



# Child Welfare Rate Setting in Montana

## *State Advisory Commission Sets the Stage for Improving Foster Care Rates*

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By Sarah Cane During<sup>1</sup>  
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In 2005, the Montana Legislature established the Department of Public Health and Human Services (DPHHS) Rate Commission to analyze and monitor community providers' costs, services, and reimbursement rates.<sup>2</sup> The rate commission's role is to advise the legislature on rates for providers of community-oriented services, including the rates for foster care and other child welfare services.<sup>3</sup> The legislature, however, retains ultimate authority over the use of state funds.

While progress since the inception of the commission has been limited due to budgetary constraints, providers say the commission has been productive. The commission has provided a forum for the sharing of information and it has educated the public and state officials about rate-related issues affecting foster children. Providers remain optimistic about the ability of the commission to foster rational rate restructuring when the states' fiscal situation improves.

### **MONTANA'S CURRENT RATE SETTING PROCESS**

In Montana, DPHHS, the legislature, and the governor are all involved in the process of rate setting. DPHHS makes a budgetary recommendation to the governor. The governor submits a budget to the legislature. The legislature then reviews the governor's budget request and passes an appropriations bill that may include changes to the executive branch recommendation. DPHHS is not required to use appropriated funds to adjust rates, but it may do so.<sup>4</sup> DPHHS is charged with setting and publishing the final rate for providers.

In the 2005 biennial session, Montana established a commission to make independent recommendations to DPHHS and the legislature on rates.<sup>5</sup> The commission and DPHHS are closely linked. DPHHS was tasked with forming the commission and appointing members. The commission includes DPHHS employees as voting members.<sup>6</sup> Conversely, DPHHS must also cooperate with the commission and

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<sup>1</sup> For more information, contact Sarah Cane During, Policy Analyst, at (202) 429-0400 x19, [scaneduring@alliance1.org](mailto:scaneduring@alliance1.org).

<sup>2</sup> Mont. Code Ann. §§ 53-10-202-204, 53-10-210-12 (2005). The relevant sections of the Montana Annotated Code can be found online starting at <http://data.opi.state.mt.us/bills/mca/53/10/53-10-201.htm> (last visited March 9, 2010).

<sup>3</sup> This includes a number of different types of services including developmental disability services, housing services, and adult care services.

<sup>4</sup> The department has the discretion to withhold the funds, which will then revert to the general fund.

<sup>5</sup> H.R. 738, 2005 Legislative Session (Mt. 2005), House Bill No. 738, introduced by Representative Christine Kaufmann, <http://data.opi.mt.gov/bills/2005/billhtml/HB0738.htm>. See also, Mont. Code Ann. §§ 53-10-203, 53-10-204(2) (2009).

<sup>6</sup> §§ 53-10-202, 53-10-204(2).

provide it with all necessary records, including past, current and potentially new provider services, costs, and reimbursement rates.<sup>7</sup>

## HISTORICAL AND POLITICAL BACKGROUND

Montana makes payments to group and foster care homes to help privately-funded agencies provide for the needs of children in foster care. When the system began, the rate paid to the provider was cost-based, meaning the payment amounts were based on the providers' stated costs and the type of services offered.<sup>8</sup>

In the late 1980's, Montana moved from a system in which reimbursement rates were based on providers' costs to a system of standardized rates. In the new system, the state set a base rate for all providers. The base rate was determined by a number of pre-determined factors and it was set forth in a "rate matrix".<sup>9</sup> The rate matrix, developed in 1988, set rates based on the level of supervision of children and the treatment provided.<sup>10</sup> This system was intended to ensure that similar providers would receive equal reimbursement.<sup>11</sup> However, over time the rate matrix became outdated. Additionally, some human services providers became concerned that provider rate increases were not based on clear methodologies that take into account the costs of meeting service levels specified in DPHHS administrative rules.<sup>12</sup>

Community service providers began advocating for a commission, in part, because they wanted to ensure that the rates set by DPHHS and the Montana Legislature followed a clear and consistent rationale for all types of providers, not just those that are politically well-connected. They also wanted to update rates to bring them closer to the actual cost of services.<sup>13</sup> Many other types of rates not covered by the rate matrix are standardized based on national or recent rate methodologies.<sup>14</sup> However, the rate matrix that

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<sup>7</sup> § 53-10-211.

