MINUTES

MONTANA HOUSE OF REPRESENTATIVES
59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON HUMAN SERVICES

Call to Order: By **VICE CHAIRMAN TOM FACEY**, on March 9, 2005 at 3:00 P.M., in Room 472 Capitol.

ROLL CALL

Members Present:
Rep. Tom Facey, Vice Chairman (D)
Rep. Don Roberts, Vice Chairman (R)
Rep. Mary Caferro (D)
Rep. Emelie Eaton (D)
Rep. Gordon R. Hendrick (R)
Rep. Teresa K. Henry (D)
Rep. William J. Jones (R)
Rep. Dave McAlpin (D)
Rep. Tom McGillvray (R)
Rep. Mike Milburn (R)
Rep. Art Noonan (D)
Rep. Ron Stoker (R)
Rep. Bill Warden (R)
Rep. Jonathan Windy Boy (D)

Members Excused: Rep. Arlene Becker, Chairman (D)
Rep. Pat Wagman (R)

Members Absent: None.

Staff Present: Susan Fox, Legislative Branch
Mary Gay Wells, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing & Date Posted: SB 42, 3/4/2005
SB 121, 3/4/2005
SB 127, 3/4/2005
SB 150, 3/4/2005
Executive Action:

HEARING ON SB 42

Sponsor: **SEN. BOB KEENAN, SD 5, BIGFORK**

Opening Statement by Sponsor:

SEN. BOB KEENAN opened the hearing on **SB 42** which would clarify the System-Of-Care (SOC) and Service Area Authority (SAA) for children's mental health. He gave some background on the bill. In the 2003 Legislature, two bills were passed that dealt with planning for mental health services. SB 347 created regional planning authorities for mental health and dealt with both adult and children's mental health issues. SB 92 created the concept for a System-Of-Care (SOC) for children's mental health. During the subcommittee, they began to separate the children's mental health system from the adult's with the intent to get away from the stigma of mental illness and include children's mental health with all other physical health issues. Through the process of these two bills, some language in SB 347 put children into the area of adult SAA reporting. There are two groups: the SAA on the adult side of the system and (SOC) planning committees for children's mental health. This bill will eliminate the confusion about who has the responsibility for the children's mental health system. The bill will assure that the SOC Committee and local SOC committees, known as the Kids Management Authorities (KMA), will collaborate with the SAA's.
{Tape: 1; Side: A; Approx. Time Counter: 0 - 4.9}

Proponents' Testimony:

Pete Surdock, Chief, Children's Mental Health Bureau, DPHHS, stood in support of the bill. He concurred with the sponsor's opening statement. The feedback that they have received has been very good. This bill will clear up the confusion about who should steer the ship.
{Tape: 1; Side: A; Approx. Time Counter: 4.9 - 5.4}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. JONATHAN WINDY BOY inquired about maps of the areas of KMA's and SAA's. **REP. KEENAN** had the KMA map. The boundary went through Fort Belknap. **Mr. Surdock** said the reservation would not be split. The reservation would fall into one or the other of the SAA's.

REP. DON ROBERTS asked that because of the high cost for children's mental health, was the Department trying to evaluate how the costs were being distributed between these groups. **REP. KEENAN** related that was an issue in the 2001 Legislature with the high-cost kids. An effort was made to have an multi-agency approach to those kids because they could be in many different systems. SB 42 was born out of that process.

Closing by Sponsor:

The Sponsor closed.
{Tape: 1; Side: A; Approx. Time Counter: 5.4 - 9.3}

HEARING ON SB 121

Sponsor: SEN. BOB KEENAN, SD 5, BIGFORK

Opening Statement by Sponsor:

SEN. BOB KEENAN opened the hearing on **SB 121.** Currently, State statute prohibits the Department of Public Health and Human Services (DPHHS) from billing a resident or a financially responsible person for care provided at the Montana State Hospital under any provision of the criminal statute. This bill would change the statute and would allow the Department to bill forensic patients, meaning criminally-placed patients, for their cost of care. All other civilly-placed patients are billed for the cost of their care based on their ability to pay. The money collected will go to the General Fund and the morale of the staff will be greatly increased by this bill.

