

**MINUTES OF THE
SOCIAL SERVICES APPROPRIATIONS SUBCOMMITTEE**

Room 30 House Building, State Capitol Complex
Tuesday, February 7, 2012

MEMBERS PRESENT: Sen. Allen M. Christensen, Co-Chair
Rep. Bill Wright, Co-Chair
Rep. Bradley G. Last, House Vice Chair
Sen. Patricia W. Jones
Sen. Luz Robles
Sen. Todd Weiler
Rep. Jim Bird
Rep. Rebecca Chavez-Houck
Rep. John Dougall
Rep. David Litvack
Rep. Daniel McCay
Rep. Kraig Powell
Rep. Evan Vickers
Rep. Larry B. Wiley

MEMBERS EXCUSED: Sen. Margaret Dayton
Sen. Peter C. Knudson
Sen. Wayne L. Niederhauser
Rep. Ronda Rudd Menlove

STAFF PRESENT: Mr. Russell Frandsen, Fiscal Analyst
Mr. Stephen Jardine, Fiscal Analyst
Mr. Gary Ricks, Fiscal Analyst
Mrs. Diane Pope, Secretary

Note: A copy of related materials and an audio recording of the meeting can be found at www.le.utah.gov
A list of visitors and a copy of handouts are filed with the committee minutes.

Co-Chair Christensen called the meeting to order at 8:24 am.

1. Public Comment on Department of Health Issues

Ms. Nita Smith, a member of the Utah Brain Injury Council, spoke about a non-Medicaid program that is hosted in the Department of Health (DOH), in the Violence and Injury Prevention Program. This program is the Traumatic Brain Injury (TBI) fund, created in 2008. The fund was organized with \$50,000 and used less than two percent of the fund for administration. They served 255 people at a cost of less than \$180 per person. Recently, the Utah Brain Injury Council found through a survey that 14 percent of Utah individuals have a family member with brain injury, 29 percent know someone with brain injury, but 73.4 percent were unaware of any treatment or services available. TBI provides a connection to resources for individuals with brain injury. The Council would like to continue with their work but they need more funding.

3. Department of Workforce Services - Medicaid Fraud Operations

Ms. Kristin Cox, Executive Director, Department of Workforce Services (DWS), with Mr. Greg Paras, Associate Director Performance Review, spoke about the Payment Error Prevention (PEP) Unit. The Unit identifies overpayments, fraudulent activities and establishes a payment schedule for the amount an individual owes back to Medicaid. It has 16 investigators that identify overpayment and 13 benefit analysts that determine how much is owed. Medicaid works differently than Food Stamps, for example, where if an overpayment is determined then money can be taken from a tax return. This offset is not available in Medicaid, so sometimes it is very hard to collect on overpayments. On January 1, 2012, DWS had 1,456 debts on the books worth about \$5.3 million. Some of this debt is being collected at a rate of \$6 a month so it's a slow process. In the last two quarters, they identified 291 cases of inadvertent error and 110 cases that were more fraudulent. If a case is fraudulent and the amount of money owed exceeds \$5,000, the case will be turned over to the OIG's office. If the amount is less than \$5,000, the Unit will set up a payment plan and sanction the individual so they won't be able to receive future benefits. The PEP Unit is always looking for new ways to detect fraud. They are looking into expanding data matching tools with exception reports where trends may be identified. Most of the fraudulent activity does not come from patients but through service providers.

Sen. Robles asked for a couple of examples of inadvertent error.

Mr. Paras explained that sometimes Medicaid recipients aren't aware that an asset has cash value that would make them ineligible. This might include an insurance policy.

Sen. Robles asked if it's an inadvertent error are the recipients sanctioned from program.

Ms. Cox indicated that if it's determined to be an inadvertent error, an individual wouldn't lose benefits but if it's intentional, like withholding information on assets, then they would be sanctioned.

Co-Chair Christensen gave an example of when Medicaid gets billed for a child's care and it is later discovered that the child is covered by an ex-husband's insurance policy is very common.

Mr. Paras said that was a good example.

2. Approval of Minutes

MOTION: Co-Chair Wright moved to approve the minutes from the January 26, 2012 meeting. The motion was approved unanimously with Rep. Dougall absent.

