

MINUTES OF THE
JOINT HEALTH AND HUMAN SERVICES APPROPRIATIONS SUBCOMMITTEE
TUESDAY, JANUARY 12, 2010, 8:00 A.M.
Room 30, House Building, State Capitol Complex

Members Present: Sen. Allen M. Christensen, Co-Chair
Rep. John Dougall, Co-Chair
Sen. Margaret Dayton
Sen. Patricia W. Jones
Sen. Daniel R. Liljenquist
Rep. Rebecca Chavez-Houck
Rep. Ben Ferry
Rep. David Litvack
Rep. Ronda Rudd Menlove
Rep. Kraig Powell
Rep. Paul Ray

Members Excused: Rep. Keith Grover

Staff Present: Russell Frandsen, Legislative Fiscal Analyst
Stephen Jardine, Legislative Fiscal Analyst
Greta Rodebush, Secretary

Speakers Present: Kade Minchey, Office of the Legislative Auditor General
Tim Osterstock, Office of the Legislative Auditor General
Dr. David Sundwall, Department of Health
Michael Hales, Department of Health
Lisa-Michele Church, Department of Human Services
Adam Trupp, Utah Association of Counties
Richard Nance, Utah County Division of Substance Abuse
Ron Stromberg, Davis Behavioral Health
Scott McBeth, Agencies on Aging
Gary Edwards, Local Health Departments

Public Comment: Lincoln Nehring, Utah Health Policy Project
Korey Capozza, Voices for Utah Children
Sheila W. McDonald, Salt Lake Community Action Program
Dan Hull, Utah Association for Home Care and Hospice
Dr. Tom Metcalf, American Academy of Pediatrics, Utah Chapter
Dr. Jennifer Brinton, UCAAP
Dr. Craige J. Olson, University of Utah Dental Residency Program
Marsha Colegrove, Danville Services of Utah
Phil Shumway, TURN Community Services
Shellie Simmons, Developmental Training Services, Inc.
Justin Naylor, RISE
Kate McConaughy, Work Activity Center
David Christensen, Work Activity Center
Andrew Riggle, Disability Law Center
Clarissa Crisp, Parent
Kris Fawson, Legislative Coalition for People with Disabilities

Margaret Peterson, Youth Providers Assn.
Karen Silver, Salt Lake Community Action Program
Eric Bjorklund, Utah Youth Village
Sylvia Scott, Parent
Tom Day, TRI Connections/TURN
Deborah Bowman, Family to Family Network

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.

1. Welcome and Overview

Co-Chair Dougall called the meeting to order at 8:15 a.m.

Stephen Jardine explained how the budget analysis binders were organized. Committee members have the option of taking or leaving the binders after each meeting. In either instance, the analysts will update the binders as new information becomes available.

2. Direction from Executive Appropriations Committee for FY 2010

Russell Frandsen, LFA, informed the committee that Executive Appropriations Committee has directed the appropriations subcommittees to come up with a 4 percent one-time reduction list for FY 2010 and a 5 percent ongoing reduction list for FY 2011. Reductions to Health and Human Services are \$23.5 million in FY 2010 and \$29.4 million in FY 2011.

Mr. Frandsen noted that the Health and Human Services Appropriations Subcommittee is directed to prioritize its list of 4 percent reductions by the end of the January 20, 2010 meeting.

Mr. Frandsen stated that the Executive Appropriations Committee has authorized a 2 percent across the board reduction for FY 2011 to balance the budget.

Rep. Litvack asked for further clarification on the reductions.

Mr. Frandsen explained that in the current fiscal year, a 4 percent reduction is needed to cover a known \$194 million shortfall. It is projected that the shortfall in FY 2011 will not be as significant, about \$88 million. While the Executive Appropriations Committee has authorized a 2 percent reduction for FY 2011, subcommittees have been asked to make a 5 percent reduction list, thereby giving EAC some options to work with.

