



Children, Families, Health, and Human Services Interim Committee

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60th Montana Legislature

SENATE MEMBERS

CAROL JUNEAU
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DAN WEINBERG

HOUSE MEMBERS

EDITH CLARK
ERNIE DUTTON
TERESA HENRY
DIANE SANDS

COMMITTEE STAFF

SUE O'CONNELL, Lead Staff
LISA JACKSON, Staff Attorney
FONG HOM, Secretary
PAT MURDO, Staff for SJR 15

MINUTES

June 11, 2008

Room 137, Capitol building
Helena

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COMMITTEE MEMBERS PRESENT

SEN. CAROL JUNEAU
SEN. RICK LAIBLE
SEN. TERRY MURPHY
SEN. DAN WEINBERG

REP. EDITH CLARK
REP. ERNIE DUTTON
REP. TERESA HENRY
REP. DIANE SANDS

STAFF PRESENT

SUE O'CONNELL, Lead Staff
LISA JACKSON, Staff Attorney
FONG HOM, Secretary
PAT MURDO, Staff for SJR 15

Visitors and Agenda

Visitors' list, Attachment 1
Agenda, Attachment 2

COMMITTEE ACTION

- The Committee requested a bill draft to define the principles on how rate revisions will be done for children's mental health.
- The Committee voted to amend the motion for draft legislation regarding notification to sponsors of bills on when departments will begin the process of drafting rules to request that staff draft an amendment to that section of code to state explicitly that the sponsors of the bill are being notified because they have a right to be involved in the drafting of the administrative rules.
- The committee voted to accept SJR 31 Study's April 29th draft legislation as written, along with changes incorporated, as a working draft for the working committee to build consensus.
- The committee voted to request that DPHHS take action as soon as possible to revise their rules for the Food Stamp Program to eliminate the asset test and increase the federal poverty level limit to the maximum allowed by the USDA.

CALL TO ORDER AND ROLL CALL

00:00:01 Rep. Clark called the meeting to order at 10:10 a.m.

AGENDA

SJR 15 STUDY: HEALTH CARE DELIVERY SYSTEM

Panel Discussion: Insurer Credentialing

Theresa Stahly, Blue Cross Blue Shield

Dr. Patsy Vargo, Family Practitioner

Jeannie Worschech, Board of Medical Examiners

Dr. Bob Shephard, New West Health

00:01:06 **Theresa Stahly, Credentialing Coordinator, Blue Cross Blue Shield of Montana**, provided an overview of Blue Cross Blue Shield's credentialing process.

Questions

00:08:38 Rep. Henry asked how Ms. Stahly determines if Blue Cross Blue Shield is evaluating for safety versus personal preference? Ms. Stahly said that Blue Cross Blue Shield (BCBS) is looking for patterns of quality care.

Rep. Henry asked if BCBS includes complication rates that are considered quality measurements related to care? Ms. Stahly said that they don't have the same kind of information that hospitals do on quality of care.

Sen. Laible asked about credentialing of the doctors as well as the hospital facilities. Ms. Stahly said that they credential the hospital facilities for their networks but that is more just making sure that they are licensed. They do look at their survey results from either an accrediting body or the state to see whether there were any deficiencies and to ensure that they were corrected.

Sen. Laible said as far as the doctors are concerned, does it make any difference whether the doctors are in a specialty hospital or in a community hospital or does BCBS credential doctors no matter where they perform their services. Ms. Stahly said yes.

00:12:54

Dr. Patsy Vargo, Family Physician, Great Falls, expressed her concern as to what she perceives as undue authority of the insurance companies to her patient's access to care. She described problems she has been experiencing since January when her recredentialing came up with Blue Cross Blue Shield of Montana (BCBS). Her partner, Dr. Cruse, was also asked to recredential with BCBS. Dr. Vargo described the trend towards the use of hospitalists. She said she works with hospitalists and feels that the continuity of care with the patients stays consistent. When BCBS asked her to be recredentialed, they said that she needs to have admitting privileges at Benefis. She told them that she has had privileges since 1983 but had put them on hold and is using hospitalists. At the beginning of March, both she and Dr. Cruse received a notice stating that as of the end of March they would no longer be providers for BCBS unless they were on staff at the hospital and they would need a letter from other physicians stating that the physicians would cover Dr. Vargo's and Dr. Cruse's 5,000 patients for them. She said that basically at the end of March, she would be out of business because she could only see those patients who can pay cash for her services. She said that BCBS was attentive to her situation. They met and came up with an agreement that put her situation on hold for a year. She said that she had no idea that BCBS had that much power over all the other insurances. She found out that since they do credentialing for all the federal insurance companies, they literally decide who has access and who doesn't.

