

**MINUTES OF THE
SOCIAL SERVICES APPROPRIATIONS SUBCOMMITTEE**

Room 30 House Building, State Capitol Complex

Friday, January 27, 2012

MEMBERS PRESENT: Sen. Allen M. Christensen, Co-Chair
 Rep. Bill Wright, Co-Chair
 Rep. Bradley G. Last, House Vice Chair
 Sen. Margaret Dayton
 Sen. Patricia W. Jones
 Sen. Peter C. Knudson
 Sen. Wayne L. Niederhauser
 Sen. Luz Robles
 Sen. Todd Weiler
 Rep. Jim Bird
 Rep. Rebecca Chavez-Houck
 Rep. John Dougall
 Rep. David Litvack
 Rep. Ronda Rudd Menlove
 Rep. Kraig Powell
 Rep. Evan Vickers
 Rep. Larry B. Wiley

MEMBERS ABSENT: Rep. Daniel McCay

STAFF PRESENT: Mr. Russell Frandsen, Fiscal Analyst
 Mr. Stephen Jardine, 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 Wright called the meeting to order at 8:08 am.

Unfinished Items From the Previous Agenda

A. Building Blocks from the Department of Health

Dr. David Patton, Utah Department of Health (DOH), referred to yesterday's handout and the document requested on the Accountable Care Organizations (ACO). The rate of enrollment for Medicaid has slowly declined. DOH anticipates it will continue declining. Dr. Patton moved on to CHIP, Children's Health Insurance Program. CHIP is mostly funded by the tobacco settlement account, different than the cigarette tax restricted account.

Co-Chair Christensen commented that those funds are decreasing or disappearing.

Dr. Patton said one of the conditions of the lawsuit was that if the rate of tobacco sales declined, the amount of settlement payment could decline as well. There is also some litigation that has tied up the tobacco money in reserve. This has left CHIP with a deficit of \$3.6 million. There was some money carried over from FY 2011, and caseload has decreased in FY 2012, so instead

of needing the whole amount from the General Fund, DOH is asking for \$2.4 million. In FY 2013, the tobacco settlement rate decreases again leaving a shortfall along with projected growth, amounting to \$255,000.

In referring to Medicaid, Dr. Patton indicated the reductions in funding over the last three years have caused a strain but DOH is not asking to recover any of those cuts. The area where the cuts are really hurting DOH is in administration. There has been substantial caseload growth, there have been a number of audits and studies, i.e. whether to privatize the eligibility determination system, and the waiver. DOH is asking for a supplement of \$62,000 for FY 2012, and an ongoing general fund appropriation of \$247,000 in FY 2013, to increase the administration capacity.

Mr. Hales spoke about some more items from the Governor's budget proposal. One item is in reference to the federal healthcare reform bill called the estimated quarterly rebate offset amount. In the past, the government has set a minimum level of pricing discount for states. In many cases, the states have received better pricing. Now the federal government is expanding to recover the difference from the states. The State has been billed \$5.8 million. This figure is the same for FY 2012 and FY 2013 as on ongoing expense.

Rep. Dougall asked Mr. Hales if he was understanding this correctly by stating that Mr. Hales was saying that because Utah is getting a better cost savings than the federal government they are penalizing us for doing a better job than them and making us pay the difference.

Mr. Hales answered that Utah has been doing better than the minimums established by the federal government and they want to take the savings. They are expanding the minimum to take 100 percent of the difference.

Rep. Dougall said the federal government is saying good job, you lose; it sounds like a federal program.

Sen. Jones wanted clarification on the CHIP caseload growth and Medicaid caseload growth. Her understanding is that the largest growth is with low income families and children.

Dr. Patton answered that the CHIP caseload is increasing, just at a slower rate than expected. The same is true for Medicaid, the growth has slowed down. Medicaid will cover the lowest income children and CHIP would cover children in families with a little higher income bracket.

Another item is mandated compliance for projects for Utah's claims payment system. This applies to all insurance companies, payers and providers. These are HIPPA transaction standards. One is called the 5010. In October 2013, the health insurance system will be upgraded for coding from ICD-9 to ICD-10. DOH is making a supplemental request of \$679,000 for FY 2012 and an ongoing funds request for \$500,000 in FY 2013. The expenses are mostly in the development and ongoing licensing fees for software. DOH is also asking for intent language for non-lapsing authority to carry the funds from FY 2012 into FY 2013 as the system is developed.

In reference to The Federal Medical Assistance Percentage, FMAP, the federal government has recalculated what percentage they will match this year based on per capita income. In Utah we are fortunate to have a 70 percent participation rate, however, even a one percent change is significant. Utah has seen a one percent reduction in matching funds. DOH is estimating an additional cost of \$13 million in General Fund and is asking for these funds to keep the system whole.

