



Children, Families, Health, and Human Services Interim Committee

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60th Montana Legislature

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PAT MURDO, Staff for SJR 15

MINUTES

Date: February 11, 2008

Subcommittee SJR 15
Capitol Bldg. Rm 137

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COMMITTEE MEMBERS PRESENT

SEN. DAN WEINBERG
REP. ERNIE DUTTON

STAFF PRESENT

LISA JACKSON, Staff Attorney
Cj Johnson, Secretary
PAT MURDO, Legislative Staff for SJR 15

Visitors/Agenda

Visitors' list, Attachment #1.
Agenda, Attachment #2.

COMMITTEE ACTION

- Panel discussion on Economic Credentialing and Specialty Hospitals.

PANEL MEMBERS AT THE TABLE:

John Solheim, CEO, St. Peter's Hospital
Roy Kemp, Deputy Administrator, Quality Assurance Division, Department of Public Health and Human Services (DPHHS)
Lorena Pettet, Physical Therapist in Independent Practice, Manhattan
Keith Popovich, M.D. Pulmonologist, Butte
Patti Jo Lane, PT, Great Falls Clinic
Kevin Kelly, M.D. Anesthesiology, Great Falls Clinic
Bob Wynia, Retired Physician, Helena
Kurt Kubicka, M.D. Montana Medical Association representative and family

practitioner with the Great Falls Clinic, Helena,
Tim Nagel, Advanced MRI, Billings, formerly Bozeman
Mark Rumans, M.D., Billings Clinic, Physician in Chief, Billings
Jerome Anderson, Attorney representing Yellowstone Physicians Alliance and
Montana Orthopedic Society
John Flink, Montana Hospital Association (MHA), an Association of Montana
Healthcare Providers
Tanya Ask, Vice President of external and provider services, New West Health
Services
Susan Witte, Allegiance Benefit Plan Mgt. Inc. and Allegiance Life and Health
Insurance Co.
Rep. Edith Clark, HD 28, Sweet Grass, Chair of the Children, Families, Health
and Human Services Interim Committee (CFHHSIC)

AGENDA:

CALL TO ORDER AND ROLL CALL

- 00:00:19 SEN. WEINBERG called the subcommittee to order. He informed those in attendance that economic credentialing will be discussed. He thanked the panel members for attending and their assistance. The secretary noted the roll. Attachment #3
- 00:01:59 Pat Murdo, Legislative Staff, announced that the polycom phone is at the table and available for anyone to call in to make public comments during the meeting.
- 00:02:26 Ms. Murdo distributed a handout of a bill in draft form, LC0038, **EXHIBIT 1**. She said the draft is for discussion purposes only. She read and explained each section.
- 00:06:03 Ms. Murdo discussed the terminology for economic credentialing, which some people say should be called a conflict of interest. She has created a separate section in the draft that deals with conflict of interest.
- 00:12:13 Ms. Murdo discussed the proposals that she has received and addressed them as they relate to the bill draft. One proposal would have allowed a hospital to deny privileges when there are referrals to a specialty hospital. She stated there are no specialty hospitals at this time and said that may be determined by the federal government. She is open for any additional language and issues to be included in the bill, such as ambulatory surgical centers (ASCs), and other healthcare providers.
- 00:14:00 SEN. WEINBERG asked Ms. Murdo to explain what has changed in comparison to current statute. Ms. Murdo read the MCA code. She explained the comparison of the bill draft to show what is proposed in the draft and what is in current law.
- 00:15:44 Ms. Murdo discussed the language in section 2 of the draft that states a person cannot be denied treatment because of economic discrimination. She said the

main concept is that treatment cannot be denied. The new language in section 2 as of July 1, 2009, would let a hospital limit membership or privileges based on education, training, or other relevant criteria. Proposed language would let the Board of Medical Examiners define competency to avoid individual hospital determining "relevant criteria". REP. DUTTON asked Ms. Murdo about subsection 4. He said when it comes to hospital staff, the hospital should be able to decide. She suggested leaving the language in its current form, but take out sub (i), and sub (ii). She said the subcommittee may want to leave in "may limit privileges or membership based on education, training or competency", which is important to a hospital so they can limit someone they feel doesn't qualify.

