



Children, Families, Health, and Human Services Interim Committee

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61st Montana Legislature

SENATE MEMBERS

RICK LAIBLE--Vice Chair
ROY BROWN
CHRISTINE KAUFMANN
TRUDI SCHMIDT

HOUSE MEMBERS

DIANE SANDS--Chair
MARY CAFERRO
GARY MACLAREN
PENNY MORGAN

COMMITTEE STAFF

SUE O'CONNELL, Research Analyst
LISA JACKSON, Staff Attorney
FONG HOM, Secretary

MINUTES

June 28, 2010

Room 137, Capitol Building
Helena, Montana

Please note: These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities. The minutes are accompanied by an audio recording. For each action listed, the minutes indicate the approximate amount of time in hours, minutes, and seconds that has elapsed since the start of the meeting. This time may be used to locate the activity on the audio recording.

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To view the minutes, locate the meeting date and click on minutes. To hear the audio recording, click on the Real Player icon. Note: You must have Real Player to listen to the audio recording.

COMMITTEE MEMBERS PRESENT

REP. DIANE SANDS, Chair
SEN. RICK LAIBLE, Vice Chair

SEN. ROY BROWN
SEN. CHRISTINE KAUFMANN
SEN. TRUDI SCHMIDT

REP. MARY CAFERRO
REP. GARY MACLAREN
REP. PENNY MORGAN

STAFF PRESENT

SUE O'CONNELL, Research Analyst
LISA JACKSON, Staff Attorney
FONG HOM, Secretary

Visitors

Visitors' list, Attachment #1.

COMMITTEE ACTION

- The minutes of April 27, 2010 were approved as written.
- A subcommittee was formed to draft legislation revising the Medical Marijuana Act.
- The committee will send a letter to the Department of Public Health and Human Services objecting to the rule adoption regarding Medicaid reimbursement rates for physicians.

CALL TO ORDER AND ROLL CALL

00:00:13 Rep. Sands called the meeting to order at 8:34 a.m. The secretary noted the roll. Everyone was present.

00:00:24 The minutes of the April 27, 2010, meeting were approved as submitted.

AGENDA

- **AGENCY OVERSIGHT: DPHHS UPDATE - Anna Whiting Sorrell, Director**

- ▶ **Healthy Montana Kids and Healthy Montana Kids Plus**

00:02:25 Ms. Whiting Sorrell gave a report on the enrollment in Healthy Montana Kids and Healthy Montana Kids Plus (**Exhibit 1**).

Questions

00:06:38 SEN. SCHMIDT asked about the differences in enrollment between the smaller communities and the larger communities. **Ms. Whiting Sorrell** said that it is because of the efforts in the community outreach in major communities.

00:09:29 REP. SANDS said that the urban areas have monthly increases of substantial percentages. If you look at the reservation communities, the percentages are very small. Could Ms. Whiting Sorrell address what is going on with the reservations, is there a dual enrollment with the Indian Health Service. **Ms. Whiting Sorrell** said that the Department has a contract with Indian Health Services to transfer funding for the Medicaid program. The Department is working individually with each tribe to identify what services are on the state Medicaid-covered plan, which services they are providing on a tribal level, and whether the Department can bill for those services.

00:13:13 REP. SANDS asked if the Department also has that kind of contractual relationship with the urban Indian health programs? **Ms. Whiting Sorrell** said that the relationship with the Urban Indian Health Centers is more difficult because most are considered to be federally qualified health centers.

00:17:25 SEN. KAUFMANN asked about the Department's continued distinction between the Healthy Montana Kids and Healthy Montana Kids Plus programs. **Ms. Whiting Sorrell** said that Healthy Montana Kids is one program with two funding sources.

00:21:18 REP. CAFERRO said that as long as the Children's Health Insurance Program (CHIP) is in place, public employees' children have been discriminated against because they didn't qualify for CHIP. With the new health care reform bill, the state has the option to provide CHIP to public employees. What is the state plan

for accessing and utilizing CHIP? **Ms. Whiting Sorrell** said that until additional legislation is passed and signed by the President, the Department cannot extend that benefit.

00:23:08 SEN. LAIBLE asked whether CHIP will eventually become irrelevant under the federal health care bill. **Ms. Whiting Sorrell** said that some decisions will need to be made by 2015 about what happens to CHIP. The impact in Montana will be somewhere down the road; probably the biggest impact will not happen until 2014.

▶ **Budget Report**

00:26:59 Ms. Whiting Sorrell gave an update of the Department's budget.