There was program put in place, based on HB 256, by Rep. Dunnigan, to facilitate the Medicaid dental transition from a fee-for-service program to a managed care program where there are set rates paid to a provider based on number of clients. Currently, the dental program is only available to pregnant women and children. DOH has put out for bid to contract with a provider just for that population. They are asking for \$486,000 in FY 2013 for a one time appropriation to cover costs incurred as they transition from claims to monthly payments.

Co-Chair Christensen asked if this money would only be used if a contract is issued.

Mr. Hales replied that the money would go into the General Fund. DOH will be awarding the contract after this legislative session is finished. They could do a negative supplemental next legislative session to recover the money.

DOH has a request for Medicaid provider inflation. This is not for hospitals, physicians and other providers that have already taken a hit, this is to keep up with forced provider inflation like health insurance premiums and pharmaceuticals.

DOH is asking for the third installment of \$3 million in general funds to replace the claims payment system.

The last two requests involve the DOH transition to the new waiver program. As they move out of fee-for-service claims to prospective payments at the beginning of the month, there will be a need for financial overlap. DOH is asking for one time funding of \$8.5 million in FY 2013. A companion building block is the Accountable Care Organization transition administration. As they move from fee-for-services to prospective payments, there will be some structural changes in the administration. DOH is requesting \$670,000 in ongoing general fund. They anticipate a slight reduction because of the programs the federal government did not approve that were added into these funds.

Co-Chair Christensen clarified that this request includes the programs which the federal government denied that were a part of the Medicaid waiver.

Dr. Patton said their request would be reduced a little bit by what has been declined by the federal government.

Mr. Hales reiterated that DOH could carve out the prioritized benefit list.

Co-Chair Christensen asked if it still made sense to move forward with the Accountable Care Organizations without the programs that have been denied. He wanted to know if there would still be a cost savings and efficiencies realized.

Dr. Patton indicated that the major cost savings items were in the programs that the federal government turned down with the co-payments and prioritized benefits, but the overall payment system will still save money. DOH is still enthusiastic about the new ACO program even though they are disappointed with the losses.

Mr. Hales said the payment reform itself will provide for substantial savings.

Co-Chair Wright said it seems that the federal government is more of a moving target and wanted to know what is the protocol for resubmitting the waiver. He wants DOH to be persistent.

Dr. Patton indicated DOH is going to take a more political approach this year. They are working with the Governor's office.

Co-Chair Christensen brought up the fact that DOH has appealed one of the items already.

Dr. Patton said they had actually appealed all of the items but they were particularly intent on reversing the decision that includes the program that is modeled after Oregon's program because the precedence has already been set.

B. Department of Health Update on Medicaid Waiver (SB 180 from 2011 General Session)

Mr. Rod Betit, CEO, Utah Hospital Association, served 11 years as the director of DOH and has dealt with a number of waivers. He was impressed with how Mr. Hales handled CMS. It was disappointing but the rationing list is just a small part of moving into quality care. Utah knows from their own experience that cost reductions can be made by improving the service provided to Medicaid patients. As a member of the hospital community, Mr. Betit wants budget predictability especially going into FY 2014 with the increase in eligible Medicaid population. He sees a real benefit of using ACO's with the right incentives, moving away from the number of procedures to improving overall health. Hospitals have already been working with commercial managed care systems with success. Electronic health records will help with overall care. He believes that the Medicaid population will be happy with the changes. He looks at ACO's as managed care 2.0 because they've learned a lot from HMO's. Utah starts at an excellent place with the lowest rate of healthcare cost per capita at \$5,000 per person per year. Utah hospitals are rated the fifth best overall in the country at achieving all the quality targets of which there are many. They are also ranked well from patient surveys. The ACO system can only work in collaboration with the State. The hospitals are ready for the transformation. They hope the Subcommittee approves the Governor's budget. They also hope the Subcommittee keeps in mind the annual increases as a critical part in the plan.

1. Approval of the Minutes

None.

2. Review of the Division of Services for People with Disabilities - Safety Net for Individuals with Disabilities

- 3. Budget Brief - Division of Services for People with Disabilities**
- 4. Issue Brief - Structural Imbalance in the DSPD Community Supports Waiver**
- 5. Issue Brief - Account for People with Disabilities**
- 6. Issue Brief - Cost for Residential Care**

Mr. Jardine presented a summary based on all of the above provided issue briefs. Rather than go through all the briefs individually, Mr. Jardine chose to bring forward four issue areas and then four recommended areas of solution.