3. Follow up on "A Performance Audit of Fraud, Waste, and Abuse Controls in Utah's Medicaid Program"

Kade Minchey, Audit Supervisor, Office of Legislative Auditor General (OLAG), presented the audit. He was assisted by Tim Osterstock, Audit Manager, OLAG.

The scope of the audit was threefold: (1) determine if the Medicaid program is effectively avoiding costs through the prior authorization process; (2) determine if the Medicaid program is recovering inappropriate payments involving fraud, waste, and abuse; and (3) determine if the oversight functions at the Department of Health (DOH) are effectively reviewing the operations with the Medicaid Program. The audit focused on the Bureau of Program Integrity (BPI) located within the Division of Health Care Financing (HCF or Medicaid Program).

Mr. Minchey clarified that the Bureau of Program Integrity (BPI) conducts reviews of Medicaid providers and not Medicaid recipients.

Audit findings show that there is significant room for improvement in BPI's operations, which over time can result in savings of more than \$20 million annually in federal and state dollars for the state Medicaid program. Two areas of potential cost savings include: (1) prior authorization (cost avoidance) and (2) improved recovery effort (cost recovery).

Figure 4.1 on page 44 of the report illustrates that if BPI increased its fraud, waste, and abuse recovery efforts to 3 percent, an additional \$20.2 million (\$5.8 million in state dollars) could be saved over time.

The audit identified a number of problems in the prior authorization and provider enrollment processes; inefficiencies, data concerns, and ineffective utilization of staff resources in cost recovery efforts; a lack of systematic, consistent oversight by BPI's over Medicaid funds; and the need for greater independence for DOH oversight functions.

Mr. Minchey informed the committee that Utah's Medicaid Program has reported progress in implementing audit recommendations.

COMMITTEE DISCUSSION

Sen. Jones inquired about the costs associated with reaching the 3 percent cost recovery goal.

Mr. Minchey responded that a primary expenditure includes replacing the current Surveillance and Utilization Review System (SURS) with a new analytical tool and training staff to use it effectively. Medicaid is moving forward with an RFP with the expectation of having this a tool in place by the end of this year.

Sen. Jones expressed concern about the public's perception that Medicaid is fraught with abuse. She felt that it would be important to look at what is working well for Medicaid and focus efforts on fixing the problems. Mr. Minchey stated that while most Medicaid providers are doing a good job, a small percentage of providers can have a large impact.

Rep. Chavez-Houck referenced Figure 5.1 Expenditures and Recoveries by Program area FY 2008 (page 59) and asked about the "best practices" utilized by entities to recover \$22.2 million. Mr. Minchey clarified that 78 percent of the reported recovery amounts are third-party liability payments recovered by the Office of Recovery Services. Recovery amounts for BPI are small when compared to expenditures.

Rep. Chavez-Houck inquired about other state Medicaid programs. Mr. Minchey explained that the audit did not include a state comparison.

Tim Osterstock commented that adding an analytical tool is the first step in a long term project. The \$20 million cost savings will not be available next year. Other states have a better tool to start with.

Sen Jones asked where the overall fraud and abuse lie. Mr. Minchey explained that he could not comment on the extent of fraud and abuse as it relates to Medicaid recipients. Recipients fall under the jurisdiction of the Department of Department of Workforce Services. There is, however, fraud that occurs within a small number of providers. Sen. Jones asked if the auditors had a sense of whom those providers are. Mr. Osterstock stated that the Auditor General's Office has received audit requests to look at the Medicaid Program from many different angles, one of which includes who is responsible for fraud, waste, and abuse.

Sen. Jones asked if the 3 percent goal is attainable next year. Mr. Osterstock stated that he did not know if they could reach that goal next year, a lot depends on getting an analytical tool in place and staff trained to use it. He suggested that Medicaid prepare a time line for Sen. Jones.

Sen. Liljenquist asked if the oversight of BPI is a structural or a process issue. Mr. Osterstock responded that oversight is a structural problem that Medicaid has addressed by restructuring internally.