Dr. Vargo talked about how the cost and scheduling of a procedure vary, depending on whether a provider is in an insurance network or not. She used a colonoscopy as an example and said that if you are a BCBS provider and your patient needs a colonoscopy, you could set up an appointment with the Great Falls Clinic who is a BCBS provider and the cost of the procedure would be almost free, but it would take a long time to get in to see the doctor. She said that she could call a doctor who is not a BCBS provider and get in within two weeks but it would cost her patient at least \$1,500. As a physician, Dr. Vargo said, you had better document that, because if your patient has colon cancer and it isn't diagnosed it because the patient chooses to wait and not pay extra, that to her is economics. When she started 25 years ago, it is unethical for her to look and see whether the patient has insurance or not, and if so, what kind. She thinks she should treat each patient exactly the same.

Discussion on Dr. Vargo's presentation

00:24:39

Rep. Dutton asked if a person is a patient of the clinic, are they scheduled for a colonoscopy immediately? **Dr. Vargo** said no, the only way she can get them in right away is that she couldn't choose the provider, she would have to send them to the emergency room so that they would be charged \$1,000 for stat rectal bleeding, stat colonoscopy.

Dr. Vargo said that if a physician is licensed by the Board of Medical Examiners, they should be allowed to participate in an insurance network in the state. She takes offense at the insurance company deciding whether she is good enough to see patients or not. She said that good enough ends up having colors of bias. Credentialing should be up to the Medical Board of Examiners. Call duties and how physicians should handle patients on call and when they are admitted to the hospital should be between doctors and doctors.

Rep. Dutton said that that is something that is too late for this committee to look at but we've heard testimony before other committees and this seems to be a big problem for patients. He understands that sometimes people want to make their own decisions, and he understands that there's reasons for these contracts. He said that to the degree these contracts do not fulfill the best interest of the patients, those need to be looked at.

Sen. Juneau asked Dr. Vargo for clarification on a situation in which a patient who lives in Great Falls and has BCBS insurance and has to get a colonoscopy and, according to Dr. Vargo's testimony, there could possibly be a 10-month scheduling wait. **Dr. Vargo** said that in order for BCBS to pay for it, you might have to be on the 10-month waiting list. You can get the colonoscopy tomorrow but you are going to pay for it out of pocket. Her message is that BCBS has authority over her patient's access. She could see the patients but they would have to pay cash because she no longer is a BCBS provider and can't bill BCBS. The continuity and the relationship with the patients, particularly from a primary care physician, is threatened simply by the authority invested in the insurance company over all other insurances. It is phenomenal to her that BCBS would govern more than 50% of her patient base and they are not bowing to what is set up as far as the Medical Board of Examiners or bowing to medical staff or the Montana Medical Association relationship of doctor to doctor. They are literally implementing it themselves.

Sen. Juneau asked Ms. Stahly if she were a patient who needed a colonoscopy and she couldn't get an appointment for 10 months, would Ms. Stahly do her own investigation to find a clinic who could perform the procedure, and does Ms.

Sthaly have an appeal process with BCBS? How fast would that happen, and if Ms. Stahly found a doctor who would perform the procedure, would BCBS pay for it? **Ms. Stahly** said that she is not familiar with that portion of their claims processing.

Frank Cote, Senior Director of Government Relations, Blue Cross Blue Shield Montana, said that 93% of all the doctors in Montana are part of the Blue Cross Blue Shield network. He said he doesn't know the specific instance that Dr. Vargo is referring to, but he will try and find out what the situation is with colonoscopies in Great Falls and if he can, he will present that testimony later this afternoon, and if he can't, he will write a letter to the committee members explaining the situation.

Rep. Dutton said that Dr. Vargo not being credentialed by Blue Cross Blue Shield because she is not an admitting physician should be looked into. **Mr. Cote** said that if in fact Dr. Vargo does not end up being credentialed, it doesn't mean that her patients can't still come to her, and BCBS would still be billed. The difference is, as a participating provider, the member does not get balanced billed for the difference between what the physician charges and what the BCBS acceptance rate is. The second difference is, instead of a check going directly to the doctor, the check for a non-participating provider goes to the patient and the patient will then pay the doctor.

Sen. Weinberg said that Mr. Cote has attempted to isolate this as a small issue and has complicated it with technicalities. The point here is that the insurance company is making therapeutic decisions. In this case, whether somebody gets their colonoscopy immediately or in 10 months, has nothing to do with the fact that 93% of the doctors in Montana are part of the BCBS network and the others are not. It has nothing to do with how much they pay. What we are hearing is that the insurance company is making therapeutic decisions that can either save a life or kill somebody. **Mr. Cote** said that that is exactly what he hopes to be able to address to the committee this afternoon. If they have credentialed the other doctors, and they are part of the BCBS network, he is unclear as to why there would be a difference other than the fact that it points out one thing. We need many more providers in Montana. He said that he is unclear as to why there would be a waiting list at Great Falls Clinic versus the other doctors. If they are all in the network, it shouldn't make any difference.