- 00:20:55 **Roy Kemp, Deputy Administrator, QAD, DPHHS**, responded to REP. DUTTON's question. Mr. Kemp talked about physicians who are not employees of the hospital and said they shouldn't have to go through the same process as an employee of the hospital. He added that there are a number of facilities that employ physicians and also grant privileges to physicians who are in independent practice. REP. DUTTON said the language doesn't specifically apply to the staff or specify medical staff.
- 00:22:05 **Keith Popovich, M.D., Pulmonologist, Butte**, said if the language were to say "the entire medical staff", it would be a protection for those employees. **EXHIBIT 2**. SEN. WEINBERG said the standard should not be lowered.
- 00:23:38 **Kevin Kelly, MD, Anesthesiology, Great Falls Clinic**, wanted to know if this draft will outline specific criteria that can be used for denial of privileges. SEN. WEINBERG replied that any proposal that comes out of this subcommittee and goes to the full committee will be very specific.
- 00:24:55 Pat Murdo continued her explanation on the comparison of economic credentialing to economic discrimination in Exhibit 1. She talked about the certificate of public advantage that exists, and what it does if there is an exclusive contract or cooperative agreement, which sometimes limits competition. She discussed what triggers a certificate of public advantage, and the one she discussed allows the DPHHS to bring an injunction for violation of the act. The Attorney General can then monitor the competition issue. REP. DUTTON talked about the language and stated it should be broader.
- 00:30:26 SEN. WEINBERG said he would like to include all ASCs. He voiced concerns about a repealer that will take effect on July 1, 2009.
- 00:33:33 SEN. WEINBERG talked about competition through credentialing. He said there should be a process for contracts. He stated that the hospitals should not be allowed to punish any group through contracting.
- 00:34:41 REP. DUTTON said the intent of this meeting is not to take away from hospitals, but said decisions should be made in the best interest of the patients.
- 00:35:17 SEN. WEINBERG and REP. DUTTON distributed handouts on their comments

for discussion. **EXHIBIT 3 and EXHIBIT 4**

00:36:52 SEN. WEINBERG opened the hearing for discussion.

00:38:51 **Bob Wynia, retired Physician Helena**, talked about his concerns on page 2, (2)(a). (see Exhibit 1) that a hospital may refuse to appoint a physician to the governing body of the hospital. He said medical staff is usually considered an autonomous body, and that hospitals do not have the right to control. He said he thought the AMA (American Medical Association) and OMSS (AMA's organized medical staff section) would have problems with how hospitals might impact medical staff decisions as to the chief of the medical staff.

00:41:28 **Kurt Kubicka, M.D., Montana Medical Association representative and family practitioner with the Great Falls Clinic, Helena**, said he is speaking on behalf of the Montana Medical Association (MMA). He informed the subcommittee that the MMA and a MMA member drafted the original bill, SB 312. He addressed the MMA's concerns on the proposed draft: 1) the conflict of interest in (1)(a) and payment disparities on facility-based provider care on Medicare and Medicaid reimbursement, and 2) in-patient and out-patient physician privileges being denied. Pat Murdo responded that the denying of privileges can only happen in subsection (1)(a). Dr. Kubicka stated there is an "or" between (1)(a) and (1)(b), and that (1)(b) could also be a criteria for an independent conflict of interest. Ms. Murdo said that (1)(a) and (1)(b) can be clarified in separate issues. Dr. Kubicka said he reads that as a conflict of interest. SEN. WEINBERG asked Dr. Kubicka to explain his first issue. Dr. Kubicka said the MMA agrees with the general principle on the definition in (1)(a), defining what the conflict of interest is. He asked the subcommittee to recognize that under the current payment schemes for Medicare and Medicaid there is an enormous payment differential between a hospital-employed physician and an independent practicing physician. He talked about general differences in payers and the activities of in-patient procedures and ambulatory surgery procedures. The proposed language could trigger the definition as a conflict of interest. He didn't feel this is fair because the payments are put in place to assure access.

00:46:55 SEN. WEINBERG asked Dr. Kubicka how this would affect the activities. Dr. Kubicka responded there are many physicians shying away from Medicaid patients because of the current poor Medicaid reimbursement that exists in the state. He said there is a substantial payment differential benefiting hospital-employed physicians under a facility-based provider payment vs. an independent practicing physician. He talked about a hospital-employed physician who will have a larger percentage of Medicaid patients for that reason. Part of the state's reason for putting this in place was to make sure the hospitals take Medicaid patients, because they cannot limit their practice. This creates a large differential in the payment, for example, a facility-based provider might have a higher Medicaid patient pool to start with. He said that patients who are referred to the ambulatory surgery centers (ASC) will reflect the underlying patient pool and that may skew things to trigger a conflict of interest. He asked that the subcommittee investigate this issue. REP. DUTTON and Dr. Kubicka discussed the influence of how a physician's practice is structured on a payer mix. He talked about being

involved with the Great Falls Clinic, but he doesn't receive facility-based or provider-based reimbursements. REP. DUTTON asked how can the subcommittee address this. Dr. Kubicka said he didn't know how to address this, because it is a potential unintended consequence of the current language. REP. DUTTON asked Dr. Kubicka if he could get some information back to the subcommittee, because this issue does need to be addressed. Dr. Kubicka said yes. Dr. Kubicka addressed two other areas that the MMA has concern with, which are: 1) On page 2 (2)(a), Exhibit 1, the encumbrances placed on the chief of medical staff or presiding officer of medical staff. He said that the MMA opposes denial of any privileges based on concerns other than those of clinical relevance, such as, education, training and quality of patient care. The MMA does recognize that a conflicted physician can be excluded from a Board proceeding specific to the conflict of interest. He said that the MMA cannot abide by the exclusions under (2)(a). He offered alternative wording that has been provided by Jerry (Jerome) Anderson. **EXHIBIT 5.** The wording would state " notwithstanding the prohibitions in subsection (1), a hospital may refuse to appoint a physician to the governing body of the hospital if the physician, a partner or an employee of the physician has an ownership interest in a different hospital, hospital system, or health care facility, other than the ex officio role of the chief of medical staff as such exist on the Board of Directors." 2) The MMA's other area of concern is in section 4(a), and on page 8 under 3.3. He asked that the subcommittee consider language to state, "if a physician practices as an employee of a hospital that does not constitute an exclusive contract." He summarized that if a family practitioner is employed by a hospital and orders an MRI at the hospital while a free standing MRI facility is available elsewhere in the community should that physician provide written notification to the patient. He gave another scenario of a surgeon employed by a hospital who schedules surgery at the hospital which could be safely performed at an ambulatory surgery center (ASC) in the community or a competing hospital in the community, and is written notification required. He asked "does physician-employment constitute an exclusive contract." He answered that it usually does.