4. Medicaid Office of the Inspector General - Update on Activities

Mr. Lee Wycoff, Inspector General, explained the focus of the Office of the Inspector General's (OIG) office is to remove or minimize waste, abuse and fraud. There is a lot of talk about fraud but it's not as prevalent as waste and abuse. All three are costs that Utah taxpayers shoulder. Through effective governance, waste and abuse can be minimized. Mr. Wycoff's goal is to treat

all the involved entities fairly from the tax payer to the recipient. The use of Recovery Audit Contracts (RAC) and Medicaid Integrity Contracts (MIC) has been set up by the federal government. They can dictate certain criterion because of the federal match component to Medicaid. The OIG uses data mining, nurse investigation, and auditing to identify cases. They have legal and policy components to help establish jurisdiction. There is also a recovery and collections piece. The OIG identifies potential areas of waste or abuse and quantifies the data to put in front of DOH and bring to the Legislature to make more informed decisions. The goal is to make sure the quality and quantity of services rendered is accurate and medically necessary within medical policy and the services were actually rendered. The office is doing a lot of work in overutilization of the emergency room. They have identified 619 recipients that used the ER over ten times last year, of which 74 recipients are already on medical restriction and accrued an additional 2,354 ER visits. The top ten over-users cost \$1.1 million per person last year. The OIG is working hard to shut down pill "shopping" by looking for patterns across ER's.

Co-Chair Christensen told Mr. Wycoff that this issue is of particular interest to him. A lot of roadblocks come from the federal government. He would appreciate receiving the statistics that have been generated.

Mr. Wycoff noted that some of the federal government guidelines stop what would appear to be a common sense approach to minimizing abuse or coaching care.

Co-Chair Christensen mentioned that the federal government is even beginning to recognize they have a problem and is opening the doors a little bit.

Mr. Wycoff continued saying that if an individual has a lot of ER visits, that's indicative of a real problem. OIG is asking if they need in-home care or should be admitted to solve the problem. It's either a care management problem or it's simply abuse.

Sen. Jones asked what were the percentages of waste and abuse. She also asked about the high use abusers and if Mr. Wycoff would say the preponderance of the over-users are drug seeking.

Mr. Wycoff answered that the percentage of waste and abuse is very difficult to quantify because there are so many variables. There are some national statistics. OIG is doing everything to identify fraud, waste and abuse. Utah needs to go after what is realistic, identifying what has happened and Mr. Wycoff believes the numbers will actually go down as waste and abuse are scrutinized.

Sen. Jones wondered if OIG is trying to recover every penny.

Mr. Wycoff answered that they are looking at clearly black and white cases in order to get past some of the legal issues. OIG is looking for access to outside databases to determine if an individual has assets out of state.

Sen. Jones asked if Utah could also look at people that are getting Medicaid for their births and newborn care that might be students.

Mr. Wycoff replied that if they meet the eligibility requirements, they receive services. It's difficult for him to get information coming from tax forms. That would actually help OIG identify second houses by interest paid and income from other states.

Vice Chair Last added that he sees this as a problem with entitlements; while families have all the capabilities to pay, and the students will have successful careers, the young people are eligible at the time. Vice Chair Last asked Mr. Wycoff to explain the relationship with the recovery contractors and where they get direction.

Mr. Wycoff indicated the recovery contract furthest down the path is with Health Management Systems (HMS). Two HMS employees are on-site and work through OIG to identify recoverable amounts at the transaction level. There will be less reliance on the contractors as OIG develops its own robust data mining function. That function is already maturing. The contractor gets to keep 10.9 percent of what they help collect. Ultimately, OIG will be able to do a lot of the work internally at less expense.

Vice Chair Last asked what the process is when a provider problem is identified and what can they do to resolve the problem.

Mr. Wycoff indicated OIG is educating providers proactively and trying to let providers know when they see themes. The first discussion with a provider will be to let the provider know that OIG sees a problem. There will be a chance for OIG and the provider to sit down at the table and look at the facts. When OIG finds an unfortunate situation then it is tied to laws, federal or state and medical policy. The process delays collection but the more it looks like delay tactics then OIG will pull back the money and let the provider follow the appeals process.

Vice Chair Last indicated he has many questions about the conflict involved in this process. He is especially concerned when there has been an established way of doing things, even if it isn't in statute, that the provider will be unduly punished. As a former provider, he has many concerns.