Sen. Weinberg asked Mr. Cote to investigate it as broadly as possible, not just focusing on this one case but focus on the issue that has been brought up. He also said that he would also like Mr. Cote to take his time in addressing the

broader issue and provide a written response to the committee.

Sen. Juneau asked Mr. Cote what happens if she did not have the money to pay for the colonoscopy procedure, the doctor or the lab? Should she ask for charity care and would BCBS support her in trying to get charity care in order to get the procedure done as soon as possible? **Mr. Cote** said that depends upon the provider. Most providers that he goes to don't require up front payment. **Sen. Juneau** said that the issue is that there are people in Montana who can't pay, and they might be lucky to have insurance, but BCBS is putting them into a situation that is not good.

Sen. Laible asked what being on call commits a physician to? **Dr. Vargo** said that it varies for the communities. In one area, you rotate with other doctors. If someone comes into the emergency room, you see them, you admit them, and you take care of them, you visit them each day. In another area, you get into a group who are on call. The emergency room doctor could see a patient of yours and call you and say come in and get them admitted. If you are choosing not to be on call, then you have to set something up with a hospitalist to take care of the patient. If there are nine people in the call group, they are only going to see their doctor the ninth week, otherwise you are going to see someone else. To her, as far as continuity of care because you rotate call, it isn't a concern of the insurance companies.

Sen. Laible asked Ms. Stahly, if the percentage of physicians that are not credentialed is because of a determination of competency from BCBS, or is it because the physicians aren't on call at the hospital. **Ms. Stahly** said that the requirement isn't that they be on call at a hospital, the requirement is that they have a plan in place to get their patient admitted. Many hospitals require a physician to be on call to get hospital privileges, or to have a formalized arrangement in plan with another physician or physician group who agrees to admit on behalf of that physician.

Sen. Laible said if the hospital decided that they don't want any doctors that aren't on call to be able to refer patients to the hospital, they could basically say that they are not going to have any continuation of care doctors within the hospital to take these patients. They could actually control where patients go for care within their community. **Ms. Stahly** said that they could.

00:53:11

Jeannie Worsech, Executive Director, Board of Medical Examiners, talked about the qualifications process with regard to licensing physicians in the state. The Board requires verification of their medical school, their test scores, their

graduation date, and their residency, any DD214s from the Drug Enforcement Agency that may be applicable and recent information from the National Practitioner Data Bank, as well as all current verifications from any licensing states where the physician has ever held a license, including whether or not the applicant may have a dual degree. Along with their application process, the Board verifies whether the applicant has ever applied in Montana before and whether their application has been withdrawn. Numerous disciplinary questions are asked. It takes around 30 days to process an application. If it is a non-routine application, it takes 60 to 120 days. The Board of Medical Examiners has the authority to request this information, has the ability to do peer reviews on records, has the ability to put a license on probation or issue a temporary license, and has the ability to review the practice of the physician if they were to grant a probationary, temporary license. Ms. Worsech talked about continued competency and maintenance of licensure. She also said that the Federation of State Medical Boards has just completed a briefing sheet and guidance recommendations for all state boards within the United States.

01:00:55

Dr. Bob Shephard, New West Health, talked about the credentialing process that New West follows. They have an application that they follow that requires primary source verification with the Board of Medical Examiners and physicians, with college, medical school, and residency programs. They query the National Practitioner Data Bank, the Federal Employee and Medicare Sanction List, etc. When they look at malpractice issues, they ask the provider to write a note if there is anything that they need to go over. When they know that a physician is impaired, they query the Montana Physician Assistance Program to provide information with the physician's permission regarding whether they are in compliance or not. They have eight hospitals and two independent practice associations (IPA) with whom they have contracts to do delegated credentialing.

Network Issues

Dr. Shepard talked about issues similar to Great Falls. He said that if there was a 10-month delay, they would give the patient one of two choices: 1) they could come to Helena, Montana, where there might be a place; or 2) they could do it in the network at the same reduced rate or waive the additional co-pay.

Hospitalists

Dr. Shepard said that he started pushing hospitalists because it was clear that two things were happening. One, he was getting older and didn't want to be on call so much, and secondly, younger physicians coming out of practice expect that there will be a hospitalist that will take of the patients when they are in the hospital.

