

Report on Developmental Disabilities Programs



*Prepared by the
Select Committee on
Developmental Programs*

September 29, 2006

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 required 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.

2006 Laws, Chapter 84 requires the Select Committee on Developmental Programs to again report to the Management Council, Joint Labor, Health and Social Services Interim Committee, Joint Appropriations Committee and the Governor not later than October 1, 2006 on (a) the adoption and implementation of rules and regulations by the Developmental Disabilities Division; (b) provider reimbursement methods and service delivery in the adult, child and acquired brain injury (ABI) programs of the Developmental Disabilities Division, (c) funding mechanisms in the developmental preschool program of the Developmental Disabilities Division, and (d) other issues affecting developmental disabilities.

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Chapter 1

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 (DDD) should investigate alternative programs to support different disabled populations and seek broad input into this policy-making process.
- 2) DDD should promulgate formal rules, not provisional manuals, to establish important program rights, definitions, and procedures.
- 3) DDD should obtain an independent analysis of the DOORS model and its effect on client services and program costs.
- 4) DDD should establish a system to account for the money it uses to fund emergency cases and forced rates.
- 5) DDD 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 by 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 21 and their total projected costs based upon the aggregate of each client's individual budgeted amount; and
- 7) specific information on funds transferred among programs within DDD and between DDD 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.

Subsequently, in 2005, the Select Committee again recommended and the Legislature adopted a second, one-year continuation of the Committee (2006 HB 8; '06 Laws, Ch. 85). This most recent legislation further authorized continuation of the activities of the Select Committee on Developmental Programs and charged it with reporting on Wyoming Department of Health (WDH) rules and regulations, provider reimbursement and service delivery, funding mechanisms in the developmental preschool program, and other issues affecting developmental disabilities.

Committee Activities

In 2006, the Select Committee on Developmental Programs met formally on three occasions (Thursday, April 20th in Casper; Monday and Tuesday, June 12th and 13th at the Wyoming State Training School (WSTS) in Lander; and Tuesday, September 26th in Sheridan) to receive testimony with respect to issues assigned to the Select Committee. The Committee has planned one additional meeting on the morning of November 16th in Casper for the primary purpose of finalizing requested legislation.

The Committee received written and verbal testimony from Senator Cale Case; numerous Wyoming Department of Health (WDH) personnel including Dr. Brent Sherard, Director; Bob Peck, CFO; Cliff Mikesell, Administrator, DDD; Diane Baird Hudson, Superintendent, WSTS; Sue Williams, WSTS; Tiernan McIlwaine, Preschool Program Manager and later representing STRIDE Learning Center; and Kevin Malm, DDD. The Committee also heard from Marilyn Patton, Department of Family Services; Lori Morrow, State Department of Education; Brenda Oswald, Governor's Council on Developmental Disabilities; Ruth Sommers, Regional Service Providers; Shawn Griffin, Chris Boston, John Holdrecker, John Godell, Larry Samson, Executive Directors of various Regional Service Providers; Kathleen Orton, Child Development Services; Donna Merrill, STRIDE Learning Center and subsequently, WDH; Richard Leslie, Wyoming Epilepsy Foundation; Tom Robeson and Buck Gwyn, Protection & Advocacy; Dr. David Braddock, Professor and Chair of Psychiatry at the University of Colorado School of Medicine and Executive Director of the Coleman Institute for Cognitive Disabilities; Jordan Yeager, Betty Lieth, Chris Hasslem, G. William Day, Jr., Darlene Sutor, and Scott Harnsberger, interested members of the public. All written materials received by the Committee are available at LSO as attachments to the Select Committee minutes.

In June, 2006, the Committee also toured the Wyoming State Training School and two facilities operated by the Community Entry Services, a regional service provider in Lander.

Chapter 2

Summary of Key Committee Activities

Update of Response to Management Audit Recommendations. WDH officials addressed the Committee at every meeting on the progress of the Department in responding to the January 2004 Management Audit recommendations. Table 1 summarizes WDH's response to the January 2004 Management Audit recommendations.

Table 1. Status of WDH Action on 2004 Management Audit Recommendations.