Proponents' Testimony:

Ed Amberg, Administrator, Montana State Hospital, Warm Springs, concurred with the sponsor's opening statement. If the civilly-placed patients are eligible for Medicaid, Medicare, or other insurance, they collect first from them. They have fifty-one criminally-placed patients. The hospital pays for all their medical needs and prescriptions and those who have the funds put their own money on color TV's, laptop computers, etc. The other group of patients who have not committed any crimes must pay for their own medical needs and prescriptions. He felt that the situation is unfair to the other patients. He urged a do pass because this is a fairness bill.
{Tape: 1; Side: A; Approx. Time Counter: 9.3 - 14.4}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. ROBERTS asked Mr. Amberg if they would encourage natural or adoptive parents to set up a trust fund, if they can afford to, for their children. On Page 1, Line 23, it states that when a child becomes 18, the natural or adoptive parents are no longer responsible for the cost of care. **Mr. Amberg** thought that would be a good idea. He explained that it is important that when a patient is discharged, they are looking for group home services. The money that is reimbursed comes from public funds and pays for the therapeutic component. The patients have to pay for their own room and board and many times that is a barrier for them. A trust fund would be very helpful for those who face a permanent disability.

REP. ROBERTS felt that a trust fund would be very helpful to them in these types of situations. **Mr. Amberg** agreed and planned to talk to his staff.

REP. WINDY BOY and **Mr. Amberg** discussed the cost to the patients, who would pay, who would not have to pay, and where that money would go. It was stated that the money would go into the general fund.
{Tape: 1; Side: A; Approx. Time Counter: 14.4 - 20}

REP. DAVE MCALPIN questioned that if the inmate had to make restitution for their crime, would that be taken before these costs or after. **Mr. Amberg** said that was usually addressed in the Order of Commitment by the district court and his understanding was that the restitution would be made first.

Closing by Sponsor:

The Sponsor closed. REP. MIKE MILBURN would carry the bill.
{Tape: 1; Side: A; Approx. Time Counter: 20 - 21.8}

HEARING ON SB 127

Sponsor: **SEN. BOB KEENAN, SD 5, BIGFORK**

Opening Statement by Sponsor:

SEN. BOB KEENAN (R), SD 5, opened the hearing on **SB 127.** Statutes from 1983 needed to be updated and in the review, the authority to operate the currently existing home and community-based waivers needed clarification and updating to insure the Department has statutory authority in place to operate these waivers. Three programs are affected by this: 1) the developmental disabilities home and service-based program, 2) the developmental disabilities community support program, and 3) the elderly and physically disabled home and community-services program.
{Tape: 1; Side: A; Approx. Time Counter: 21.8 - 23.5}

Proponents' Testimony:

Kelly Williams, Administrator, Senior and Long Term Division, DPHHS, said that her Division was in support of SB 127. They had looked at the different waiver provisions and felt they needed clarification. Nothing in the proposed revision to the statute will change, in any way, the services which are delivered under those current waivers. This legislation is being requested for housekeeping purposes only. The Legislative Council staff had advised the Department that the authority to operate the currently existing home and community-based waivers which have been in existence since 1983 needed to be updated. The passage of this bill will provide the Department with the authority to pursue and implement other home and community-based waiver options related to populations that are outlined in the bill should funding become available through the appropriations process. This will insure that the Department will have the appropriate statutory authority to support and continue operation of the home and community-based service waivers that currently exist.
{Tape: 1; Side: A; Approx. Time Counter: 23.5 - 26.2}

Opponents' Testimony: None

Informational Testimony:

Bonnie Adee, Mental Health Ombudsman, pointed out on Page 7, Line 9, that the new language adds "emotionally disturbed" which describes children who might be in a new waiver because the accepted term has been "seriously emotionally disturbed" or SED. She wondered if that was an oversight or intentional.

