



## 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

August 24, 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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### **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 committee approved the outline of the Final Report.
- The committee approved the following proposals as committee bills: LC 0046; LC MM01 as drafted and amended; LC MM02 with certain provisions as discussed; LC MM03; and LC 8888.
- The committee approved as a committee bill the Dental Hygienists' Association's proposal for a school-based sealant program.
- The committee approved a motion to cancel the bill drafting of LC 0092 and LC 0093.
- The committee approved a motion for a letter to the Department of Public Health and Human Services requesting that they address questions regarding their programs.

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

00:00:01 REP. SANDS reconvened the meeting at 8:05 a.m. The secretary took roll visually. Everyone was present.

## **AGENDA**

- **EMS GRANT PROGRAM UPDATE - Jim Lynch, Director, Department of Transportation**

00:02:09 Director Lynch gave a presentation on the Emergency Medical Services grant program authorized as a result of the Committee's Senate Joint Resolution 5 Study during the 2007-08 Interim (**Exhibit 17**).

- **HB 243 REPORT: SERVICES FOR CHILDREN WITH MENTAL HEALTH NEEDS - John Talbot, Open Minds**

00:28:26 Mr. Talbot gave a report on House Bill 243 Study of the Montana Children's System of Care (**Exhibit 18**). He also discussed the Psychiatric Residential Treatment Facility (PRTF) grant that the state had applied for and was awarded.

01:00:30 The committee members asked questions regarding whether or not the state would be able to maintain services in the future to children in need because of the bad economy, if there was a way to combine various funding streams into one source to be distributed to targeted areas in Montana, and what would the impact to rural states be if Medicaid were to be expanded.

01:10:00 SEN. KAUFMANN asked Rep. Hunter, the sponsor of HB 243, to respond to Mr. Talbot's presentation and the concerns of the committee. REP. HUNTER said that the bill called for a report to the Legislature with clear recommendations on whether and how Kids Management Authority should be structured, staffed and funded, and whether THEY should be continued. The report was silent on that.

01:13:09 **Bob Runkel, Administrator, Developmental Services Division, DPHHS, said**

the report helped confirm that some of the basic tenets in the value systems of the state agency are consistent in terms of what is seen by an external party in their review. The PRTF waiver was brought into this discussion in part because it is a natural evolution to the KMA system.

- **HB 173 REPORT: PUBLIC HEALTH PILOT PROJECTS - Jane Smilie, Administrator, Public Health and Safety Division, DPHHS**

01:19:57 Ms. Smilie gave a report on the HB 173 Pilot Projects **(Exhibit 19)**.

01:22:07 **Kate Marone, Cascade City-County Health Department**, gave a presentation on the role of public health in the community.

01:28:04 **Judy LaPan, Richland County Health Department**, gave a presentation on making impacts on public health in Montana and the benefits of accreditation to the public health system.

01:38:26 **Melanie Reynolds, Lewis and Clark County**, discussed the results from the pilot project in each agency.

01:44:32 There was a discussion regarding the lack of participation from the Native Americans tribes and the issue of accreditation program for public health.

01:56:11 **Rep. Gordon Hendrick, District 14**, commented on Sen. Kaufmann's concern over the lack of tribal participation in the public health system. He said that he made sure a provision to that effect was written into HB 173. He said that he hopes the bill will lower insurance rates and lower the burden on the Department of Public Health and Human Services.

#### **BREAK**

02:10:34 The meeting reconvened at 10:16 a.m.

02:11:22 **Peggy Stevens, Public Health Director in Mineral County**, discussed the problems of public health in her county and the purpose of the HB 173 Study.

02:13:43 **Michelle Sare, Granite County**, gave testimony regarding the HB 173 Study.

- **SJR 35 STUDY OF HEALTH CARE: FEDERAL ISSUES - State Insurance Commissioner**

**Monica Lindeen, and Jackie Boyle, Communications Director, Montana State Auditor's Office**

02:16:35 Commissioner Lindeen gave an update on the Montana Affordable Care Plan, the State Auditor's Office legislative package, and grants that the Montana State Auditor's Office had applied for.

▶ **Montana Affordable Care Plan**

02:18:26 Commissioner Lindeen provided an update on enrollment numbers in the Plan, which was created to comply with the high-risk pool requirements of the federal health care legislation.

▶ **Legislative Proposals Update**

02:21:19 Commissioner Lindeen discussed a proposal to authorize the Auditor's Office to review and approve health insurance rates (**Exhibit 20**).

02:23:59 Commissioner Lindeen discussed the proposal to create a state-level health insurance exchange (**Exhibit 21**).

