



## Children, Families, Health, and Human Services Interim Committee

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### 65th Montana Legislature

#### SENATE MEMBERS

MARY CAFERRO  
FREDERICK ( ERIC ) MOORE  
ALBERT OLSZEWSKI  
DIANE SANDS

#### HOUSE MEMBERS

KATHY KELKER  
JON KNOKEY  
DENNIS LENZ  
GORDON PIERSON

#### COMMITTEE STAFF

SUE O'CONNELL, Lead Staff  
ALEXIS SANDRU, Staff Attorney  
FONG HOM, Secretary

# MINUTES LOG

January 19, 2018  
Room 102, Capitol Building  
Helena, Montana

**Please note:** This document is a Minutes Log and provides a notation of the time elapsed between the beginning of the meeting and the time at which the item was presented or discussed, a motion was made, or a vote was taken. The narrative presented here is provided only as a guide to the audio or video record of the meeting. The official discussion, motion, or vote is available on the audio or video archive of this meeting. The Legislature does not prepare a transcript of meeting activities. The time designation may be used to locate the referenced discussion on the audio or video recording of this meeting.

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Please contact the Legislative Services Division at 406-444-3064 for more information.

### COMMITTEE MEMBERS PRESENT

SEN. MARY CAFERRO  
SEN. FREDERICK (ERIC) MOORE  
SEN. ALBERT OLSZEWSKI  
SEN. DIANE SANDS

REP. KATHY KELKER  
REP. JON KNOKEY  
REP. DENNIS LENZ  
REP. GORDON PIERSON

### STAFF PRESENT

SUE O'CONNELL, Lead Staff  
JULIE JOHNSON, Staff Attorney  
FONG HOM, Secretary

## VISITORS' LIST ([Attachment 1](#))

## AGENDA ([Attachment 2](#))

### RECONVENE

00:00:01 Rep. Dennis Lenz reconvened the meeting at 8:02 a.m. The secretary called roll.  
([Attachment 3](#))

### REPORTS FROM COMMITTEE MEMBERS

#### HJR 20 Subcommittee Report - Rep. Kathy Kelker and Sen. Albert Olszewski

00:01:15 Rep. Kathy Kelker

00:09:06 Sen. Albert Olszewski

#### Committee Questions

00:09:56 Rep. Lenz asked Rep. Kelker about the subcommittee considering health care savings accounts as a way to limit costs and using new technology to save money in the health care system.

#### Recent Conferences and Meetings - Committee Members

00:12:25 Sen. Diane Sands commented on a recent series of news stories showing how complicated the abuse of drugs is for any specific population. She commended the Attorney General, Department of Justice, and the Department of Public Health and Human Services for developing strategic plans for how they intend to address the issue.

00:14:48 Sen. Olszewski commented on his participation at the American Legislative Exchange Council in Nashville.

### EMERGING ISSUE: DRUG-EXPOSED CHILDREN

#### Panel Discussion

Wyatt Glade, Custer County Attorney

Leo Gallagher, Lewis and Clark County Attorney

Laura Smith, Deputy Director, Department of Public Health and Human Services

00:18:31 Laura Smith

00:21:41 Wyatt Glade ([Exhibit 1](#))

00:27:39 Leo Gallagher ([Exhibit 2](#))

#### Committee Questions

00:35:00 Sen. Moore said that the Department of Public Health and Human Services is violating state law by not following the requirements of Senate Bill 229 (2017).

00:41:17 Rep. Kelker asked Mr. Glade about his memo regarding the toxicology report going to law enforcement or the county attorney with evidence that a child has been in the presence of methamphetamine and therefore endangered.

00:46:40 Sen. Sands asked Ms. Smith about the Department working with the Substance Abuse and Mental Health Services Administration (SAMHSA) on implementing SB 229.

00:50:15 Sen. Sands asked Ms. Smith about the bureaucratic issue with SAMHSA. She

also asked Mr. Gallagher to comment.

00:51:11 Ms. Smith

00:51:59 Mr. Gallagher

00:53:17 Rep. Knokey asked Ms. Smith if there is a legal and financial issue that is holding up the protection of kids.

00:54:57 Rep. Knokey summarized his observations on the matter and asked Ms. Smith to provide a response to his assessment.

00:58:10 Sen. Caferro asked Ms. Smith to explain why SAMHSA would have jurisdiction over the Child and Family Services Division or DPHHS. She asked Mr. Gallagher to comment on his statement that federal law provides exceptions.