Management Audit Recommendations	Status
1. Investigate alternative programs	WDH has internally considered implementation of new waiver opportunities that would allow more self-direction, i.e. "cash and counseling waiver" or "real choice waiver". As late as September 2006, WDH reported advertising for a position that would work to develop the specifics of a "real choice waiver".
2. Promulgate rules	WDH officials reported that the Department rules addressing waivers for services for persons with developmental disabilities are nearly complete and scheduled for final adoption by the department in October 2006, subject to review by Management Council and the Governor.
3. Independent analysis of the DOORS model	WDH has contracted with Navigant Consulting to evaluate the DOORS model including amendments to the model and consideration of other models. WDH staff reported the development of a Project Advisory Panel to guide the project team and offer insights and assistance. Preliminary assessment of the model indicates, as reported by WDH, that the DOORS model accomplishes its original objectives, but that the objectives for the model may have changed over time. The evaluation will use FY07 costs, and final results may not be completed until the spring of 2008.
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. In addition, the Committee received testimony on and explored opportunities to provide sufficient funds for emergency cases. See Recommendation #1 in Chapter 3 for an explanation of Committee-proposed legislation in this area.
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. Subsequently, WDH staff report procuring the services of Navigant Consulting to develop standard cost accounting guidelines as well as a complete assessment of the feasibility of cost-based reimbursement for all three waivers (adult, childrens and adult brain injury (ABI)). However the results of this effort are not anticipated to be available until the spring of 2008. The Committee considered additional legislation in this area, but elected not to sponsor any at this time.
Federal Audit Deficiencies	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.

Out-of-Home Placements and Waiting Lists. A concern that was raised by both the Regional Service Providers and a representative of the Governor's Planning Council on Developmental Disabilities was that some persons receiving services on the adult waiver receive the option of out-of-home placements while others do not was raised. The Committee heard testimony from several parties on this issue. At its September 26th meeting, the WDH relayed the results of a recent survey of persons served by the adult waiver which found that 42 adults responded that they would be interested in receiving out-of-home placement, if funded. After taking into account nonrespondents and children transitioning to the adult waiver, approximately 61 individuals are expected to desire out-of-home placements for which there are no current funds. This result is dramatically lower than previous (less informed) estimates. See Recommendation #2 for the Committee's response to this issue.

Preschool Funding Mechanism. The DDD provided six reports required by 2006 Laws, Chapter 85, Developmental Preschool Funding, to the Committee. Similarly, the State Department of Education submitted one draft report required by the same legislation relating to school district expenditures for "child find" activities for children age birth through age five. By way of background, the legislation requiring several reports relating to adequacy of funding and quality of services was sponsored by the Select Committee in 2006; the same bill increased per child state funding from \$5,210 to \$7,206. Each of the reports are available through LSO, however the findings and recommendations are summarized as follows:

Compensation and Funding Levels – Based upon FY07 salary schedules and benefit packages collected by DDD from the regional preschools and their corresponding school districts, "the disparities identified in 2005 remain, primarily due to the effects of the 2006 school district recalibration, and ... present funding levels are not sufficient to provide required services for all eligible children." See Recommendation #4 in Chapter 3 for the Committee's response to this recommendation.

Service Provision in the Least Restrictive Environment – According to DDD reports, the State Performance Plans for Part C and Part B "have identified the provision of early intervention services in natural environments and special education and related services in the least restrictive environment as monitoring priorities." The Division is reportedly committed to continued monitoring, and the results of this year's survey indicate that children are increasingly receiving services in their natural environment.

Adoption of Evidence-Based Best Practices – DDD found that self-assessments suggested that approximately 79 percent of statewide preschool program services meet nationally recognized evidence-based recommended practices. The Division recommended "establishing a permanent statewide social-emotional developmental system including the provision of regional social-emotional development coordinators."

Mental Health Pilot Project and Costs – DDD reported on the results of a pilot program for mental health that began in October 2005 and ended in June 2006. DDD also indicated that the program "served as an effective foundation for an early childhood social-emotional development system" and recommended \$363 in per-child funding be added to provide for regional social-emotional development coordinators. See Recommendation #5 for the Committee's response to this recommendation.