John Chappius, Deputy Director, DPHHS, believed that language was an oversight. SED is what has been used in the past.

Questions from Committee Members and Responses:

VICE CHAIRMAN FACEY stated that the bill would keep the sideboards in place and continue to be the tool in the tool box for the Department. **SEN. KEENAN** agreed.

Closing by Sponsor:

SEN. KEENAN commented on the language which was mentioned. He said that there has always been a concern for children with mental illnesses. In the education field, they are referred to as ED and yet in the mental health field the term SED is used. He did want to fix the language and have SED used consistently.
{Tape: 1; Side: A; Approx. Time Counter: 26.2 - 29.4}

HEARING ON SB 150

Sponsor: SEN. BOB KEENAN, SD 5, BIGFORK

Opening Statement by Sponsor:

SEN. BOB KEENAN opened the hearing on **SB 150**. This bill came out of the Medicaid Redesign Council. It would authorize DPHHS to pursue Federal approval to require recipients of community-based Medicaid services to share in the cost of services based on their ability to pay. This would affect children being served in three different programs in DPHHS. They are: 1) Developmental Disabilities Program, 2) Disability Services Division which includes the new children's area of services, and 3) the Senior and Long Term Care Division.
{Tape: 1; Side: A; Approx. Time Counter: 29.4 - 32}

Proponents' Testimony:

Joe Mathews, Disability Services Division, DPHHS, explained that his Division has been doing Medicaid home and community-based waivers for a long time in Montana. The issue is: "Should DPHHS pursue a waiver from the Federal Government to require some form of cost participation based on ability to pay for families who become eligible for Medicaid by virtue of the waiver of deeming." What the waiver of deeming means is, if kids are in any of the three waivers within the Department, DPHHS doesn't look at the parent's income. Medicaid is designed as a program for the poor; so, if their child is eligible for waiver services, the income is not looked at. DPHHS is looking for legislative direction in whether they should do this or not; and if so, how. He asked, "If people have fairly decent incomes, should they be required to do some kind of cost participation, even if it is minimal, in order to access Medicaid services."

The people who would be affected by this proposal would be: 1) children with developmental disabilities and developmental disabilities home and community-based waivers, 2) children with physical or cognitive disabilities served in the senior and long-term care waivers, and 3) children who would be served under a home and community-based waiver that is being proposed by the Health Resources Division. That waiver has not yet been approved by the Federal Government.

He has been asked if there are many people receiving these services who could afford to pay something. He had some anecdotal information for the developmental disabilities waiver and the senior and long-term care waiver. He said there were not a lot. In the developmental disabilities home- and community-based waiver, they have 300 families. Through a survey, they learned that about 150 of those families are on Medicaid. The other 150 families are above eligibility for Medicaid but they don't know how high they are. If DPHHS does go forward, they would have to write a demonstration waiver to gather some of this information and actually get approval from the Federal Government at the Center for Medicare/Medicaid Services (CMS). They would then work out a plan for cost participation. They do have waiting lists for all the waivers and so if there was cost participation, others might be able to be served.
{Tape: 1; Side: B; Approx. Time Counter: 0 - 6.4}

Opponents' Testimony:

Cris Volinkaty, Children and Families in Developmental Disabilities (DD) Services, Region IV and V; Family Outreach and Child Development Center (CDC), spoke in opposition to SB 150. She told the Committee her background and gave some history on developmental disability services. She spoke about the Katy Beckett Law of 1981 which provided for children's needs exclusive of their parents' income. In Montana, this is extremely important. When a family has a developmentally disabled child, they need help. In 1983, a waiver of deeming was begun which provided in-home supports and assistance for these children. She said that it was not an entitlement; it is a cap system and the most needy are served first. That waiver has grown over the years and has become very cost effective for Montana. The most expensive part of the Medicaid budget is for people with disabilities.