02:26:38 Commissioner Lindeen discussed the proposal to adopt health insurance market reforms as allowed under the federal Patient Protection and Affordable Care Act (PPACA) (**Exhibit 22**).

02:27:35 Commissioner Lindeen discussed the proposal to create a state-level external review process for health insurance (**Exhibit 23**).

02:28:35 Commissioner Lindeen discussed two grants that her office is involved in: a planning grant on implementing the health insurance exchange and the Consumer Assistance/Ombudsman Grant.

**Questions**

02:31:18 SEN. LAIBLE asked about access to insurance being an issue in Montana because we may be discouraging insurance companies from selling insurance in Montana. **Commissioner Lindeen** said insurance companies will have to submit rate information to the State Insurance Commissioner and to the Secretary of Health and Human Services under the new federal law.

02:34:46 SEN. SCHMIDT asked about the possibility of regional groups providing an insurance package to bring in insurance companies into Montana. **Commissioner Lindeen** said that a provision in the federal law has provided for the possibility of regional state and multi-state health insurance exchanges.

- **SJR 35 STUDY: CHILDHOOD HEALTH PROMOTION DISCUSSION**

02:38:51 **Lisa Mecklenberg Jackson, Staff Attorney**, discussed LC 8888 (**Exhibit 24**), providing for the monitoring of childhood body mass index in schools.

02:41:22 **Steve Meloy, Executive Director, Montana Board of Public Education**, discussed the Board's position statement on School Wellness Policies (**Exhibit 25**).

02:50:25 **Katie Bark, Project Director, Montana Teen Nutrition Program and the Montana Nutrition and Physical Activity Program**, discussed the Department of Health and Human Services' School-Based Prevention Strategies for State Policymakers (**Exhibit 26**) and what the Office of Public Instruction has done with state and local partners to strengthen childhood wellness.

03:02:08 **Christine Emerson, Registered Dietician, Director of School Nutrition Programs, Office of Public Instruction**, gave a presentation on school nutrition programs through the Office of Public Instruction (**Exhibit 27**).

- **SJR 35 STUDY: ACCESS TO DENTAL CARE - Mary McCue, Montana Dental Association, and Colleen Grass, Montana Dental Hygienists' Association**

03:24:31 **Mary McCue** discussed access to dental care in Montana, the statewide school sealant program, and a copy of the section in the health care bill that shows the language used regarding school-based sealant programs (**Exhibit 28**).

03:32:31 **Colleen Grass** discussed the Montana Dental Hygienists' Association's proposed legislation for certain dental hygienists to provide school-based sealant programs (**Exhibit 29**).

**Questions**

03:45:00 REP. MORGAN said that it appears that there are two separate issues: one, whether there is a sealant program in schools; and, second, allowing hygienists the ability to provide sealants in schools.

03:46:40 REP. CAFERRO asked if a sealant program were to be provided in the schools, could the need be met by dentists without the aid of the hygienist? **Ms. Grass** said possibly, but that would mean dentists would have leave their offices to go into the schools to do that. Other states have their hygienists providing that service.

## LUNCH

04:43:45 The meeting reconvened at 12:49 p.m.

- **ATTORNEY GENERAL'S PRESCRIPTION DRUG ABUSE ADVISORY COUNCIL - Siri Smillie, Coordinator, Prescription Drug Abuse Awareness Program**

04:45:15 Ms. Smillie gave a presentation on the abuse of prescription drugs in Montana.

### Questions

04:54:35 SEN. LAIBLE asked if there was any way to manage the way prescriptions are issued and is there a mechanism to track prescriptions. **Ms. Smillie** discussed having a prescription drug monitoring program and a prescription drug registry program.

- **EMERGING ISSUE: MEDICAL MARIJUANA**

- ▶ **LCMM02, clarifying employer rights (Exhibit 2)**

05:01:48 Ms. O'Connell discussed the sections of LCMM02.

### Questions

05:03:28 REP. CAFERRO asked for clarification on the section where workers' compensation will not cover anyone on medical marijuana.

**Jon Bennion, Montana Chamber of Commerce**, explained that the section is intended to address instances where a person's use of medical marijuana after the initial injury may lead to a greater disability.

05:06:27 REP. CAFERRO asked if Mr. Bennion is saying that medical marijuana would increase a person's disability. **Mr. Bennion** said that a plaintiff's attorney may try to argue that the use of medical marijuana as a treatment has made someone permanently and totally disabled.

05:08:43 SEN. KAUFMANN asked about Section 2, involving discrimination based on an employee's use of a legal product during nonworking hours. **Mr. Bennion** said they were trying to prevent claims for wrongful discharge and are trying to ensure consistency in the law.

