

# **Report on Developmental Disabilities Programs**



*Prepared by the  
Select Committee on  
Developmental Programs*

**September 30, 2005**

## **SELECT COMMITTEE ON DEVELOPMENTAL PROGRAMS**

2004 Laws, Chapter 104 required the Select Committee on Developmental Programs to report to the Legislature and the Governor, no later than October 1, 2004.

2005 Laws, Chapter 168 requires the Select Committee on Developmental Programs to again report to the Legislature and the Governor, no later than October 1, 2005 on continued examination of issues identified and the implementation status of recommendations developed in 2004.

### **SELECT COMMITTEE MEMBERS**

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### **LEGISLATIVE SERVICE OFFICE STAFF**

Gerald W. Laska, Staff Attorney  
Don Richards, Senior Research Analyst

*September 30, 2005 • PAGE 2 OF 10*

# Table of Contents

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Chapter 1 – Background, History, and Committee Charge .....	4
Committee Activities .....	5
Chapter 3 – Summary of Committee Testimony .....	6
Chapter 4 - Committee Findings and Recommendations .....	9

# Chapter 1

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## *Background, History, and Committee Charge*

In January 2004, the Wyoming Legislature's Management Audit Committee released a Legislative Service Office (LSO) program evaluation on the state's adult waiver program for persons with developmental disabilities (DD). The evaluation raised several issues relating to:

- ✓ the oversight and accountability within the Wyoming Department of Health (WDH) for DD services and
- ✓ policy implications of the current structure for the provision of adult DD services.

The 2004 Management Audit contained five recommendations:

- 1) The [Developmental Disabilities] Division should investigate alternative programs to support different disabled populations and seek broad input into this policy-making process.
- 2) The Division should promulgate formal rules, not provisional manuals, to establish important program rights, definitions, and procedures.
- 3) The Division should obtain an independent analysis of the DOORS model and its affect on client services and program costs.
- 4) The Division should establish a system to account for the money it uses to fund emergency cases and forced rates.
- 5) The Division should require more justification of rates for major services.

As an outgrowth of the program evaluation, the Legislature adopted 2004 SF 84 ('04 Laws, Ch. 104), originally sponsored by the Management Audit Committee. This legislation created the Select Committee on Developmental Programs and charged it with:

- ✓ studying the state's programs for persons with developmental disabilities and other states' programs for the delivery of assistance to persons with developmental disabilities;
- ✓ identifying system changes for improvement in the delivery of services to persons with developmental disabilities; and
- ✓ sponsoring necessary legislation implementing Committee recommendations.

In addition, the authorizing legislation for the Select Committee appropriated funds for a contract study to identify the costs of services and recommend a mechanism for funding the costs of providing developmental health and educational services to qualifying preschool children in the state.

Finally, the same legislation requires enhanced annual reporting of the WDH (by October 1 of each year) on each of the following:

- 1) number of ongoing and emergency clients served or put on a waiting list for service;
- 2) amounts expended, both total and per client average, for ongoing and emergency client services;

- 3) the source of funds for services to newly served clients, whether from excess funding for existing clients, funds appropriated for the waiting list, funds appropriated for emergencies or funds from another source;
- 4) the number of clients projected to become eligible for services in the subsequent year who are not already on a waiting list for service;
- 5) the number of clients who are expected to transition from one (1) category of service eligibility to another category and their total projected costs based upon the aggregate of each client's individual budgeted amount;
- 6) the number of clients who are expected to transition from school district services to Department of Health services at age twenty-one (21) and their total projected costs based upon the aggregate of each client's individual budgeted amount; and
- 7) specific information on funds transferred between programs within Developmental Disabilities [Division] and between programs within Developmental Disabilities [Division] and other programs within the Department of Health.

In 2004, the Select Committee recommended and the Legislature adopted a one-year continuation of the Committee (2005 SF 43; '05 Laws, Ch. 168). This legislation authorized continuation of the activities of the Select Committee on Developmental Programs and charged it with examination of the issues identified during the first year of the study and the implementation status of the 2004 report recommendations.

## *Committee Activities*

In 2005, the Select Committee on Developmental Programs met formally on three occasions (Monday, April 18; Wednesday, August 24; and Wednesday, September 21, 2005) to receive testimony with respect to this report and address other issues assigned to the Select Committee.

The Committee received written and verbal testimony from the Wyoming Department of Health, including Cliff Mikesell, Developmental Disabilities Division (DDD) Administrator; Ginny Mahoney, COO; Chris Newman, Deputy Administrator and Program Integrity Manager; and Iris Oleske, Medicaid Program Manager. The Committee also received input from individuals speaking on behalf of developmental disabilities providers: Ruth Sommers, Regional Service Providers; Larry Samson, Director of RENEW and Chair-Elect of the Regional Service Providers; and Shawn Griffin, Regional Service Provider. The Committee heard from Senator Cale Case, Diane Hudson, Executive Director, Wyoming State Training School (WSTS) and Buck Gwyn, Protection & Advocacy System, Inc. (PNA) on issues related to WSTS. Brenda Oswald, Executive Director, and Tricia Mason offered comments and updates from the Governor's Planning Council on Developmental Disabilities.