Questions

00:31:05 REP. MORGAN asked if an increase in federal matching funds for medicaid (FMAP) will increase the budget for the upcoming biennium or if it is include in the final year of our current biennium. **Ms. Whiting Sorrell** said that it is for the final six months of this biennium. It does not impact the next biennium.

▶ **Updates on HB 634, HJR 17, and HJR 25**

00:31:57 Ms. Whiting Sorrell gave updates on HB 634, transportation for people to the Montana State Hospital; Montana State Hospital census numbers; a bill that asked for goals and performance expectations for older Montanans; HJR 17, medical aides; and HJR 25, Medicaid eligibility in nursing homes.

Questions

00:35:49 REP. MORGAN asked if Ms. Whiting Sorrell could give the committee a status report on the implementation of SB 119. **Ms. Whiting Sorrell** said they are in process of implementing SB 119. The fiscal note was limited in the first year of the biennium. It continues to be a priority because it allows people who have a disability to work and keep their Medicaid coverage.

00:41:27 SEN. KAUFMANN asked about the numerous grant opportunities in the federal reform legislation and if the Department is planning to take advantage of those opportunities. **Ms. Whiting Sorrell** said a small work group was formed to look at applying for available grants.

00:47:51 SEN. SCHMIDT asked about work on HJR 25. **Hank Hudson, DPHHS**, said that HJR 25 was brought forth by Rep. Warburton during the session to look at barriers for people obtaining Medicaid eligibility who are in nursing homes. It is a narrow and specific study that was requested by the Legislature and hasn't had much interaction with the balancing and rebalancing of long-term care services.

• **SJR 35 STUDY OF HEALTH CARE: CONTINUING TOPICS**

▶ **Safe Harbor Legislation for Physicians**

- 00:56:39 Ms. Mecklenberg Jackson gave an overview on Safe Harbor legislation in other states (**Exhibit 2**).
- 00:59:51 **Dr. Brett Kronenberger, President, Montana Medical Association**, gave her perspective on the report *Swimming in Murky Waters: Thoughts on "Safe Harbor" Legislation* by Lisa Mecklenberg Jackson. She said that the report relies on guidelines, and seems to sideline the bill by connecting doctor's protection with clinical guidelines.
- 01:04:38 **Bob Olsen, Montana Hospital Association**, said the health care policy at the federal level is trying to shift the incentives away from compensating the providers based on the quantity of care they deliver and moving toward compensation systems that reward the providers for the quality of the services that they deliver. The American Hospital Association has put forward a framework for changing the way that mistakes are dealt with to create an administrative process for compensation but leave in place the ability for the courts to deal with negligence. He said that the Legislature should think about changing adversarial relationships, reducing liability costs, and allowing physicians to practice medicine less defensively.
- 01:10:13 **Al Smith, Montana Trial Lawyers Association**, said there has been no conclusive study about defensive medicine. There has never been a punitive damage award in medical malpractice case in the state, yet that is a fear that drives what is going on here.
- 01:16:47 **Questions**
SEN. LAIBLE asked why Mr. Smith thinks that defensive medicine is a myth and there is no substantial need to change the laws to provide some standard of care to help determine whether negligence has occurred. **Mr. Smith** talked about the work of the Medical Legal Panel where medical malpractice claims are reviewed. He said he is not downplaying that there might be defensive medicine out there but he doesn't think that safe harbor legislation will actually affect that.
- 01:22:00 SEN. LAIBLE asked why there isn't a standard of care so that physicians have a basic guideline for tests and procedures. **Dr. Kronenberger** said that they do have standards of care but physicians also use their experiences to make a diagnosis. **Mr. Olsen** said that there isn't a tome that exists that says this is the standard of care.
- 01:24:36 REP. MACLAREN asked Mr. Smith about non-economic damages. **Mr. Smith** said that there have been awards for non-economic damages.
- 01:25:27 REP. MACLAREN said that the Medical Legal Panel now makes the determination as to whether it was a mistake or whether it was negligence and if it was negligence, then you proceed. In the case of a mistake, are there damages awarded on the basis of that finding? **Mr. Smith** said that the Medical Legal Panel does not determine compensation.
- 01:26:04 SEN. SCHMIDT asked Mr. Olsen whether a demonstration project can be

accomplished. **Mr. Olsen** said that it would be worth pursuing if the parties would like to see something tried.

- **EMERGING ISSUE: MEDICAL MARIJUANA**

- ▶ **Overview of Recommendations from Stakeholders - Sue O'Connell, Research Analyst, Legislative Services Division**

01:28:59 Ms. O'Connell gave an overview of recommendations established by the working group (**Exhibit 3**).

