

2013 Legislative Report

During the 2013 legislative session, Disability Rights Montana tracked, researched and monitored hundreds of bills and funding issues. This report describes our efforts to educate lawmakers about the impact that some of those bills would have on the lives of people with disabilities, their families, and communities.

The 2013 Montana Legislative Session was remarkable in many ways, including the largely bipartisan agreement about much of the budget. Although there were disputes in the Senate, which did enact largely across-the-board cuts to the state government, funding for community services for people with disabilities was added to the budget early on and went on to survive in the budget sent to the Governor.

The budget passed the House in a form that was quite similar to the Governor's proposal, with additional critical support of community services for people with disabilities. However, in the Senate, substantial cuts to state government were made primarily in the form of increased required vacancy savings, which prohibit the hiring of replacements of a certain percentage of open positions for an extended period of time. The reason for this was to address the apparent structural imbalance of roughly \$170 million identified by legislative staff, but refuted by others.

This sort of move to cut all programs across-the-board can be pretty problematic, given that it was imposed regardless of whether there were many vacancies in an agency. The appropriations subcommittees were generally regarded as having done very

thoughtful work to shave the budget where appropriate, but they also largely accepted the Governor's proposals to increase spending where there was a good reason to do so. Having this sort of across-the-board cut struck many legislators as really unfortunate, in that it negated much of the precise work already done on the budget.

At the end of the session, an agreement was struck to provide the Governor an additional \$13 million to use to shore up shortfalls in the budget through the enactment of SB 410.

Highlights of the community services funded were:

- a. housing for people leaving institutional placements while they wait on housing waiting lists (often referred to as "bridge" funding);
- b. a total of a 4% increase for providers of adult developmental disabilities services in the community;
- c. a total of roughly a million dollars for new adult community mental health crisis services;
- d. a 2% provider rate increase for all Medicaid providers;

- e. 50 additional waiver slots in senior and long term care;
- f. \$125,000 each year for jail suicide prevention;
- g. \$50,000 for TBI services;
- h. community services for seniors and those with physical disabilities that had been cut by the Department beginning in March 2013; and
- i. the wage increase for direct care workers in senior and long-term care that was passed as one-time-only by the 2011 Legislature.

Unfortunately, even though this funding was authorized by the Legislature, the Governor line-item vetoed the additional funding for adult crisis mental health services which dropped to just \$200,000 per year as a consequence. We are very disappointed with this decision.

In addition, the Governor vetoed HB 12, which was a bill requested by the Efficiency in Government Select Committee, which met during the 2011-12 interim. It appropriated funds to Medicaid providers who were supposed to get a 2% increase in 2009 for fiscal years 2010 and 2011, and physicians who were to receive a 6% increase during the same years. These rate increases were eliminated by Governor Schweitzer in 2010 when the forecast for state revenue required him to reduce state general fund spending.

The legislature is currently being polled as to whether it will override this veto. The deadline is June 10, 2013.

Medicaid Expansion

One great disappointment of the session was the failure to pass Medicaid expansion. Although much extraordinary work was done to try to pass this expansion in various forms during April, especially by Sen. Christine Kaufmann, Sen. Mary Caferro, and Sen. Dave Wanzon, as well as the Montana Human Rights Network, AARP, and Montana Women Vote, the opposition steadfastly refused to pass Medicaid expansion.

The U.S. Supreme Court's 2012 ruling on the Patient Protection and Affordable Care Act in *National Federation of Independent Business v. Sebelius*, has put the states in the position to decide whether to expand Medicaid coverage to those making up to 138% of the federal poverty level. In Montana, that would be expanding Medicaid coverage from just the very poor, which it serves now, to those who are often called the "working poor." As the ACA mandated this expansion, it provided subsidies for those at 138% and higher to buy private insurance from the insurance exchanges. When the U.S. Supreme Court struck down this mandate, it placed these working poor in a terrible position where, if their state did not expand Medicaid, they would be required to purchase private health insurance without a subsidy or face a fine for failing to purchase coverage.

Medicaid expansion is very important for people with disabilities. Only very low income people with disabilities receive Medicaid as their health insurance in conjunction with SSI. Although some people with disabilities can qualify for waiver services, and those who are working can

"buy-in" to Medicaid if they are under 250% of the federal poverty level, people with disabilities who do not meet this criteria often have no insurance at all.

In addition, many people can be caught in the lack of coordination of federal programs. For example, for those who qualify for SSDI, which are often people who have worked all their lives only to become disabled, there is a two-year delay for Medicare coverage once eligible. These people, who may desperately need health insurance coverage, often make too much money to qualify for Montana Medicaid so they are left with no coverage at all for that two year period.

The various Medicaid expansion measures did not receive hearings until mid-March, which was fairly late in the session. This gave the proponents of expansion very few options and little time to address the resistance against the proposals.

Most measures were introduced as expansions of Medicaid (HB 458, HB 590, SB 395, SB 393), though there was one bill, HB 623, sponsored by Rep. Bangerter, that was proposed as an alternative to expansion. Each bill died.