AGENCY RESPONSE

Dr. David Sundwall, Executive Director, Department of Health, acknowledged that there were a number of problems and inadequacies identified in the legislative audit that needed to be addressed. Dr. Sundwall raised some caution about taking the audit at face value without looking deeper. He was troubled by the term "fraud and abuse" and believes that most of what is paid for inappropriately is a result of errors in coding and interpretation. Nevertheless, the payments are still inappropriate and every effort should be made to achieve savings.

Dr. Sundwall stated that we need to be cautious in projecting the \$20 million annual cost savings. He was pleased with the auditor's comments about inadequate analytical tools. He noted that the Department has begun implementing audit recommendations. Dr. Sundwall expressed confidence in the Medicaid staff and felt that it was important to give them the proper tools so they can do a better job of addressing the concerns raised by the audit.

Michael Hales, Director, Division of Health Care Financing, stated that the Department can move toward these savings by implementing all of the audit recommendations. The most effective investment will be on the systems upgrade. Replacing the entire system is expensive. The Department has explored some options in terms of temporary intervention or solution on the cost avoidance side and the cost recovery side. The upgrade would cost \$2 million. The Department anticipates that 90 percent could be funded by the federal government, and the remaining \$200,000 could be funded from an existing appropriation designated for a study on a new MMIS system.

Mr. Hales noted that there has been some internal reorganization within the Medicaid Program, including the creation of a new office, Internal Audit Services, that reports directly to Dr. Sundwall. In addition, the Division has put together a twenty-six-page implementation plan with target dates.

Dr. Sundwall introduced Doug Mayne who will be heading up the new Office of Internal Audit Services.

Sen. Jones asked Dr. Sundwall if he considered Medicaid as more health related or welfare related. Dr. Sundwall stated that he prefers to think of Medicaid as a health program. Medicaid is a safety net designed to help people through bad times and not a permanent solution.

Co-Chair Dougall informed the committee that Rep. Grover had asked to be excused from today's meeting.

Co-Chair Dougall invited committee members and staff to introduced themselves.

Co-Chair Dougall informed the public that sign-up sheets were available for those who wished to speak.

4. Summary of Governor's Budget Recommendations and Agency Proposals to Meet Reduction Targets:

Department of Health

Dr. Sundwall distributed and discussed a one-page summary, "2009/10 Budget Recommendation Implementation Report Summary - 10/20/2009," a three-page discussion of proposed reductions for FY 2010 and FY 2011, and one handout with charts, "UDOH FY 09 General Funds by Division, and UDOH FY09 Total Expenditures by Major Program, State and Federal."

Dr. Sundwall pointed out that since September 2008, the Department of Health's budget has been reduced by \$49 million which has resulted in a targeted, focused, and trimmer DOH.

The Department of Health is responding to Governor Herbert's executive order to reduce personnel services by 3 percent in FY 2010 by requiring a one-day, mandatory furlough for all employees in January, offering early retirement, reorganizing internally, reducing current expenses, and holding vacancies open.

Dr. Sundwall stated that coming up the Legislature's 4 percent target in FY 2010 could be problematic. DOH has identified savings through operational improvements or federal reimbursement changes. However, Center for Medicare & Medicaid Services (CMS) has denied the State Plan Amendment which reduces dental rates 25 percent. There were \$1.5 million in FY 2010 savings associated with this reduction. In addition, pending health care reform legislation requires continuation of Medicaid eligibility rates that were set in July of 2008. Further budget cuts may put Medicaid at the risk of paying back ARRA funds.

Dr. Sundwall identified potential 5% ongoing reduction scenarios for FY 2011. They include: department reorganization savings, public health service reductions, public health staffing and support service reductions, and Medicaid administrative and service reductions.

COMMITTEE DISCUSSION

Sen. Christensen asked about the Department's inability to affect eligibility requirements. Dr. Sundwall explained that ARRA legislation states that you cannot reduce eligibility levels in Medicaid below what they were in July 2008. Mr. Hales added that ARRA prohibits eligibility reductions through December 31, 2010. A provision in the current health care reform bill will not allow any cuts to eligibility levels from December 31, 2010 moving forward until new eligibility levels are established in health care reform.