- ▶ **Work Group Perspectives on Stakeholder Recommendations**

01:43:30 **Lewis Smith, Powell County Attorney**, provided written testimony (**Exhibit 4**) to the committee.

01:48:41 **Jason Christ, Montana Caregivers Network**, discussed what his network does and the number of patients he serves. He said he is most concerned about accessibility of medical marijuana from a caregiver.

01:55:57 **Tom Daubert, Patients and Families United**, said that the outcome of the process so far demonstrates what he hoped and predicted at the last meeting: that there is an extraordinary amount of consensus on how to fix this law to fulfill voter intent and to end the various abuses that have alarmed people.

Questions

02:05:43 SEN. SCHMIDT said that she has heard that legislators have been threatened or have received anonymous phone calls accusing them of statements that they have made. The members of the committee are trying to listen to everybody and trying to be fair. She hopes that people will respect this process and also realize that if there is too much animosity going on towards the committee, they could vote to ban it totally.

02:10:29 REP. SANDS asked Mr. Smith about the issue of marijuana still being an illegal substance. **Mr. Smith** said that there needs to be a strong delineation point between when you are within the medical marijuana law and when you are there acting as a drug dealer or a drug user. He discussed how he thinks it should be done.

- ▶ **Public Comment**

02:15:04 **Rep. Ron Stoker**, suggested that caregivers record the location of their growing facility and make that available to law enforcement. He also suggested having a blood analysis expert review how they test and what actionable levels determine whether a person is under the influence or not. He said he is in favor of repealing the law.

02:20:30 **Jim Gingery, Executive Director, Montana Medical Growers Association**,

said that caregivers in his Association are willing to accept appropriate and necessary regulations. The Association has not suggested modeling any regulations in Montana after any other states.

- 02:23:51 **Rick Rosio, Montana Pain Management**, suggested that the committee take the time to understand who is being regulated and what they are regulating.
- 02:26:03 **Tayln Lang, General Manager, Zoo Mountain Natural Care**, said that the goal of the working group was to fix the problems that are present in the law. He urged the committee to look at the recommendations of the work group.
- 02:27:08 **Katrina Farnum, Garden Mother Herbs**, suggested adding insomnia to the list of conditions, adding a 50-state background check, and focusing on compassionate, safe, and responsible access.
- 02:29:58 **Heidi Handford, Montana Connect Magazine**, asked the committee to use her magazine as a resource.
- 02:31:42 **Pam Birchard**, said that a ban on medical marijuana in cities prohibits her from distributing her product to immobile patients who reside within city limits. She supports the efforts of MMGA and other organizations across the state to develop a certification program for caregivers and a means for transparency.
- 02:34:09 **Ed Docter, Montana Medical Growers Association**, supports the regulations that the work group has recommended.
- 02:34:45 **Jim Smith, Lobbyist, Sheriffs and Peace Officers' Association and Montana County Attorneys**, said that putting this program under the Professional and Occupational Licensing Division of the Department of Labor and Industry is an important step to take. He would urge the committee to make some allowance for local flexibility.
- 02:37:39 **Mike Batista, Division of Criminal Investigation, Attorney General's Office**, distributed written comments from Steve Bullock, Montana Attorney General (**Exhibit 5**).
- 02:40:20 **Pam Christianson** questioned what the Montana law was meant to do.
- 02:44:34 **Mike Foster, Catholic Hospitals of Montana**, distributed the Catholic Hospitals' statutory recommendations for the committee to consider (**Exhibit 6**).
- 02:46:28 **Roger Curtiss, Great Falls**, said that he is in favor of patients that need medical care having access to it. He agrees that caregivers and doctors need to be regulated, school zone issues need to be addressed, and wants to make sure that there is a board that will govern the program.
- 02:48:49 **Sherry Brady, Billings**, said that she submitted the petition to have the Medical Marijuana Act repealed because she disagrees with the law and with the ease of

obtaining cards. She also disagrees with the idea of dispensaries. She provided a document from the Medical Marijuana Distribution Centers that lists four areas that need attention.

02:51:11 **Susan Smith, Billings**, would like to repeal the law.

02:53:29 **Rebecca Sturdevant, representing Mothers Against Drunk Driving**, has concerns regarding impaired driving and children using marijuana.

02:54:32 **Kate Cholewa** said that the recommendations sound good but it is good to keep a broader picture in mind to build an infrastructure for success and national competitiveness.

02:56:38 **Rose Habib, Missoula**, requested that the committee take a careful view on potentially limiting the production and distribution of edible forms of marijuana. The future of accurate dosing is in edibles and tinctures.