00:53:29 SEN. WEINBERG asked Dr. Kubicka about his concerns regarding doctors that are not employed by hospitals and referral patterns. Dr. Kubicka said the MMA doesn't have a problem with independently practicing physicians who may have a financial interest in a facility having a requirement for disclosure. He said if that is the case under the proposed language the MMA feels that physicians employed by a hospital who refer patients to facilities or diagnostic procedures within that hospital when those services are also available in the community would also need to make the same kind of disclosure. He asked if employment by a hospital constituted an exclusive contract. He suggested new wording that will address physician owned hospitals. It would read "in addition to an exclusive contract or employed by the hospital". SEN. WEINBERG asked if that were the case what would happen if that change were made and doctors employed by hospitals made it clear that patients have options, what would happen to that physician. Dr. Kubicka stated that the same thing would happen as for an independent practicing physician who has to make it clear that they have an interest in a facility to which they may refer a patient. He feels it makes the public aware of another avenue that is available to them as a patient.

- 00:56:08 SEN. WEINBERG asked if there would be any change in a patient's decision making. Dr. Kubicka said he felt there would be a difference. He said that patients are not always aware they have a choice.
- 00:57:35 **Mark Rumans, M.D., Physician in Chief, Billings Clinic**, responded it is the role of the hospital boards to set the criteria for privileging and credentialing of medical staff. He stated that the first section (1)(a) could be re-worded. He said it is unnecessary to use the Board of Medical Examiners (Board) in credentialing, because local organizations have a good understanding of the criteria, and they would probably set higher criteria than the Board. He asked the subcommittee to work on that section. He discussed other sections addressing the various issues and the way they are written. He talked about the challenges in section (1)(a). He commented that he agrees with Dr. Kubicka in the case of not understanding the referral language.
- 01:03:36 SEN. WEINBERG asked Dr. Rumans if he thought there was pressure on patients to keep the services in-house. He commented that he doesn't like the way the bill is written either and said it will be difficult to manage if the draft isn't written differently. SEN. WEINBERG talked about referrals being made for the wrong reasons. He asked how can we overcome these difficulties and open up the process to give the patients the information they need to make good decisions. Dr. Rumans agreed, stating that transparency is good for healthcare. He discussed a patient when entering a hospital will know who the owner is of that facility, but when a patient enters an ASC it isn't clear who owns that facility. SEN. WEINBERG replied that is one of the issues the subcommittee wants to address. Dr. Rumans said if this is the way the subcommittee wants to go, then it needs to be more clear, such as, respiratory therapy services offered to patients as a choice and what is available in the community. Dr. Rumans discussed how patients should be able to choose where they get their health care. SEN. WEINBERG responded that this is only possible if the patient has all of the information. Dr. Rumans said that is correct. SEN. WEINBERG asked "how do we get there"? Dr. Rumans said that it should be more on a global basis rather than a case by case basis. SEN. WEINBERG wanted to know why people cannot be offered the information they need to make decisions. Dr. Rumans said the patients that come to him at the Billings Clinic know that he works for the Billings Clinic. His patients know what his referral patterns are, and they are informed they can go see whomever they want in Billings. SEN. WEINBERG asked if that is the global perspective that he was talking about, to be able to see whomever they want. Dr. Rumans replied yes. SEN. WEINBERG wanted more specific information about who else in the community is providing the same type of service and what it means. SEN. WEINBERG talked about conflicting information about whether people can be clearly informed about choices. SEN. WEINBERG said he will not accept a response that the information cannot be put out for the people to see. Dr. Rumans replied that his ideas and SEN. WEINBERG's ideas lead to the same place, the delivery of services. He is in full support of giving out information to patients to make decisions. He said this conversation started out about ownership or financial interest. But, he feels there is a slight difference between someone who is employed by an organization who doesn't have a per-referral economic benefit disclosure vs. someone that is

receiving a per-referral economic benefit from that disclosure. SEN. WEINBERG said he heard that pressure can be brought by the hospital on hospital employees to refer patients in a certain manner. Dr. Rumans stated that this is about delivering the information, and that it's just the delivery, but he reiterated this doesn't happen at the Billings Clinic. SEN. WEINBERG voiced concern that financial decisions are driving clinical decisions, and stated this is wrong. Dr. Rumans said it is difficult for a patient to make a decision while in the doctor's office. SEN. WEINBERG commented this isn't any different than a doctor who would like an ASC to inform the patient that a certain doctor has a financial interest in that ASC. He stated that the hospital employees can inform patients who they work for and what their other choices are.