A. Four Overall Points Regarding the Division of Services for People with Disabilities

1. Within the Department of Human Services the Division of Services for People with Disabilities (DSPD) is the largest division.
2. The DSPD is requesting the largest budget at \$200 million.
3. The DSPD is closely allied with Medicaid, with 42 percent of all Medicaid expenditures serving people with disabilities. It might be called an epicenter of Medicaid.
4. Some individuals are also served under the Department of Health, especially those in residential settings. There is a wide array of services.

B. 4 Issues with Recommended Solutions

1. Decide to approve or not approve a budget for next year to operate. The Analyst recommends the Subcommittee approve the base budget.
2. DSPD is requesting additional State General Fund for FY 2012 and FY 2013. There are four items to consider, one having to do with the past and three for the future. The analyst recommends a range of options to deal with this issue ranging from fund the full amount of the request as the Governor recommended to do or not fund any money.
 - a. Item having to do with the past: the division didn't fully implement budget reductions of \$3.5 million. They used one time money to get through and now they're asking for more money to make them whole.
 - b. Item having to do with the future: the federal percentage for programs, FMAP, will decrease leaving the State to replace those funds, with an estimate at \$2.7 million.
 - c. Second item having to do with the future: under Medicaid, if the individual is assessed as having more needs, the federal government requires that their needs be met. The division expects an increase of ten percent of individuals for \$1.4 million.
 - d. Third item having to do with the future: some children enter the Division of Child and Family Services system who have disabilities. When these children turn 18, under federal rules, they cannot be taken out of services. This will cost \$1.6 million.
3. There is a looming federal problem and the National Conference of State Legislatures (NCL) has determined there will be a 2.7 percent reduction in federal funds for FY 2012 and between eight and nine percent in FY 2013. As a model of how we might try to deal with this,

the Wisconsin Legislature put the responsibility back on the agency and stake holders to make their own reductions of 10 percent--reductions they could live with. This was better than the Legislature dictating where the cuts would be and helped them to take ownership for their spending.

4. There is an odd structure to the way Utah's departments are set up to serve people with disabilities that is explained by the way these agencies historically developed. The Analyst's recommendation is to ask the two agencies involved in serving individuals with disabilities, the Department of Human Services and the Department of Health, to review this issue and come back and offer a range of options with a recommendation.

Sen. Dayton asked Mr. Jardine to restate the needs of the shortfall in 2.a. and asked how much it was and where the money would be coming from, with an understanding that some money came from the Utah State Developmental Center (USDC).

Mr. Jardine answered Sen. Dayton that the amount is \$3.5 million and indicated that some money would be coming from USDC but that the DSPD could better answer that question.

Rep. Litvack asked what was the percentage cut in dollar amount in both state and federal funds.

Mr. Jardine didn't know percentages off the top of his head. He could provide that information later. It becomes complicated with the ins and outs. They took a sizable cut, reduced staff and privatized staff. They closed some offices and made some changes in services.

Co-Chair Christensen asked for clarification on implementation of the budget reductions (2.a). He asked if DSPD did not take budget cuts as directed and now they want supplemental funding to make up for the ground that should have been cut and was not.

Mr. Jardine said there is a bottom line budget. Agencies are to live within that budget. The DSPD chose not to take the reductions in an ongoing way. They used one time money to cover the reductions. The DSPD considers this a structural imbalance. When the Analyst reviewed their revenue sources, he recommended the Subcommittee use some of the one-time money available to the department to cover the shortfall for FY 2012 which the Governor also recommended. The Governor approved funding for FY 2013.

Sen. Jones asked Mr. DePaulis to enlighten the Subcommittee as to why the budget reductions were not fully implemented.

Mr. Palmer DePaulis, Executive Director, DHS, introduced Mr. Mark Ward, Deputy Director, DHS and Mr. Paul Smith, Director, DSPD. DSPD serves the vast majority of the people with disabilities in the community, the least expensive way to ensure the effectiveness of their care as well as the impact on Medicaid and the General Fund. In implementing rather large budget cuts, administration took a big hit as did the USDC, but for the most part the DSPD didn't take people out of services. Last year, the Subcommittee gave them the task of making budget cuts without taking people out of the waiver system, where it would cost more for services provided. The DSPD worked very hard to meet this expectation. It would be cheaper to fix the structural imbalance rather than pay for more expensive services later. The DSPD implemented the use of

one time money as approved by this Subcommittee, as stated in the brief. This is a way for the DSPD to manage the future. By not funding this shortfall, it requires an increase in costs. Mr. DePaulis asked Mr. Ward to present the percentages of cuts taken. They have been fairly massive.

Sen. Jones asked if Mr. DePaulis was saying that DSPD did not make the full budget cut and used one-money at the direction of this Subcommittee.