00:58:55 Ms. Smith

01:00:16 Mr. Gallagher

01:02:11 Sen. Caferro asked Mr. Gallagher to talk about the different avenues that law enforcement have when trying to obtain information about possible endangerment to children that is drug related.

01:03:25 Sen. Caferro commented on why the issue with SB 229 is before the Children and Families Interim Committee.

## **HJR 24 STUDY: DD SERVICES FOR ADULTS**

### **Review of Individual Cost Plans and Provider Reimbursement - Sue O'Connell**

01:11:09 Ms. O'Connell gave a brief overview of the HJR 24 Study and the panel discussion. She referred the committee to the briefing papers she provided in advance of the meeting: Individual Cost Plan Overview ([Exhibit 3](#)) and DD Provider Reimbursement ([Exhibit 4](#)).

### **Panel Discussion: Limitations on Use of Individual Cost Plans**

Ken Brown, Opportunity Resources, Inc., Missoula  
Jim Uecker, Residential Support Services, Billings  
Patrick Maddison, Flathead Industries

01:13:07 Ken Brown ([Exhibit 5](#))  
01:36:50 Patrick Maddison ([Exhibit 6](#))  
01:56:06 Jim Uecker

### **Panel Discussion: Workforce Concerns**

Fran Sadowski, Missoula Developmental Services Corp.  
Rob Tallon, REACH Inc., Bozeman  
Brooke Bartholomew, Developmental Educational Assistance Program (DEAP), Miles City

02:11:01 Fran Sadowski ([Exhibit 7](#))  
02:29:21 Rob Tallon ([Exhibit 8](#))  
02:34:40 Brooke Bartholomew ([Exhibit 9](#))

### **Committee Questions of the Panelist**

02:49:26 Rep. Knokey commented about the passage of House Bill 638, to increase direct care worker wages; the attempt to repeal HB 638 because it could not be funded; and the addition of or the rescinding of triggers as a means of saving HB

02:55:51 638. He urged the committee to draft legislation for next session on this issue.  
 02:58:04 Rep. Kelker asked the panelists to address direct care worker wages.  
 02:58:27 Ms. Sandowski  
 02:59:34 Ms. Bartholomew  
 03:00:06 Mr. Tallon  
 03:00:06 Rep. Pierson responded to Rep. Knokey's remarks.  
 03:01:26 Rep. Lenz asked Ms. Bartholomew if she knew why the percentage of Custer County's developmentally disabled population is double that of Missoula County's population.  
 03:02:26 Sen. Caferro asked Ms. Bartholomew about payroll costs.  
 03:03:09 Sen. Caferro asked the panelists about overtime pay.  
 03:03:43 Ms. Sandowski

**Public Comment on the HJR 24 Study**

03:05:11 Jackie Mohler, Family Outreach, Inc. **(Exhibit 10)**  
 03:09:09 Matt Bugni, A.W.A.R.E. Inc.  
 03:10:31 Beth Brenneman, Disability Rights Montana  
 03:14:19 Mike Mahoney, Executive Director, Family Outreach  
 03:19:12 Vickie Lafond-Smith **(Exhibit 11)**  
 03:30:06 Peggy Hollow-Phelps, Helena  
 03:33:52 Pat Noonan, A.W.A.R.E., Inc.  
 03:39:43 Nicole Downs, parent, raised concerns about child protective services. Sen. Caferro asked her to wait until the public comment period on general topics.  
 03:42:03 Eve Franklin, Montana Association of Community Disabilities Services  
 03:47:37 Tom Danielsen, Billings

**AGENCY OVERSIGHT: HEALTHY MONTANA KIDS PLAN**

**Introduction - Sue O'Connell**

03:49:50 Ms. O'Connell **(Exhibit 12)**

**Healthy Montana Kids Plan Update**

State Picture - Marie Matthews, Manager, DPHHS Medicaid and Health Services Branch  
 National Overview - Abbie Gruwell, Policy Director-Human Services, National Conference of State Legislatures *(via phone)*

03:51:51 Marie Matthews  
 03:53:40 Abbie Gruwell

**Committee Questions**

03:57:25 Sen. Sands asked Ms. Matthews about obtaining funds for the continuation of the Healthy Montana Kids program and whether this population could be covered under the Medicaid expansion if federal funding for Healthy Montana Kids is not reauthorized.  
 03:58:44 Sen. Sands asked Ms. Gruwell what other states are doing if their programs are not funded. Will those services be discontinued for that population?