Capital Construction Needs – Based upon - admittedly inconsistent - responses to a DDD survey from regional preschools, the Division identified more than \$30 million in reported capital construction needs. DDD's report also referred to a 2005 contract study prepared for the Select Committee by Dr. Goetze of Utah State University which identified more than \$71 million in potential capital construction needs. In response to the findings, the Division recommended changing "the statute to allow the legislature to appropriate capital construction funds to regional developmental preschool programs." Upon receipt of the recommendation, the Select Committee discussed the potential constitutional barriers to such a change and explored other opportunities, including supporting the use of excess space in school buildings as well as community investments that may develop as a result of expanded child care legislation. The Committee

noted both of these issues were being explored by the Select Committee on School Facilities and the Legislative Oversight Committee on Quality Child Care.

Parent Expectations and Student Progress – With respect to this report, DDD merely provided an update on how the Division intends to conduct preschool services satisfaction survey in the coming year, as required by the law. No outcome data was expected or provided.

SDE Report on School District Expenditures for Child Find Activities – The State Department of Education (SDE) provided a preliminary report on K-12 school district expenditures for child find activities. SDE noted that statewide expenditures actually exceeded the amount of federal "619" funds provided for such efforts, but noted that not all districts were expending the full amount, and some districts not any of their 619 funds received by the district on child find activities directly.

Wyoming State Training School. Through testimony and an on-site tour, the Select Committee received reports on the breadth, depth, and quality of services provided at the Wyoming State Training School from employees, clients, family members, and outside observers. They also heard concerns regarding the lack of rules to establish formal protocols for such things as admission and release, as required by current statute. The Committee also contracted with a national expert to receive a presentation on the history of treating persons with developmental disabilities and trends nationally and in Wyoming in the provision of services to these persons. The expert noted that in both instances services are increasingly being provided in communities rather than traditional state institutions, and advocated for the elimination of institution-based services whenever possible.

Responding to this exploration, the Select Committee urged a separate Task Force to develop legislation that would: modernize the statutory language governing the WSTS, specify eligibility criteria, and provide for a report from WDH on why clients served at the WSTS could not be served in their respective communities. The Task Force reported meeting on four occasions, inviting approximately 300 stakeholders, and having a variety of stakeholders in attendance. The group forwarded proposed legislative changes to LSO, and LSO legal staff prepared draft legislation for the Select Committee's consideration. After receiving testimony from a variety of stakeholders, the Select Committee, at its September meeting, voted to table the proposed legislation indefinitely to permit WDH time to develop a long-range plan for the use of the facility. The Select Committee did explore options and potential timelines for conducting a broader review of facility space and programmatic needs of the WDH, including WSTS, and other agencies. The Committee expressed an interest in continuing to explore those discussions prior to the 2007 General Session.

Chapter 3

Select Committee Findings and Recommendations

- 1) At the time of this writing, the Select Committee has approved one legislative draft for sponsorship during the 2007 General Session, 07LSO-0135.W2, relating to emergency funding for persons with developmental disabilities and ABI. The purpose of this legislation is to establish an on-going emergency fund to provide services to medically fragile persons likely to be clinically and financially eligible for services provided by the state's three Medicaid waivers for persons with developmental disabilities or adult brain injury (ABI) between the time they present themselves and the establishment of eligibility and funding for Medicaid waiver services. The legislation includes a \$500,000, non-reverting appropriation from the Budget Reserve Account (BRA). The Select Committee respectfully requests the support of the Governor and the Legislature for this recommended legislation.

