

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 51st LEGISLATURE - REGULAR SESSION

SUBCOMMITTEE ON HUMAN SERVICES

Call to Order: By Chairman Bradley, on February 16, 1989, at 7:06 p.m.

ROLL CALL

Members Present: All members were present.

Members Excused: None

Members Absent: None

Staff Present: Evan McKinney, LFA
Peter Blouke, LFA

Announcements/Discussion: Chairman Bradley said the language was ready for the issue discussed this morning on the Burlington Northern lawsuit, and they would take that up first.

DISPOSITION OF DEPARTMENT OF HEALTH AND ENVIRONMENTAL SERVICES

The language for the \$200,000 appropriation for the lawsuit with Burlington Northern on the clean up at Livingston was given to the committee, and is attached to the minutes as EXHIBIT 1.

Motion: by Representative Cobb to accept the language.

Recommendation and Vote: Voted, passed, Senator Keating voted no.

Mr. McKinney said EXHIBIT 2 is Language in regard to the Preventive Health Block Grant, and the first 2 are the language consistent with what is in the Appropriations act currently. He said the first is with the Preventive Health Block Grant and appropriated the total anticipated grant amount, and to project ahead to what the Federal Government may give us, we have included language which would allow them to use it on identifiable health care needs, if less they make reductions. The MACH grant is different. It is appropriated to the counties and the Handicapped Children and in the past several years there has been an excess of authority over the cash amount. He said this language lets

the left over for one year be re-allocated to the counties the next year.

Motion: Motion by Representative Cody to move numbers 1 and 2 on Exhibit 2.

Recommendation and Vote: Voted, passed, unanimous vote.

Mr. McKinney said Number 3 is on the Legal Services budget. Currently it is funded partially with general fund and this would require they charge those fees to the units using them within the Department. Mr. Hoffman said he did not know of any one in state government that does not have at least one general funded attorney. He said he would suggest that the committee strike out the part that says "shall include no direct general fund support" and leave the rest as is. We would then have to come up with some plan to fund the legal services bureau to fund it, and present it to the legislature, rather than saying no general fund support.

Representative Cody said the intent is to charge the organization using the legal services, but she said she could not see this doing what was intended.

Motion: Motion by Representative Cody to accept number 3, but to put a period after "legal services" on line 2, and strike the remainder of the sentence.

Recommendation and Vote: Voted, passed, vote was unanimous.

Mr. McKinney said number 4 is language that is currently in the Appropriations Act. This will assure that the committee that if there is additional federal funding above the anticipated, they be allowed to come in with a budget amendment to exceed that authority.

Motion: Motion by Representative Grinde to accept number 4.

Recommendation and Vote: Voted, passed, unanimous vote.

EXHIBIT 3 listing those recommended for de-earmarking was given to the committee. Mr. McKinney said these are earmarked accounts recommended by the Appropriations Committee for consideration by the subcommittees as to whether you wish to leave them, or de-earmark them.

Discussion: Discussion was held on whether this was attempting to get rid of state special revenue funds, or what, and Representative Cody asked if these are all fees that are paid for a specific thing? Mr. Huth looked through the highlighted list and said they are all fees for service except the Rabies Vaccine. That is bought and charged out as it is used. Senator Keating asked if they all revert to the general fund at the end of the biennium, or are the balances carried over? Mr. Huth said the EMT carries over

and the Rabies Vaccine carries over. He said the Insurance proceeds will be used up at the end of fy'90 and the Subdivision and Legal Services he would have to defer to Ray. Mr. Hoffman said the Subdivision Review does revert to the general fund, and the Legal fees, there might will not have a balance at the end of the current biennium. Senator Keating asked if the Insurance Proceeds and Legal Services just disappear, then there is no sense in taking action on them. He asked about Rabies Vaccine and Mr. Huth said this is one that, if the state goes with general fund they will have to appropriate general fund and they might not need it.

Representative Cody said, if some revert and some do not, doesn't the interest revert to the general fund? Mr. Hoffman said any treasury fund cash balance, unless specifically marked for the interest to return to an agency, is invested by the Board of Investments, and that interest automatically into the general fund. None of these accounts are invested, he said. It was decided to do nothing, to say the committee scrutinized them and they are good, as is.

EXHIBIT 4 is the Allocation of the Block Grants. Mr. McKinney said this was approved as the committee went through the programs. He said it was for information purposes for the committee.

INDIRECT COSTS (210)

Mr. McKinney said used visual aid charts to show the way indirect costs are allocated. (225) Mr. McKinney went through the chart explaining how the indirect costs were assessed and what they are used for.

Mr. McKinney said the net result is we are applying one rate to federal funds that is different in order to recover some of the federal grant monies to offset some of the costs for statewide services that are paid for out of the general fund.

Mr. McKinney said the issues are: 1. Indirect rate of 15.2% applies to federal funds that would be applied against Personal Services costs; 2. a rate of 12.4% that would be applied to all others for personal service costs; 3. Because the federal rate is still being reviewed, and there may be an approval of a rate by the end of the session, to firm it up, if now if they allow us to assess a higher rate against those federal sources we would like the Department to come back in and get a budget amendment to do that; 4. statewide cost allocation plan that is just being assessed against federal sources, we would not want general fund in earmarked accounts to be a part of that plan. We are saying just assess the federal sources, since assessing general fund to go to general fund would be a shell game. Mr. McKinney said that is the essence of the plan we have worked out, and

unless objection from the committee that plan will be applied to the budget you approve.

Motion: Motion by Representative Cobb to accept the plan presented by the LFA.

Recommendation and Vote: Voted, passed, unanimous vote.

MIAMI project: Chairman Bradley said the Department stated they could pursue the essence of the MIAMI project with some re-juggling. She said she had asked for information on how it was to take place. Mr. Hoffman said that it is neither the position of the Department nor the Executive to request funding for the MIAMI project. We realized it may have some impact on public health. (375) He said it was the intention of the Department to pursue the MIAMI project in accordance with the other projects, but he said the intent by Mr. Opitz was that if there were available funds within the department, MIAMI project may be considered within those financial resources. He said in a meeting he had with Dr. Pratt, Dr. Espelin, and Mr. Opitz, the rationalization came out quickly that they did not have current resources they could devote to this program. He said the second item on your letter was a specific dollar amount for the biennium to determine what Dr. Espelin could determine a minimum level to start the project. EXHIBIT 5 gives figures and said they would need approximately 23,000 from public sources on public education. He said Dr. Espelin felt 1 FTE would be needed for the Infant mortality data. The Low Birth Weight Project, and Dr. Espelin felt the minimum would be \$50,000 to institute 2 additional programs that would be conceivably started with Flathead and Lewis & Clark Counties. Dr. Espelin also felt there should be some sort of an advisory committee that would advise the Dept. if the program were to come about on current needs to be addressed. Mr. Hoffman said there is no money for this within the existing resources of the Department of Health.

Representative Grinde asked for some background on this since he was presenting a bill on it. Mr. Hoffman reviewed what Dr. Espelin had outlined (447). He reviewed the three legs Dr. Espelin had talked about to totally address the infant mortality today.

Further discussion was held on the Miami project, the perinatal program working in with this, but Mr. Hoffman stressed the specific instructions for spending the federal allocations.

(Tape 2, Side B)

It was suggested that this program be left for a time to see if someone can come up with some dollars in another source that can be used.

Representative Bradley said she was gone when the vote was taken on Family Planning, and there was a request for \$50,000 a year, and she said she would ask the committee if they could take a vote on cutting that in half. EXHIBIT 6.