Currently, there is a move to request a special session to address Medicaid expansion.

Voting Bills

The voting election bills this session were a roll back of late registration to the Friday prior to the election (HB 30 and SB 405), a restriction of the required ID to vote in an election to just Montana drivers licenses,

state IDs, or tribal IDs (HB 108), and a measure to go to mail ballot only for federal and state elections (HB 428). We opposed all of these bills. Late registration provides more time and opportunities for voting for people with disabilities and we oppose attempts to restrict it. Restricting IDs for voting has a disproportionate impact on voters who are seniors or have disabilities, according to a Brennan Center study. Finally, the vote by mail proposal brought this session was the same bill that was brought in 2009, which had no safeguards or additional accommodations for people with disabilities to account for the elimination of polling places which now provide accessible voting technology.

Both HB 180 and HB 428 died in the House State Administration Committee. HB 30 passed both houses and was vetoed by the Governor on April 22, 2013. Unfortunately, SB 405 is a voter referendum to put the rollback of late registration on the ballot, which passed the legislature and will be on the ballot in 2014. Our partners on these issues have organized a ballot committee to fight this measure and they feel confident that people will not vote to restrict late registration in this way.

Rep. Casey Schreiner graciously sponsored a bill we drafted to clarify that designated agents for voters with disabilities can be used as a reasonable accommodation for all aspects of the voting process (HB 430). There was no discussion of the bill before it was tabled by the House State Administration Committee, but members were told later that the votes against the bill were based upon a concern that this would help people with mental illness to vote. This was very discouraging.

Mental Illness

There were a series of measures drafted in the interim by the Law and Justice Committee to address various mental illness issues. Two bills (HB 43 and HB 69) were drafted that attempted to address the problem of jail suicides. Both bills were heard very early in the legislative session and tabled by the house Judiciary Committee. Fortunately, Rep. Kim Dudik, a freshman legislator who sat on the House Appropriations Committee was able to get substantial support to add funding for suicide prevention into the budget.

Another measure drafted by the Law and Justice Committee was HB 16, which would revise the current involuntary commitment law and require that in order to waive respondent's presence at a hearing, there must be a fact finding that the respondent intends to waive his or her presence. It also includes situations wherein a person is substantially unable to provide for the person's own basic needs as an emergency for purposes of emergency detention. This was a compromise that our organization worked on and agreed to in the interim, so we did not oppose the bill. The hope is that by changing the emergency detention standard, community crises facilities will be utilized more for stabilization earlier and make it less necessary for a commitment to Montana State Hospital.

The Efficiency in Government Committee also worked on interim measures for the general session, which focused on the delivery of Medicaid services to children and adults with mental illness. Most notably there was:

- * a bill to increase reimbursement rates for children's Medicaid mental health services (HB 101);
- * a bill to create a Medicaid "pay for performance" pilot for children's mental health services to ensure that only successful, evidence-based practices are covered (HB 100); and
- * a bill to revise 72-hour presumptive eligibility requirements for adult crisis stabilization to ensure that providers were paid for the second assessment provided within 24 hours of admission (HB 84).

HB 101 ultimately failed in the Senate after it passed the House. HB 100 passed the legislature only to be vetoed by the Governor. Fortunately, HB 84 passed the legislature and was signed by the Governor in mid-April. Rep. Ron Ehli, who was the sponsor of HB 100 and 101, also sponsored a bill to provide for another interim committee on efficiency in government (HB 633). Although this passed the legislature, it was vetoed by the Governor and now is in the process of a veto override poll. The poll closes on June 10, 2013.

One of the most important bills to community service providers aside from HB 12, was HB 102 that would have established an advisory committee to design a plan to establish Medicaid reimbursements for targeted case management that are based upon the actual costs of providing the services. Unfortunately, it did not progress farther than the House Human Services Committee

The plan would include a monthly case management reimbursement rate, and employ a cost-based rate reimbursement methodology based on a variety of factors

including the consumer price index, as well as costs of heat and electricity, health insurance, salaries, and fixed costs. It must also include a mechanism to periodically revise rates. It was hoped that this would ensure that private providers would experience increases in rates to reflect inflation and other realities similar to those increases built into the budget for state institutions.

An attempt to license mental health peer support specialists (SB 10) was tabled by the Senate Business, Labor, and Economic Affairs Committee. It would have established licensure for people with mental illness who meet certain educational and training criteria including a designated training course in mental health peer support and supervised work experience. Applicants would have been required to pass a competency examination determined by the Board to adequately assess a person's ability to provide mental health peer support. It was hoped that licensure would serve as a basis for this service to be reimbursed by Medicaid.

Montana Developmental Center

Of course, our greatest focus this session was on SB 43, "Revise laws relating to reports of alleged abuse at MT Development Center" and SB 254, "Plan for closure of Montana Developmental Center."

SB 43 was drafted by the Interim Children and Families Committee to require Montana Developmental Center (MDC) send reports of abuse and neglect of residents to Disability Rights Montana (DRM). This issue was brought to the fore after a Montana Department of Justice report

identified insufficiencies in MDC's internal investigation of reports of a rape and other sexual abuse of women at the facility by a staff member. Sen. Art Wittich sponsored the bill.