Mr. Wycoff said OIG has an administrative process where the provider can file for a hearing. If they feel they haven't been treated fairly, then they can take their appeal to court. Mr. Wycoff warned that the federal government, through MIC, will "take over" if his office doesn't do its job. The money in the pending lawsuit will be collected by one agency or another.

Mr. David Gessell, Vice President of Government Relations and Legal Affairs, Utah Hospital Association (UHA), wanted to speak to fairness, especially in regards to the pending lawsuit. This is the first time in 18 years that a hospital has sued the State. UHA is upset because the State seems to be changing its story. They feel the providers are being treated unfairly because they have paperwork that shows DOH said it was okay to do things a certain way when they had jurisdiction. They feel the new agency shouldn't have the authority to go back so far in payment history and change the State's position. There are thousands of pages of Medicaid regulations and several of them conflict or are unclear. Mr. Gessell is not disputing that Mr. Wycoff now has authority to collect on future issues, but he feels OIG is overstepping its authority by going back to issues that have already been settled. There is a true legal dispute here that is more complicated than Mr. Wycoff has stated. It can be very intimidating to have the OIG come after you. Utah is the third state to pass an OIG law. This is a work in progress. UHA is working on legislation to protect themselves from the Inspector General having all the power to identify the issue and make the decisions. Mr. Gessell thanked the Subcommittee for being able to represent the other side of the story. He indicated that there is a real interest in working with OIG and DOH on curbing "frequent flyers" in the ER not only because of cost but to keep the ER's open for real emergencies.

Co-Chair Christensen commented that they all realize there are two sides to this issue or it wouldn't have to go to court because it would be so obvious. It will be interesting to see how this works out.

Sen. Weiler asked if OIG was only going back to FY 2009.

Mr. Wycoff indicated that the years being questioned are from mid 2008 into FY 2009. There are federal guidelines and coding guidelines that support OIG's actions. Mr. Gessell makes it sound like OIG is out on a limb and Mr. Wycoff feels this is being misrepresented.

Sen. Weiler said he didn't see anything egregious about going back three years in time.

Mr. Gessell replied that there was no set time limit, OIG could go back ten years. He indicated this issue would be something UHA would like to see settled. Even the federal government has a cut off time of three years on RAC. Mr. Gessell pointed out that DOH and OIG may find themselves in trouble with the federal government because DOH has already taken action. This isn't as cut and dried as Mr. Wycoff is making it look from a legal standpoint. The lawsuit in progress alleges that Mr. Wycoff is going beyond authority given him in statute. The bigger part of the issue is that the statute is wide open to interpretation and it would be very helpful to everyone to clarify the appeals process this session.

Co-Chair Christensen pointed out that the issues have to be settled because Utah can't go without hospitals. He feels Utah needs to be proactive and move forward. The State can't kill the hospitals in the process of trying to get things right. Co-Chair Christensen thanked Mr. Gessell. He commented to Mr. Wycoff that he's been given a tough task.

Mr. Wycoff agreed that OIG should be looking at the long haul. OIG doesn't want to hurt the cash flow for hospitals. The point is, how does Utah work with the hospitals to get appropriate reimbursement for the services they are providing.

Mr. Wycoff thanked the Subcommittee for being able to speak.

MOTION: Rep. Litvack moved to approve the minutes of January 25, 2012. The motion passed with Rep. Dougall absent.

5. Issue Brief: FY 2012 - DOH - Office of Inspector General of Medicaid Services

Mr. Frandsen explained the first four briefs are about legislation passed last year that has fiscal impact. He suggested the Subcommittee look at them in terms of what is happening, how are things going and does the Subcommittee want more information. This brief is about the creation of the OIG for Medicaid services, HB 84. The office is tasked with identifying, preventing and reducing fraud, waste and abuse. The bill called for the creation of an Inspector General that would serve for two-year terms by appointment of the Governor. The office is to provide an annual report to the Legislature which is included in this brief. Note in item #4 that the Inspector General reported opening 20 cases from hotline calls and internet submissions.