Sen. Jones emphasized the importance of maintaining health provider reimbursement rates for dentists.

Dr. Sundwall confirmed that there has been a decline in the number of dental providers participating in Medicaid. Mr. Hales indicated that because CMS denied the State Plan Amendment, Medicaid will have to pay back what was paid out at the higher reimbursement rate. CMS has recommended that Medicaid work with dental providers and determine what would be an acceptable reimbursement rate.

Rep. Chavez-Houck asked about the public health care network for pediatric dentistry.

Co-Chair Dougall asked if the Department has done an analysis of the cost structure for dental and other provider rates. Dr. Sundwall stated that the agency has not done an analysis. He was aware that dental providers conduct their own analysis of overhead costs. Rep. Dougall recommended that an independent analysis would determine what is fair and appropriate.

Co-Chair Dougall asked about the current utilization rate of public health clinics. Dr. Sundwall indicated that he would provide Co-Chair Dougall with this information by Thursday of this week.

Rep. Litvack asked if the Department of Health has acted upon the 3 percent reductions in personnel services. Dr. Sundwall confirmed that those reductions are in place.

Sen. Liljenquist asked if there are any cost containment strategies that will help us get a handle on Medicaid growth. Dr. Sundwall stated that inflation in medical services is driving the costs of Medicaid upwards. This is an area that needs to be controlled. Mr. Hales indicated that enrollment growth in FY 2009 was 19 percent, and in FY 2010, enrollment is trending between 15 percent and 16 percent.

Sen. Liljenquist asked if there are tools available that could help control growth. Mr. Hales stated that health care costs are driven by our lifestyles and until we make changes health care costs will continue to go up. Dr. Sundwall referred to a payer data base tool that can help identify high costs diseases such as obesity and depression. Mr. Hales explained that given federal restrictions, Medicaid will continue to look at intervention procedures and reimbursement rates.

Sen. Liljenquist commented that there are not a lot of options just short of a complete overhaul. Medicaid and education growth will vie for our state dollars over the next ten years. The state needs to look at restructuring the Medicaid delivery system.

Sen. Christensen noted that four years ago, the Health and Human Services Appropriations Committee held growth in Medicaid to less than the growth in the state budget. The downturn in the economy has had an impact on the number of people on Medicaid rolls. With the cuts that are in place and an improving economy, those numbers will drop off.

Sen Jones stressed the importance of investing in prevention. She offered a number of preventive measures to curve the growth in Medicaid: early diagnosis, prenatal care, school nurses, obesity prevention, mental health, substance abuse and addiction treatment and prevention.

Rep. Menlove asked if the expansion of clinics modeled after the public health clinics would help reduce the cost of health care. Mr. Sundwall stated that many efficiencies can be achieved by using the business model of the public health clinics. He seemed to think that there would not be any resistance from private competitors.

Rep. Ray asked what the exact state budget is for Medicaid, not including federal funds. Mr. Hales stated that for Medicaid and CHIP, the amount was \$311 million. There are other appropriations to other state agencies that raise that figure up to \$450 - \$500 million.

Rep. Ray asked about poverty level percentages. Mr. Hales reviewed percentages on the different categories of eligibility.

Rep. Ray pointed out that with national healthcare reform, Medicaid eligibility may go as high as 133 percent to 150 percent of poverty level. This will have a tremendous effect on our Medicaid rolls. He requested staff provide cost impacts to the state at the 133 percent and 150 percent poverty levels.

Co-Chair Dougall said many Utahns are concerned with federal involvement in healthcare. He asked Dr. Sundwall to consider the question, "To what extent is the Medicaid Program constitutional?"

