MINUTES

MONTANA HOUSE OF REPRESENTATIVES
58th LEGISLATURE - REGULAR SESSION

JOINT APPROPRIATIONS SUBCOMMITTEE ON HEALTH AND HUMAN SERVICES

Call to Order: By **CHAIRMAN EDITH CLARK**, on February 12, 2003 at 8:08 A.M., in Room 102 Capitol.

ROLL CALL

Members Present:
Rep. Edith Clark, Chairman (R)
Sen. John Cobb, Vice Chairman (R)
Rep. Dick Haines (R)
Rep. Joey Jayne (D)
Sen. Bob Keenan (R)
Sen. Emily Stonington (D)

Members Excused: None.

Members Absent: None.

Staff Present: Robert V. Andersen, OBPP
Pat Gervais, Legislative Branch
Lois Steinbeck, Legislative Branch
Chuck Stohl, OBPP
Sydney Taber, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed. The time stamp refers to material below it.

Committee Business Summary:
Hearing & Date Posted: Medicaid Estimates
HB 481
Executive Action: None.

HEARING ON MEDICAID ESTIMATES

{Tape: 1; Side: A; Approx. Time Counter: 3.8 - 18.6}
John Chappuis, Deputy Director of Department of Public Health and Human Services(DPHHS), distributed handouts and reviewed the historical background of Medicaid forecasts and the methods of forecasting used. The two main factors that drive Medicaid costs are growth in eligibles and changes in utilization. He reviewed some of the statistical information on Medicaid-eligibles in various programs: TANF, children and adults, pregnant women and infants, the disabled, the aged and disabled residing in institutions, and those aged 65 and up. January of 2003 showed an all time high in Medicaid-eligibles due to the huge increase in the TANF program.

EXHIBIT(jhh31a01)
EXHIBIT(jhh31a02)

{Tape: 1; Side: A; Approx. Time Counter: 18.6 - 30.6}
Mr. Chappuis reviewed the spreadsheet which shows the change in the Medicaid forecast by decision package. He stated that the news for the Medicaid forecast is not as good as the Department had hoped it would be. Referring to the biennial total on the spreadsheet (Exhibit 3), he said that there is a forecast reduction in the 2004 general fund of $193,675. He reviewed the specific decision package budget revisions as a result of the forecast and stated his belief that the caseload growth will be in line with the estimates. DP 50 in the Health Policy and Services Division(HPSC)primary care and hospitals program reflects a general fund drop to $5,739,059 in FY04. DP 68, Indian Health Services(IHS)has grown from $1.1 million to $4.9 million in federal funds in FY04. This is a significant change although it does not affect the general fund bottom line. In Senior and Long Term Care(SLTC)Division, DP 101, the waiver, reflects a change from $256,456 general fund in FY04 to $257,268. DP 105, the personal care program, shows a reduction from $1 million in general fund down to $669,000. There was also a similar drop from in the nursing home general fund budget of $1.4 million to $1 million in DP 106.

EXHIBIT(jhh31a03)

Mr. Chappuis reviewed the 2005 forecast (Exhibit 3) and said that things are not as good as they had hoped since this is where the long-term trends come back in. There is a higher rate of growth in 2005 because they have experienced a higher rate of growth over the last two years. DP 50 went from $10,231,918 to $11,446,788; primary care and hospitals has been one of the high-growth areas, which is reflected in these numbers. IHS has experienced similar growth in 2005 going from $1.7 million to $6.6 million in federal funds. DP 101 shows a general fund increase from $257,000 to $352,000. DP 105 shows a reduction in personal care from $2 million to $1.2 million. DP 106 goes up from $1,573,016 to $12,657,488 in general fund.

Reviewing the changes in the Addictive and Mental Disorders(AMDD) decision package DP 143, Mr. Chappuis said that in 2004, the general fund in DP 143 went from $3,350,000 to $3,300,000. In 2005, there is an increase from $5,994,000 to $6,102,000. This is not the program amount, but is the caseload change. He reiterated that the net change in general fund is $193,000. He added that if the subcommittee continues past transmittal that it is his hope that the Department will be able to report better numbers since the more data they receive, the more accurate they will be in their forecast.

{Tape: 1; Side: A; Approx. Time Counter: 30.6 - 35.9}
Responding to a question from **SEN. COBB** as to his confidence in the numbers, **Mr. Chappuis** said that Mike Billings has 90 percent confidence in the projections. He added that the models on which they base their projections vary, but they are constantly looking for trends.