**LUNCH** (reconvened at 1:06 p.m.)

**AGENCY OVERSIGHT: DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES**  
**Committee Objection to MAR Notices**

05:04:08 Ms. O'Connell referred the committee to the following documents: the committee letter to the Department of Public Health and Human Services stating the committee's objection to MAR 37-788, 37-801, 37-802, and 37-805 (**Exhibit 13**); the response from the Department of Public Health and Human Services (**Exhibit 14**); the committee's letter to DPHHS stating that with the Department's changes, the majority of the committee believed the committee's concerns were alleviated (**Exhibit 15**); and the briefing paper "Rules Subject to Objection" (**Exhibit 16**).

**Additional Information related to MAR Notices 37-788, 37-801, 37-802 and 37-805**  
**Rule Objection Discussion - Sheila Hogan, Director, Department of Public Health and Human Services**

05:05:45 Director Hogan

**Committee Questions**

05:07:40 Rep. Kelker asked Director Hogan about the status of the request she had made for a chart with information on who is receiving services and for what programs. She also requested that the information be given to the committee.

05:09:35 Rep. Lenz asked Director Hogan to explain the reductions under 17-7-140, MCA.

05:09:55 Director Hogan referred the committee to the letter dated January 18, 2018, explaining the reductions that the Department will be making as a result of the governor's 17-7-140, MCA, decisions. (**Exhibit 17**)

05:10:49 Sen. Caferro explained why she did not vote to lift the committee's objection. She asked about the transfer of funds from the Montana Developmental Center's budget.

05:13:51 Marie Matthews, DPHHS Medicaid and Health Services Branch

05:15:05 Sen. Caferro asked about the restriction that the MDC money be used only for services to people with developmental disabilities, and the amount of the transfer.

05:15:50 Director Hogan

05:16:19 Rep. Lenz asked if the \$600,000 would have made up that difference between 3.47% to 2.99%?

05:16:42 Ms. Matthews

05:20:20 Sen. Caferro asked about the budget for the Montana Developmental Center.

05:20:48 Ms. Matthews

**Department of Public Health and Human Services' Update**  
**Report on 17-7-140 Budget Reductions - Sheila Hogan, Director**

05:22:30 Director Hogan (**Exhibit 18**)

**Committee Questions**

05:24:00 Rep. Kelker asked about reductions for incontinency supplies and personal care attendants.

05:24:38 Ms. Matthews

05:25:32 Sen. Sands asked Director Hogan if this is a snapshot in time.

05:25:42 Director Hogan

05:25:49 Sen. Sands asked how does this set of cuts relate to the proposed waiver.  
05:26:17 Director Hogan  
05:26:35 Sen. Caferro said that she had requested earlier what item is to be cut, the total budget of that service, the dollar amount of the reduction and the percent, the reason for reducing it, the population impact, and the plan for addressing the impact.  
05:28:40 Director Hogan  
05:30:54 Erica Johnston  
05:32:02 Sen. Caferro asked how the Department prepared for the cuts under 17-1-140 before the session.  
05:33:51 Ms. Johnston

### **Targeted Case Management for Developmentally Disabled Individuals - Director Hogan**

05:34:09 Director Hogan

#### **Committee Questions**

05:34:55 Rep. Knokey asked about targeted case management being identified as a potential cut and the plan for maintaining those services.  
05:35:58 Director Hogan  
05:36:38 Ms. Matthews  
05:40:07 Rep. Knokey asked Ms. Matthews about moving productive and innovative programs from the private sector to the government.  
05:44:21 Rep. Knokey asked Ms. Matthews about the current role of case managers and what that role will look like going forward.  
05:46:35 Rep. Knokey asked Ms. Matthews if the Executive Branch plan complies with the current state Medicaid plan regarding the freedom of choice of a Medicaid provider.  
05:47:40 Rep. Knokey said he is concerned that DPHHS may not have enough employees to adequately provide case management services. He asked how the Department plans to make sure that people receive the services they need.  
05:53:04 Rep. Kelker asked Ms. Matthews about core-required services.  
05:54:30 Rep. Pierson asked Director Hogan if it is more financially efficient to handle these services in house than it is to contract them out.  
05:55:46 Sen. Caferro asked Ms. Matthews to explain the targeted case management cuts and whether the Department has the capacity to mobilize staff to handle the extra workload.  
06:05:41 Sen. Caferro asked Ms. Matthews about the success rate of treating a developmentally disabled person remotely.  
06:06:00 Sen. Caferro asked Ms. Matthews about any conversation that the Department might have had with providers regarding the budget cuts.  
06:08:05 Sen. Caferro asked Ms. Matthews to address the issue of the budget cuts and her understanding that the providers were willing to take the cuts.  
06:09:46 Rep. Pierson asked Ms. Matthews to discuss using outside providers, in addition to in-house providers, who are willing to take the lower state provider rates.  
06:11:00 Ms. Matthews distributed the Montana DDP Regions map with contact information for regional manager by area to the committee. **(Exhibit 19)**