She handed out an informational sheet on Family Education and Support services and explained those services.
EXHIBIT(huh52a01)
{Tape: 1; Side: B; Approx. Time Counter: 6.4 - 18.3}

Jan Cahill, Chief Executive Officer, Quality Life Concepts, concurred with Ms. Volinkaty. He felt that SB 150 was asking for a waiver on a waiver. His concern is that they would become a billing agent. He wants his family support people to do what they have been hired to do. He urged a do not pass.
{Tape: 1; Side: B; Approx. Time Counter: 18.3 - 24}

Informational Testimony: None

Questions from Committee Members and Responses:

REP. JONES spoke on the concept of the services provided to parents of developmentally disabled children. He asked if SB 150 would disrupt a system that is working quite well. **Ms. Volinkaty** replied, "Yes."
{Tape: 1; Side: B; Approx. Time Counter: 24 - 28.1}

REP. MCGILLVRAY asked for clarification on Page 1, Line 16. **Mr. Mathews** said that with the home- and community-based waivers that are used, enrollment is a capped waiver and based on eligibility --meaning a disability. A person would be diagnosed and put on a waiting list. When there is an opening, the one in the most need is usually chosen. They then identify the needs of that person. The state takes general fund money and matches it into Medicaid waiver money. On average, it runs $10,000 to $15,000 to serve a child. Some kids cost more than that and others less.
{Tape: 1; Side: B; Approx. Time Counter: 28.1 - 32}

REP. MCGILLVRAY again asked about the cost to a family. **Mr. Mathews** replied that has not been decided yet. They are waiting for the green light from the Legislature.
{Tape: 2; Side: A; Approx. Time Counter: 0 - 1.5}

REP. ROBERTS said that cost sharing can come in many forms. With a lot of extensive costs for special equipment, etc., he wondered if the Shriners work with these kids. **Mr. Mathews** replied, "Yes." He further explained that it is a private/public partnership. They look for alternative benefits and resources.

REP. ROBERTS asked if these developmentally disabled children have young parents and if so, who serves them. **Mr. Mathews** said that many are young. Montana is divided into regions and there are providers in each region. The providers contract with the state through DPHHS and a team works with the families.

REP. ROBERTS inquired if genetic counseling was provided. **Mr. Mathews** said that generally they are referred to Shodair for that.
{Tape: 2; Side: A; Approx. Time Counter: 1.5 - 4.3}

REP. WARDEN asked for an explanation of a waiver for a waiver. **Mr. Mathews** explained that in Montana, all the home and community-based waivers have a waiver of deeming. That means the parent's income is not looked at or considered. In order to implement something like SB 150, the Department would have to get a waiver from the Federal Government in order to look at the parent's income.

REP. WARDEN inquired if other states were doing this. **Mr. Mathews** replied that it is a fairly new concept. There are two states that he knows about. One is Arkansas and the other is Kansas. Many states are looking at this option because Medicaid is having difficulties.

REP. WARDEN felt that support for SB 150 was lukewarm and wondered how the sponsor felt about the bill. **REP. KEENAN** responded that he was carrying the bill for the Department and he realized that it is an emotional issue. Over time, he had come to believe that sometimes services go to others rather than the "poor and needy." Parents should help with the costs if possible. When a tragic happening comes to the family, they need services and those services are provided by the State. If they have assets, they can contribute: in-kind, cash, etc. There is a waiting list and care is being rationed. He questioned whether the State was using all the available dollars to serve the greatest number of people.
{Tape: 2; Side: A; Approx. Time Counter: 4.3 - 10.7}

REP. NOONAN felt the bill would leave too much to the discretion of DPHHS. He asked if the sponsor had thought about using a percentage to tie the cost to what a child received. **Mr. Mathews** spoke on how Kansas runs their waiver. A fee is charged to the parent to receive their Medicaid card. For those below 200% of the Federal Poverty Level (FPL), there is no fee. For those who are at 201% to 225% of FPL, there is a charge of $10 per month. For those who are at 476% to 500% of FPL, there is a charge of $102 per month.
{Tape: 2; Side: A; Approx. Time Counter: 10.7 - 14.8}

REP. MILBURN inquired where Social Security would come into play. **Mr. Mathews** responded that some kids receive Social Security and are in families that receive Social Security--either Supplemental Security Income (SSI) or Social Security Disability. In the adult world, Social Security is used to pay for part of the services. In the kids' services, Social Security is not looked at.