Dr. Rumans referred to another section of the proposed bill on the certificate of public advantage [COPA]. He said the language is very general and suggested it could keep certain organizations from moving forward with programs they may want to develop. SEN. WEINBERG asked if he would like this tightened up. Dr. Rumans said it shouldn't be in there at all, but if it has to stay, then it should read "it appears to diminish competition". He commented that he understands the intent of the bill draft but said he isn't sure if this is the way the subcommittee will want to go. He understands that physicians are concerned that economic credentialing could prevent a physician from being on a medical staff, and that could limit their ability to purchase malpractice insurance. SEN. WEINBERG gave a hypothetical analysis on hospitals entering into contracts with the purpose of squeezing certain groups of doctors out of the process and wanted to know how do we prevent that. Dr. Rumans suggested there could be an open phase for contracting with other groups by bidding on it to make it a more fair and open process. He said the language could allow for some services to be offered to other individuals, or make it 80% of the services that could be offered to physicians. He said this would all depend on the facility and what types of services are being offered. SEN. WEINBERG asked Dr. Rumans to put some ideas together and give them to Pat Murdo for the subcommittee to review.

01:18:48 Dr. Wynia commented that he was involved with COPA when it went into effect. He said Joe Mazurek, Attorney General at the time, had written the COPA to be very specific and detailed to the issues that were going on in Great Falls with the merger of Columbus and Deaconess hospitals. He stated that if the subcommittee looked at all the COPAs around the country, that they would find they are all specific to a given issue. He said because of that the hospital and physicians could function because they knew in advance exactly how it would operate and what their limitations were. He said if the subcommittee tried to write a COPA for the entire state there would be all kinds of problems. SEN. WEINBERG asked if the COPA process could be in place, be open, and be flexible to work for the state. Dr. Wynia stated that everyone involved would have to look at episodes as they occur. SEN. WEINBERG asked Dr. Wynia if it is possible if the process can be fair and be broad and open. Dr. Wynia said in each case when an issue comes up they would have to be defined.

01:21:31 Dr. Wynia talked about hospitals that have contracted with doctors and asked if that contract states that those doctors have to use that facility in all cases. He

said this reduces access for patients as well as increased costs such as insurance, managed care, etc. The access issue is: if it is determined that a patient needs an MRI, can it be done on an outpatient basis when the hospital is a two-week wait, and it can be done in two days at an ASC or a stand-alone facility. He said the subcommittee needs to look at this to determine what is effective cost-wise, and with a lower co-pay, such as: will managed care pay for outpatient procedures for a hospital procedure.

01:22:38

John Flink, MHA, said he remembers when COPA was passed. He said the intent of the COPA statute was a model used by states around the country to deal with the anti-trust issues that came about when two organizations merged. He said that when the Columbus and Deaconess hospitals merged, their choice was to go to the Federal Trade Commission in the Department of Justice at the federal level to get approval of the merger or use the model of a certificate of public advantage. He talked about the statute that Dr. Wynia addressed on how Benefis Healthcare and the state of Montana implemented COPA. He said that the Attorney General had a contract with an economist who provided consulting services as the merger took place. He said that Benefis had their own contracts to deal with the technical side of putting the agreement (merger) together. He isn't sure this is the best way to get at the intent of the language. He informed the subcommittee that he understands that hospitals shouldn't be able to drive physicians out of business through contracting procedures. He talked about a facility in Northwest Montana that has contracts for numerous services. For example, the hospital wasn't able to maintain an anaesthetist 24/7, so they developed a contract with a group of anaesthetists to provide that service. He discussed the controversy that took place in the last session with SB 312, when an anaesthetist had called and said he had been excluded from that contract. He said it was the group of physicians that had excluded him and not the hospital. Mr. Flink said the MHA agree about some kind of notification. He said the challenge is when a patient comes to a physician for a number of treatment options. He voiced concern over decisions driven by the type of insurance coverage, or out of pocket expenses, which is information that the doctors don't have on individual patients. He said there is a red flag on the notification language as it places that burden on the hospital or the physician who sees the patients. He said not only are they willing to work with the patients to get the right information for their decision making, but the facility also needs to make sure that the patients get the information from the right people. He offered his assistance to help Ms. Murdo with the language. He said that hospitals have concerns with situations where there is a conflict of interest, and they need to know how to manage those conflicts. He discussed the subcommittee's last meeting when Jim Paquette, St. Vincent Healthcare, and others talked about how to manage the conflict of interest so a hospital board can fulfill its fiduciary responsibilities. He suggested that instead of a new bill to add a new paragraph in the current law on the conflict of interest. He talked about a conflict that could occur, for example: a physician with a proprietary interest in another organization, such as being on a board, and in a staff leadership position where that person may have some control over purchases, such as equipment. He noted that a physician referring a patient away from the hospital could undermine the financial stability of the hospital, which is also an issue that hospitals need to

deal with. He closed stating that the conflict of interest does need to be addressed, and he said it can be managed.