## **Other Topics as Identified by DPHHS and Committee Members**

### **Vocational Rehabilitation**

06:13:49 Director Hogan

### **0208 Developmental Disabilities Waiver**

06:14:49 Ms. Matthew

### **Committee Questions**

06:16:45 Sen. Sands asked Ms. Matthews about the status of the draft waiver to be submitted to the federal government. Sen. Sands said she would like the committee to be involved in the content of the waiver and to review the proposal before it is submitted.

06:18:30 Rep. Kelker said that she has asked the Governor's Office and the Department to consider having a discussion with the providers as the waiver request is being prepared.

### **PUBLIC COMMENT on any non-study topic in the committee's jurisdiction**

06:20:27 Dirk Beccari, Consumer Direct Care Network, Behavioral Health Division

**(Exhibit 20)**

06:23:57 Matt Furlong, Montana Child Protection Alliance **(Exhibit 21)**

06:27:03 Cleve Maloney, Montana Child Protection Alliance, discussed the Office of the Child and Family Ombudsman.

06:30:43 Carrie Jones commented on the proposed budget cut for meal preparation.

06:32:19 Matt Kuntz, Executive Director, NAMI-Montana, commented on targeted case management cuts that supported psychiatrists.

06:34:47 Nicole Edwards, Targeted Case Manager, Helena Industries, commented on targeted case management.

06:38:11 April Hall, Montana Child Protection Alliance and a grandmother, commented on the impacts from children that have died.

06:41:29 Raye Newmeyer discussed her experience with child protective services.

**(Exhibit 22)**

06:43:11 Jeff Driessen, concerned parent, discussed child protective services. **(Exhibit 23)**

06:47:53 Denise Johnson, Montana Child Protection Alliance **(Exhibit 24)**.

06:52:33 Cliff Mosley, Consumer Direct, Great Falls, commented on the impacts from the Department of Public Health and Human Services cuts.

06:55:02 Krissy Sanchez discussed her experience with child protective services.

**(Exhibit 25 is available on file)**

06:58:29 Janessa Hendon, clinical manager, Consumer Direct, Great Falls, commented on the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program.

07:02:32 Barbara Walsh, Chief Executive Officer, Helena Industries, commented on the cuts to case management services.

07:04:00 Jacob Henderson commented on targeted case management services.

07:06:24 Kai Thorsgard encouraged the committee to look at the legal definition of "choice" and encouraged the idea of paying providers more.

07:08:07 Bobbie Wells, Targeted Case Manager, Helena Industries, Bozeman, commented on targeted case management.



- 07:11:33 Syndey Blair, Children and Adult Community Health Behavioral Health Services, commented on the Department of Public Health and Human Services cuts to the budget and to services.
- 07:13:25 Amber Williams discussed her experience with child protective services. **(Exhibit 26 is available on file)**
- 07:17:36 Sterausie Hart discussed her experience with child protective services. **(Exhibit 27 is available on file)**
- 07:21:16 Nicole Downs, Montana Child Protection Alliance, discussed her experience with child protective services. **(Exhibit 28 is available on file)**
- 07:23:31 Cameron McBride supported the testimony of Ms. Downs. **(Exhibit 29 is available on file)**
- 07:25:42 John Walton commented on a case with child protective services.
- 07:28:54 Sandra Dearman, Montana Independent Living Project, commented on the DPHHS cuts to services.
- 07:31:15 Mark Supanich commented on children's deaths.
- 07:32:31 Pamela Young, Co-Executive Director, Lewis and Clark and Broadwater County CASA Program, supported SB 229.
- 07:35:15 Ken Brown, Opportunity Resources, discussed providing case management in rural communities.
- 07:36:27 Beth Brenneman, Disability Rights Montana, commented on the Office of the Child and Family Ombudsman.
- 07:38:49 Rose Hughes, Montana Health Care Association, commented on the DPHHS cuts.
- 07:41:32 Abigail St. Lawrence, Montana Speech Language Hearing Association, thanked the committee for its continued insistence on answers and urged the committee to continue asking questions.
- 07:42:32 Erin McGowan, Association of Montana Public Health Officials, commented on targeted case management for high-risk pregnant women. **(Exhibit 30)** Brooke Bartholomew, Developmental Educational Assistance Program, Miles City, commented on the DPHHS cuts.