Motion: Motion by Senator Van Valkenburg that an additional \$25,000 be put in per year to Family Services.

Recommendation and Vote: Voted, failed, Representative Cody, Cobb and Grinde, Senator Keating voting no.

Mr. Hoffman said there is an item, the # 1 priority of the Department of Health on it's modified, the committee disapproved. He said he would like the committee's indulgence in having that modified brought up again. He said while it might seem a nebulous act, it impacts every modified you have approved for DHES, which is in excess of \$10 million a year. He said it is the additional 2 support staff in the Centralized Services Division to account for these funds. The DHES has gone from \$18 million to over \$40 million within a 4 year period, and not added one person to provide additional accounting to related services, such as paying claims, etc. (079)

Mr. Hoffman said this was approved by the Executive, they had to decrease 2 FTE in another part of the budget to get these. It was not an increase in the Department, it was that high a priority on it's list. Mr. Huth asked the committee to check page 150 of the Executive budget book. These, he said, were negotiated, that we would approve this if they would find the FTE in the existing current level or modified level budgets. There was no increase in FTE that had been approved at that time.

Motion: Motion by Senator Keating to accept the 2 FTE for the DHES.

Recommendation and Vote: Voted, passed, Representative Cobb voting no.

Dr. Peter Blouke took over as the staff person from LFA.

HOUSE BILL 304 Chairman Bradley said this was Rep. Hannah's bill, and there had been several hearings on this bill, and the committee could take action on the bill. Dr. Blouke said this bill defined a residential treatment center. He said Rivendell is a inpatient hospital facility, and it must meet all of the medicaid certification requirements for a hospital before medicaid will reimburse them. (209) He said many of them got involved to determine if medicaid could be used to reimburse for a facility such as Yellowstone Boys' and Girls' ranch, or Montana Deaconess. He said Family Services has been reimbursing Yellowstone for services at the rate of \$80 a day, the actual cost apparently being \$180 a day, and Yellowstone and Deaconess

said they could not afford to subsidize the care. Mr. Waldron said it was about \$149 a day at Deaconess.

Ms. Steinbeck answered Rep. Cobb on a question regarding the fiscal note by saying, the way the Executive branch sees the fiscal impact of this bill, we would be saving money in one respect, but spending more money than we would have without medicaid residential treatment.

Representative Grinde asked if they were only talking about 2 facilities and Dr. Blouke said any facilities that meet the licensing requirements would be eligible. Mr. Melby said they recognized they would be asking the Legislature to take a little risk, but tired to crank it down to existing facilities. He said with the time limit and the requirements that would have to be met it was unlikely that more facilities could get under the time limit.

There was considerable discussion on the possibility of other facilities being licensed and providing services by July 1, the possibility of moving some into or out of existing facilities, and it was pointed out that if something was not done, the people would be sent out of state and we would have to pay their fee since Yellowstone and Deaconess would not continue to subsidize the patient care.

At the suggestion of Chairman Bradley this was left for future action by the committee, and no action was taken at this time.

(Tape 2, Side A)

Clarification of AFDC and GA: (047)

Dr. Blouke said it is his understanding the committee voted for 41% of the poverty level. That is a reduction in the payment level. 42% would set it at approximately the same level that is currently in the statutes.

There was some discussion as to whether the committee had set it at 41 or 42. Representative Grinde said he had made the motion at 42 because he was mistaken when he said 41 that he thought it was the current level. Ms. Steinbeck said she had recorded Rep. Grinde as making a substitute motion for 42% and that it passed with 3 noes, Senators Van Valkenburg, Hofman and Keating.

Motion: Motion by Representative Grinde that it be set at 42%, so that it is clear.

Recommendation and Vote: Voted, passed.

Dr. Blouke said the next issue was the committee had asked that language be developed because the general assistance levels are included in the current statutes. He said EXHIBIT 8 is

draft of changes to the bill that would implement the committee's intent to eliminate the dollar amounts so that every session the committee will not have to change the statutes and avoid the problem of last session. He said he had asked the Department to look at the changes and they do not feel this change would give them the same security they have, if the specific dollar amounts were contained in the language in the body of the bill. He said he had discussed the committee's intent with Mr. Petesch of the Legislative Council, and gave him a copy of Mr. Cater's letter EXHIBIT 9. Dr. Blouke said Mr. Petesch felt the language in which the draft bill is written, plus the considerable documentation in the minutes, plus language would be in the both in the Appropriations report and the Appropriations bill specifying the specific intent of the Legislature that the payment level would be 42% of the poverty level, would be sufficient documentation for the Department to defend it if they needed to.

Senator Van Valkenburg asked, why can't we put 42% of poverty level into the statute. Why do we say the Department shall establish the amount by rules? Dr. Blouke said his understanding, it was the intent of the committee to avoid having any specific reference in the codes.

Motion: Motion by Senator Keating to accept the actions in the draft bill.

Recommendation and Vote: Voted, passed, unanimous.

Dr. Blouke said previously the committee heard House Bill 296, which was Rep. Driscoll's bill for salaries for direct care workers, and the committee requested that the actual dollar amounts in general funds and federal funds be calculated. EXHIBIT 10 was passed around, and Dr. Blouke said the fiscal impact is \$1,027,527 in '90 and \$217,960 of federal for a total cost of \$1, 245,960, and a total cost of \$1.2 million in '91.

Rep. Cobb suggested bringing the bill back, tabling it, incorporating the amount in the big bill. Ms. Volinkaty said they would prefer that.

Motion: Motion by Representative Cobb that they reconsider action on Driscoll's bill and put the money in House Bill 100, the Appropriations bill.

Recommendation and Vote: Voted, passed, unanimous vote.

Mr. Taylor presented an option. EXHIBIT 11. He said they felt if the Legislature would decide to appropriate enough money to begin to work with the problem for comparable salaries, that it should not be an across the board increase, designed to go to other support services, but that this would be a grant program individual agencies would have to apply for

and take into consideration they intend to bring everyone up to a minimum level rather than passing a straight 11% across the board.

Rep. Cody asked how the Department could dictate to a private organization how they can pay salaries? Mr. Taylor said it can be worked into the contract they sign. Ms. Volinkaty said they had worked with the Department on this and she felt it could be worked out and everyone was committed.

Senator Keating asked how many classifications of people they had and Ms. Volinkaty answered 7. Senator Keating said, then on a contract basis you can specify what the classes would make as a range? Ms. Volinkaty indicated yes.

Mr. Taylor said as he understands this it will be in addition to the 2%. He said the Department intends to use the 2% for provider rate increases across the board.

Motion: Motion by Representative Cobb to take the 11% and using the language so that it will adjust to this plan.

Recommendation and Vote: Voted, passed, unanimous.

Dr. Blouke said on exhibit 10, item 3 is the SSSO. He said the committee did pass the SSSO and asked that the funding be split out on the same sheet as House Bill 296 funding. The funding cost is \$685,285 general funds, \$1,051,790 in federal for a total of \$1,737,075. He said this is not the full annualized cost for the SSSO. The full cost is approximately \$2.4 million on an annualized basis.

Representative Cobb said he would like to have a committee bill that provides for an SSSO, but also put in the bill that if a county take an SSSO they pay the equivalent of 2 mills, or in essence pay the cost of the general fund.

Representative Cody asked if they could have a 2 mills or a piece of property that the county might own.

Motion: Motion by Representative Cobb that there be a committee bill that if an SSSO be given to a county that they have a 2 mill levy to pay the general fund cost.

Recommendation and Vote: Voted, passed, unanimous vote.