{Tape: 1; Side: A; Approx. Time Counter: 35.9 - 42}
Referring to the last page of Exhibit 2 and the fact that the overall trend is down, **SEN. KEENAN** asked what institutions other than the nursing homes it refers to. **Mr. Chappuis** replied that it refers to Eastmont, Montana Developmental Center, Montana State Hospital, the veterans' homes, and the nursing care facility in Lewistown. He added that there has been a downturn in the nursing home industry which is driving that trend.

{Tape: 1; Side: A; Approx. Time Counter: 42 - 47.1}
Responding to questions from **SEN. COBB**, **Mr. Chappuis** said that the Office of Budget and Program Planning(OBPP)had already seen the figures. There was a difference between the forecast made by Mr. Billings and the one that he and Dan McBride had made for hospitals. **SEN. COBB** commented that the numbers may change when individuals who have been impacted by the stock market downturns can no longer afford to pay for nursing home care and will become eligible for Medicaid.

{Tape: 1; Side: A; Approx. Time Counter: 47.8 - 50.2}
{Tape: 1; Side: B; Approx. Time Counter: 0.9 - 2.8}
Mr. Chappuis responded to questions from **SEN. COBB** about the dental program and the increase in IHS estimates.

{Tape: 1; Side: B; Approx. Time Counter: 2.8 - 4.9}
Lois Steinbeck, Legislative Fiscal Division(LFD), reviewed some of the options at the federal level for changing Medicaid, one recurring option is an enhancement in the Medicaid match rate. There is a federal proposal to temporarily increase the federal matching percentage. There were strings attached to this proposal which would not allow states to cut optional services or eligibility. If the triggers are imposed retroactively, many of the mental health eligibility and service changes would need to be undone.

{Tape: 1; Side: B; Approx. Time Counter: 4.9 - 6.9}
Gail Gray, Director of the Department of Public Health and Human Services(DPHHS), reported that when she was recently in Washington, she went to the congressional delegation to discuss the Medicaid changes. She said that they were unable to articulate their concerns because no one knows what is in the law. The initial concern with the change is that they would end up with two block grants, one is mandatory, and the other is for optional services. As more people came into the programs, the Department would not receive more money. There is great confusion at the federal level as well as within the Department as to what the changes will be and how they will impact state programs.

{Tape: 1; Side: B; Approx. Time Counter: 6.9 - 10.1}
Mr. Chappuis said that Tommy Thompson alluded to an increase in the federal medical assistance percentages(FMAP). However, anything they have received in writing says that it is first done as a block grant and then as an FMAP change. He said that the $10 million in funding that is in the block grant has the percentage, but they will not pay the state under an FMAP format as they have in the past. They will use a block grant format similar to CHIP, cap it, and tell them to do what they need to do. Everything is quite sketchy, now. Senator Baucus's staff said that there is no increase in the mandatory. There is a great deal of disagreement and confusion over what this all means. There is nothing in writing about this, no bill, no analysis of a bill, so that they can tell what is happening. **Mr. Chappuis** said that they will have a conference call with Senator Baucus's office in order to find out more about what is going on. He concluded that based on what he has heard so far, he does not know if it will be a good or a bad deal for the State.

{Tape: 1; Side: B; Approx. Time Counter: 10.1 - 13.7}
Ms. Steinbeck commented that her own reading indicates that states may have a choice. She said that some of the material she has read says that if a state opts in to the additional funds they would have to go the block grant route. She reviewed the

mandatory and optional services under the present program. She added that some of what she has seen in writing indicates that the base year for the block grant would be the year that Montana was cutting back programs and staying within the budget. It would not include the expansions in Developmental Disabilities(DD), the hospital bill, the nursing home bed tax, and increased rates. The rate increases would be funded out of the block grant, and there would also be a maintenance of effort(MOE) which would be subject to inflationary increases on the state's part. The Subcommittee may wish to weigh the pros and cons of the block grant. It may not be a choice which they would wish to delegate to the executive branch.

{Tape: 1; Side: B; Approx. Time Counter: 13.7 - 20.1}
SEN. STONINGTON asked what the time frame would be if there were going to be a choice between the block grant and continued entitlement. **Mr. Chappuis** said that he does not believe that the bill will have passed or there will have been suitable analysis or discussion on the federal proposal by the time the legislature leaves. **Director Gray** suggested contingency language to give direction to the Department should the federal legislation pass since they do not know what is in the bill.