- 01:30:02 REP. DUTTON commented that the stakeholders from the January 24th meeting did a good job in addressing the managing of conflict of interest. He said the statutes state "they may exclude", and certain people that are on boards are excluded where conflict may occur. Mr. Flink responded that the challenge that is faced when coming out of this process is so prescriptive that it takes away their flexibility to deal with the issues at the local level, and stated that is the balance they are dealing with. Every facility handles this in its own way.
- 01:33:35 **Tim Nagel, Advanced MRI, Billings**, said he doesn't have a problem with the Billings Clinic like he did in Bozeman. He talked about his experience in Bozeman when starting his MRI business, and its advantages and disadvantages. SEN. WEINBERG asked Mr. Nagel how he would handle putting legislation together on the issue of contracting. Mr. Nagel said there are always shades of grey. He said to look at what is appropriate and what is inappropriate, then evaluate those problems and establish guidelines. He stated that the patient's right of choice has to be honored. He said if a patient can pick their pharmacy, why can't they pick where they want to get an MRI. Mr. Nagel talked about contracts and said he didn't have any problems with getting contracts or becoming a member provider. He said that technology is changing and that image quality is a trade off to an MRI.
- 01:42:44 SEN. WEINBERG and Mr. Nagel continued the discussion on contracting, with Mr. Nagel saying that the question is, is it productive or is it predatory. SEN. WEINBERG asked how can legislators make policy for hospitals to open up this area to make it more fair.
- 01:49:01 REP. DUTTON asked how to keep hospital/physicians from providing information that is discriminatory. Mr. Nagel responded they have a right to their opinion, but not the right to say negative comments or have inappropriate behavior. He discussed political pressure being put on physicians as employees and as independents.
- 01:51:30 **John Solheim, CEO, St. Peter's Hospital**, pointed out the difficulty of giving notification to every patient for every procedure in a facility with multiple issues and needs like: physical therapy, lab work, X-rays, etc. From the hospital's perspective it is almost impossible to inform everyone where they can go. He named the number of physical therapists and dieticians and said it would take too many sheets of paper to process one patient. He doesn't know of anyone that is worried about transparency, but the physicians are under pressure to see the patient in a reasonable amount of time for economic reasons, and to burden the patients with all these referral sources would be problematic.
- 01:52:56 Mr. Solheim addressed the remedy for contracting, and stated it is called anti-trust. He said that physicians are not opposed to using anti-trust lawsuits against hospitals if they feel that competition is unfair and they have a legal case. He stated that to add more regulations on top of anti-trust adds another needless

burden. He talked about hospitals that don't have contracts with providers for services, because it is done through insurance companies. He stated that physicians who have employment contracts with a clinic can make the decision that is in the best interest of the patient. He said the physician does have the right to refer a patient any where she/he feels is the best place for services. SEN. WEINBERG asked if it is realistic when someone starts a new business in Montana and is in debt, could that person effectively file an anti-trust suit and win. Mr. Solheim replied there are a number of attorneys that would be willing to take advantage of a case like Tim Nagel's.

01:55:36 **Dr. Kevin Kelly, Great Falls Clinic**, commented that hospital-employed physicians do have a vested interest in referring within the hospital. He discussed the wording in 23 (b), Exhibit 1, and said they define investment interest with equity or debt. He said the subcommittee could also include vested interest that physicians would have in that stake and said that is the reason why situations like Tim Nagel's occur. He talked about conflict of interest and said that hospitals who are able to own insurance companies, surgery centers, primary care physician offices, and employment and ancillary services do have a responsibility to that hospital. He said there are no provisions that pertain to hospitals. He said there needs to be a solution for that, and the word "applies" should be applied to all physicians and all entities.

PUBLIC COMMENTS:

01:57:49 **Jack McMahon, M.D., Medical Board**, said the whole problem is the code of ethics. He said that current mandates have to be what is best for the patients. He talked about conflicts that are a financial burden for physicians, hospitals, etc. He said that physicians seek to provide the best care for their patient, and it is their obligation to provide those services to the patient. He talked about practical considerations like hospitals versus free standing facilities that are not available 24 hours a day like a hospital. He talked about the hospital's income that is spread over 24 hours. He commented that it would be cheaper for the patient if everything is the same. He closed stating that most of this discussion is between patients and physicians. He asked the subcommittee to concentrate on the idea of what is best for the patient. He also asked the subcommittee not to pay attention to "patterns", because it is determined by a computer. He said unless you know what the relationship is between the physician and the patient, a pattern doesn't mean anything, it is only a number.

02:02:57 **Mona Jamison representing Central Montana Surgical Hospital d.b.a. Central Montana Hospital, and Great Falls Clinic, LLP**, via Polycom phone, talked about the draft and her thoughts:

- Conflict of interest for physicians
- Equal pay
- Disclosure
- Hospitals owning insurance companies, and
- Exclusive contracts - a way of locking out the market.