REP. MILBURN wanted to know how fees would be collected. **Mr. Mathews** thought the fees would be collected by the Department's eligibility technicians in the county offices (Human and Community Services).
{Tape: 2; Side: A; Approx. Time Counter: 14.8 - 17.6}

REP. JONES felt there was too much paper work and administrative work which takes money from the services that should be provided to the children. **Mr. Mathews** shared some of his concerns. The issue is that there are people on waiting lists and they would like to balance things out and serve as many people as possible.
{Tape: 2; Side: A; Approx. Time Counter: 17.6 - 23.3}

REP. MCGILLVRAY saw the bill as an opportunity for those who could afford it, to chip in and help pave the way so those less fortunate could be served. **Mr. Mathews** agreed.

REP. STOKER inquired how many asset tests DPHHS does in the whole organization. **Mr. Chappius** replied those tests are done primarily for Medicaid, and are done in the county offices.

REP. STOKER asked how much the cost is for the 1800 people served as developmentally disabled. **Mr. Mathews** replied that the Department's budget for all developmental disabilities which includes children and adults is about $70 million. They match it into Medicaid whenever they can if the people meet the criteria. The $70 million includes Federal funds.

REP. STOKER asked Ms. Volinkaty if her group, being contracted by the State, does any billing or collections on behalf of their clients. **Ms. Volinkaty** replied that over 97% of the money comes from the contract with the State. **Mr. Cahill** said that 100% comes from the State.
{Tape: 2; Side: A; Approx. Time Counter: 23.3 - 29.7}

REP. WARDEN thought the bill was too vague. He agreed with the concept, but thought the bill needed more work. **SEN. KEENAN** agreed somewhat and added that there is some restructuring being

done on the way the system operates for payment. He hoped that more accountability would be forthcoming.
{Tape: 2; Side: A; Approx. Time Counter: 29.7 - 32}

Mr. Mathews described some of the ways the Department was trying to improve the system. He stated that SB 150 had been at the request of DPHHS and in discussions with his Division, the issue of why DD kids get Medicaid services when mental health kids' parents have to pay came up. He wanted legislative direction on this issue. Medicaid is known as the payer of last resort and sometimes that is not the way it is working with the current system.
{Tape: 2; Side: B; Approx. Time Counter: 0 - 2.5}

REP. HENDRICK asked how much a family might spend themselves on a child who was DD. **Ms. Volinkaty** replied that it would depend on the severity of the disability. Many kids have out-of-state treatment. They have co-pays; they need therapy and lots of surgery. Their medications are very expensive. Even with insurance, they have had several families who are state employees and are pretty desperate. Young families may have daycare. Many daycare facilities won't take DD kids. They tell the parents that they would have to pay for these costs for a normal child.
{Tape: 2; Side: B; Approx. Time Counter: 2.5 - 6}

REP. STOKER asked what process the Department would use to determine asset tests, co-pay considerations and public hearings. **Mr. Mathews** replied the Department would set a series of formal, public meetings with their disability constituents, families, and providers. They would not look at parental assets. They would look at income and develop a very simple system which would be easily understood by everyone. They would then write the waiver which takes approximately six months or longer to get approved. They would submit to Centers for Medicare and Medicaid Services (CMS) and wait for a reply. Rules would then be written.
{Tape: 2; Side: B; Approx. Time Counter: 6 - 8.4}

Closing by Sponsor:

The Sponsor closed.

ADJOURNMENT

Adjournment: 5:30 P.M.

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REP. ARLENE BECKER, Chairman

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MARY GAY WELLS, Secretary

AB/mw

Additional Exhibits:

EXHIBIT(huh52aad0.PDF)