Ms. Steinbeck reviewed her concerns about the Subcommittee delegating authority to the executive branch on such a major policy decision.

{Tape: 1; Side: B; Approx. Time Counter: 20.1 - 44.4}
Mr. Chappuis responded that the federal proposal is supposed to go in place by October of 2004; however, DPHHS is requesting that it be allowed to do a redesign study of Medicaid which would take two years, and they would want to include the federal changes in their redesign. They do not want the decision to have to be made until they have been able to return to the legislature with their redesign plan for approval. He said that he had told Senator Baucus's people that the Department would like them to not make it mandatory to move to the federal change because it wants a chance to get legislative approval on their redesign. A fundamental change of half a billion dollars seems inappropriate to make without legislative involvement.

Ms. Steinbeck reiterated that if the Subcommittee does not express its wishes, the person who will ultimately make the decision will be the Governor. She said that numerous decisions have been made for the Subcommittee in the Executive Budget which have been laid out as choices, but are not, and gave several examples of this. She added that the federal government has implemented major initiatives and has required states to comply before federal rules and regulations have been written and gave examples of this.

There was continued discussion of the issue.

HEARING ON HB 481

Opening Statement by Sponsor:

{Tape: 2; Side: A; Approx. Time Counter: 0.3 - 4}
REP. DAVE LEWIS, House District 55, Helena, presented his bill to impose a utilization fee on hospital facilities for acute inpatient bed days. The bill would authorize the Department of Revenue(DOR) to collect and deposit fees in a state special revenue account for funding increases in Medicaid payments to hospitals; providing for assessment, collection, and adjustment of the fee; providing an appropriation; and providing an effective date, an applicability date, a termination date, and a contingent voidness provision.

EXHIBIT(jhh31a04)
EXHIBIT(jhh31a05)

Proponents' Testimony:

{Tape: 2; Side: A; Approx. Time Counter: 4 - 9.4}
Tom Beck, Chief Policy Officer, said that general fund cuts had to be made to the budget, and this bill will backfill money to the hospitals. It assesses a fee on hospitals which will be put into a fund used to match Medicaid and federal funds. The money will protect private insurance companies and puts the money back in to pay hospitals. The Governor is on board with this. He asked that they give this bill favorable consideration and approve the Governor's amendment to ensure that the tax is not added to the patient's bill.

EXHIBIT(jhh31a06)

{Tape: 2; Side: A; Approx. Time Counter: 9.4 - 20}
Bob Olsen, Montana Hospital Association(MHA), presented his written comments and expressed his appreciation to the Department, Hospital members, and the Governor's office for the work they had done on this bill. He reviewed the information in his written statement and the bill. There is contingent voidness language in the bill, so that if it does not pass federal muster, it will go away. A sunset clause ensures that the bill will be reviewed in the next session. MHA supports this legislation.

EXHIBIT(jhh31a07)

{Tape: 2; Side: A; Approx. Time Counter: 20 - 26.5}
Mike Foster, representing St. Vincent Healthcare in Billings, St. James Healthcare in Butte, and Holy Rosary Healthcare in Miles City, said that all three support HB 481. They have taken a cautious approach since they will be taxing themselves and trusting the government is inherently risky. He said that if the revenues are not distributed back to the hospital, their support for the bill will evaporate. He expressed concerns over the Shodair amendment because the bill is the work of many months and delay is not good considering the situation. He asked that they look hard at any amendments, support the bill, and protect its integrity as it goes through the legislative process.

{Tape: 2; Side: A; Approx. Time Counter: 26.5 - 31.2}
F. Douglas Carr, Medical Director of Clinical Operations at Billings Deaconess Clinic, read his statement in support of HB 481. The hospitals have taken significant Medicaid cuts and this plan will keep the provider tax within the hospital system. He is confident that the bill is part of the solution to provide integrity in the safety net. Billings Deaconess Clinic supports HB 481, and the tax will not be used as a line item in their patient billing.