02:12:07 **Mike Foster, representing St. Vincent's Hospital, Billings; St. James**

Hospital, Butte; and Holy Rosary Hospital, Miles City, discussed two situations where a conflict of interest exists. Mr. Foster stated that a hospital board would need the authority to look into a situation when a chief of staff has an ownership interest in a competing facility. He said by being a member of a board, does it give that person access to all the financial data, competing interest, and have all that knowledge of that hospital's finances and strategies. Mr. Foster said there is room for discussion and feels there should be an easy agreement. He said he thought the definition of conflict of interest wasn't a definition but a description of a situation. He said the subcommittee may want to add to the conflict of interest definition from Dr. McMahon's example. He also suggested looking at Black's Law Dictionary, which gives a good example on conflict of interest. He commented on the area of certificate of public advantage and felt that Dr. Wynia and Mr. Flink did a good job of addressing this area.

02:16:17 Break

02:36:09 SEN. WEINBERG opened by asking the panel to address specialty hospitals, and questioned if we are really addressing ASCs. Mr. Kemp stated that ambulatory surgery is distinct because it doesn't allow an overnight stay. He said there has to be a transfer agreement, which must address the needs of the patient and what is required beyond what is provided by an ASC. He said there is a distinction between a facility that can take patients for an indefinite period of time and a facility that can provide a similar service in a 23 hour period of time.

02:38:47 SEN. WEINBERG asked if it is fair to have the discussion also include ASCs. Mr. Kemp said that an ASC and a hospital are two different facilities.

02:39:53 REP. DUTTON asked Mr. Kemp to define COPA. Mr. Kemp responded that the Department (DPHHS) cannot take an opinion. He voiced concern over unintended consequences. He said the issue involves two different departments, the Department of Justice and DPHHS which monitors. Mr. Kemp talked about the certificate of public advantage, stating that DPHHS was involved and had provided data for the Department of Justice on the quality of health care access, patient safety issues, patient satisfaction, health care service changes, etc. He informed the subcommittee if they want to address these issues they would need to find a more relevant way from a facility's point of view. He said a COPA would be a tremendous amount of work administratively.

02:41:57 Dr. Kubicka talked about specialty hospitals, and said that ASCs are in full bloom in Montana. He addressed section 1 (b), that states, "specialty hospital or an ancillary facility", and he wanted to know if that is merging into ASC. Pat Murdo defined ancillary services on page 2 and 3, Exhibit 1.

THE ROLE OF INSURERS AND PROVIDERS:

02:44:16 **Tanya Ask, Vice President of External Relations and Providers for New West Health Services, Helena**, provided background information on Montana law and the network arrangements on various health plans in the State of Montana. She discussed Governor Ted Schwinden's Cost Containment

Advisory Council. She explained:

- Quality indicators
- Health Maintenance Organizations (HMOs) - Coordination of care
- Preferred Providers
- HMO being under scrutiny by hospitals/physicians and the indicators.
- The patient perspective.
- What physicians and hospitals do in credentialing.
- Financial benefit under an HMO
- Hospitals

02:54:41 Ms. Ask responded to SEN. WEINBERG's question on how insurers might be directing patient traffic. She replied that in Montana employers choose what benefits are provided to their employees, and it is done on the basis of the providers that are in the network, the types of services that are available, and the costs of those benefits. She said insurance companies make available the different types of networks that are available. She discussed facilities that want to go through the credentialing process and Medicare. Ms. Ask talked about the Medicare Advantage plan, which is only available for individuals that are Medicare eligible, and is available to any hospital and physician who is willing to go through the credentialing process and is interested in participating in a Medicare Advantage Program. This means as a Medicare beneficiary, there is only one bill to deal with.

02:59:14 REP. DUTTON and Ms. Ask discussed:

- HMOs,
- exclusion of providers from networks, and
- what is contractually responsive.

Ms. Ask said that New West is not constricted as to whom they can work with. She said that HMOs are the most tightly controlled and regulated organizations.

03:05:22 SEN. WEINBERG asked Ms. Witte to respond.

03:05:47 **Susan Witte, Vice President and General Counsel for Allegiance Benefit Plan Management, a third party administrator, and Allegiance Life and Health Insurance Company, Missoula**, discussed self-funding on the Allegiance Benefit Plan. She talked about an entity, Allegiance Direct, a subsidiary that does most of their contracting. She addressed self-funding with a third party administrator (TPA), and said they can direct a large employer to drive a deal with an entity and a group of providers. She talked about the insurance side, Allegiance Life and Health, and how they work with provider contracts. She addressed the language "exclusive", and said if it is an exclusive care provider then they are dealing with a managed care situation; if it is exclusive benefits she said that deals with co-pay, deductibles, and other factors that drive the prices down with full insurance. She closed stating it boils down to the product you buy, she gave several examples: 1) an insurance policy, 2) a HMO product, or 3) a self-funded plan.