The bill also establishes that the Department of Justice will employ the investigator in these circumstances. This will eliminate the issues associated with the current system wherein an MDC employee is required to investigate his co-workers accused of abuse or neglect. SB 43 passed into law and our staff is preparing to work with the Department of Justice as it begins its investigation function at MDC this year.

SB 254 did not pass the Senate. Although our sponsor, Sen. Mary Caferro, DRM, including many DRM board members, and our allies such as the Independent Living Centers and some DD providers, worked hard to get support for the measure, the opponents including DPHHS, Jefferson County, and labor unions succeeded in killing the bill in the Senate after it had been successfully blasted onto the Senate floor.

We had a terrific hearing in the Senate Public Health, Welfare, and Safety Committee, which served not only to demonstrate the substantial issues with MDC, but to convince many people who had not previously taken a position that it was time for the institution to be closed. Although we are disappointed with the ultimate result, the bill helped begin a serious public discussion of the future of MDC, and makes it far more likely that this will be accomplished in the near future. We have a terrific opportunity to continue this discussion in the interim, with HJ 16, a study that focuses on the state institutions that serve people with mental illness or developmental disabilities.

Abuse and Neglect of Youth

Rep. Ellie Hill made another attempt this session to close the current loophole in the licensing of some private adolescent treatment programs in Montana (HB 236). The 2009 bill requiring these private programs to be licensed contained an exemption for “an organization, boarding school, or residential school that is an adjunct ministry of a church incorporated in the state of Montana.” Since that time, serious allegations have arisen against one of the programs claiming this exemption Pinehaven Christian Children’s Ranch - which takes children as young as four years old.

We worked very hard to get the original licensing bill passed in 2009 and worked to pass this exemption, but it failed in the House Judiciary Committee. Many of the youth that are sent to these programs have as yet undiagnosed psychiatric and cognitive issues that they have often self-medicated with drugs or alcohol.

Discrimination

Rep. Keith Regier followed up his bill last session that established a Montana developmental disabilities month with a bill this session to eliminate the term “mental retardation” from the Montana Code, and replace it with “intellectual disability.” This bill (HB 123) passed both houses easily and was signed by the Governor in mid-March. A similar federal law was passed in 2010.

The legislature also passed HB 498, which revised state issued ID requirements. Currently, state IDs are only valid for four years, where driver’s licenses are valid for eight. This, to paraphrase a proponent, requires people with disabilities to go to the DMV to renew twice as frequently as licensed drivers. The sponsor was Ellie Hill.

Criminal Justice

DRM was one of very few opponents to HB 269, “Assault on health care or emergency services provider.” This raised the penalties for misdemeanor assault from six months and a \$500 fine to up to 10 years and a \$50,000 fine if the victim was a health care or emergency services provider. We provided strong testimony about the disproportionate impact that this would have on people with mental illness, developmental disabilities like autism, or seniors with dementia. The House Judiciary Committee first amended the bill to exclude people with mental disorders or developmental disabilities from prosecution and lowered the maximum penalty to one year or \$1,000. Then, the motion to pass the bill failed on a 10 - 10 vote. The committee then voted to table the bill.

The House Judiciary Committee also tabled HB 370 entitled “Abolish death penalty and replace it with life in prison without parole.” Sponsored by Rep. Doug Kary, this bill would have eliminated the death penalty in Montana. We are concerned that because of the interaction of federal and Montana law, there are prohibitions against executing people with some cognitive impairments like mental retardation, but not others with autism or brain injuries who may be just as cognitively impaired. In addition, there is no

prohibition against putting individuals with mental illness to death.

The legislature passed SB 11, sponsored by Sen. Mary Caferro, which primarily changed the makeup of the parole board to require one mental health professional and require all members to have knowledge of serious mental illnesses and their treatment, and allows the parole board to condition parole upon compliance with mental health treatment.

Rep. Franke Wilmer brought HB 536, which would have prohibited the use of long-term solitary confinement for youth and people with mental illness. The testimony was limited in time because it was heard on the last day of hearings prior to transmittal, but a compelling case was made that changes need to occur in the current practices in Montana's corrections institutions. The committee immediately voted to table the bill.

Interim Studies

We are excited about HJ 16, an interim study sponsored by Rep. Eck, which would require an interim committee to study all

state operated public institutions serving individuals with mental illness, intellectual disabilities, and chemical dependency. The committee will be required to provide the final results to the 64th legislature. The study passed the legislature and was ranked 5th out of 17 studies in order of importance.

We see this as a terrific opportunity to analyze how we provide services and to plan to create a system we really want. Many of these institutions such as Montana Developmental Center and Montana State Hospital were built many years ago during a time when our system was ill-conceived and our treatment model was based primarily upon institutionalization. This study gives us an opportunity to take a step back and talk about the system we want to have – not continue to use these institutions merely because we have inherited them.