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

- 2) Approval of \$3,090,321 (\$1,461,104 Section 302 BRA contingency funds and \$1,629,217 FF) in order to ensure the option of out-of-home placement is available to all persons served through the adult, children, and ABI waivers. According to WDH projections, this funding is expected to be sufficient to provide services for one fiscal year for all persons currently identified or projected who would not otherwise have the option of out-of-home placements. The total number anticipated, as of this writing, is 61. The funding source recommended by the Select Committee is the \$60 million Medicaid Contingency Appropriation found in Section 302 of the 2006 Budget Bill ('06 Laws, Ch. 35) and associated federal matching Medicaid funds.
- 3) Approval of \$12,236,831 (\$5,785,574 Section 302 BRA contingency funds and \$6,451,256 FF) in order to fully fund the existing and projected waiting lists for the adult, childrens and ABI waivers. The funding source for this recommended appropriation is the same as the previous recommendation – Section 302 Medicaid Contingency Appropriation and federal matching funds. According to WDH projections, this level of appropriation will be sufficient for one full (or where appropriate pro-rated) fiscal year's funding for 440 additional waiver slots (214 adults, 170 children, and 56 ABI). The WDH notified the Select Committee that a waiting list was initiated for all three waivers on July 1, 2006. As of August 31, the WDH reported 33 qualified individuals on three waiting lists (13 adults, 19 children, and 1 ABI). However, the remaining individuals on the projected waiting list are expected to present themselves for service before June 20, 2008, or the end of the current biennium.

[Letters for the prior two recommendations forthcoming from the Select Committee.]

In addition to favorable action on the two requests for budget approval in the 2007 Supplemental Budget described above, the Select Committee has requested draft legislation that would provide additional funding for developmental preschools. In the event legislation is sponsored by the Select Committee in these two areas at its November 16th meeting, the Committee recommends favorable consideration by the Legislature

and the Governor. At the time of this writing, WDH reports have been submitted to the Committee, but no formal action has been taken on bills that would implement their recommendations:

- 4) Within the text of a legislatively required study prepared by DDD, the Division identified that a discrepancy has persisted between developmental preschools and local school districts in compensation levels for comparable positions, despite the recent increase in per pupil funding adopted by the Legislature in 2006 ('06 Laws, Ch. 85). In order to address the discrepancy and maintain the quality of program services, the Select Committee has requested draft legislation (07LSO-0218, Developmental preschool funding), which would increase per child preschool funding by \$1,296. The DDD and interested parties recommended a per child increase that would permit preschools to offer comparable compensation packages for early childhood special educators, occupational therapists, physical therapists, and speech-language therapists.
- 5) Similarly, as a result of another legislatively required study, DDD evaluated the progress of a mental health pilot project and the cost of integrating mental health/social-emotional development services in developmental preschools and having the preschools assist other early childhood programs in their communities with integration into their service delivery. The Division reported that an independent evaluator concluded, "that the 'train-the-trainer' model would serve as an effective foundation for an early childhood social-emotional development system in Wyoming." DDD recommended funding in the amount of \$363 per child be added to the statewide per child preschool funding amount in order to retain a social-emotional development coordinator for each regional developmental preschool. The Select Committee requested draft legislation incorporating the Division's recommendation (07LSO-0220, Early childhood mental health), but has not yet acted on the legislation.
- 6) 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 has also requested draft legislation (07LSO-0219.W1, Select committee on developmental programs) for the purposes of extending the Select Committee on Developmental Programs for one additional year. Although this legislation has not been formally adopted by the Committee, the Committee plans to consider legislation in November to extend its authorization, including the necessary appropriation, to address the following objectives:
 - a) Support and oversee WDH's development of a "real choice" waiver (also known as a "cash and counseling" waiver) that would provide greater flexibility to the waiver client in choosing providers and services using a capped case budget.
 - b) Receive status reports and updates of the contract between WDH and Navigant with respect to:
 - i) an independent analysis of the DOORS model, amendments to the model, as well as alternative funding models to arrive at an adequate funding level for each waiver recipient's individual budget amount (IBA), and
 - ii) the collection and assessment of standardized, comparable financial cost data from the regional service providers for waiver services to persons with developmental disabilities. This data will reportedly be used to consider and evaluate changes to the funding mechanism and adequacy for the reimbursement of services provided by the state to providers of customary waiver services.
 - c) Consider revisions to the statutes governing the Wyoming State Training School, within the context of the capacity of state facilities and multiple state government programmatic needs.
 - d) Continue to monitor the effectiveness of the recently adopted preschool funding mechanism.

- e) Develop a transition plan for any outstanding activities so that the activities and advances made by the Select Committee on Developmental Programs can be handed over to the Joint Labor, Health and Social Services Interim Committee.