6. Issue Brief: FY 2012 - DOH - HB 77 - Medical Assistance Accountability

Four changes were made by HB77 for the Department of Health in answering to the "Performance Audit of Utah Medicaid Provider Cost Control". DOH was directed to report on the status of compliance to the audit, reported on October 19, 2011. DOH was directed to seek out and implement best practices for combating fraud, waste and abuse within Medicaid. The department has established quarterly meetings to discuss potential abuses in pharmacy. The Legislation required DOH to update prices for pharmacy drugs.

Co-Chair Christensen asked if DOH was finding more value in the pharmacy program with these updates.

Mr. Hales answered the he believes the DOH is getting more value. It gives them a more accurate picture of what drug prices are doing in the marketplace. They have a request for proposal out to hire an

independent contractor to provide the updating of pricing information.

Co-Chair Christensen asked if accuracy was the goal.

Mr. Hales indicated that accuracy was the goal.

Mr. Frandsen continued, stating that approximately 50 staff members have been trained in upcoding by Mr. Wycoff and his staff.

7. Issue Brief: FY 2012 - DOH - HB 211 - Community Service Medicaid Pilot

Mr. Frandsen said this is the bill that has a requirement to apply for a federal waiver to allow some individuals be able to do community service in exchange for Medicaid services. The pilot involves beginning with 100 individuals located in Cache and Davis counties on the Primary Care Network Program. These individuals would provide eight hours of service monthly in order to retain services. The pilot is still pending federal approval but is scheduled to start in October 2012.

8. Issue Brief: FY 2012 - DOH - HB 256 - Children's Health Insurance and Medicaid Administrative Simplification

Mr. Frandsen indicated there were two primary changes. First, DOH is seeking approval of an optional simplified enrollment by using tax return data to help in determining eligibility with the consent of an applicant. This would make the application more difficult but will make it easier for the department. The second change involves the vetting out of dental benefits. Medicaid dental services are currently provided on a fee-for-service basis. This bill directs the department to request bids for Medicaid dental benefits to be served via a 100 percent risk-based contract if this can be done cost neutral. DOH is requesting bids at this time.

Rep. Litvack asked about the dental benefit and how many responses DOH has received from providers for the new contracts.

Mr. Hales said DOH had just closed the bidding and there was some initial sorting being done to determine if the responders are qualified to meet the requirements. This information has not been provided yet but Mr. Hales expects to have an answer later this week.

Rep. Litvack indicated that the brief says the department has some flexibility in awarding the contracts and asked what factors were involved.

Mr. Hales clarified that the statute allows DOH to insure that access criteria are met and the cost is less than or equal to what is currently being paid for services.

Rep. Litvack asked if DOH is looking at the impact on current providers.

Mr. Hales said they consider the impact on current providers to be somewhat correlated to access and that is what they will evaluate.

9. Issue Brief: FY 2012 - DOH - Required Reports

Mr. Frandsen indicated that there are 11 reports in statute that are required from the DOH to be provided to this Subcommittee. There are 14 other reports included in this brief for information purposes. On page three, item #2 there is an annual report about the Drug Utilization Review Board. This board reviews the pharmacy policies in Medicaid and sometimes implements prior authorization for specific drugs to try to reach ideal usage of drugs. The policies established by this board have produced a net savings of \$19,276,323. The third statement (item c.) about this report indicates a savings of over \$1.35 million by streamlining drug therapy in order to reduce potential adverse drug reactions, unnecessary, and/or duplicate prescriptions.

10. Issue Brief: FY 2012 - DOH - Nonlapsing Balances

Mr. Frandsen said the purpose of this brief is to inform the Subcommittee of \$13,662,5000 in nonlapsing balances at the end of FY 2011. Most of this money came from intent language that provided nonlapsing authority. He noted the large balance in Medicaid services was temporary due to federal requirements for stimulus funding. The Subcommittee would not likely see a nonlapsing balance for Medicaid in the future.

11. Issue Brief: FY 2012 - DOH - Intent Language Follow-Up from Prior Years

Mr. Frandsen explained the purpose of this brief is to see if DOH complied with past intent language. On page seven, item #25 the Legislature passed intent language that allowed DOH fund the \$485,600 one-time General Fund costs of changing to a capitated dental service program in Medicaid within existing appropriations. It was determined that this would be done in FY 2013 to make sure there were enough funds to cover the change. The analyst has no concerns with non-compliance with intent language. On page nine, #5 the nonlapsing authority for Primary Care Grants Program was cut off in FY 2010 and no funds were carried forward in FY 2011. Mr. Frandsen suggested the Subcommittee might want to make this intent language less specific.