Mr. Mark Ward, Deputy Director, DHS, indicated that the department implemented reductions across the division as specified by this Subcommittee, with administration and service delivery being cut by 38 percent, the USDC was reduced by 17 percent, FTE's by 30 percent, and non-waiver services by over 50 percent. The issues in terms of the building block were related to unfunded increased costs. FMAP requirements also created a shortfall because they were not fully funded. The cumulative effect was to reduce one time balances to get through the recession. There is one item for Medicaid fraud reduction that has not materialized.

Rep. Litvack wanted clarification on the Medicaid fraud reduction because he didn't see it in the brief.

Mr. Ward pointed out that the fraud reduction was noted in the table and was one reason for the structural imbalance.

Sen. Jones asked how the cuts in administration were made.

Mr. DePaulis turned the question over to Mr. Paul Smith, Director, DSPD. Mr. Smith indicated there is a huge organizational shift with moving the support coordinators into the private sector. There is still a need to retain staff for coordination of services. The DSPD is looking at every position one by one and determining what requirement there is to have that position. They have closed a lot of regional offices. It will take another month or two to finish the realignment.

Sen. Jones said she was astounded with the services provided at the Developmental Center. She knows that the care giver ratio to patient is extremely high. The care givers are very dedicated. Sen. Jones wanted to commend the care givers for their efforts. This population, people with disabilities, is much like the student population in that it is Utah's responsibility to help serve these individuals. She asked if the DSPD didn't receive the money, would there be a reduction in services or rates.

Mr. Smith answered that the department is really at the bare minimum. DSPD is making sure all natural resources--family, church, and community are being used first. In order to fill a gap this significant there would need to be a rate cut. A change of services cannot be done without federal approval. A rate cut would decrease the number of providers and potentially leave an area without services. This problem is very serious.

Sen. Robles asked what is the liability for the DSPD with reduced services. There is already an issue over having a waiting list. She is concerned about putting the State in harms way with lawsuits.

Mr. Smith said the DSPD is highly scrutinized by other organizations and there are lawsuits in the wings that they try to respond to as quickly as possible.

Rep. Rebecca Chavez-Houck asked about the scope of the number of individuals being helped through the division, especially in long term care.

Mr. Smith stated the division currently serves approximately 5,000 people, with about 4,500 being serviced in the community supports waiver program. This program provides a few services for an individual on up to full time residential care for extreme behavior support needs. There is a program for those with brain injuries, with about 106 individuals being served. There is also the physical disabilities program, with about 160 people, that provides personal care aides.

Rep. Chavez-Houck asked in what fiscal year will the projected federal funding cuts come.

Mr. Jardine indicated from what he's read from the NCL is they would begin with October 1, 2012 for FY 2013. In the current fiscal year, targeted to certain programs, there would be a 2.7 percent cut, then eight to nine percent in FY 2013.

Sen. Dayton wanted to clarify she feels it is crucial that Utah has the full array of services as an option available for these individuals. She appreciates Mr. DePaulis' efforts in working with the Subcommittee. She indicated that private providers have the option of turning people away, so the Subcommittee needs to ensure help for the rest of the individuals.

7. Services for People With Disabilities--Output and Outcome Measures

Mr. Jardine noted he was reviewing the last Issue Brief, "Services for People with Disabilities--Output and Outcome Measures", a follow up to the in-depth budget review DHS reported in November of 2010. The Analysts asked the departments to provide five years of performance measures. One of the recommendations was to find a benchmark to measure against. The recommendation included a directive that all agencies within the department were to follow best practices, measure what matters, compare internally and against other states and focus on outcomes, then outputs. The Subcommittee was directed to look at the chart and see where all the money goes.

Sen. Jones asked the staff how can the Subcommittee expect safety when there is so much turnover because typically people working in group homes don't make very much money.

Mr. Jardine answered that it would be good to have some measure of quality so that if quality declined, they could ask questions about training, turn-over and pay.

Rep. Chavez-Houck is interested in what best practices are used within this profession to use for comparisons. She asked if there are standards that might be used in accreditation or what the industry is already using that show good outcomes.

8. Other Business

Mr. Jardine presented "Comparison of FY 2013 Base Budget to FY 2012 Estimated Budget" for review. Senate Bill 8, the Social Services base budget bill, will be up for discussion next week.

9. Items From Next Meeting's Agenda

None.

MOTION: Co-Chair Christensen moved to adjourn. All were in favor.

Co-Chair Wright adjourned the meeting at 9:46 am.

Minutes were reported by Mrs. Pope, Senate Secretary

Sen. Allen M. Christensen Co-Chair

Rep. Bill Wright, Co-Chair