Department of Human Services

Lisa-Michelle Church, Executive Director, Utah Department of Human Services, addressed the committee. She reviewed a booklet entitled, "Health and Human Services Appropriations Subcommittee, January 12, 2010," that outlines DHS' plan to address the Governor's 3 percent (\$2.9 million GF) FY 2010 one-time reduction by June 30, 2010 and the Legislature's 4 percent (\$10.5 million GF) FY 2010 one-time budget reduction.

With a backdrop of significant budget reductions in the past eighteen months, DHS has carefully considered how to minimize the disruption of even more services. DHS has identified four tools that will be used to reach the FY 2010 one-time target. They include: (1) use of one-time fund balances;

(2) personnel expenses, including attrition and a hiring freeze; (3) one-time use of restricted accounts; and (4) additional controls on operating expenses.

Ms. Church reviewed a number of bar charts that illustrate the effects of DHS' reduction plan on programs, expenses, caseloads, and disability waiting list.

Ms. Church addressed the Legislature's 4 percent (\$10.5 million GF) one-time budget reduction in FY 2010 and the impact on programs.

Ms. Church discussed the one-time funding balances, and commented on the 5 percent ongoing reductions in FY 2011. She referred to the DHS Program Summary included in the handout.

COMMITTEE DISCUSSION

Rep. Ray asked about reductions in training. He also wanted to know if this will have any negative ramifications as far as the David C. Lawsuit is concerned. Ms. Church explained that current employees are sufficiently trained; however, overtime, there may be some problems if DHS is not able to train new employees or retrain existing employees.

Rep. Menlove inquired as to why more children are being served out-of-home. Ms. Church explained that it is harder to recruit foster families because provider rates are low. She also noted that there are more children in poverty and/or experiencing child abuse and neglect cases as a result of a poorer economy.

Rep. Menlove asked what the policy is for the disabilities waiting list. Mr. Church stated that there are three categories where individuals can get in-service: a court-ordered emergency; health, life, safety, and death emergencies; or children who have aged out of foster care or juvenile justice care who are disabled.

Rep. Menlove commented that some of the preventive measures that were in place to keep individuals off the waiting list have been lost due to budget cuts.

Rep. Powell asked for further clarification on Governor Herbert's 3 percent reduction target (\$2.9 million) and the Executive Appropriation's 4 percent one-time reduction target (\$10.5 million) for FY 2010. Mr. Jardine clarified that the Governor has asked departments to implement a 3 percent of a cost of living equivalent in personnel services for FY 2010. On the other hand, Executive Appropriations has asked the appropriations subcommittees to come up with a 4 percent one-time reduction list for FY 2010 for its consideration .

Mr. Jardine clarified Governor Herbert's budgeting process and the 3 percent one-time budget reduction for FY 2010. He also stated that the Legislature's request for a prioritized list of 4 percent one-time budget reductions addresses a \$194 million shortfall in FY 2010.

Rep. Litvack stated that the subcommittee is not only charged with coming up with a list of 4 percent reductions but is also responsible for identifying the impact of those cuts.

Sen. Liljenquist encouraged the subcommittee to move forward in preparing a 4% prioritization list for the Executive Appropriations Committee. It is his expectation that the subcommittee will receive backfill monies just as they did last year.

Ms. Church concluded her presentation referring to a 5 percent ongoing reduction analysis and a Department of Human Services Program Summary with 1 percent, 3 percent, and 5 percent analyses.

5. Comments from Utah Association of Counties

Adam Trupp, General Counsel, Utah Association of Counties, expressed support for the Governor's executive order to cut budgets by 3 percent in personal services. He did not offer any suggestions beyond what Health and Human Services put forth regarding the 4 percent reduction for FY 2010 and 5 percent reductions for FY 2011. He noted, however, that with any budget cut, there are long term ramifications not only for the treatment providers, but for the counties as well. A cost savings to the state could mean cost increases to the counties. A 5 percent reduction would change the way counties do business.