Farm in the Dell: Dr. Blouke said that is item #4 (exhibit 10) and the amount is \$126,400 general funds in fy'90 and \$128,928 in fy'91. He said these are figures provided by the Department. He asked the Department if the residents would not be eligible for SSI, and if there wouldn't be some offset. Jan Dee May answered that these costs are net of the SSI. The total cost was in excess of \$140,000, subtract the SSI, minus the \$40 a month for spending and that gets you to the \$140,000.

Representative Grinde asked if we lost the SSSO and we have the three plans in the Governor's budget, can one of those be the Farm in the Dell? Chairman Bradley said, yes, it could be. Senator Keating said the Farm in the Dell is not an intensive care unit, and the ones in the budget are for intensive care units. Chairman Bradley said, that is true, this is not an intensive unit.

Representative Cobb said we had asked the Department to find out how many under 21 who receive no services at all for DD. He said it is there are 97 out of 162 that don't receive anything, and the cost ranges from \$259 to \$722 a year and they are saying they can take these 97 families for \$48,209 a year and give them at least respite.

Motion: Motion by Representative Cobb to spend this \$96,418 to take care of the 97 families that don't have any other DD care.

At the request of Representative Cody, Mr. Taylor said they provide respite services to approximately 157 families. There are 8 providers that cover the state that are available to arrange for in home support for families with children. He said currently the Department spends about \$276,811 a year, or about 1/4% of the \$19.1 million in total benefits, and the average cost is \$497 per family. EXHIBIT 12.

Senator Keating asked if these would be some of the 429 unserved, and Mr. Taylor answered yes, this would be 97 of the 429 that are receiving no services at all, and included with the 1,066 that are on the Community waiting list at the present time.

Representative Bradley said she would be voting no, appreciated the work done by Representative Cobb, but there were so many programs that still had to be voted on, and there was not money to spend.

Recommendation and Vote: (Rep. Cobb's motion to spend the \$96,418 to serve the 97 families) Voted, passed, Representative Bradley voting no.

Rivendell: Dr. Blouke handed out EXHIBIT 13, Primary Care, current level, and said the 1991 year does not have the calculations in it. He said there was a 9% increase for 1990. He said when the committee acted on the Primary Care budget they acted exclusive of the Inpatient Psychiatric Care. He said this (exhibit 12) is an option for the Rivendell and Shodair facilities that would include the same inflationary rate that was included for the in patient hospital services. e said the 2 Rivendell and the Shodair facilities are essentially in patient hospitals. He handed out the other sheet, EXHIBIT 14, for the modified level.

(Tape 2, Side B)

Senator Keating (013) asked if there was an inflation factor built in by the provider, and Mr. Donwen said 3.9% increase is limited by TEFRA, the federal regulations, and is on a cost based method. 3.2% is what we are limited to allowing an increase to, based on cost, so 5.9, which is a 3.2 and 2.7 may or may not be the full amount that will be reimbursed, because of the limitation. (026)

Motion: Motion by Representative Van Valkenburg moved we approve the amounts on this sheet in fy'90 for in patient youth psychiatric care and that Dr. Blouke be instructed to inflate by 3.9% for fy'91, and adopt that level.

Questions from the Committee: Representative Cobb said he did not feel we can afford Rivendell at Butte and are spending too much money. (060)

Senator Van Valkenburg said isn't this a medicaid entitlement program where if someone is eligible for the program and they are medically appropriate for it--it is there, and we can't avoid the fact that it is there by not appropriating the money. Rep. Cobb answered that these people could be put somewhere else at a lesser cost. He said he did not think the state could afford \$7 million a year for 140 some beds. He said they have to be taken care of, but this is pretty expensive.

Ms. Steinbeck said the types of placements that are available and can be made. They have to meet medical criteria to go into Rivendell. One of the criteria is that they cannot be treated in any lesser care facility. She said they have sent children to other Rivendell facilities in Utah and Nebraska, and to Northwest Passages in Idaho and they are all within \$500 in cost range.

Senator Hofman asked why the variation and Mr. Casey, Administrator of Shodair said one of the reasons that Shodair's costs are higher is the population they serve. He said they serve children 13 and under and the staffing level has to be greater for that age group.

Recommendation and Vote: (Cobb's motion to accept the primary care - current level) Voted, passed, Representative Grinde and Cobb voted no.

EXHIBIT 14, Dr. Blouke explained this modified for primary care. (125) He said this is for Rivendell and Shodair facilities. He said the committee has passed a 2% increase on the rest of Primary Care, this is 2% on top of the 3.9% to be consistent with previous committee actions.

Senator Keating questioned the wage scale of Rivendell, and was

told the average annual hospital wide is about \$18,000 considering all employees.

Motion: Motion by Representative Cody to accept the modified.

Recommendation and Vote: Voted, passed, Senator Hofman, Representatives Cobb and Grinde voting no.

Representative Grinde asked for further explanation of the motion just passed on the modified. This was explained (189) by the Department, and stated they were not sure of the federal funds, and needed this amount as a contingency.

Ms. Steinbeck said she wished to remind the committee that they had accepted a couple of items that were lower than the Executive recommendation. She said she felt they would really need this in the budget since they were a couple of key elements in the catastrophic health care issues.

Motion: Motion by Representative Grinde that the committee reconsider its action and not fund the contingency.

Discussion: Representative Cody said when Dave Lewis was in SRS he came in for a \$20 million supplement and got it, and she did not feel the \$1.4 million was that extreme, and with the new federal mandates she said she would like the Department to address the issue.

A gentleman from the Department said in 1987 it was for medicaid and was for under estimation of services in medicaid.

Recommendation and Vote: Voted to reconsider, Motion passed, Representative Bradley and Senator Van Valkenburg voting no.

Motion: Motion by Representative Grinde that the contingency not be funded, to remove the 1.4%.

Discussion: Ms. Bullock said under OBRA, there was testimony on the level 1 and 2 evaluations that have to occur in the nursing homes. She said that was going to cost about \$500,000 over the biennium. She said if this were not accomplished they were looking at the loss of all the federal dollars that go into nursing homes. This would be a considerable kind of catastrophic loss. She said this was just under OBRA, and would ask the committee to consider the contingency, it is considerably less than what they stand to lose if they do not carry out the mandates of the new laws.

Representative Cobb said we are not stopping you from getting a supplemental. Ms. Bullock answered yes. Representative Cody said she would rather have the Department come in for an honest supplemental of actual need rather than put the money in not knowing how much it will cover.

Recommendation and Vote: (Rep. Grinde's motion to remove the

HOUSE SUBCOMMITTEE ON HEALTH AND HUMAN SERVICES

February 16, 1989

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1.4% contingency. Voted, passed, Representatives Cody and Bradley, Senator Van Valkenburg voting no.

EXHIBIT 15 was handed to the Secretary and is included in the minutes.

ADJOURNMENT

Adjournment At: 7:45 p.m.


REP. DOROTHY BRADLEY, Chairman

DB/sk

4023p.min

DAILY ROLL CALL

HUMAN SERVICES

SUBCOMMITTEE

DATE _____

2/16/89 PM

[illegible]

copy
Harm Sec - PM
2/16/89

The legislature intends that \$200,000 be appropriated annually from the 12% of the resource indemnity trust fund that is allocated under 15-38-202 to the hazardous waste/CERCLA account. This appropriation is to be used to pursue the civil action filed in federal district court on December 27, 1988, by the State of Montana against Burlington Northern, Inc., Burlington Northern Railroad, Inc., and Glacier Park Company, and to seek remediation for other alleged violations of state and federal laws governing the management of hazardous or deleterious substances by these potentially responsible parties at other sites in Montana.