Rep. Bird asked what the term "capitated dental" meant.

Co-Chair Christensen explained that it's a program where the dentist receives a set dollar amount every month for a patient and the dentist provides services whenever needed. Whereas, fee-for-service dental involves paying the dentist a fee for each service rendered.

12. Issue Brief: FY 2012 - DOH - Health Department Fees

Mr. Frandsen indicated there are about 60 pages of fees listed by DOH. The Legislature has the option to approve these fees each year. This year DOH is proposing a one percent increase overall. This is an item for which the Subcommittee will need to take action. From page three on, there are pages of fees based on poverty level, program and item. On page two there is an explanation for some of the changes in fees. The Analyst recommends the Subcommittee approve the proposed fees.

Co-Chair Christensen asked the department if they have any latitude in changing fees. He used the example of a family that couldn't get respite care for the price allowed. The family asked to receive the same reimbursement but have less service.

Dr. Patton answered that DOH must adhere to the fee schedule as approved by this Subcommittee. There isn't a lot of flexibility allowed unless it is built into the fee structure. There are a number of sliding scale fees that are determined by income.

Co-Chair Christensen said there were some cases like the example where the cost was budget neutral.

Mr. Hales explained this fee schedule are fees the DOH charges the public, not what services are covered. DOH can't change fees after the fact. If there is Medicaid funding involved then they have to establish a payment structure for the federal government. The amount DOH can pay for services is also highly structured and must be approved through a public review process. DOH might be able to find some flexibility for a situation similar to what Co-Chair Christensen described. Anything that involves Medicaid funding must be strict in order to receive federal participation.

Co-Chair Christensen indicated that DHS felt they had the authority to deal with exceptions.

Mr. Frandsen clarified DOH fees are set at a ceiling so they could charge less money, just not more.

13. Issue Brief: FY 2012 - DOH - ARRA Funds Approval

Mr. Frandsen indicated the Legislature expressed interest in reviewing the American Reinvestment and Recovery Act (ARRA) funds as a separate item from General Funds. The Analyst approves using the fund increases for FY 2012 of \$27,574,900 and \$75,721,200 for FY 2013. ARRA money is subject to intent language as shown on page one of this brief. Mr. Frandsen noted that at the top of page three the Subcommittee could see that a large share of this money is being used for new Health Information Technology for Medicaid services.

14. Issue Brief: FY 2012 - DOH - Social Services Related Revenue Option

Mr. Frandsen identified two potential revenue sources, with the vast majority of funds being held in the State Endowment Fund, and the Medicaid Restricted Account. The Subcommittee has the option of appropriating up to \$121,000,000 from these sources.

15. Budget Brief: FY 2012 - DOH - Department of Health

Mr. Frandsen introduced the next six budget briefs. They give the Subcommittee an idea of what the base budget is being used for; how things are going, a review of current expenditures and whether changes should be made. The Department of Health base budget is \$2.2 billion for FY 2013. The Analyst recommends reducing the Tobacco Settlement Restricted Account to reflect the \$2.4 million ongoing General Fund provided for this purpose during the 2011 General Session.

16. Budget Brief: FY 2012 - DOH - Executive Director's Operations

Mr. Frandsen indicated the Analyst recommends the Subcommittee approve a base budget for FY 2013 for the Executive Director's Operations of \$12,273,900 with the program allocations and plan of financing according to the table under the Budget Detail. The Analyst also recommends the Subcommittee approve intent language to allow the use of nonlapsing funds up to \$90,000 for computer equipment, software, and employee training. Mr. Frandsen noted that Utah is ranked the seventh healthiest state by America's Health Ranking Report. The Commonwealth Fund State Scorecard ranked Utah 19th for its health care system.