With regard to the authorized study of preschool services, the Committee contracted with Dr. Linda Goetze, Early Intervention Research Institute, Utah State University. During 2005, the Committee received three presentations from Dr. Goetze in order to monitor the progress of the study and provide oversight and direction, where necessary. At the conclusion of each presentation, the Committee received public comment, including input from Kathleen Orton, Child Development Services and Clark Burden, service provider. Representatives from WDH, principally, Tiernan McIlwaine, Preschool Program Manager, offered input on the study of developmental preschool costs. In addition, representatives from the Wyoming Department of Education, including Tammy Cox, Deputy Superintendent for Special Programs, and Stephanie Weaver, Fiscal Officer, offered comments relating to the distribution of federal special education (Part B Section 611 and 619) funding to preschools providing services to children with developmental disabilities. All written materials received by the Committee are available at LSO as attachments to the Select Committee minutes.

# Chapter 2

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## *Summary of Committee Testimony*

**Wyoming Department of Health Update.** WDH officials testified that largely due to the 2005 budget footnote to the WDH budget, which limited transfers of funds out of DDD to other WDH Divisions, the Division was able to completely address the outstanding client waiting list for all three waiver programs (Adult Waiver, Childrens' Waiver, and Adult Brain Injury Waiver (ABI).) In reference to the Select Committee's 2004 recommendations:

- WDH reported that a new fiscal services structure had been implemented in WDH. This structure included the designation of a fiscal position within DDD that now feeds information to the Department's fiscal staff.
- WDH reported that roles and responsibilities of the Area Resource Specialists (ARS) had been divided into Area Resource Specialists and Survey/Certification staff, each with different responsibilities. The Committee also discussed the workload of 8 to 9 ARS's serving approximately 2,000 clients.
- WDH presented the results of a contract study on the costs of waiver services, prepared by Navigant. Subsequent to the presentation of results, WDH officials reported that another contract with Navigant would be pursued to obtain additional data from non-respondents. WDH officials indicated that the initial study was not comprehensive enough to develop meaningful conclusions.

The WDH constituted an advisory council made of up ten members. (Division Advisory Councils within WDH have historically been authorized in statute (W.S. 9-2-107(a)). During the 2004 Select Committee activities, Regional Service Providers called for the re-establishment of such an advisory council.)

WDH provided background information to the Committee regarding the establishment and make-up of an Extraordinary Care Committee (ECC) for additional review of extraordinary expenses and to review client service plans for consistency.

Table 2, on the next page, summarizes WDH's response to the January 2004 Management Audit recommendations.

**Table 2. Status of WDH Action on 2004 Management Audit Recommendations.**

<b>Management Audit Recommendations</b>	<b>WDH Status</b>
1. Investigate alternative programs	The WDH cites broad input into the promulgation of rules (see item 2). Further, WDH is currently considering new waiver opportunities that would allow more self-direction.
2. Promulgate rules	WDH officials indicated that as of August 2005, none of the six proposed rules for Home and Community Based Service (HCBS) waivers had been promulgated. One of the chapter rules had completed internal legal review. WDH officials stated that promulgation for five of the six sets of rules would begin in November 2005, with the sixth expected in the fall of 2006.
3. Independent analysis of the DOORS model	An external professional advisory panel reviewed the DOORS model in 2004.
4. System to account for money used to fund emergency cases; forced rates	The WDH's database has been modified to track emergency cases and forced rates. Completed by September 1, 2004.
5. Enhanced justification of rates for major services	A cost study of the adult DD waiver began in July 2004. An outside contractor, Navigant, completed the initial study. WDH indicated that a second study, by Navigant, would be forthcoming in 2006.
<b>Federal Audit Deficiencies</b>	According to WDH, all federal findings have been addressed and responses have been approved by the federal government.

Source: LSO summary of WDH provided information.

**Service Provider Recommendations.** The regional service providers raised the following issues to the Select Committee:

- ✓ Concerns over the fiscal ramifications of eliminating the waiting list, including funding of residential placements;
- ✓ The need to revise the budget footnote in the future to recognize WDH reorganization;
- ✓ The need for a response to the Navigant cost report;
- ✓ Issues related to WSTS service provision as compared to services available and provided communities; and
- ✓ Request to continue the Select Committee for purposes of oversight of the rules process, establishment of a cost-based rate setting mechanism; expansion of the rate setting mechanism to include all home and community based waivers; and discussions of system sustainability.