It is the intent of the legislature that the civil action for Livingston be pursued as appropriate through trial, negotiation, or a combination of both to a resolution satisfactory to the interests of the State of Montana, including the signing of a settlement agreement that provides for recovery of state remedial action costs and legal fees, payment by the responsible party of applicable penalties and natural resource damages, and agreement by the responsible party to perform necessary remedial action.

Upon the satisfactory resolution of the Livingston site and other Burlington Northern sites in Montana, funds remaining from this appropriation revert to the hazardous waste/CERCLA account.

EXHIBIT 1
DATE 2/16/89 PM
Harm Sec. Dir. Com

2402
2/16/89 PM
Hum Sec.

HEALTH\21189

LANGUAGE.

- Desired
1. To the extent that revenues from the Preventive Health Block Grant exceed \$597,771 in fiscal year 1990 or fiscal year 1991 they may be distributed at the discretion of the director of the department based upon identifiable health care needs. To the extent revenues from the grant are less than this amount, the director of the department shall make program reductions.
 2. The total appropriation for the department includes \$2,101,803 in fiscal year 1990 and \$2,101,803 in fiscal 1991 from the Maternal and Child Health Block Grant. To the extent the revenues from the grant exceed these amounts they are appropriated for distribution to the counties, and must be distributed to the counties based upon identifiable needs. To the extent revenues from the grant are less than this amount, distributions to the counties must be reduced.
 3. It is the desire of the legislature that beginning in the 1993 biennium the department's budget for Legal Services, ~~shall be funded from charges to the organizations using the legal services and shall include no direct general fund support.~~
 4. If federal revenues exceed the amounts budgeted, the department may submit a budget amendment to include additional federal spending authority unless specifically prohibited by legislative action.

EXHIBIT

DATE

2
2/16/89 PM
HB 21189 Sub-Com

EXHIBIT 3
DATE 2/16/89 PM
Helen Sue Com

LEGISLATIVE FINANCE COMMITTEE

The following is a list of accounting entities whose fund balances will be transferred to the general fund on June 30, 1989 in accordance with Section 17-2-111, MCA. The committee recommends that 41 of the 42 accounting entities be de-earmarked and reclassified as general fund. Appropriation subcommittees should be directed to budget these accounts as general fund instead of state special revenue.

A/E	Account Title	Agency Number	Agency	FY88 Fund Balance
02093	Westlaw	2110	Judiciary	\$ 5,667
02464*	Ag Lien Filing Fees	3201	Secretary of State	162,893
02047	Copying Fees	3202	Comm. of Political Pract.	519
02044*	Securities Regulatory Acct.	3401	State Auditor's Office	244,836
02060*	Insurance Regulatory Acct.	3401	State Auditor's Office	240,108
02401*	Police/Fire Retirement Fund	3401	State Auditor's Office	103,790
02119	Crime Control Fees	4107	Board of Crime Control	37
02013	Law Enforcement Academy	4110	Department of Justice	16,719
02014	Justice Insurance Clearing Acct.	4110	Department of Justice	-0-
02804	Escheated Estates	4110	Department of Justice	-0-
03141	I.D. Special Services	4110	Department of Justice	7,324
03944	Motor Veh. Prop. Tax Conversion	4110	Department of Justice	14,420
02103	Public Service Commission	4201	Public Service Commission	79,231
03014	Athletic Program	5113	School for Deaf & Blind	-0-
02059	EMT Certification	5301	Department of Health	(711)
02418*	Subdivision Plat Review	5301	Department of Health	51,289
02847	Insurance Proceeds	5301	Department of Health	56,941
03028	Legal Services	5301	Department of Health	3,361
03817	Rabies Vaccine	5301	Department of Health	6,162
02031	Foresters Nursery	5501	Dept. of State Lands	88,043
02438	Floodway Obstruction Removal	5706	Dept. of Natural Resources	400
03036	Centralized Services	5706	Dept. of Natural Resources	5,344
02441*	Cigarette Enforcement	5801	Department of Revenue	6,277
03902	Vehicle Assessment	5801	Department of Revenue	4,059
02035	MDC Donated Fnds-Prevoc. Ctr.	6402	MT Developmental Center	-0-
02846	MDC Canteen	6402	MT Developmental Center	-0-
02914	OFA-Canteen	6404	Center for the Aged	11,844
02917	MSP Canteen	6409	Montana State Prison	51,655
02918	SRYFC-Canteen	6410	Swan River Youth For. Camp	4,471
02919	SRYFC-Clothing Account	6410	Swan River Youth For. Camp	37,168
02920	Veteran's Home-Canteen	6411	Montana Veterans' Home	326
03113	Third Party Reimb-MVH	6411	Montana Veterans' Home	109,573
03932	Vet's Home Interest & Income	6411	Montana Veterans' Home	218
02921	MHS-Canteen	6412	Montana State Hospital	59,247
03933	MSH-Interest & Income	6412	Montana State Hospital	-0-
02028	Prop Occup Admin Services	6501	Department of Commerce	-0-
02079	Fireworks Wholesalers	6501	Department of Commerce	520
02101	GA Training	6602	Dept. of Labor & Industry	-0-
02011	Crime Victims Compensation	6603	Brd. of Crime Control	---
02915	MUS-Canteen	6911	Dept. of Family Services	737
02916	PHS-Canteen	6911	Dept. of Family Services	3,336
03931	PHS-Interest & Income	6911	Dept. of Family Services	63,967
	Total			\$1,439,771

*6 AIES are statutorily established, although fund balances are unrestricted. Legislation has been introduced to remove earmarking requirements.

copy 4

MATERNAL AND CHILD HEALTH BLOCK GRANT ALLOCATIONS (NOT EXPENDITURES)

EXHIBIT *f*
DATE *2/16/89 PM*
from Saw-Saw Co.

	FY 1986	FY 1987	FY 1988	FY 1989	FY 1990	FY 1991
DIRECTOR	30,000	30,000	30,000	30,000		
COUNTIES	700,422	624,509	662,587	667,245	651,427	650,425
MSMFD ADMIN	23,663	23,727	23,727	23,727	29,897	29,961
NURSING	28,000	28,000				
FAMILY PLANNING	28,000	29,000	29,000	29,000	29,000	29,000
FAMILY/MCH ADMIN	105,756	80,634	105,000	105,000	160,693	160,941
PRIMARY CARE/CASE MANAGEMENT			67,395	122,492	85,394	85,394
HANDICAPPED CHILDREN	801,276	843,691	866,119	865,215	842,058	842,315
DENTAL	58,000	43,000	43,000	43,000	74,363	73,702
PERINATAL PROGRAM	96,965	157,028	137,988	134,234	162,951	165,045
PERINATAL MOD					66,000	65,000
MODIFIED (PREVENTIVE CLERICAL)						
ADDITIONAL COUNTIES			239,424	385,105		
TOTAL	1,872,102	1,859,589	2,204,240	2,405,018	2,101,803	2,101,803
ANTICIPATED GRANT/CARRYOVER	1,897,421	1,836,330	2,204,240	2,405,018	2,101,803	2,101,803
ANTICIPATED BALANCE	25,319	(23,259)	0	0	0	0

PREVENTIVE HEALTH BLOCK GRANT ALLOCATIONS (NOT EXPENDITURES)