<sup>8</sup> Department of Public Health & Human Services Provider Rates Commission, *Meeting Minutes*, Minutes (Aug. 8, 2006) (hereinafter "Meeting Minutes and Date"), <http://www.dphhs.mt.gov/boardscouncils/meetingminutes/081606.pdf>. Group care in Montana began in the early seventies as a part of a movement to deinstitutionalize youth. *Id.* The first programs were funded by grants given by the Montana Board of Crime Control. Geoff Birnbaum, *Meeting Minutes Aug. 16, 2006*, at 1.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* The rate matrix itself is a chart that is used to set rates according to a pre-set rate formula which considers the level of supervision and treatments received at a particular facility. *Id.*

<sup>11</sup> *Id.* There is some debate over whether the rates set by the rate matrix ever came close to the cost of care for providers. Some say that at the time the providers would accept 78% of cost (8/16/06 minutes), but others state that at the time the rate chart was developed, care was funded at 85% of cost. See *Meeting Minutes Aug. 16, 2006*; see also Jani McCall, *Meeting Minutes*, at 6-7 (June 28, 2006), <http://www.dphhs.mt.gov/boardscouncils/meetingminutes/062806.pdf>. Another estimate was that on an aggregate basis, the department paid only 66-67% of the actual cost of providing care. Dave Thorsen, *Meeting Minutes June 28, 2006*, at 7-8.

<sup>12</sup> According to individuals within Montana, some community service provider groups had paid lobbyists and political influence and they received greater increases than the groups that did not have political influence. The provider groups without influence were frustrated and struggling to stay open. Other individuals within Montana state that even those community service provider groups with political influence are struggling to provide services at the current rates. Those individuals claim that the real issue is ensuring that rate methodologies are developed using a solid, fact-based rationale.

<sup>13</sup> Information derived from conversations with providers, state employees, and a review of the minutes of Commission meetings.

<sup>14</sup> *Meeting Minutes June 28, 2006*, at 7-8. The time and cost needed to rebase the 1988 matrix are often stated as major barriers to performing an overhaul. Dave Thorsen, *Id.* A restructuring of rates was done by the Developmental Disabilities program and it took more than a year and 1.5 million dollars. The costly and time consuming nature of that program has discouraged many stakeholders from hoping that such a comprehensive reform will be done in child welfare. This information was derived from conversations with providers, state employees, and a review of the minutes of Commission meetings.

is used to determine foster care rates in Montana is twenty years old. Since the rate matrix was first implemented in 1989, changes to the foster care rate have depended on legislative appropriations.<sup>15</sup>

In 2005, provider groups including Montana Children's Initiative (MCI) and Intermountain, a provider that is a member of MCI, advocated for more equity, consistency, transparency, and objectivity in the rate-setting procedure through the establishment of an advisory commission.<sup>16</sup> Arguing that current rates are about 60% of the actual cost of care in Montana,<sup>17</sup> providers said they were being held accountable for compliance with statewide standards without being given the funds necessary to comply.<sup>18</sup> Providers wanted to have some input into how and what they were paid.

## THE PUBLIC HEALTH AND HUMAN SERVICES RATE COMMISSION

In response to their concerns, the state legislature passed House Bill No. 738 in 2005, instituting the Public Health and Human Services Rate Commission as a bipartisan, independent forum for the discussion and analysis of rates.<sup>19</sup> The Montana Code states that the purpose of the statute is to establish a "regular, predictable and equitable mechanism under which contracted services, costs, and reimbursement rates are given optimum attention by the department."<sup>20</sup>

### *The Montana Code*

According to the state statute, the commission's role is strictly advisory.<sup>21</sup> The statute does not restrict the legislature's power to make appropriate policy and funding decisions regarding rates and services.<sup>22</sup> The commission is expected to establish a set methodology for rates,<sup>23</sup> including recommending: a list of reimbursable expenses for every service and service level, how to establish rate equity among similar service levels, and the best and most-cost-effective procedures for regulating and auditing provider services.<sup>24</sup>

State law requires the commission to conduct ongoing reviews of provider services, costs, and rates without regard to fund sources.<sup>25</sup> The commission is meant to make "independent determinations of those matters within its authority," but it also must consult with the director of DPHHS.<sup>26</sup> The commission may decide to narrow its focus to a particular provider category and it may also determine the order in which it conducts its reviews of provider services.<sup>27</sup> The legislature specified that the commission should consider many factors in its review of rates including: the need to limit DPHHS expenses, current regulations, the complexity of provider services, and all financial aspects of the providers' services.<sup>28</sup>

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<sup>15</sup> Dave Thorsen, *Meeting Minutes June 28, 2006*, at 7-8. The legislature has been receptive to the needs of children in foster care for the last decade. This information is derived from conversations with providers, state employees, and a review of the commission minutes. In 2000, the legislature gave foster care rates a significant boost of \$1.50 a day, a 4% increase. *Id.* Foster care rates have gone up about 2% every session since 2003. *Id.* In fact, there was a large deficit in 2003 during which all providers got a cut but child welfare still got a 1% increase in rates. *Id.*

<sup>16</sup> Information derived from conversations with providers, state employees, and a review of the minutes of Commission meetings.