## **COMMITTEE WORK SESSION**

### **Motion**

- 07:47:06 Sen. Moore moved to send a letter to the President of the Senate and the Speaker of the House asking the leadership to request a formal attorney general's opinion on whether the requirements imposed by SB 229 regarding sharing of information conflict with federal laws, as stated by DPHHS.

### **Committee Discussion**

- 07:47:47 Discussion revolved around what to put in the letter. The consensus of the committee was to find a resolution to the issue. The committee directed staff that if the situation changes between the Department and SAMHSA, to send a second letter stating that an attorney general opinion was no longer needed.
- 07:50:02 Sen. Caferro said that the letter will need to be amended and her signature taken off because she will vote no.

### **Vote**

- 07:50:41 The motion passed, 7-1, on a voice vote with Sen. Caferro voting no.



### **Committee Direction to Staff on Study and Oversight Activities**

- 07:51:21 Sen. Sands said that the Department will provide more information on the 0208 Waiver.
- 07:51:37 Rep. Kelker said that she had requested that the Department consider having a meeting with providers to look at the draft of the waiver request.
- 07:56:04 Sen. Sands said that the committee needs to be talking with the providers about any potential legislation by the next meeting.
- 07:57:33 Ms. O'Connell asked for more guidance regarding the HJR 24 Study and Medicaid expansion.
- 07:58:14 Ms. O'Connell asked if the committee wanted more time allocated for public comment regarding medical marijuana at the next meeting.
- 07:58:40 Sen. Moore commented on the work of the State Auditor's Office on HJR 17 and said he would be interested in hearing from the office at a future meeting.
- 08:02:48 Sen. Caferro suggested having the Department come in and explain its initiatives related to child protective services.
- 08:03:33 Sen. Moore said he is interested in knowing how child protective services work in other states. He said he would like to tour a group home for people with developmental disabilities and that the committee hold a future meeting offsite.
- 08:11:56 Sen. Caferro asked if the committee would entertain sending a letter to the Department encouraging the agency to rethink its decision of bringing all targeted case management in-house and severing the contracts with the current providers of targeted case management.

### **Motion**

- 08:14:35 Sen. Caferro moved that staff send a letter to the Department of Public Health and Human Services requesting that the department reconsider its decision on targeted case management.

### **Committee Discussion**

- 08:15:10 Rep. Knokey asked Sen. Caferro if the committee has the ability to object. Sen. Caferro said that it is a contract and the committee can't get involved in a contract.
- 08:15:58 Sen. Moore said that this is not a rule objection and will have no significant impact on what the Department can or can't do. He will vote no on this motion.

### **Motion**

- 08:18:01 Sen. Olszewski moved that staff draft a letter to the Department of Public Health and Human Services asking that the Department consider offering the same rate that it would use in-house to extend its workforce in a public/private partnership.

### **Vote**

- 08:19:00 The motion passed, 7-1, on a voice vote with Rep. Kelker voting no.

### **Further discussion on provider rates**

- 08:19:20 Rep. Knokey said he supported Rep. Kelker's request that the Department work closely with the committee in coming up with some legislation ready to go in a bipartisan manner.
- 08:21:05 Rep. Kelker said that the mistake that the Legislature made was trying to fix the

08:24:37 problem by raising the rates only.  
Sen. Caferro said that the committee needs to look at the system and how to change the rate system.

08:25:06 Rep. Lenz said that he would not support a standalone bill on provider rates.

**ADJOURNMENT**

08:27:06 With no further business before the committee, Sen. Caferro adjourned the meeting at 4:29 p.m.

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