	FY 1986	FY 1987	FY 1988	FY 1989	FY 1990	FY 1991
DIRECTOR	43,557	46,645	48,645	46,151		
RAPE CRISIS	11,970	11,970	11,970	11,970	11,968	11,968
MICROBIOLOGY	34,000	34,000	54,655	53,537	66,757	66,837
MSMFD ADMIN	10,150	10,168	10,168	9,750	13,287	13,325
HEALTH EDUCATION	48,714	49,257	48,218	46,327	56,374	56,632
FAMILY PLANNING	198,693	191,337	202,015	187,022	202,015	202,079
MONTANA PERINATAL PM	94,967	56,205	70,012	65,644	69,667	68,052
EMERGENCY MEDICAL SERVICES(EMS)	175,939	204,855	168,186	161,197	177,703	178,878
SPEC PROJECTS			38,660			
DENTAL		15,000	18,318	17,696	0	0
TOTAL	617,990	621,437	670,847	599,494	597,771	597,771
ANTICIPATED AWARD/CARRYOVER	621,561	618,020	670,847	632,187	597,771	597,771
ANTICIPATED BALANCE	3,571	(3,417)	0	32,693	0	0

465

EXHIBIT 5
DATE 2/16/89 PM
H Sec-Sub Com

DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES
2/16/89

MIAMI PROJECT

	FY 1990	FY 1991
PUBLIC EDUCATION	\$7,500	\$7,500
INFANT MORTALITY	\$45,837	\$44,665
LOW BIRTH WEIGHT PROJECT	\$50,000	\$50,000
ADVISORY COUNCIL	\$4,500	\$4,500
TOTAL	\$107,837	\$106,665

Program: 02 - Central Services

Control: 92052

Title: Administration FTE

	<u>Fiscal 1990</u>	<u>Fiscal 1991</u>
FTE	2.00	2.00
Personal Services	\$54,999	\$55,036
Operating Expenses	-0-	-0-
Equipment	-0-	-0-
Subtotal	\$54,999	\$55,036
Other	-0-	-0-
* Total Expenses	\$54,999	\$55,036
Funding		
General Funds	\$ -0-	\$ -0-
Other	<u>54,999</u>	<u>55,036</u>
Total Funds	\$54,999	\$55,036

6
2/16/89 PM
JLM Secy Sub Com

DEPARTMENT OF
SOCIAL AND REHABILITATION SERVICES



STAN STEPHENS, GOVERNOR

P.O. BOX 4210

STATE OF MONTANA

HELENA, MONTANA 59604-4210

February 14, 1989

TO: Peter Blouke
Senior Analyst
Office of Legislative Fiscal Analyst

FROM: Russ Cater
Chief Legal Counsel
Office of Legal Affairs

RE: Policy 1762 General Relief Assistance

EXHIBIT 7
DATE 2/16/89 PM
Hansen Sub-Cam

Thank you for the opportunity to review proposed bill LC 1762. This proposed bill will eliminate the benefit schedules for general relief. In its place authority will be given to the Department of Social and Rehabilitation Services (SRS) to adopt rules establishing the benefit schedules for general assistance and eligibility standards for general relief medical. For the following reasons I believe it to be unwise to eliminate the eligibility schedules from Montana statutes.

The idea of placing the eligibility schedules in the Montana statutes was originally proposed by the department to the legislature in 1985. This resulted from a decision by Judge Arnold Olsen questioning the amounts of assistance which were authorized according to department rule. Judge Olsen indicated that the department had not performed any scientific study to determine needs and adequate benefit levels to meet those needs. He further found that "[T]he exhibits and testimony [presented by the department] did not indicate that a methodology, necessary for systematic updating of standards based on current, independent data and price levels, was used;"

Judge Olsen relied upon Article XII § 3(3) of the Montana Constitution. This provision has recently changed to allow the state more flexibility in the area of welfare benefits. Judge Olsen, however, also relied upon section 53-3-204, MCA in reaching his decision. This provision has been readopted as part of 53-3-108, MCA. This provision in pertinent part provides that "[G]eneral relief, along with other assistance programs, is made available to provide basic necessities that provide minimum subsistence compatible with decency and health"

Low income groups will argue that the burden is upon the department to prove that it is complying with section 53-3-108, MCA and Montana's Constitution. There have been court cases in other states requiring state or county agencies to increase benefit levels when the state statute has contained provisions requiring benefits to be set at levels compatible with "decency and health".

Under the current statutory scheme the department has argued that the legislature, by establishing benefit levels in the statute, has in effect determined appropriate levels consistent with what the legislature has interpreted as "minimum standards compatible with decency and health". It is a general rule of law that the specific will take precedence over the general terminology used in the statute. Thus, low income groups have found it more difficult to challenge the eligibility standards that are contained in statutes.

Another general principle of law, perhaps more often unwritten than written, is that the courts are more willing to overturn agency rules than state statutes. In effect, this proposed change will shift the burden of proof to the department to demonstrate that any rules adopted establishing eligibility schedules and benefit levels are consistent with "decency and health". Under the present statutory scheme low income groups would be required to prove by "clear and convincing evidence" that the statute is unconstitutional. The latter would be a much more difficult burden. It places a state agency in a superior position of defeating any challenge to the benefit levels.

There may be some question as to why the same does not hold true for the Aid to Families with Dependent Children (AFDC) program. The department has argued that the legislature in adopting benefit levels for general relief has in effect established appropriate standards which can also be applied to AFDC. Thus, it is not necessary to place both benefit levels in the statute.

Establishing benefit levels as a percentage of the poverty index is another alternative but not as defensible. Placing this language in the appropriations bill, however, is not sufficient. Language in the appropriations bill is not considered substantive language to support a legal challenge on this issue. It may be used as an indication of legislative intent but it cannot be used to defeat the language currently contained in section 53-3-108, MCA.

I recognize that it may be inconvenient for the legislature to change the eligibility standards every session but I believe it to be the most appropriate method and the method that is most legally defensible. Defending lawsuits of this sort require a great deal of time and expense by both the legal unit at SRS as well as program staff. It is most appropriate for the legislature to review and approve the benefit levels during each

Peter Blouke
February 14, 1989
Page 3

session. This allows the legislature to set priorities among the many welfare programs provided by the state.

If the appropriations subcommittee on human services still desires to continue with this proposal I would make the following technical corrections. The title of the bill should read: "An act providing flexibility in establishing eligibility for general relief by replacing eligibility schedules with amounts determined by rule; amending sections 53-3-205, 53-3-206, and 53-3-311, MCA; and providing an effective date". The current bill title refers only to "general assistance". In fact the changes in the bill apply to both general relief assistance and general relief medical.

It is also my recommendation that section 53-3-108, MCA be amended. The third sentence in subsection (1) should be deleted or at least that portion of the sentence relating to the provision of basic necessities that provide "minimum subsistence compatible with decency and health". If this change is made reference in the title should also be made to 53-3-108.

REC/rm

cc: Representative Dorothy Bradley
Maggie Bullock
John Donwen

DEVELOPMENTAL DISABILITIES DIVISION
APPROPRIATION SUBCOMMITTEE ACTION AS OF 1/9/89

EXHIBIT
2/16/89
JPM
Buck
PM

-----FISCAL YEAR 1990-----		-----FISCAL YEAR 1991-----	
General Funds	Federal Funds	General Funds	Federal Funds
Total		Total	
6,457,855	13,918,748	6,437,122	13,918,761
20,376,603		20,355,883	
100,000		150,000	
302,274	75,724	604,544	151,448
		685,285	1,051,790
	0	128,928	
126,400			
6,986,529	13,994,472	8,005,379	15,121,999
20,981,001		23,127,878	

APPROPRIATION BILL:

OTHER BILLS:

1. HB 296 Direct Care Sal	1,027,527	217,960	1,245,487	1,048,078	222,320	1,270,398
TOTAL OF ALL BILLS	8,014,056	14,212,432	22,226,488	9,053,957	15,344,319	24,398,276

EXHIBIT

EXHIBIT

DATE

9
2/16/89 P.M.