PUBLIC COMMENT:

- 03:10:11 John Solheim talked about hospitals and why they got into the insurance business. He explained how New West got started as an alternative insurance provider at the request of several small business owners rather than deal with larger insurance companies that can be aggressive on pricing with hospitals and physicians. He talked about New West as a provider driven insurance company that has hospitals, physicians, and insurance companies working together to provide insurance across the continuum and in a more systematic and friendlier way than other insurance companies do. He discussed the four facilities that formed New West, and they are: Northern Montana Hospital, Havre; Community Medical Center, Missoula; Billings Deaconess-now Billings Clinic, Billings; and Saint Peter's Hospital, Helena. He informed the subcommittee that New West has approximately 40,000 enrollees while Blue Cross/Blue Shield has approximately 250,000 people enrolled. He stated that Bozeman Deaconess and Benefis Healthcare-Great Falls have also been added to the pool. He closed stating that New West's goals are still the same, and that is to work together on a provider-based approach to improve patient care, quality of care, sharing information, and give cost affordable insurance.
- 03:12:55 Tim Nagel talked about uninsured patients, and that people who have health insurance pay [indirectly] for those that cannot afford any.
- 03:19:48 SEN. WEINBERG commented about ASCs and hospitals, and the quality of care, and who pays what. He said the reason we are here is to discuss what is the best care for the patients. He wants to hear what is best for the patient, if under insurance rules and contracts is the patient able to get the best level of care.
- 03:21:23 **Patti Jo Lane, Physical Therapist (PT), Great Falls**, presented a summary on her PT business and how it operates. She questioned the insurers, and wanted to know what kind of credentialing process they will have for PTs, MRI clinics, orthopedic groups. She wanted to know how they determine who qualifies and who doesn't. She asked if a PT clinic can be a part of that network, or is it only specialty services that a hospital cannot provide. She stated that PTs are not privy to the credentialing process.
- 03:23:49 Tanya Ask responded to Ms. Lane's comment stating there is a uniform standard for credentialing professionals for physicians, allied medical professionals, etc. The basic thing they look at is to make sure the education is there, and any other records, such as: 1) malpractice, 2) credentials reviewed by a panel, and 3) an educational component that isn't familiar, e.g., foreign medical graduates. She said when these providers do receive their license here in Montana there is overarching authority and then they look at any potential malpractice. If there are signs or allegations, etc., then that professional has an opportunity to respond and be reviewed by a panel of their peers. Ms. Ask said they are expanding their networks and are in need of PTs. She talked about exclusions and where there is a need, and a strict managed care product that is now expanding the network to those areas that were excluded. Ms. Ask responded to another question by

Ms. Lane, regarding whether they have ever de-credentialed. Ms. Ask said at this time no. This would only happen if a person failed to respond to an ongoing credentialing. She said they re-credential a panel every three years.

QUESTIONS FROM COMMITTEE MEMBERS:

- 03:28:02 REP. DUTTON asked about soliciting to expand the networks. Ms. Ask said New West is contacting offices that show interest and want to be involved. There is no general solicitation. She addressed managed care stating before they can have a managed care network they have to have: 1) a hospital, 2) primary care, and 3) a pharmacy. She stated these are a requirement in Montana.
- 03:30:20 REP. DUTTON asked what percentage of New West's business is managed care. Ms. Ask said it is under 50%, and it could be closer to 35%. She said that the bulk of New West's business is indemnity.
- 03:30:59 SEN. WEINBERG asked if a client can ask to see a certain provider that is excluded from the plan, and is that appropriate from the standpoint of the patient. Ms. Ask discussed a managed care product for a patient. She said the patient would have an expanded level of service and an opportunity, e.g., at the best prices, and the best practice. She stated that managed care is designed from a specific perspective, which allows physicians and hospitals to be involved in a coordinated management. She said that New West's traditional network is a wide open network, where a managed care network is not.
- 03:34:09 REP. DUTTON and Tanya Ask talked about providers not being part of network. He wanted to know why would a provider not want to be a part of an HMO.

PUBLIC COMMENT:

- 03:38:27 Tim Nagel interjected it is about assisting patients in navigating the system to find information on what insurance will pay in and out of the network. REP. DUTTON asked what is the justification for charging the same when there is no insurance involved. Mr. Nagel said this is a way to assist patients that cannot afford to pay a monthly amount. REP. DUTTON commented that the frustration in purchasing health insurance is because people are not informed.
- 03:46:46 Lorena Pettet asked if there are different rates for reimbursement in the various locations. Ms. Ask said yes. There may be different levels of reimbursement depending on how it is billed, e.g., if it is a procedure in a facility or a procedure done in a doctor's office they are each billed according to the practice of that facility or clinic. Ms. Pettet asked about reimbursement rates for a PT. Ms. Ask said that a PT would be reimbursed differently than a physician. Ms. Pettet said in rural Montana there are times when people do not receive care because services are not provided or contracts are not in place. Ms. Ask stated that providers can be contracted, but there are some who do not want to be contracted in that area. Ms. Ask said it is a problem not getting care in every

community. She said that New West is asked all the time why they don't have a particular provider type in an area, and it's usually because they don't have anyone practicing in that area or anyone who has signed a contract.