Questions

01:11:22 Sen. Laible asked why isn't there a basic insurance policy available in the state with a high deduction, like a cafeteria style so people could use either their medical savings accounts or medical health accounts to pay the premium. He asked if there was something in federal law that says we can't purchase insurance from another company out of state unless they are licensed in this state. Dr. Shephard said that the HSA rules on the federal level do not allow you to take HSA funds and buy health insurance. You can pay for health care costs but you may not buy insurance with it. Who gets to sell insurance in the state is governed by the state's Department of Insurance. [Federal law currently prevents insurers from offering policies across state lines.]

Rep. Henry asked if there is a process where you have access to information that a doctor has a drug abuse problem, do you report that to the Board of Medical Examiners? If somebody has a malpractice history, does that get reported to the Board of Medical Examiners as well? Dr. Shephard said that the short answer is no because they often know that the Board of Medical Examiners is already aware. If they were to become aware of a substance abuse problem where the physician had not been part of the Montana Physicians Assistance Program, then they would report it. Since they are part of that program, then in fact by definition, the Board of Medical Examiners already knows. The same thing would be true with malpractice because every time they go through the Board of Medical Examiner licensing process, they are required to report malpractice claims.

Public Comment

None at this time.

SJR 5 STUDY: EMERGENCY MEDICAL SERVICES

Legislative Audit Report - Misty Wallace and Angus MacIver, Legislative Audit Division

01:24:10 Misty Wallace presented the Legislative Audit Report for Emergency Medical Services (**Exhibit 1**).

Questions

02:01:31 Sen. Juneau asked what the red dots represent on the map that shows the distance from motor vehicle crash sites to advanced level EMS. Ms. Wallace said that the red dots were motor vehicle crashes involving an injury that were 30 miles or more away from an advanced level of care.

Sen. Juneau asked if the rate of death in those areas versus some of those other areas have been looked at? **Angus MacIver, Legislative Audit Division**, said that they were able to get data that looked at fatality rates for those incidents. He said that there is an increase in fatalities as you move further away from AL care. The important qualification is that there are multiple factors, independent variables that come into play, such as road conditions, weather conditions, the type of highway speeds that are involved, use of alcohol. They made a judgment that it is reasonable to assume that the distance from emergency medical services can be a factor that affects mortality.

Rep. Dutton asked how the committee should move forward. Rep. Clark said that members from this committee who were interested in the EMS study could be appointed to work with staff on the issues that are forthcoming. Rep. Clark said that the caveat with the volunteers to work on the EMS study is that we should have draft legislation ready by the August meeting. Rep. Sands asked if we are directing staff to begin working on a draft. Ms. O'Connell said that after the audit report is heard, she will start work on bill draft.

Public Comment

None at this time.

BREAK FOR LUNCH

SJR 5 Study Draft Legislation - Sue O'Connell, Research Analyst, LSD

02:56:39 Ms. O'Connell talked about proposed legislation for the SJR 5 study:

LCS5-1: Creating special license plates for volunteer EMS technicians (Exhibit 2)

A bill to recognize volunteers and reward them with both a license plate and a tax credit for buying the license plate.

LCS5-2: Define nonemergency ambulance transport (Exhibit 3)

A bill to change staffing requirements for certain ambulance transports and to address concerns of EMT availability in rural areas.

LCS5-3: Add a volunteer emergency medical technician to the Board of Medical Examiners (Exhibit 4)

A bill to amend current law to add a licensed EMT to the Board of Medical Examiner.

LCS5-4: Provide tax incentives to volunteer EMTs and their employers

(Exhibit 5)

A bill to create tax incentives for both volunteer EMTs and for employers who allow their employees time off to respond to an EMS call.

LCS5-5: Create grant program for EMS (Exhibit 6)

A bill to create a grant program for Emergency Medical Services to fund both equipment and vehicle purchases.

03:38:01

LCS5-6: Providing for evaluation of EMS medical run reviews - Lisa Mecklenberg-Jackson, Staff Attorney, LSD

Ms. Mecklenberg-Jackson talked about the confidentiality for medical run review **(Exhibit 7)** and LCS5-6 **(Exhibit 7a)**.

Questions

03:42:17

Sen. Weinberg asked for clarification of the confidentiality and why it is necessary. Ms. Mecklenberg-Jackson said that it is her understanding that it is a liability issue. They are concerned that they are going to be giving out information that will make it easier for people to sue.

Sen. Weinberg said that sometimes it is good to have that ability to sue if people aren't performing up to standard. Without better evidence that we really need to provide this confidentiality, his inclination is to deny it and let people have access to the information.

Rep. Henry said that it is her understanding that this is modeled on some of the review and response to medical errors which means that ultimately someone would still have the right to sue based on anything, but the piece of information that would not be subject to discovery would be the problem-solving piece where evaluators look at processes that were used and how to improve responses.