Hon. Sec. Sub. Com.

DIRECT CARE STAFF COMPENSATION AND BENEFITS
STUDY COMMITTEE

RECOMMENDATIONS ON IMPLEMENTATION AND ADMINISTRATION PROCESS

The following assumes that the option of taking no action is rejected by the Montana Legislature and that positive consideration is given to adjusting the total compensation level of the direct care staff employed in the Developmental Disabilities (DD) non-profit organizations. Given this assumption, the Direct Care Staff Compensation Benefits Study Committee (hereafter referred to as "The Committee"), believes it is extremely important to ensure that any additional funds allocated in the rate setting process for the specific purpose of direct care staff compensation are used for that purpose.

It is apparent from a review of the salary data provided in response to the survey of Montana's DD providers that the amount of any adjustment to average hourly wages for direct service staff would vary widely by provider. Some providers already are paying wages comparable to, or in excess of, those paid by other segments of the market to individuals employed in comparable positions. Therefore, it would be neither equitable nor effective to distribute a blanket percentage increase across all providers for adjustment of the compensation levels for these positions. Instead it would be important to assure that the considerable amount of money to adjust the compensation level go to the positions for which it is intended, i.e. those positions considered to be direct care who are currently compensated below a "target average base rate" recommended by the Committee. A "floor" amount for these positions could be considered in reviewing any proposal for adjustment to the compensation levels submitted by providers. The Committee recommends that administrative costs not be factored into the overall rate for a provider as a result of adding any amount of money to the rate for direct service staff salary dollars.

In addition, the Department of Social and Rehabilitation Services/Developmental Disabilities Division (SRS/DDD) should be assured of the providers' ability to distribute the funds equitably and rationally. This is particularly important because the State pays for a significant amount of the operational costs of the non-profit SS programs/services. The Department also should be assured that management and the Board of Directors and others are aware of the significance of the non-monetary factors which affect employee satisfaction and turnover. Otherwise, the additional funds may not produce the intended result.

Assurances can be provided through the development by each provider of a comprehensive, well documented plan with respect to all compensation issues for direct care staff. Review and approval of the plan by the Board of Directors and SRS/DDD of each non-profit organization should be required.

To achieve these assurances in a timely, complete and consistent manner, the Committee believes that the Department should require that a formal, written request be made to the Department of SRS/DDD by the Board of Directors of each interested DD corporation for a specific amount of funds to be used to adjust the level of compensation for the individuals employed as direct care staff.

The Committee recommends that an application process be developed that will provide specific qualifying information and assurances. The request should include the following information and supportive materials:

A specific amount of money proposed for use by the non-profit organization as an adjustment to the compensation level for direct service staff.

Identification of each position in the direct care staffing occupations at each program/service.

The current shift, holiday or weekend differentials paid.

The proposed shift, holiday or weekend differentials to be paid.

The current cost per year of all elements of compensation previously identified.

The proposed cost per year of all elements of compensation previously identified (updates of these worksheets to be included yearly with the annualized budget would include all positions in the organization and would be discussed as part of the negotiating process on overall compensation levels for all staff).

A written narrative explaining the basis for the request, including a description of the analyses performed by the non-profit organization to determine the appropriate amount of money to be requested.

A copy of the current Board approved personnel policies of the organization and for all programs of service.

The plan for consideration of merit and cost of living increases in the future for direct care staff positions.

The date on which the organization files the Salary, Wage and Benefit Questionnaire, used by the Committee to survey the private non-profit community providers.

Identifying factors, other than compensation, which the provider believes are impacting the level of turnover in their organization and the perceived impact on the quality of the program; including a statement of the corporation's plan to deal with factors contributing to staff turnovers.

A written commitment to meet reporting requirements of the department with respect to data on the implementation of the adjustment to compensation levels and other factors related to staffing at their organization.

Further, the Committee recommends that a committee comprised of representatives from the Department of SRS/DDD and the Montana Association of Independent Disabilities Services design the process for application and the criteria for provider participation.



DEPARTMENT OF
SOCIAL AND REHABILITATION SERVICES

STAN STEPHENS, GOVERNOR

P.O. BOX 4210

STATE OF MONTANA

HELENA, MONTANA 59604-4210

February 14, 1989

Representative John Copp
House of Representatives
State Capitol
Helena, MT 59620

Dear Representative Cobb:

Last Friday you asked me to find out how many families were waiting for respite care and were not receiving any other DDD funded services. As of January 1, 1989 there are 162 children waiting for respite care. Of these, 97 receive no other DDD funded services. The approximate cost to provide respite care services to 97 families is:

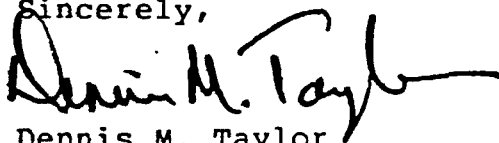
<u>FY 90</u>	<u>FY 91</u>
\$48,209	\$48,209

Biennium Total \$96,418

I have attached a sheet that details the funding history of respite care services for your information.

If I can be of further assistance, please call me at 444-2995.

Sincerely,



Dennis M. Taylor
Administrator
Developmental Disabilities Division

Enclosure

RESPITE CARE

PROJECTED FY 90

INDIVIDUALS SERVED:	557
NUMBER OF SERVICE PROVIDERS:	8
NUMBER OF SERVICE LOCATIONS:	8
TOTAL BUDGET FOR THE SERVICE:	\$276,818
PERCENT OF TOTAL BENEFITS:	1.4%
AVERAGE ANNUAL COST PER INDIVIDUAL:	\$497

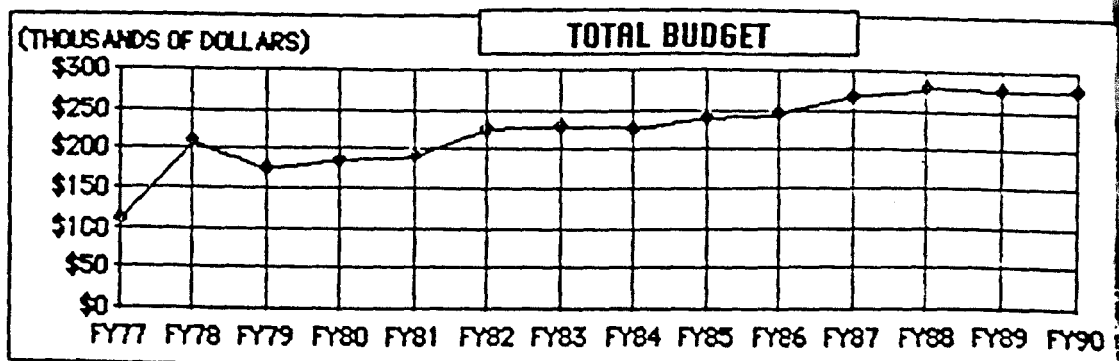
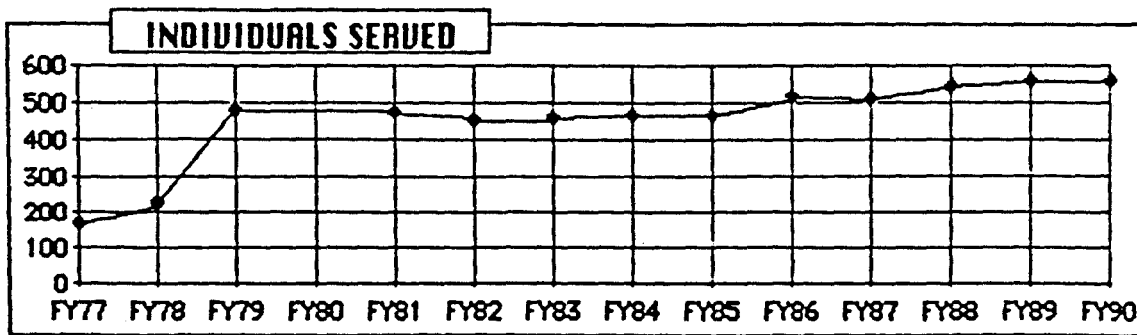
RANGE OF ANNUAL COSTS:

High: \$722.00

Low: \$259.00

NOTE: ALL FIGURES REPRESENT PROJECTIONS AS OF 12/1/88

FUNDING HISTORY



February 13, 1989

TO: Mike Hanshew

FROM: S Means

SUBJECT: Children on Waiting list for respite services who currently are involved in no other DD services.