17. Budget Brief: FY 2012 - DOH - Family Health and Preparedness

Mr. Frandsen conveyed the Analyst recommendation of \$119,433,200 base budget for FY 2013. The Division of Family Health and Preparedness assures and improves the quality of the Utah health care system, with an emphasis on care delivered to the most vulnerable populations. The division also directs the regulation and oversight of the health care industry and strives to assure that women, infants, children and their families have access to affordable health care. There are six pieces of intent language proposed

by DOH concerning nonlapsing funds and specifying how the money can be used. The first two are for Emergency Medical Services. The third one asks that civil money penalties collected not lapse. The fourth item concerns the Primary Care Grants Program and the specificity of the use of money which created problems in FY 2011 where no money was lapsed because of the wording. The Subcommittee needs to decide if they want to change that wording. The fifth piece of intent language addresses the fees collected for the purpose of plan reviews. The last proposal concerns unused funds appropriated for the Assistance for People with Bleeding Disorders Program. The Budget Detail is shown on page four. The Analyst recommends approval of the base budget and the adoption of the six items of intent language included in this brief.

18. Budget Brief: FY 2012 - DOH - Disease Control and Prevention

The Analyst's base budget recommendation is \$56,637,000 for Disease Control and Prevention for FY 2013. This budget funds eight programs including: Director's Office, Health Promotion, Epidemiology, Microbiology, Office of the Medical Examiner, Chemical and Environmental Services, Forensic Toxicology and Laboratory Improvement. The mission of the division is to promote health and reduce the leading causes of death, disease, and disability in Utah. The building block requests are listed on page three. The change in the Medical Examiner's jurisdiction requires a statutory change. This building block requests funds for the change. There is a new request for intent language to make funds nonlapsing for alcohol, tobacco, and other drug prevention, reduction, cessation, and control programs. The Analyst recommends approving the intent language with the removal of the last phrase, "or for emergent disease control and prevention needs." There is intent language that allows for purchasing computer equipment, software, laboratory equipment and for facility improvements. The Accountability Detail is located on page four and the Budget Detail on page five.

Rep. Litvack wanted to know the rationale for the new intent language and if the DOH is concerned about the intent language that the Analyst is concerned about.

Dr. Patton indicated that DOH would like to have funds set aside for emergent disease control and prevention needs but understands there might be a conflict with statute. They would be careful not to use the restricted part of the funds. He thanked Mr. Frandsen for putting these briefs together. They are very well done and thorough. DOH has over 25 types of reports to do and they don't have a "report writer." The reports are just added work for individuals within the department. Where they think accountability is a good idea, the department wants the Subcommittee to understand it's a lot of extra work.

Co-Chair Christensen asked Dr. Patton to give him a list of redundant reports so he could see about consolidating some of them with a sunset bill.

19. Budget Brief: FY 2012 - DOH - Local Health Departments

Mr. Frandsen presented the last three briefs. The Analyst's base budget recommendation is \$2,122,400 General Fund FY 2013 for twelve local health departments across the state. Pages two and three show funding sources and allocations.

20. Budget Brief: FY 2012 - DOH - Workforce Financial Assistance

Mr. Frandsen indicated the analyst's base budget recommendation is \$40,000 for Workforce Financial Assistance in FY 2013. The purpose of the combined Health Care Workforce Financial Assistance Program is to increase the number of health care professionals to provide primary care services in medically underserved areas and geriatric professionals. This is done through educational loan repayment grants and scholarships. The Budget Detail can be seen on page two.

21. Issue Brief: FY 2012 - DOH - State Laboratory Drug Testing Account

Mr. Frandsen pointed out that receipts to the General Fund Restricted State Laboratory Drug Testing Account will likely be about \$179,800 or 43 percent lower than anticipated in FY 2012 and FY 2013. The Legislature has a number of options to consider concerning this shortfall.

Rep. Last wanted to point out to the Subcommittee there was a bill sponsored for emergency funds for an outbreak that was not funded. This year DOH spent \$300,000 on a measles outbreak. Rep. Last feels the Subcommittee ought to have emergency funds for this purpose.

Rep. Litvack would like DOH to be able to come back for more discussion on emergency funds.

Co-Chair Christensen thanked the Subcommittee and the audience for their time and efforts.

22. Other Business

None.

23. Items from the Next Day's Agenda

None.

MOTION: Rep. Litvack moved to adjourn. The motion passed with Rep. Dougall and Rep. Powell absent.

Co-Chair Christensen adjourned the meeting at 9:52 am.

Minutes were reported by Mrs. Pope, Senate Secretary

Sen. Allen M. Christensen Co-Chair

Rep. Bill Wright, Co-Chair