EXHIBIT(jhh31a08)

{Tape: 2; Side: A; Approx. Time Counter: 31.2 - 37}
Chuck Hunter, representing the Department of Public Health and Human Services, supported HB 481. He stated that the Department has been working on the proposal for some time, and the bill reflects the good working relationship that they have had with the hospitals. They have made a good bill which will help both sides of the Montana Medicaid equation. The bill will provide funding for the hospitals and will allow Medicaid clients to have access to good quality medical services. He reviewed two amendments requested by the Department and okayed by MHA. The first amendment will allow them to take the administrative costs from the proceeds of the tax. The second amendment deals with appropriation of the funds to make the payments to hospitals. He encouraged their support of the bill.

EXHIBIT(jhh31a09)

{Tape: 2; Side: A; Approx. Time Counter: 37 - 49.5}
Mona Jamison, representing Shodair Hospital in Helena, testified that Shodair stands in strong support of HB 481. She explained the services provided by Shodair, which is Medicare and Medicaid certified, and the residential treatment facility(RTF),which is Medicaid certified, are included under the bill. She said that the provider tax will tax hospital providers so the State can

leverage the tax dollars with the federal Medicaid that would be returned to the providers and cover Medicaid expenditures that are not now being paid. At present, it costs the facilities to provide Medicaid services, and Shodair wants to be part of this bill. They have researched federal regulations, and they believe that they pass muster under federal law. She presented an amendment which would make it clear that they can be players in this legislation. Shodair would like to work with them on a severability clause which makes it clear that if for any reason it is not acceptable at the federal level, it does not disrupt the intention of the bill. She reviewed the federal statute and definitions. She said that if Shodair were assessed within the bill, it would pay $700,000 which would generate $2.1 million in federal dollars. She said that they want to be included and do not want to risk the bill.

EXHIBIT(jhh31a10)

{Tape: 2; Side: B; Approx. Time Counter: 0.4 - 1.6}
Opponents' Testimony:

None.

Questions from Committee Members and Responses:

{Tape: 2; Side: B; Approx. Time Counter: 1.6 - 5.2}
SEN. COBB asked a technical question on language and **Mr. Olsen** said that the Department as defined in that part of the bill is the Department of Revenue. **SEN. COBB** then asked what MHA thought about the Shodair amendment. **Mr. Olsen** said that as the bill is crafted, Shodair Hospital is included and has been included in the models. Shodair has said that their reading of the statute is that the federal government will require the RTF to also be part of the bill and pay the assessment, which is a new twist. There is no definitive answer to this, yet. If Shodair's RTF is part of this, the question is how the state can pay for those services differently than it does the Yellowstone Treatment Center and Children's Behavioral Center. If the Department can pay Shodair's RTF differently than the other two, then they would have no objection to Shodair's inclusion in the bill and the amendment. If they are not allowed to include the RTF, then he believes that they will propose an amendment which will exclude them from the bill completely.

{Tape: 2; Side: B; Approx. Time Counter: 5.2 - 16.3}
Responding to questions from **SEN. COBB**, **Mr. Olsen** said that the bill is structured so that the assessment is paid to DOR at the end of January, which leaves the state one month to calculate payment amounts. **Mr. Olsen** said that he does not believe that

there will be a problem should there be Medicaid changes. They have not proposed anything that is new nor have they done anything questionable.

Responding to a series of questions from **SEN. STONINGTON, Mr. Olsen** said that they need to find out if the state can pay Shodair's costs on a differential basis. If the answer is that it can not do this, there will be an amendment to exclude psychiatric hospitals from the proposal, which will take Shodair's hospital out of the proposal. They would like to see an amendment drafted that would provide severability should the federal government deny the Shodair proposal. The severability clause is a mechanism that would prevent the bill from falling completely apart should there be unforeseen problems down the road. MHA agreed to the Department's first amendment and suggested that it may be wise to cap it at $30,000. As to the second amendment, he said that it is a good amendment. They also agreed that they would not add the tax to the patient's bill. He said that the proposal is predicated on the belief that the assessment will generate about $7 million into a state special revenue(SSR) account and will return $25 million to them. The purpose of the bill is to reduce the costs that are passed on to patients, while hospitals will end up with their money back. They agreed to the language because they want the public to understand that this is not an effort to impose new costs. If the revenues do not materialize, they will need to reflect the cost of business through their rates.

{Tape: 2; Side: B; Approx. Time Counter: 16.3 - 18.4}
REP. HAINES asked **REP. LEWIS** about the contingent voidness payment of fees and asked him about the likelihood of the federal government approving this or making changes in it. **REP. LEWIS** said the proposal is neither unusual or unique so that there is a high anticipation that there will be trouble with the federal government. He has not had discussion with the federal government.