Sen. Weinberg asked Rep. Henry if he was right in understanding that the public would still have equal access to the original information by excluding these reports, it would not diminish that access or make it more difficult to discover the initial problem. Rep. Henry said that her understanding is that the intent is based on other responses that she has seen related to medication errors.

Sen. Juneau asked if we were limiting it enough to just EMS peer review and only certain things that they can discuss in their meeting by this bill? Ms. Mecklenberg-Jackson said that it is intended to be limited to medical run review which means review of an emergency medical call for service. **1:01**

Public Comments on legislative bills

03:59:16 **Cliff Christian, American Heart Association and the American Stroke Association**, said that rewarding the EMTs with personalized license plates will help not only in recruiting but also in the retention of emergency medical technician personnel. He also thinks that putting a volunteer emergency medical technician on the Board of Medical Examiners is a great idea. He suggested adding one volunteer EMT and mandating that one of the physicians have experience in the Emergency Room or experience in emergency medical assistant care.

04:10:30 **Teresia Moore, EMS Director, Roosevelt County**, said that she reviewed all the draft legislation and thinks that the committee is on the right track. She discussed a few issues about the bills:

- She said that the definition of "volunteer" is old and needs to be updated.
- She said that regarding the license plate issue, if they are going to give a tax credit for those who buy the plate and the profits go to Richland County, are they suggesting that we all give our money to one county, one agency over another? On the other hand, if the state develops their own license plate, are we taking away from all the profits of Richland County which already issues an EMT plate?
- She supports a bill that addresses the liability and issues of trying to get enough EMTs to go on a 9-1-1 call. The Department rules say that they can get a temporary waiver to operate with one EMT and one driver. The idea was to allow services to continue to operate during a short period of time while they are in transition. She said she would like a bill that will allow them to use educated drivers.
- She supports an EMT who is active on the Board and would like to see that same type of input in the Department.
- The proposed tax credit bill, LCS5-4, would allow a volunteer to receive a tax credit by only working 1 day a month. She would like to see the hours changed so that in order to receive a tax credit, you need to work more than 1,000 hours a year. Need to look at including full-time EMTs into the tax credit, especially those who work at a full-time service or public agency but also volunteer on their off time.
- She supports creating a grant program but would like to see the funds used for training of EMTs, as well.
- She said that EMS basically needs three things: recognition, representation, and respect.

04:27:26 **John Bleicher, Trauma Coordinator, St. Patrick's Hospital, Missoula**, said that he is a member of three of the groups that have been discussed today: the

State Trauma Care Committee, the EMS Advisory Council for Children, and the Missoula group that has the request for some protection for case review discussions. He addressed the case review issue. Their goal is to be able to have discussions on case reviews without that discussion being discoverable. It doesn't have anything to do with any documentation, anybody could sue, but they wouldn't be able to dispose him to come and talk about the discussion that the groups had about that case. He discussed the audit report in that the question about whether or not there should be a reconfiguring and expansion of the State Trauma Care Committee or the establishment of some oversight umbrella EM Advisory Council to deal with some of the problem they have within their system. He would like to speak to the latter as the preferred option.

04:32:51 **Tim Breuster, Polson and Ronan Ambulance**, said that it appears to him that the bills were written to 10% of the patients that are transported and 90% EMTs in Montana. Unfortunately, 10% of the EMTs in Montana do 90% of the transports, patient care, etc., therefore, most of the bills that he sees are for 10% of the patients, not for 90%. He does not support the one EMT and one driver bill because of insurance. He does not support the license plate bill, but supports a state license where the state is available to those who need it the most. He commented on run review by saying that run review is about brainstorming ideas to improve, not a way to point out things that were done wrong. The only people that are qualified to make those judgments are the people who are trained, the EMTs, the first responders, the fire department, the dispatch, the hospital, etc.

04:40:17 **Mike McGree, President of the Montana Private Ambulance Owners's Association**, distributed their comments regarding proposed legislation (**Exhibit 8**).

COMMITTEE ACTION AND REVIEW OF OPTIONS WITH DIRECTIONS TO STAFF

04:41:23 Sen. Laible said before moving forward on any of the bills, he wanted to go through his notes and work with Rep. Sands and get back with changes based on input today.

Ms. O'Connell asked if she should wait until the August meeting before submitting any formal bill draft requests. Sen. Laible said it would be better to wait until August before we submit any as official bill drafts.

Rep. Henry said her question is a followup to what Sen. Kaufmann had proposed about looking at rate reimbursements. She asked if that would have any effect or any direction toward the other Medicaid reimbursement rate discussion? Ms. O'Connell said that Sen. Kaufmann's request was specific to the children's

mental health and foster care system.