▶ **Discussion**

02:58:19 REP. SANDS said that it is the job of the committee to bring its recommendations to the Legislature. She would like to create a Subcommittee on Medical Marijuana to present a bill at the August meeting.

▶ **Summary of Proposed Legislative Changes regarding the Act**

03:11:01 REP. SANDS discussed the Summary of Proposed Legislative Changes (**Exhibit 7**).

03:21:10 SEN. LAIBLE discussed his proposal for legislation. He said that there are patients that actually need the medical marijuana and that is the intent of the Medical Marijuana Act.

03:26:07 REP. CAFERRO said if a caregiver has a number of patients and they are making money off of this industry, that does not mean that they are not being compassionate. She agrees with the idea of for a subcommittee on medical marijuana.

03:26:52 SEN. KAUFMANN said that she hopes that a bill would come forward that would create a regulatory board.

03:29:22 The following members volunteered to be on the subcommittee on medical marijuana: Rep. Sands, Rep. MacLaren, Rep. Morgan, and Sen. Schmidt.

LUNCH

04:31:09 The meeting reconvened at 1:05 p.m.

- **ADMINISTRATIVE RULE REVIEW - Lisa Mecklenberg Jackson, Legal Staff**

04:31:33 Ms. Mecklenberg Jackson gave a presentation on administrative rule review **(Exhibit 8)**.

Motion by Rep. Morgan for a letter objecting to the rule adoption regarding Medicaid reimbursement rates for physicians

04:37:39 Rep. Morgan **moved** that staff send a letter objecting to the rule adoption and asking the Department to respond to that objection. The motion **passed**.

- **SJR 35 STUDY OF HEALTH CARE: FEDERAL LEGISLATION**

- ▶ **Health Insurance Exchanges Among the States (Conference Call)**

The Utah Health Exchange - Cheryl Smith and Dan Schuyler

04:42:59 Ms. Smith discussed the Utah Health Exchange **(Exhibit 9)**. Dan Schuyler discussed how the Exchange works.

Massachusetts Health Care Reform - Rosemarie Day

05:08:06 Ms. Day gave a presentation on the Massachusetts health care reform efforts **(Exhibit 10)**.

Federal Health Reform: the Role of the Exchange and Lessons from Massachusetts - Bob Carey, Senior Advisor, Public Consulting Group

05:26:36 Mr. Carey focused on exchanges under the federal health care reform legislation **(Exhibit 11)**.

Questions

05:45:36 SEN. LAIBLE asked Ms. Smith if Utah will be able to keep the system and meld it into the federal program? **Ms. Smith** said that the federal government has given them every indication that states will have flexibility on working with their existing plans.

05:47:12 REP. MACLAREN asked Ms. Smith if pretax dollars were associated with Health Savings Accounts. **Ms. Smith** said that it is actually a cafeteria plan so it meets all the guidelines.

05:47:52 REP. MACLAREN asked how brokers fit in. **Ms. Smith** said that they didn't have the money to do outreach and education that Massachusetts did so they had to utilize brokers.

- ▶ **Montana Issues - State Auditor's Office, Monica Lindeen, Commissioner**

05:51:52 Commissioner Lindeen gave an update on the temporary high-risk pool called the Montana Affordable Care Plan (MAC Plan) **(Exhibit 12)**; the availability of \$51 million in grants dealing with premium rate review; health insurance exchanges; what the State Auditor's Office is doing; and the decisions that need

to be made.

BREAK

06:40:41 REP. SANDS reconvened the meeting at 3:15 p.m.

• **SJR 35 STUDY OF HEALTH CARE: CONTINUING TOPICS**

▶ **Workforce Issues**

Dental Hygienists Limited Access Program - Colleen Grass, Montana Dental Hygienists' Association

06:43:11 Ms. Grass gave a presentation on the Dental Hygienists' Program and the Patient Protection and Affordable Care Act (**Exhibit 13**).

Questions

06:56:46 REP. MORGAN asked if there would be a problem granting dental hygienists power because dentists might think that it devalues their profession. **Ms. Grass** said that the provisions in the act do not give hygienists any more allowable duties than what they already have.

06:59:06 SEN. LAIBLE asked if hygienists have to work out of a dentist's office. **Ms. Green** said that under current law, unless you hold that limited access permit which allows you to work in certain settings, dental hygienists must work in a dentist's office because they are under the general supervision of a dentist at all times.

▶ **Update on Data Collection Request - Sue O'Connell**

07:03:29 Ms. O'Connell gave an update on the data collection request to the Department of Labor for information from their licensees about whether they practice full time or part time, where they practice, and when they plan to retire, so that better workforce planning could be done in the future. The Department of Labor has plans to put a survey online to their licensees. It would not be a required response but would be a starting point for data collection. She said that if the committee was interested in pursuing that, she would pass that information along.