05:10:58 SEN. KAUFMANN asked if Mr. Bennion is concerned about what employees do in their nonworking hours. **Mr. Bennion** said that the employers are concerned about what employees do in their nonworking hours if the effects of the activity

carry over into the working hours.

05:12:20 SEN. KAUFMANN questioned whether the draft language was in the appropriate place in the law.

05:12:57 **Ms. O'Connell** said she took the recommendations from the Chamber of Commerce working group. If the committee approves the concept of this bill draft as a committee bill, the language could be revised as needed.

05:14:01 SEN. LAIBLE asked Mr. Bennion if Section 2(3)(d) would have any effect on someone who, at their home at night, can't sleep because of chronic pain and uses medical marijuana for medical reasons. **Mr. Bennion** said that it didn't. The proposal tries to address situations that affect work place safety and the safety of the public.

05:16:25 REP. CAFERRO asked how employers can prove that somebody has smoked medical marijuana during work hours. **Mr. Bennion** said tests will show certain levels of THC. Currently in law, certain industries are allowed to test for any marijuana use and prohibit hiring and allow termination based on that.

▶ **LC MM03, clarifying that smoking medical marijuana is prohibited for the purposes of the Indoor Clean Air Act**

05:19:40 The committee did not discuss LC MM03.

▶ **Proposed Changes to LC MM01 and new version of LC MM01 Discussion**

05:20:19 Ms. O'Connell distributed and discussed the document "Emerging Issue: Medical Marijuana, Proposed Changes to LC MM01 (**Exhibit 30**) and the new version of LC MM01 (**Exhibit 31**).

• **DISCUSSION OF THE NEW VERSION OF LC MM01**

**Definitions.**

05:31:58 Primary care physician and a specialist

05:33:25 Revisit of a motion for two physicians, one being a specialist and one a general physician

05:35:44 Definition of resident

05:37:40 Performing a relevant physical examination

- 05:43:50      **Section 3. Registry identification cards.**
- 05:45:26      **Section 4. Unlawful conduct by cardholder -- penalties.**
- 05:47:10      **Section 5. Prohibitions on physician affiliation with medical marijuana licensees.**
- 05:48:16      **Section 7. Medical use of marijuana -- limits on amount -- presumption of medical use.**
- 05:53:37      **Section 11. Limitations of Medical Marijuana Act -- penalties.**
- 05:56:03      **Rulemaking -- fees.**
- 05:56:43      **Section 16. Classes of licenses -- disclosure -- confidentiality.**
- 05:58:01      **Section 19. Medical marijuana grower -- eligibility -- confidentiality -- allowable activities.**
- 05:58:25      **Section 23. Denial of license.**
- 05:59:36      **Section 34. Repeal.**  
The committee discussed the repeal of the affirmative defense.
- 06:01:08      **Section 41. Termination.**  
The committee discussed the sunset date of September 30, 2016.

• **PUBLIC COMMENT**

- 06:02:53      **Don Judge, Montana Injured Workers Resource Center**, commented on provisions of LC MM02 that would impact workers' compensation.
- 06:06:53      **Bill Hund, Butte**, commented on the draft proposal that limits the number of patients and dispensaries for medical marijuana users.
- 06:08:51      **Rick Rosio, Montana Pain Management**, commented on issues related to the medical marijuana draft proposals.
- 06:11:04      **Rose Habib** spoke on dosage restrictions, concept of liability, and legislative boundaries.



- 06:13:26 **Jim Gingery, Montana Medical Growers Association**, commented on issues related to medical marijuana.
- 06:15:37 **Tom Daubert, Patients and Caregivers United**, commented on the medical marijuana issues.
- 06:17:52 **David Max, Caregiver**, read his comments and will provide them to staff.
- 06:20:29 **Jon Bennion, Montana Chamber of Commerce**, addressed comments made regarding drug testing for medical marijuana in businesses.
- 06:22:02 **George Brown, Poppa Bear Care**, provided comments on the issue of caregivers working with each other within the system.
- 06:24:31 **Jill Demers, Director of M2C2, River City Family Health, Missoula**, commented on the requirement for two physicians to certify the chronic pain.
- 06:26:08 **Jason Christ, Montana Caregivers Network**, commented on the Constitution, Title 2, part 9.
- 06:28:40 **Erin McGowan Fincham, Association of Montana Public Health Officials**, commented on HB 173.
- 06:30:45 **Robin Phillips** commented on the amount of medical marijuana one can buy.

- **FINAL REPORT**

06:32:57 Ms. O'Connell discussed the outline of the Final Report (**Exhibit 32**).

**Motion by Sen. Kaufmann**

06:35:20 SEN. KAUFMANN **moved** to approve the outline of the Final Report. The motion **passed**.