Rep. Henry moved that the CFHHS Interim Committee request a bill draft related to defining the principles on how rate revisions will be done for children's mental health. Sen. Liable said his concern is about unintended consequences if we pass this and how it is going to affect rural areas. Rep. Clark said that it is a set of standards and procedures that the rate commission will use to determine what the rates will be across the state for the DPHHS to pay to their providers. **The motion passed with Sen. Murphy voting nay.**

DPHHS RULE REVIEW - Lisa Mecklenberg Jackson, Staff Attorney

04:52:17 Ms. Mecklenberg Jackson talked about rule review (**Exhibit 9**).

Discussion

04:53:13 **Rep. Sands** said that as the committee goes through the rulemaking, and since we have oversight of rulemaking versus the old system when it was done in a separate committee, that prior to presenting the rules here that the sponsors of each of the bills be contacted prior to a meeting to see if they wish to address this committee about how the department complied with their intent relative to rulemaking or not. She said that there are now two levels of requirements. The first is that the sponsor is to be notified when the department is beginning to draft rules with the implication that they should be involved and that is the intent of the statute. Secondly, the sponsor is notified when the rules have been drafted in order to comment. **Rep. Clark** asked if that was a suggestion for the future.

Rep. Sands moved for draft legislation to have the sponsor of a bill notified when the department is beginning to draft rules with the implication that they be involved and the sponsor of the bill is also notified when the rules have been drafted in order to comment. Motion carried.

05:12:22 Rep. Sands said that she would like to reopen the last motion that we made, the one having to do with Administrative Rules. Ms. O'Connell had advised her that we could take up the issue by doing a committee bill to insert in that section of the Administrative Rule code, a clarification that addresses administrative rulemaking and the requirement to notify the sponsor that the agency has begun drafting administrative rules that it state explicitly that they notify that sponsor and that they are notifying them because they have a right to be involved in the process of drafting of the administrative rules. It is implied but it is not explicit.

Rep. Sands moved to amend her motion to request staff to draft an

amendment to that section of code to state explicitly that the sponsors of the bill are being notified because they have a right to be involved in the process of drafting of the administrative rules. The motion passed unanimously.

Sen. Laible thanked Ms. O'Connell for her hard work on the proposed legislation. Rep. Clark said that the study sheets were coordinated well and thanked her for that work.

SJR 15 Subcommittee Report - Sen. Weinberg and Rep. Dutton

05:15:28

Sen. Weinberg gave an overview of SJR 15 Study's activities:

- **Disclosure.** What should medical professionals disclose to the patient so that the patient can make good choices? The proposal is that whether a physician or health care professional, who is employed in a hospital or in an ambulatory surgical center, has a financial interest or not in a facility. They must reveal in a clear and concise manner to the patient what their economic tie is with the facility. Patients will be asked to read and sign off on a brief and clear statement when they enter a facility. That statement will be framed and evident throughout the facility.
- **Kickbacks.** The subcommittee attempted at one time to go beyond the federal anti-kickback legislation. They simplified it and decided to use the federal anti-kickback regulations but broaden them because the federal legislation only deals with Medicare and Medicaid. Wanted to broaden it for all incidents in Montana.
- **Specialty Hospitals.** The federal government is supposed to reach a determination soon on its stance on specialty hospitals. The subcommittee does not want to draft a bill that may become moot. The subcommittee decided to hold off on bringing any legislation to the full committee until the federal government has decided what they are going to do. In August, the committee expects to have some draft legislation.
- **Economic credentialing and conflict of interest.** Whether or not a conflict of interest statement is needed in current legislation depends on what we come up with regard to economic credentialing. One of the main bones of contention has to do with the question of what is a competing physician allowed to do in a hospital. Can that physician be on the board of directors or can the hospital keep a competing physician off the board of directors. Should the hospital be allowed to keep that physician off the medical staff or should the hospital be permitted to keep that physician from a leadership position on the medical staff. Most of our hospitals are community institutions so they don't operate with total autonomy, they are responsible to the community at large. The committee would like to make it possible for the

board of directors, if they are uncomfortable with a competing physician being on the committee of the hospital or in a leadership position of a committee in a hospital, to recuse themselves if they are dealing with an issue that could potentially compromise the fiduciary responsibilities of the hospital.

Sen. Weinberg said that they were not able to bring a completed draft legislation because he felt the subcommittee was not ready.

Rep. Dutton said that he would like to commend Sen. Weinberg on his leadership on this issue. He said that he was impressed with the dialogue and testimony that he has heard. He believes that this proposed legislation is good for patients and health care consumers because it has tried to promote fair competition between health care providers to protect them from what might potentially be anti-competitive practices. One of the key parts of the bill, to him, says "the primary concern of health care providers must be the welfare of the patient".

