FAIM IIR cuts that are resulting in more damage to an already fragile infrastructure in tribal communities and that they will disproportionately affect their ability to deliver services.

Rep. Lawson was unsure whether he had the basis to make the judgment on how negatively the Department cuts were impacting the tribes because of the discrepancies in the amounts given in testimony while Sen. O'Neil wanted to hear the report from Mr. Hudson as to how and where FAIM IIR funds were disbursed to the tribes before the letter was drafted.

Rep. Thomas agreed with Rep. Lawson in that the amounts needed to be rectified and Sen. Grimes felt that the Legislature created its own mess and he wanted to be very careful how the letter to the Governor was structured.

Sen. Franklin said that the Committee could request additional information that includes more detail but she wanted to see the detail go beyond cash flow.

Sen. Grimes said that the Legislature promised the tribes money and gave them a glimmer of hope, but it yanked the funds back before the tribes even had the money. It is embarrassing and the Legislature has egg on its face. It should never have let it happen.

Sen. Pease said that the FAIM IIR cuts hurt all of the communities and the Committee should receive all of the numbers before it makes a decision. The cuts are to be implemented by February 24 and it may be too late to do anything about it. However, there could be possible legislation down the road.

Sen. Franklin withdrew her motion.

Ms. Fox will work with multiple groups to compile the information because the discrepancies may not be discrepancies at all. The Committee may be mixing metaphors. The Committee agreed to allow staff to work with all the parties involved to sort out the information.

Rep. Lawson **moved** that the Committee encourage the Department to engage in a formal mediation process with the plaintiffs (MAP) to develop a proposal that, if implemented, would settle the Travis D. v. Eastmont Human Service litigation and that the proposal be presented to the Committee at its May meeting for review, analysis, and recommendations.

Sen. Grimes said that it is odd that the Committee would be intervening in a lawsuit when it is unsure what was most advantageous to the state. He felt more comfortable leaving it in the legal process. He added that it was also unfair to put Mr. Mathews in a position to negotiate a settlement unless a Judge were to mandate it. In addition, it may be an issue that the Legislative Council should take up as to whether the Committee should be crossing boundaries.

Sen. O'Neil asked what Mr. Mathews thought about the motion. Mr. Mathews said that as a public official and being caught in both places, he has been trying to resolve the issues of the lawsuit for six years and progress has been made. He has never felt that he could negotiate for the Executive Branch or the Legislature. He could negotiate on policy and on what the Division believes is the right thing to do, and it his responsibility to keep communications open with MAP. His concern is that if the Division does nothing, it may not be as responsible as it should to seek a solution.

Ms. Lane said that the fact that Sen. Grimes had talked with the chief litigator of the state holds a lot of weight. It is a little odd for the Committee to give direction to a defendant in a lawsuit. She

also had concerns with the language "engage in formal mediation". Her understanding of formal mediation is that the parties may agree to mediate, but it then becomes binding. The Court would refer it to mediation and take the mediators findings and issue an order which would be the settlement of the case. The Department can settle the case and it could lose the case. The state may find itself in a situation where the federal court is going to impose restrictions or conditions on the state that it will have to live with. Ms. Lane added that if a motion is passed, it must be written in a way that is fairly harmless.

Rep. Lawson withdrew his motion but requested suggestions for a more benign motion.

Rep. Schmidt read the motion made in August 2000--that the Committee recommend that the Department continue to meet with interested parties to resolve the issues surrounding developmental disability placements, that it work to establish a seamless system meaning that it provide an appropriate level of service at the appropriate time in a clients continuum of care, and that it revise or eliminate commitment laws to present to the Legislature. Later the Committee said that it reminded the Department that even though the motion was a recommendation, it was not optional.

Committee members felt that they were crossing boundaries and they did not feel right intervening. However, a motion to direct the parties to continue meeting would be acceptable.

Sen. Grimes said that there is enough time left in interim that if Mr. Mathews thinks that there is a resolution to consider, the Committee could form a subcommittee to pursue legislation.

No further action was taken.

Rep. Thomas said that during the last session, he carried legislation for the Montana Association of the Blind concerning technology that the state was developing. There is a parallel between that legislation and what the Montana Transportation Partnership was suggesting. The bill was written by the Association of the Blind and the General Services Division through their negotiations. He suggested that the same process could work for the Montana Transportation Partnership.

Sen. Grimes said that legislation is good idea to get people together, but the stickler is the funding. People who have the disability-transportation capability are non-profits and non-profits do not have insurance problems. If a motion were made to get the parties together to establish a mechanism to obtain proper funding, Rep. Thomas would be hitting the nail on the head.

Sen. O'Neil asked about legislation to change insurance requirements so that non-profits and for-profits had to have the same insurance for providing the same service. Sen. Grimes said that he would not do that because it is a mandate that would be cost shifted to everybody else who has insurance.

Ms. Fox said that this would also apply to Lifespan Respite in that their statement suggests to seek potential policy changes, rules, and regulations to require transportation coordination. If there are impediments with Medicaid and insurance reimbursements, it is wiser to ask them to bring the issues to the Committee's attention. Both groups have beginnings of proposals. The Committee could ask them to bring their legislative proposals forward in May like the

Department, perhaps they could work with the Department, or the Committee could ask the Department in its EPP process how is it dealing with transportation and respite issues. It puts the onus back on the people that either want a legislative proposal or who are in need of funding through the Department.

Rep. Lawson said that the Montana Transportation Partnership just wanted to inform the Committee of their ideas. If reelected, he has agreed to work with them to prepare legislation.

Ms. Fox said that Sen. Cobb is seeking an economic impact statements on one of the Department's proposed rules. Because of the short time span for comment on the rules, the majority of Committee could request one. Very few economic impact statements have been requested.

Sen. Franklin said that the request has merit, but the Committee does not have the structure to calculate what the impact might be.

Sen. Grimes said that economic impact statements make for great debate because they are based on a lot of assumptions. Although it may further Sen. Cobb's purposes, he was unsure whether it was efficient for the Department at this time.

Sen. O'Neil said that the Department needs to make an tough decision, and he did want to make it impossible for them to make it. He felt that a bad decision in this case was better than no decision at all.

Ms. Fox said that if Sen. Cobb gets 15 legislators to request a impact statement, it will come back to the Committee.

Rep. Lawson asked if the requirements related to an economic impact statement would also relate to a family impact note. Ms. Lane said that both an economic impact statement and a family impact note are located in the same statute and would have the same requirements.

No action was taken on Sen. Cobb's request for an economic impact statement.

Future agenda item are as follows:

- an update from Lonnie Olson on how the CSED investigators are handling the phone calls received by the Division since it rescinded the contract with Maximus Corporation that provides customer service for CSED clients;
- an update on the room and board emergency rule issue for youth and if there is any improvement in eligibility;
- a discussion of the Tribal/New programs;
- a report from Hank Hudson as to how and where FAIM IIR funds are disbursed to the reservations;
- a progress report from Joe Mathews on the Travis D. v. Eastmont Human Services litigation; and
- a discussion from the Department related to the time frame that Medicaid providers use to get their bills in.

There being no further business, the meeting adjourned at 5:20 p.m.

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