<sup>17</sup> *Meeting Minutes Aug. 16, 2006*.

<sup>18</sup> Information derived from conversations with providers, state employees, and a review of the minutes of Commission meetings.

<sup>19</sup> H.R. 738, 2005 Legislative Session (Mt. 2005) at <http://data.opi.mt.gov/bills/2005/billhtml/HB0738.htm>.

<sup>20</sup> Mont. Code Ann. § 53-10-201(2) (2009).

<sup>21</sup> § 53-10-203(1).

<sup>22</sup> § 53-10-201(2).

<sup>23</sup> § 53-10-201(2).

<sup>24</sup> § 53-10-201(3).

<sup>25</sup> § 53-10-204(1).

<sup>26</sup> § 53-10-204(2).

<sup>27</sup> § 53-10-204. Information was also derived from conversations with providers, state employees, and a review of the minutes of Commission meetings.

<sup>28</sup> § 53-10-204(4).

Once formed, the commission is directed to establish an “open and defensible” methodology for determining provider reimbursement rates.<sup>29</sup> The commission then gives independent recommendations and advice directly to the legislature, as well as to DPHHS.

### **Composition of the Commission**

The members of the commission were chosen by the DPHHS director in early 2006. The composition of the commission is determined by statute and includes a maximum of 15 members including:

- At least three providers;
- At least three persons who use community services and/or family members of those persons;
- Two DPHHS employees;
- One representative from the Governor’s Office on Budget and Program Planning;
- Two members of the State House of Representatives, including one member of the majority party and one member of the minority party;
- Two members of the State Senate, including one member of the majority party and one member of the minority party; and
- One representative from the Legislative Fiscal Division.<sup>30</sup>

Each member of the commission serves a two-year term and can be reappointed for an additional two-year term by the director of DPHHS.<sup>31</sup>

### **Progress of the Commission**

The commission held its first official meeting on February 15, 2006,<sup>32</sup> after which it met about a dozen times prior to submitting its 2008 Report to the Legislature.<sup>33</sup> During its meetings it agreed to focus first on children’s mental health and child welfare services.<sup>34</sup> The commission received testimony from providers in a variety of categories, including therapeutic group home care, therapeutic foster care, family foster care, and targeted case management services.<sup>35</sup>

The 2008 report included Principles for Reimbursement and three recommendations to the legislature.<sup>36</sup> The principles included statements that child welfare rates should be “objective, unbiased and developed in [sic] a scientific and predictable methodology to create a balanced and equitable system,”<sup>37</sup> and that reimbursement policy should be outcome-driven and fully funded.<sup>38</sup> To implement these principles, the commission recommended: establishing a common database of information for children’s services that would allow cost-of-care information to be gathered and assessed, and identifying alternative ways to

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<sup>29</sup> § 53-10-201(3)(a).

<sup>30</sup> § 53-10-203(1).

<sup>31</sup> § 53-1-203(4).

<sup>32</sup> Department of Public Health & Human Services Provider Rates Commission, meeting minutes posted at <http://www.dphhs.mt.gov/boardscouncils/providerratescommission.shtml> (last visited March 9, 2010).

<sup>33</sup> The report states that it met 10 times between September of 2006 and June 2008 but minutes from all of those meetings were not online. DPHHS Rates Commission, *2008 Report to the Legislature* (2008).

<sup>34</sup> Representative Tim Furey, DPHHS Rate Commission Chairman, *Draft Letter to Gov. Schweitzer* (Nov. 7, 2008) (2008 Report to Legislature attached).

<sup>35</sup> DPHHS Rates Commission, *2008 Report to the Legislature*, “Summary of Meetings”, at 1 (2008)(attached to *Draft Letter to Gov. Schweitzer*)(hereinafter “2008 Legislature Report”).

<sup>36</sup> Child Welfare & Mental Health Provider Rates Work Group, DPHHS Rate Commission, *Final Report*, at 1 (Nov. 15, 2007) (“Final Report”).