Committee Discussion

Sen. Laible said that he sat in the SJR 15 Subcommittee meeting and it appeared to him that consensus had been reached on the April 29th draft with the changes but one of the working group said that they need more time in order to build a consensus to work on it. He thought he heard this morning that this was at least a good starting point. **Sen. Weinberg** said that they are using that draft as a starting point, and they were close but they were not ready to make a recommendation to this committee.

Sen. Laible said that he is concerned that if there isn't a motion to approve the April 29th draft with the changes that were agreed upon, they are not going to get this done. When they first started out, this whole issue was based on credentialing and they could have taken the existing legislation from other sessions and just removed the "temporary" status. **Sen. Weinberg** said that the reason he is not forwarding a draft piece of legislation today is not because the full committee is not ready, but because the subcommittee is not ready. He would propose that in two weeks time, the subcommittee would have draft legislation out for review.

Sen. Laible moved that the committee accept the April 29th draft as written, along with changes incorporated, as a working draft for the working committee to build consensus. The motion carried unanimously.

Public Comment

05:43:47 **Mona Jamison, Great Falls Clinic**, said that she supports the recommendation

and the discussion that just occurred. She urges the committee that once a change to the proposed bill is done, to not make any more changes by staff. The only entity now that can make changes to that bill is this committee.

05:48:10 **John Nordwick, President and CEO, Bozeman Deaconess Health Services**, said that he will examine LC8888 and the negative impacts that it will have on full service community hospitals. There have been many studies done regarding limited services hospitals and the negative impact on full service community not for-profit hospitals. He said that the ban on specialty hospitals should remain in effect.

05:52:57 **Jim McLean, Montana Physical Therapy Association**, said that he strongly supports the April 29th draft, and is particularly supportive of the conflict of interest definition contained in Section 6. He said that he opposes the anti-kickback statute and especially the exemptions to the anti-kickback statutes.

Questions

05:54:24 Sen. Weinberg asked Mr. McLean how keeping the anti-kickback provision in the bill would affect the Montana Physical Therapy Association? Mr. McLean said that the big question is what happens with exceptions. The anti-kickback statute itself without exception is an excellent statute, it is just that the exceptions are very broad. In their perspective, ruins the original intent of the statute.

Sen. Weinberg asked, in its current form with the exceptions, how does that affect Mr. McLean's group. Mr. McLean said that with the exceptions that go with the anti-kickback statutes, basically, there is no regulation whatsoever of physician-owned physical therapy services.

05:55:13 **Mary McCue, Montana Medical Association**, said that she reinforces Mona Jamison's suggestion with regard to the process. It would be a good idea if that once we have this draft that Ms. Murdo will be preparing soon, that if there are suggestions, that they come to the committee and we all work off the same draft.

05:56:29 **Dr. Mark Rumans, Billings Clinic**, thanked the committee for their good work. He said that he has concerns on the disclosure section although he supports disclosure, especially for those items that do help patients make medical decisions. The Billings Clinic has concerns about equating physicians who have an ownership interest where they receive direct financial gain from those services where they may have an ownership interest with employed providers, nurses, social workers and others. He questioned whether they should have similar disclosures. He would ask the committee to consider that. He said that

concerning the federal anti-kickback regulations, the way that the April 29th bill is drafted, it needs to have the federal anti-kickback language in there. Regarding the conflict of interest statement, more work needs to be done there. The committee doesn't understand that the ultimate accountability of the board of directors of any organization is both to the community that they serve and ultimately to those patients that come into that organization.

- 06:00:03 **Lorena Pettet, Montana Physical Therapy Association**, thanked the committee for their work on this. She said that it was stated that everyone should be prepared for compromise. The patient, however, should not be prepared for compromise. She said that Stark Act regulations do allow referral for profit. That is why the MPTA would be opposed to the addition of those rules and regulations because it would essentially allow the referral for profit in there. They support the draft as completed on April 29th and do oppose the addition of those Stark regulations that have been watered down through the years with the Safe Harbor additions to make it inconsequential.
- 06:01:42 **David Leckner, Medical Director for Employed Physician Group, St. Peter's Hospital**, said that he has concerns on some of the elements in LC0038. Empowering patients, which is one of the main tenants for the disclosure law, is something that they embrace and encourage their patients to do. He said that he hopes the committee will reconsider some of those issues.
- 06:05:13 **James Lefoholtz, Deaconess Health Group, Bozeman**, said integration between physicians and health care facilities is not always a bad thing.
- 06:10:21 **Bill Robinson, Physician, Bozeman Deaconess Hospital**, commented on disclosure and employed physicians. He said that he echos the comment by Dr. Rumans that considering employed physicians and a physician having an investment interest in an institution is not a correct approach. Across the nation, the more physicians who are aligned with hospitals, the better the results in quality and patient safety. The current initiatives that Medicare and others are proposing addresses physician behavior in hospitals but the rewards or penalties are against the hospital. Without those two groups being aligned, it is difficult to achieve the results that you as patients are looking for.
- 06:13:11 **Bob Olsen, Montana Hospital Association**, said that they are interested in making sure that the disclosure is appropriate to the patient, that it is only done when it is a referral situation, and that it was meaningful to the individual in exercising choice. He said that when it comes to economic credentialing, MHA is supportive of a physician retaining their independent right to refer patients away