{Tape: 2; Side: B; Approx. Time Counter: 18.4 - 32.1}
REP. JAYNE asked what section of the code this bill would be under, and **Ms. Steinbeck** said that it would be assigned to the DOR user feed code. Following up, **REP. JAYNE** said that the penalty in interest is under the tax administration section, so it is a tax. She then asked **Mr. Hunter** what the cost to implement the tax to DOR would be and why it was not included in the fiscal note, and he replied that it would be about $5,000 to $10,000. DOR concluded that it was so negligible that it would not need to be included in the fiscal note.

REP. JAYNE then asked **Mr. Olsen** whether the hospitals will get more than the assessment back. **Mr. Olsen** explained again that the dollars the hospitals will pay are the state general fund match required so it would be about $7 million the first year and over $8 million the second year. The payment back to the hospitals would be $25 million and $30 million, so they would end up with a net gain of $18 million the first year and about $22 million the second year. Those gains are the costs that are not paid by the program now. To a question as to whether all of the hospitals had agreed to this, **Mr. Olsen** replied that the 55 hospitals subject to the assessment had all agreed, but some of them will do better through this than others.

REP. JAYNE asked who would resolve penalties, and **Mr. Hunter** said that DOR would be responsible for this activity; it would be included in the $5,000 to $10,000 administrative fees formerly mentioned.

{Tape: 2; Side: B; Approx. Time Counter: 32.1 - 35.5}
SEN. STONINGTON asked the staff to identify whether any decision packages on provider rate reductions are impacted by this bill, **Ms. Steinbeck** said that the Executive Budget includes a 2.02 percent reduction in hospital rates, which would be one-fifth of the amount included annually, so it would fully offset the reduction. The Subcommittee has deferred action on all Medicaid rate reductions included in the Executive Budget.

{Tape: 2; Side: B; Approx. Time Counter: 35.5 - 40.5}
CHAIRMAN CLARK asked if it would require a second bill to address Shodair, and **Ms. Jamison** responded that a separate bill would not work for this. She stated her understanding that the federal government has not approved any additional classes, and it is a matter of what class a hospital is in whether or not it can be included. She urged them not to make a second bill, but rather to ensure that the contingent voidness and severability language are expertly drafted so that the bill would not be jeopardized. She said that references had been made to Yellowstone Treatment Center and the Children's Treatment Center. They are freestanding facilities, not part of a hospital, which is why they are not included in the bill. The issue is whether or not the Shodair RTF is a distinct part of a hospital, and as they interpret it, they are.

<u>Closing by Sponsor</u>:

{Tape: 2; Side: B; Approx. Time Counter: 40.5 - 48.3}
REP. LEWIS closed with his statement that he would like to see Shodair included in the bill, but he does not want its inclusion to jeopardize the bill. This bill would bring in $40 million to

the state and would provide an opportunity to do good things with the state's healthcare and make a difference in the state's healthcare needs.

{Tape: 3; Side: A; Approx. Time Counter: 0.4 - 8}
Ms. Steinbeck distributed and reviewed a list of changes made to hospital reimbursement rates from 1995-2003 and the resultant reductions in the diagnostic related group(DRG)base rate. She gave an example of DRG and the reimbursement rate that hospitals would receive within it.

EXHIBIT(jhh31a11)

In response to a question from **SEN. STONINGTON** with respect to this history and its relationship to the hospitals' anticipated loss of $55 million in the next biennium, **Ms. Steinbeck** said that Medicaid does not pay the cost of care and is way off on billed charges. **Mr. Chappuis** added that based on the 2000 cost reports, they are approaching 95 percent in reimbursed costs. Based on 2002 figures, they are approaching 90 percent of reimbursed costs which would be about $6 million in loss payments. They receive Medicaid reimbursement below cost in both inpatient and outpatient services. He said that the $55 million to which **SEN. STONINGTON** referred may include figures combined from several years, but he was unable to address this.

{Tape: 3; Side: A; Approx. Time Counter: 8 - 17}
SEN. STONINGTON asked **Mr. Olsen** to address this, and he explained the process by which they had determined this amount. The projected costs based on trends and actual payment growth.

ADJOURNMENT

Adjournment: 11:00 A.M.

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REP. EDITH CLARK, Chairman

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SYDNEY TABER, Secretary

EC/ST

EXHIBIT(jhh31aad)