- **REVIEW AND DECISIONS REGARDING PROPOSED LEGISLATION**

- ▶ **LC 0046, Commitment Laws for People with Developmental Disabilities**

06:36:31 SEN. SCHMIDT **moved** LC 0046 be approved as a committee bill. The motion **passed**.

- 06:36:59 ▶ **LC MM01, revisions and regulatory structure**  
 SEN. LAIBLE **moved** LC MM01 as drafted and amended be approved as a committee bill. The motion **passed** with Rep. Caferro voting no.
- 06:39:31 ▶ **LC MM02, employer and employee provisions**  
 SEN. LAIBLE **moved** LC MM02 be approved as a committee bill with the provision that staff work with the Montana Association of Counties (MACo) and incorporate its requested changes and also with the caveat that the Montana Chamber of Commerce work with staff and other interested parties that employees are not discriminated against and are still eligible for workers' comp benefits. The motion **passed** with Rep. Caferro and Sen. Kaufmann voting no.
- 06:41:26 ▶ **LC MM03, addressing the Clean Indoor Air Act**  
 REP. CAFERRO **moved** LC MM03 be approved as a committee bill. The motion **passed**.
- 06:42:46 ▶ **Dental Hygienists' Association's proposal to allow dental hygienists to provide sealants in public schools within their scope of practice**  
 REP. CAFERRO **moved** the Dental Hygienists' Association's proposal be approved as a committee bill. The motion **passed** with Sen. Brown and Rep. Morgan voting no.
- 06:45:15 ▶ **LC 8888 - child obesity in the school system**  
 SEN. SCHMIDT **moved** LC 8888 be approved as a committee bill. The motion **passed**.
- 06:47:06 **Sponsors of LC MM01, MM02, and MM03**  
 SEN. LAIBLE requested that Rep. Sands be the sponsor for the three medical marijuana bills. REP. SANDS said that she would like to work with Rep. MacLaren on the bills.

- **SUMMARY OF PROPOSED LEGISLATION**

06:50:00 Ms. O'Connell discussed the list of bills that were proposed as legislation **(Exhibit 33)**.

- 06:51:43 ▶ **LC 0092 and LC 0093**  
 SEN. SCHMIDT **moved** to cancel for bill drafting purposes, LC 0092 and LC 0093. The motion **passed**.

- ▶ **LC 0065, clarify HB 130 grant awards**  
06:52:03 SEN. BROWN will sponsor LC 0065 with Sen. Kaufmann as his backup.
- ▶ **LC 0046, revise DD commitment laws**  
06:52:43 SEN. SCHMIDT will sponsor LC 0046 with Sen. Kaufmann as her backup.
- ▶ **LC 8888, childhood body mass index monitoring**  
06:53:03 SEN. KAUFMANN will sponsor LC 8888.
- ▶ **Dental Hygienists' Association's proposed bill**  
06:53:14 REP. CAFERRO will sponsor the Dental Hygienists' Association's proposed bill and Rep. Sands will be the backup.
- ▶ **Bill to amend the administrative rule on physician reimbursement**  
06:53:43 SEN. SCHMIDT will sponsor the bill and Rep. Sands will be the backup.

- **DISCUSSION ON DRAFTING A LETTER TO DPHHS ASKING THE AGENCY TO ADDRESS QUESTIONS REGARDING ITS EXISTING PROGRAMS**

06:53:58 SEN. BROWN said he would like to send a letter to the Director of DPHHS requesting a list of all programs, their mission statements, yearly budget, the number of people served, the number of FTEs, and how successful each program is. The 2011 Legislature would then have a way of prioritizing the programs, rather than cutting programs that may be working.

SEN. KAUFMANN and REP. CAFERRO supported Sen. Brown's idea; SEN. LAIBLE would like the letter to reflect how the information would help legislators make budget decisions regarding the Department's programs. SEN. SCHMIDT suggested asking if an existing program can be done more effectively in a different way.

**Motion by Sen. Brown**

07:07:52 SEN. BROWN **moved** that staff draft a letter to the Department of Public Health and Human Services with six questions: (1) the name of the program and the mission; (2) the yearly budget for that program, both federal and general fund dollars; (3) the number of people served; (4) the number of FTEs working on the program; (5) a statement on the effectiveness of the program; and (6) whether the program be done effectively in another way. This information would then be provided to the Appropriations Committee. Staff would send a draft of the letter to the committee members for review. The motion **passed** unanimously.

- **ADJOURNMENT**

07:17:18 With no further business before the committee, Rep. Sands adjourned the meeting at 3:22 p.m.

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