from the hospital or from its own services when it is in the patient's best interest. When you get down to the issue of protecting the physician's independence, you need to put that into statute and they are supportive of doing that. When it comes to the board composition and the fiduciary responsibilities, the responsibility of the board is set in federal conditions of participation and there is nothing in there that says that you must give those things up. The fiduciary responsibility rests with the board and they are not willing to concede that.

06:21:48 **Sen. Weinberg** said that in equating a non-profit 501(c)(3) hospital with independent corporations, non-profit hospitals are not totally independent, they are part of the community and in achieving 501(c)(3) status, being able to accept contributions, and by having a board of directors of community members, the hospitals have a responsibility to the community. If Mr. Olsen feels that they have been treated differently from an independent corporation, Sen. Weinberg said that that might be appropriate. Non-profit hospitals should be treated differently because they are different. Sen. Weinberg said that he has enjoyed working with Mr. Olsen, Mr. Flink and others from MHA and thinks they have contributed in a constructive manner in this process, and would like to continue working with them.

06:23:20 **Rep. Dutton** said that he wanted to reassure the employed physicians that there is nothing that they have done that would seem to imply that there is anything wrong with being an employed physician or that it is something that they want to discourage in any way. What they are saying is that the patient should know and be allowed to make a judgment of what they think is in their best interest.

06:26:43 **Rep. Sands** said to all those people who generated a lot of letters, she hopes that they understand if they don't personally respond to each one of those. The committee appreciates the input and asked to thank all the employees who sent in letters. The committee appreciates getting them.

COMMITTEE DISCUSSION AND ACTION

06:27:49 Rep. Henry said that one of the issues that they talked about relating to access to health care is the information technology. She talked about information from the Rimrock Foundation, which is one of the health care groups in Montana, that gives specific examples of questions to ask before you have surgery.

06:29:51 Rep. Sands distributed an article from Consumer Reports (**Exhibit 10**) regarding credit cards and finance lines that are being pitched to consumers seeking medical care, either directly or through their medical professionals.

06:33:03 Sen. Laible said that he saw an article that says there is a trend nationwide that are beginning to put clinics within their stores where you can receive shots or referrals to other doctors. They are manned by nurses who have additional training and that might something that we might want to look at for future legislation.

06:34:31 Rep. Clark said that she had requested a letter to the Montana State Auditor's Office to clarify some physician's credentialing by insurance companies. She distributed that letter and response to the members of the committee and said that any response can be done through email and if it needs to be on the agenda for the next meeting, they may do so.

Public Comment

None at this time.

COMMITTEE WRAP UP

06:35:45 Sue O'Connell talked about New Legislator Orientation that is scheduled for November 19 through 21. She gave an update on a joint subcommittee made up of members from the Legislative Finance Committee and members from the Revenue and Transportation Interim Committee to study the effects of aging demographics in Montana and how that would affect Montana's revenue stream.

Ms. O'Connell discussed what needs to be done at the August meeting. Final action will be needed on the bill drafts for SJR 5 and SJR 15 studies. The committee will be hearing the agency legislative proposals, hearing updates on DPHHS activities and the Mental Health Study. There are some statutorily required reports that need to come to the committee. It was decided that the committee will meet August 21 and 22, 2008.

06:41:52 Sen. Juneau talked about the Department revising its eligibility for food stamps, the asset test and the federal poverty level. She talked about an article regarding the asset test and said "the key reason it appears that states do not fully understand the flexibility available to them...it is a fully allowable option under the food stamp law and regulations and states continue to opt into this policy. Minnesota just eliminated their food stamp asset test, as of October 1, 2006." She said "what is less commonly understood is that states may set their own rules on how to treat households' financial aspects with respect to food stamp eligibility." She said that Montana can change its rules and make more people eligible for food stamps, if they wish. If there is people going hungry in Montana, we should do something about it and it sounds like we can.

Sen. Juneau moved to send a letter requesting that DPHHS take action as soon as possible to revise their rules for the Food Stamp Program to eliminate the asset test and increase the federal poverty level limit to the maximum allowed by the USDA. The motion passed.

ADJOURNMENT

06:45:09 With no further business before the committee, Rep. Clark adjourned the meeting at 4:55 p.m.

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