Ron Stromberg, CEO, Davis Behavioral Health (DBH), distributed the handout, "Davis Behavioral Health Budget reduction worksheet," and discussed cuts to DBH General Fund for FY 2011. Because DBH's budget is impacted on many levels, Mr. Stromberg anticipates that DBH's General Fund budget will be cut by 34 percent. He discussed some potential offsets that could mitigate those cuts by using six months of federal stimulus monies, one-time backfills, and eliminating the Legislature's 5 percent cut.

Richard Nance, Director, Utah County Division of Substance Abuse, stated that ARRA monies will be used to offset budget cuts in FY 2010 and FY 2011. Mr. Nance highlighted funding strategies for Utah County that included reductions in force, a hiring and wage freeze, applying for grants, contracting with the Veterans Administration, and reduced training.

Sen. Christensen inquired about the financial impacts of these budget cuts. Mr. Nance cited some outcomes studies that show significant financial savings of family drug courts and felony drug courts.

Mr. Stromberg also noted that studies are now substantiating mental health intervention does work.

Sen. Christensen commented that for the general good of the public, we need to spend government money on human services.

Scott McBeth, Area Agencies on Aging, noted that the Division of Aging and Adult Services has felt the impact of state budget reductions disproportionately when compared to other human services areas. Last year, funds were cut by 20 percent. The across the board cut would impact meals on wheels, senior centers, and transportation. He requested that the local agencies be allowed to identify where cuts can be made.

Gary Edwards, Executive Director, Salt Lake Valley Health Department, commented on reductions of federal, state and local funding sources to local health departments. These cuts directly impact services to county residents. Mr. Edwards referenced a Robert Wood Johnson Foundation report that substantiates

the positive role local health departments play in the prevention of disease.

Russell Frandsen, responded to Rep. Ray's question about the state's cost for Medicaid. Costs could range any where from \$150 million to \$290 million depending on defined poverty levels and requirements of the health care reform plan.

6. General Public and Provider Comments

The committee heard public comment from the following individuals:

Medicaid advocates: Lincoln Nehring, Utah Health Policy Project
(Handouts: "Medicaid Cost Management Navigator," and
"Principles for Addressing Medicaid Funding Challenges through the
Recession and Beyond.")
Korey Capozza, Voices for Utah Children
Sheila Walsh McDonald, Medical Care Advisory Committee

Medicaid providers: Dan Hull, Executive Director, Utah Association for Home Care & Hospice
Dr. Tom Metcalf, Utah Chapter of the American Academy of Pediatricians
(Handout: "Jan 12, 2010 - Tom Metcalf, MD")
Dr. Jennifer Brinton, UCAAP
Dr. Craig J. Olson, DDS, University of Utah Dental Residency Program

Disability providers: Marsha Colegrove, Regional Director, Danville Services
Phil Shumway, Executive Director, TURN Community Services
Shellie Simmons, Director, Developmental Training Services, Inc.
Justin Naylor, RISE,
Kate McConaughy, Executive Director, Work Activity Center

Disability advocates: David Christensen, parent, Work Activity Center
Andrew Riggle, Public Policy Advocate, Disability Law Center
(Handout: "Public Comment Regarding FY 2011 HHS
Appropriations, January 12, 2010")
Clarissa Crisp, parent of an autistic son
(Handout: Autism Support Alternatives Program)
Kris Fawson, Legislative Coalition for People with Disabilities
Margaret Peterson, Executive Director, Youth Providers Association
Karen Silver, Advocate, Salt Lake, Community Action Program
Eric Bjorklund, Utah Youth Village
Sylvia Scott, parent
Tom Day, TRI Connections/TURN
(Handout: "DSPD and my brother Danny Day, age 66")
Deborah Bowman, Family to Family Network

Co-Chair Dougall excused the senate subcommittee members to attend a confirmation hearing of a new senator.

Co-Chair Dougall called for a motion.

MOTION: Rep. Menlove moved to adjourn. The motion passed unanimously.

Rep Dougall adjourned the meeting at 12:14 p.m.

Sen. Allen M. Christensen, Co-Chair

Rep. John Dougall, Co-Chair