<sup>37</sup> Final Report, at 1. This includes client access, quality services, equitable reimbursement for services, and good stewardship for taxpayers. *Id.*

<sup>38</sup> *Id.*

ease provider burdens without increasing rates.<sup>39</sup> In the future, the commission hopes to incorporate some of these principles into legislation.<sup>40</sup>

The commission made several additional recommendations to DPHHS. It recommended:

- Including funding necessary to meet the Minimum Adequate Rates for Children (MARC)<sup>41</sup> in its budget request;
- Considering the occupancy and salary differences between comparable state and private sector positions when conducting its cost study of therapeutic group homes;<sup>42</sup>
- Reviewing and refining outcome measures for foster care and children's mental health providers that comply with federal guidelines and standards; and
- Providing mental health and all social service providers' ongoing cost-of-living increases corresponding to an inflation index.<sup>43</sup>

The commission also made several recommendations to the state legislature. It recommended:

- Appropriating funding to attain MARC;
- Giving cost-of-living increases to all mental health and social services providers; and
- Passing legislation establishing principles for reimbursement as embodied by the Principles for Reimbursement and reimbursement philosophy adopted by the commission.<sup>44</sup>

The department took no action on these recommendations. The legislature's only action was to vote down the recommendation to appropriate the funding necessary to attain MARC.<sup>45</sup> This decision was based upon the \$2.8 million estimated cost.<sup>46</sup>

Non-profit providers believe that a lower amount (\$1-2 million) would be sufficient to update the current rate system and bring provider rates closer to cost, but the state's budget precludes that at this time.<sup>47</sup> Commission members are working to make incremental, but steady, increases to the rates instead.<sup>48</sup> Advocates are also working on changes to the law that would require DPHHS to use a fair and equitable process for setting rates prior to any restructuring that might occur in the future once the economy improves.<sup>49</sup>

## CONCLUSION

Montana's rate commission is only a few years old and its impact on state rate setting is, so far, limited. This has largely been due to budgetary constraints that have faced Montana and most other states during the current recession.

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<sup>39</sup> Final Report, at 2-3.

<sup>40</sup> 2008 Legislature Report, at 2.

<sup>41</sup> See Hitting the M.A.R.C., Establishing Foster Care Minimum Adequate Rates for Children, Executive Summary, pg. 3 (October 2007) ("Hitting the MARC") available at <http://www.nfpainc.org/uploads/MARCTechReport.pdf>.

<sup>42</sup> The commission also recommended that DPHHS analyze the cost study data and make recommendations for adjusted rates. 2008 Legislature Report, at 5.

<sup>43</sup> 2008 Legislature Report, at 5.

<sup>44</sup> 2008 Legislature Report, at 6.

<sup>45</sup> This information was derived from conversations from various stakeholders in the area of child welfare, as well as from a review of documentation.

<sup>46</sup> 2008 Legislature Report, at 6. Economic difficulties were mentioned by all of the persons that I spoke to from Montana.

<sup>47</sup> This information was derived from conversations from various stakeholders in the area of child welfare, as well as from a review of commission minutes.

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Providers in Montana believe, however, that the commission process has been productive. State officials have a better understanding of providers' cost structure and the impact that rates are having on the availability and quality of the services to children.<sup>50</sup> Providers are optimistic that the work they are doing is laying the groundwork for rational restructuring of rates when the budgetary climate improves.

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### **About the Alliance for Children and Families and United Neighborhood Centers of America**

The Alliance for Children and Families, a nonprofit association, was formed by the 1998 merger of Family Service America and the National Association of Homes and Services for Children. The Alliance represents over 370 nonprofit organizations across the nation that provide services and economic empowerment to children and families. Alliance agencies cover a wide spectrum of providers, including a diversity of faith-based organizations and nonsectarian agencies. Together, these organizations deliver more than \$2 billion annually in services to more than 8 million people in nearly 6,700 communities across the United States. More information about the Alliance is available at [www.alliance1.org](http://www.alliance1.org).

United Neighborhood Centers of America (UNCA) is a voluntary, nonprofit, national organization with neighborhood-based member agencies throughout the United States. Formerly known as the National Federation of Settlements and Neighborhood Centers, it was founded in 1911 by Jane Addams and other pioneers of the settlement movement. More information about UNCA is available at [www.unca.org](http://www.unca.org).

For more information, contact the Washington office of the Alliance and UNCA at:

Alliance for Children and Families  
United Neighborhood Centers of America  
1001 Connecticut Ave., NW, Suite 601  
Washington, DC 20036  
(202) 429-0400

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<sup>50</sup> Please look forward to a report, forthcoming, that will detail the effects of rates on children.