▶ **Child Obesity Legislation - Lisa Mecklenberg Jackson**

07:05:23 Ms. Mecklenberg Jackson talked about body mass index testing (**Exhibit 14**).

07:08:53 Ellen Leahy, Missoula City-County Health Department, talked about LC 8888: creating a pilot project to assist local and tribal public health agencies in monitoring childhood body mass index.

Questions

07:14:20 SEN. LAIBLE asked what causes obesity in children. **Ms. Leahy** said that they do not have a single causation theory but they have some evidence of multiple

causation that includes the lowering of activity levels, the change in types of food, and there is some evidence to support that much of that is environmental.

07:15:48 SEN. LAIBLE asked whether it would be better to develop a plan for addressing obesity rather than measuring something we already know exists. **Ms. Leahy** said they do not agree that there is state aggregate information on BMI in Montana.

07:24:23 The members of the committee discussed postponing any decisions regarding LC 8888 and instead obtaining more information from state agencies.

07:36:00 REP. SANDS asked staff to look at LC 8888 and invite OPI and the Board of Public Education to the next meeting to talk about the issue of obesity in school age children.

▶ **Review of SJR 35 Study activities to date - Sue O'Connell**

07:36:39 Ms. O'Connell reviewed study activities and proposals regarding SJR 35 (**Exhibit 18**).

▶ **Discussion on the make up of the Montana Comprehensive Health Association Board**

07:38:30 The members of the committee discussed the make up of the Montana Comprehensive Health Association (MCHA) Board. Sen. Kaufmann said that insurance companies are making decisions about public dollars and it seemed to her that there should be more public input over the program.

Motion by Sen. Kaufmann to add more public members to MCHA Board

07:47:05 SEN. KAUFMANN **moved** for a bill draft to include two additional public members on the MCHA Board. The motion **failed** on tie vote with Sen. Kaufmann, Rep. Caferro, Sen. Schmidt, and Rep. Sands voting aye and Rep. MacLaren, Rep. Morgan, Sen. Brown, and Sen. Laible voting no.

▶ **Discussion on safe harbor legislation**

07:48:36 SEN. LAIBLE asked if there was anything the committee wanted to do on safe harbor legislation. REP. MACLAREN said that the problem is the use of definitions and didn't feel that there was enough discussion on this. SEN. BROWN doesn't think that there could be consensus for a bill draft. SEN. LAIBLE discussed guidelines or some standards of care and it could become more of a topic when the federal health care reform goes into place.

• **Public Comment**

07:53:46 **Erin MacLean, Montana Medical Association**, said that they support what Dr. Beck has brought forth on the issue of safe harbor legislation.

• **UPDATE ON COMMITTEE-REQUESTED LEGISLATION - Sue O'Connell**

- 08:04:05 Ms. O'Connell discussed the status of bill drafts requested to:
- address issues in commitment laws for people with developmental disabilities;
 - revise physician licensing to address barriers in terms of licensing new doctors after their completion of residency; and
 - revise the formula for House Bill 130 mental health grants.

• **DISCUSSION ON TANF CARDS**

- 08:06:36 REP. MORGAN discussed the subject of California residents using TANF cards as a means of getting cash to use for gambling. She suggested drafting some sort of legislation prohibiting the use of TANF cards for the purposes of obtaining cash. REP. CAFERRO said that would require a change in the computerized system. Currently the cards are used in the same way as debit cards. REP. MORGAN said that she would like to talk to the Department of Public Health and Human Services to see what it would involve. REP. SANDS suggested that the Department address this issue at the next meeting.

• **LEGISLATIVE FINANCE COMMITTEE PROPOSAL ON BUDGET REVIEW**

- 08:10:23 **Amy Carlson, Legislative Fiscal Analyst**, discussed the request for forming a subcommittee made up of four members from the Children and Families Interim Committee and four members from the Legislative Finance Committee for the purpose of reviewing budget issues and ideas for budget reductions. The four members from the CFHHS committee are Sen. Schmidt, Sen. Kaufmann, Rep. MacLaren, and Rep. Caferro.

• **COMMITTEE WORK SESSION**

- 08:17:06 REP. SANDS said that the issue of foster care will be taken up at the next meeting.

• **ADJOURNMENT**

- 08:17:52 With no further business before the committee, Rep. Sands adjourned the meeting at 4:53 p.m. The subcommittee on medical marijuana will meet June 29 in Room 152.

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