AREA I

There are 55 children on the waiting list for respite services. Of these, 29 have no other DD services.

AREA II

Eight children are in need of respite services with four having no other services.

AREA III

There are 99 children in this area with 64 having no other DD services.

TOTALS 162 individuals as of January 1, 1989, were needing respite services. Of this total, 97 were involved in no other DD services.

PRIMARY CARE - CURRENT LEVEL

	Fiscal 1988			Fiscal 1989			Fiscal 1990			Fiscal 1991		
TOTAL MEDICAID Service	PROJECTED	%Increase	COST	%Increase	COST	%Increase	COST	%Increase	COST	%Increase	COST	
Inpatient Hospital Number of Services	\$31,238,385	10.227%	\$34,433,291	NA	NA	7.536%	\$37,028,356	NA	NA	7.537%	\$39,818,998	
Cost per Service	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	
Outpatient Hospital Number of Services	\$5,663,209	10.227%	\$6,242,414	10.227%	\$6,712,873	7.536%	\$7,218,789	7.536%	\$7,718,789	7.536%	\$8,218,789	
Cost per Service	388,740	0.035	402,346	0.035	416,428	0.035	431,003	0.035	445,584	0.035	460,169	
	\$14.57	0.065	\$15.52	0.065	\$16.12	0.039	\$16.75	0.039	\$17.38	0.039	\$18.01	
Physician Number of Services	\$12,436,429	5.052%	\$13,064,780	5.052%	\$13,792,488	5.570%	\$14,520,296	5.570%	\$15,248,104	5.570%	\$15,975,912	
Cost per Service	555,906	0.035	575,363	0.035	595,500	0.035	616,343	0.035	637,127	0.035	657,911	
	\$22.37	0.015	\$22.71	0.015	\$23.16	0.020	\$23.62	0.020	\$24.07	0.020	\$24.53	
Other Praticitioners Number of Services	\$2,386,773	3.500%	\$2,470,310	3.500%	\$2,554,847	5.570%	\$2,639,384	5.570%	\$2,723,921	5.570%	\$2,808,458	
Cost per Service	197,471	0.035	204,382	0.035	211,536	0.035	218,940	0.035	226,344	0.035	233,748	
	\$12.09	0.000	\$12.09	0.000	\$12.33	0.020	\$12.58	0.020	\$12.83	0.020	\$13.08	
Drugs Number of Services	\$9,275,396	3.500%	\$9,600,035	3.500%	\$9,924,674	5.570%	\$10,249,313	5.570%	\$10,573,952	5.570%	\$10,898,591	
Cost per Service	748,541	0.035	774,740	0.035	801,856	0.035	829,921	0.035	857,986	0.035	886,051	
	\$12.39	0.000	\$12.39	0.000	\$12.64	0.020	\$12.89	0.020	\$13.14	0.020	\$13.39	
Dental Number of Services	\$2,996,449	3.501%	\$3,101,353	3.501%	\$3,206,257	5.570%	\$3,311,161	5.570%	\$3,416,065	5.570%	\$3,520,969	
Cost per Service	122,534	0.035	126,823	0.035	131,261	0.035	135,699	0.035	140,137	0.035	144,575	
	\$24.45	0.000	\$24.45	0.000	\$24.94	0.020	\$25.44	0.020	\$25.94	0.020	\$26.44	
Other Number of Services	\$9,233,306	3.500%	\$9,556,472	3.500%	\$9,879,638	5.570%	\$10,202,804	5.570%	\$10,525,970	5.570%	\$10,849,136	
Cost per Service	2,605,201	0.035	2,696,383	0.035	2,787,565	0.035	2,878,747	0.035	2,969,929	0.035	3,061,111	
	\$3.54	0.000	\$3.54	0.000	\$3.62	0.020	\$3.69	0.020	\$3.77	0.020	\$3.85	
TOTAL MEDICAID	\$73,229,947	7.154%	\$78,468,654	7.154%	\$83,707,361	6.589%	\$88,956,068	6.589%	\$94,204,775	6.589%	\$99,453,482	
ADJUSTMENTS:												
ADD: RIVENDELL - BILLINGS 48 BEDS FY 89-91 @ \$300.00/			\$2,628,000									
RIVENDELL - BUTTE 48 BEDS FY 89-91 @ \$300.00/DAY			\$1,839,600									
SHODAIR - HELENA 20 BEDS FY 89-91 @ \$420.00/DAY			\$2,299,500									
STATE MEDICAL TO MEDICAID TRANSFERS			\$450,000									
LESS: REFUNDS			(\$700,000)									
FY 88 ADJUSTMENTS	\$3,278,686											
ADJUSTED TOTAL MEDICIAID	\$76,508,633		\$84,985,754									

Rivendell - Billings: FY 90/91 48 beds at 50% Medicaid occupancy at \$300 per day/per child, inflated 3.9 percent
 Rivendell - Butte: FY 90/91 48 beds at 35% Medicaid occupancy at \$300 per day/per child, inflated 3.9 percent
 Shodair - Helena: FY 90/91 20 beds at 75% Medicaid occupancy at \$420 per day/per child, inflated 3.9 percent

UNITE
 9/16/89
 Sub Center
 11-1

EX-108

DATE 1/10/89

PRIMARY CARE - MODIFIED LEVEL

HHSM Serv. Dist. Comm.