**Select Committee Discussions.** Over the course of the three meetings, the Select Committee generally discussed:

- ✓ the quality and ease of use of WDH's billing system to reimburse providers for services;
- ✓ new waiver opportunities that would allow more self-direction;
- ✓ the future fiscal impact on newly served clients, previously on waiting lists;
- ✓ the potential for a cost study for waiver services;
- ✓ consideration of one-time assistance toward capital construction for regional service providers;
- ✓ the absence of a residential component for some wavier clients; and
- ✓ whether the above issues represent on-going concerns that should be assigned to a permanent interim committee or whether the select committee should be continued.

**Contract Preschool Study.** As of the writing of this report, the Select Committee has not received a final copy of the contract study on costs of services for developmental preschools. Nonetheless, the Committee received three updates from the contractor, Dr. Goetze. In her most recent update to the Committee on September 21<sup>st</sup>, Dr. Goetze outlined a proposed "three-tiered preschool finance mechanism." The first tier would provide 100 percent reimbursement for services dedicated to the delivery of services to qualified children with developmental disabilities. Tier two would reimburse a pro-rated amount for the portion of services directed to eligible children (and their families) with developmental disabilities, when services are also provided to children without disabilities, e.g., head start programs. Lastly, tier three of the proposed funding mechanism would provide funds for some (or all) of the expected capital construction needs of the regional preschools. While the concept of such a funding model received favorable consideration from the Committee in the form of a vote to develop draft legislation to implement the funding mechanism, not all of the specifics of such a formula have been developed either by Dr. Goetze, the Committee, or ultimately, the DDD.

In addition to the funding mechanism proposed by Dr. Goetze, she provided the Committee with extensive data from survey and other collection means on families of children with developmental disabilities, child development trends, and service providers.



# Chapter 3

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## *Select Committee Findings and Recommendations*

With respect to the costs of providing developmental health and educational services to qualifying children, the Select Committee recommends to the Legislature and the Governor:

- 1) Clarification of Wyoming statutes relating to the distribution of federal special education funds provided through Part B, Section 619 of the Individuals with Disabilities Education Act (IDEA) and codifying informal practice between the Wyoming Department of Education and the DDD with respect to the distribution of Part B, Section 611 special education funding. [Committee approved legislation: 06LSO-0052.W2, not yet numbered.]
- 2) Implementation of the three tier funding model proposed by the Select Committee's contract consultant, Dr. Linda Goetze, Utah State University, to fully reimburse regional providers of developmental health and educational services to qualifying preschool children. [Committee legislation requested and final draft to be forthcoming.]

The Select Committee identified several issues related to the funding of services administered by DDD. In that light, the Select Committee recommends to the Joint Appropriations Committee:

- 3) Continuation of 2005 supplemental budget footnote #15 to the WDH budget, consistent with any internal WDH reorganization. In short, the Committee finds it necessary to restrict the historical practice of transferring funds from this division to other WDH Divisions and to monitor the specific expenditure of funds for services administered by DDD.
- 4) Adoption of a seven percent inflationary adjustment for the 2007-08 biennium for all DD waiver services.
- 5) Adoption of an additional budget appropriation sufficient to fund out-of-home placement for additional eligible clients. The Select Committee recommends an additional \$4,927,500 total funds (\$2,349,925 GF; \$2,577,575 FF) for the 2007-08 biennium.

[Committee letter to JAC regarding all of the above, forthcoming.]

With respect to overall Committee review of the state's programs for persons with developmental disabilities, including the three Medicaid waivers administered by DDD (adult, childrens, and ABI) and delivery of preschool services, the Select Committee recommends to the Legislature and the Governor:

- 6) Extension of the Select Committee on Developmental Programs for one additional year. [Committee approved legislation: 06LSO-0151.W1, as amended by Committee action.] Within the constraints of its initial appropriation of \$35,000, the Select Committee recommends continuation of the Committee in order to:
  - a) continue oversight of the adoption and implementation of rules and regulations by DDD;
  - b) examine provider reimbursement methods and service delivery in the adult, child and acquired brain injury programs of DDD;
  - c) monitor the funding mechanisms in the developmental preschool program; and
  - d) study other issues related to persons with disabilities.

In the event the Select Committee is continued for an additional year, the Committee recommends that the subsequent Committee:

- 7) Support DDD in a cost study of the three DD waivers (adult, children, and ABI) that will review and analyze the payment system;
- 8) Investigate the implementation of a cost-based rate setting mechanism similar to nursing homes for DD providers;
- 9) Oversee the promulgation and implementation of rules for all three DD waivers;
- 10) Examine a "cash and counseling" waiver for adults with developmental disabilities.
- 11) Oversee the rulemaking and development of a "cash and counseling" waiver, if adopted, and
- 12) Monitor the effectiveness of a new funding mechanism for preschools serving children with developmental disabilities.