	Fiscal 1988	Fiscal 1989	Fiscal 1990	Fiscal 1991			
TOTAL MEDICAID Service	PROJECTED	%Increase	COST	%Increase	COST		
Inpatient Hospital	\$31,238,385	10.227%	\$34,433,291	9.606%	\$37,741,125	9.606%	\$41,366,726
Number of Services	NA	NA	NA	NA	NA	NA	NA
Cost per Service	NA	NA	NA	NA	NA	NA	NA
Outpatient Hospital	\$5,663,209	10.227%	\$6,242,414	9.606%	\$6,842,091	9.606%	\$7,499,377
Number of Services	388,740	0.035	402,346	0.035	416,428	0.035	431,003
Cost per Service	\$14.57	0.065	\$15.52	0.059	\$16.43	0.059	\$17.40
Physician	\$12,436,429	5.052%	\$13,064,780	7.640%	\$14,062,929	7.640%	\$15,137,336
Number of Services	555,906	0.035	575,363	0.035	595,500	0.035	616,343
Cost per Service	\$22.37	0.015	\$22.71	0.040	\$23.62	0.040	\$24.56
Other Praticitioners	\$2,386,773	3.500%	\$2,470,310	7.640%	\$2,659,042	7.640%	\$2,862,193
Number of Services	197,471	0.035	204,382	0.035	211,536	0.035	218,940
Cost per Service	\$12.09	0.000	\$12.09	0.040	\$12.57	0.040	\$13.07
Drugs	\$9,275,396	3.500%	\$9,600,035	7.640%	\$10,333,478	7.640%	\$11,122,955
Number of Services	748,541	0.035	774,740	0.035	801,856	0.035	829,921
Cost per Service	\$12.39	0.000	\$12.39	0.040	\$12.89	0.040	\$13.40
Dental	\$2,996,449	3.501%	\$3,101,353	7.640%	\$3,338,297	7.640%	\$3,593,343
Number of Services	122,534	0.035	126,823	0.035	131,261	0.035	135,856
Cost per Service	\$24.45	0.000	\$24.45	0.040	\$25.43	0.040	\$26.45
Other	\$9,233,306	3.500%	\$9,556,472	7.640%	\$10,286,586	7.640%	\$11,072,481
Number of Services	2,605,201	0.035	2,696,383	0.035	2,790,756	0.035	2,888,433
Cost per Service	\$3.54	0.000	\$3.54	0.040	\$3.69	0.040	\$3.83
TOTAL MEDICAID	\$73,229,947	7.154%	\$78,468,654	8.659%	\$85,263,547	8.668%	\$92,654,411
ADJUSTMENTS:							
ADD: RIVENDELL - BILLINGS 48 BEDS FY 89-91 @ \$300.00/			\$2,628,000		\$2,783,052		\$2,783,052
RIVENDELL - BUTTE 48 BEDS FY 89-91 @ \$300.00/DAY			\$1,839,600		\$1,948,136		\$1,948,136
SHODAIR - HELENA 20 BEDS FY 89-91 @ \$420.00/DAY			\$2,299,500		\$2,435,171		\$2,435,171
STATE MEDICAL TO MEDICAID TRANSFERS			\$450,000		\$450,000		\$450,000
LESS: REFUNDS			(\$700,000)		(\$700,000)		(\$700,000)
FY 88 ADJUSTMENTS	\$3,278,686						
ADJUSTED TOTAL MEDICIAID	\$76,508,633		\$84,985,754		\$92,179,906		\$99,570,770

Rivendell - Billings: FY 90/91 48 beds at 50% Medicaid occupancy at \$300 per day/per child, inflate 5.9 percent

Rivendell - Butte: FY 90/91 48 beds at 35% Medicaid occupancy at \$300 per day/per child, inflated 5.9 percent

Shodair - Helena: FY 90/91 20 beds at 75% Medicaid occupancy at \$420 per day/per child, inflated 5.9 percent

DEPARTMENT OF
SOCIAL AND REHABILITATION SERVICES



STAN STEPHENS, GOVERNOR

P.O. BOX 4210

STATE OF MONTANA

HELENA, MONTANA 59604-4210

February 14, 1989

TO: Peter Blouke
Senior Analyst
Office of Legislative Fiscal Analyst

FROM: Russ Cater *RC*
Chief Legal Counsel
Office of Legal Affairs

RE: Policy 1762 General Relief Assistance

EXHIBIT
DATE 2/16/89
Handed out Com. 13 PM

Thank you for the opportunity to review proposed bill LC 1762. This proposed bill will eliminate the benefit schedules for general relief. In its place authority will be given to the Department of Social and Rehabilitation Services (SRS) to adopt rules establishing the benefit schedules for general assistance and eligibility standards for general relief medical. For the following reasons I believe it to be unwise to eliminate the eligibility schedules from Montana statutes.

The idea of placing the eligibility schedules in the Montana statutes was originally proposed by the department to the legislature in 1985. This resulted from a decision by Judge Arnold Olsen questioning the amounts of assistance which were authorized according to department rule. Judge Olsen indicated that the department had not performed any scientific study to determine needs and adequate benefit levels to meet those needs. He further found that "[T]he exhibits and testimony [presented by the department] did not indicate that a methodology, necessary for systematic updating of standards based on current, independent data and price levels, was used;"

Judge Olsen relied upon Article XII § 3(3) of the Montana Constitution. This provision has recently changed to allow the state more flexibility in the area of welfare benefits. Judge Olsen, however, also relied upon section 53-3-204, MCA in reaching his decision. This provision has been readopted as part of 53-3-108, MCA. This provision in pertinent part provides that "[G]eneral relief, along with other assistance programs, is made available to provide basic necessities that provide minimum subsistence compatible with decency and health"

Low income groups will argue that the burden is upon the department to prove that it is complying with section 53-3-108, MCA and Montana's Constitution. There have been court cases in other states requiring state or county agencies to increase benefit levels when the state statute has contained provisions requiring benefits to be set at levels compatible with "decency and health".

Under the current statutory scheme the department has argued that the legislature, by establishing benefit levels in the statute, has in effect determined appropriate levels consistent with what the legislature has interpreted as "minimum standards compatible with decency and health". It is a general rule of law that the specific will take precedence over the general terminology used in the statute. Thus, low income groups have found it more difficult to challenge the eligibility standards that are contained in statutes.

Another general principle of law, perhaps more often unwritten than written, is that the courts are more willing to overturn agency rules than state statutes. In effect, this proposed change will shift the burden of proof to the department to demonstrate that any rules adopted establishing eligibility schedules and benefit levels are consistent with "decency and health". Under the present statutory scheme low income groups would be required to prove by "clear and convincing evidence" that the statute is unconstitutional. The latter would be a much more difficult burden. It places a state agency in a superior position of defeating any challenge to the benefit levels.

There may be some question as to why the same does not hold true for the Aid to Families with Dependent Children (AFDC) program. The department has argued that the legislature in adopting benefit levels for general relief has in effect established appropriate standards which can also be applied to AFDC. Thus, it is not necessary to place both benefit levels in the statute.

Establishing benefit levels as a percentage of the poverty index is another alternative but not as defensible. Placing this language in the appropriations bill, however, is not sufficient. Language in the appropriations bill is not considered substantive language to support a legal challenge on this issue. It may be used as an indication of legislative intent but it cannot be used to defeat the language currently contained in section 53-3-108, MCA.

I recognize that it may be inconvenient for the legislature to change the eligibility standards every session but I believe it to be the most appropriate method and the method that is most legally defensible. Defending lawsuits of this sort require a great deal of time and expense by both the legal unit at SRS as well as program staff. It is most appropriate for the legislature to review and approve the benefit levels during each

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session. This allows the legislature to set priorities among the many welfare programs provided by the state.

If the appropriations subcommittee on human services still desires to continue with this proposal I would make the following technical corrections. The title of the bill should read: "An act providing flexibility in establishing eligibility for general relief by replacing eligibility schedules with amounts determined by rule; amending sections 53-3-205, 53-3-206, and 53-3-311, MCA; and providing an effective date". The current bill title refers only to "general assistance". In fact the changes in the bill apply to both general relief assistance and general relief medical.

It is also my recommendation that section 53-3-108, MCA be amended. The third sentence in subsection (1) should be deleted or at least that portion of the sentence relating to the provision of basic necessities that provide "minimum subsistence compatible with decency and health". If this change is made reference in the title should also be made to 53-3-108.

REC/rm

cc: Representative Dorothy Bradley
Maggie Bullock
John Donwen

VISITORS' REGISTER

Health & Human Services SUBCOMMITTEE

BILL NO. _____

DATE

Feb. 16, 1989

SPONSOR _____

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
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PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.