- 03:52:01 John Solheim replied that employers choose the health care plan not the employees.
- 03:52:36 Dr. Bob Wynia talked about economic credentialing as it relates to managed care organizations. He discussed how New West and BC/BS have changed lists on economic credentialing and have excluded some physicians. He related his understanding of arrangements for discounts between Benefis Healthcare and Blue Cross/Blue Shield (BC/BC). He said that New West is not taking any clinical physicians in Helena. He questioned whether exclusion of physicians from program would result in patients not receiving the best care or access.
- 03:58:40 SEN. WEINBERG asked whether New West and BC/BS are open to all providers. Ms. Ask said it is her understanding that they both are.
- 04:01:37 SEN. WEINBERG addressed transparency. He talked about the presentation by Pat Murdo from the last meeting on what other states have done. He said these other states have a very clear web-based product that allows consumers to readily compare prices in their areas for various procedures. He asked if there is anyone at the table who would like to see this take place, and how would we compile and cooperate in putting a web site like this together. He asked for the panel to comment on this issue.
- 04:04:31 REP. DUTTON talked about two initiatives in the state: 1) a pricing transparency initiative, and 2) the electronic medical record. He feels these are interwoven and asked Mike Foster to address the interaction of both, and also who participates, and what is the role. Mike Foster talked about the transparency initiative that came out of a BC/BS policy forum that occurred in the fall of 2007. He talked about working groups that were established from that meeting and said that he was chosen to chair a working group on transparency. He said they are trying to figure out benefits and applications of this approach for consumers, providers, and insurers. He said the workgroup should be ready to present this in a month or two. He talked about the other issue on the health information technology project that has grown from a small group to a statewide coalition of stakeholders that covers all of the health care industries, consumers, etc. He talked about the State Auditor's office being involved. The group has formed a governing body called Health Share Montana, a not-for-profit 501(c)(3). Mr. Foster said the workgroup is looking at a continuity of care record, among other issues. He said the technology group is looking at how to make the continuity of care record efficient and keep costs low. His transparency group has specifically referenced this health information technology project as a vehicle to help develop and provide information on transparency. He stated that the workgroups and the committees will be pleased when these two issues come together.
- 04:08:59 REP. DUTTON and Mike Foster discussed the state of Montana being the "depository" and using state computers. REP. DUTTON said if the state isn't a

partner it will be difficult to get it going. Mr. Foster replied that at least during the implementation they will need an investment from the state in order to get it started on the health information technology project. He didn't know if this will be a cash infusion or an in-kind contribution such as space on a data base with DPHHS. He stated that the groups believe if the state isn't involved as a full partner in that project it will be very difficult to get it rolling. He said the state's role will become more critical as time goes on. He said they are not looking to the state as a long-term on-going source of funding. He said the workgroups will eventually figure out how to make it financially viable as a stand-alone operation. He said that the Medicaid part will be very significant.

04:11:16 SEN. WEINBERG asked Mr. Foster about the transparency group if the doctors and the insurance groups are represented. Mr. Foster replied yes. He said they would like more physicians involved. They have Dr. Mike Schweitzer, an anaesthesiologist from Billings who is on the workgroup, and said they would like a lot more involved. SEN. WEINBERG asked if this product from the workgroup will look like the examples from the last meeting on other states. Mr. Foster said that the model they are looking at from Pennsylvania (PA) carries some potential for Montana. SEN. WEINBERG asked if Montana is different enough to not be like PA. Mr. Foster said yes. He explained there are more hospitals and they are larger in PA, which is divided into geographical areas.

04:15:21 **John Flink, Montana Hospital Association (MHA)**, responded that MHA is determined to work with everyone involved. He said when working with transparency it has to include physicians and patients -- all players at the table.

04:16:37 **Rep. Edith Clark, HD 28, Chair for Children, Families, and Human Services Interim Committee**, talked about the Health Care forum that provided a way to bring a lot of players to the table. She talked about her original issue on transparency where she thought she could go into a hospital and get a price. She said working with all the players, such as the hospital association, physicians, insurance companies, consumers, and other health care representatives will enable action on health information technology and the transparency issue. She thanked everyone and asked everyone to go slower with the transparency issue because it is more difficult than she thought.

04:20:24 Ms. Murdo talked about developing criteria for specialty hospitals. She read the requirements in 50-5-245, MCA, DPHHS to license specialty hospitals - standards - rulemaking moratorium. **EXHIBIT 3**,

04:27:48 Roy Kemp said it is problematic when trying to determine what is a joint venture. He discussed concerns about overlapping service areas, a right of first refusal, and a definition of joint venture. He said the subcommittee needs to identify what the federal government may decide regarding physician referral, ownership, and specialty hospitals. He discussed ASCs and specialty facilities and asked the subcommittee to offer the DPHHS some guidance.

04:30:03 **Jerome Anderson, Attorney, representing Yellowstone Physicians Alliance**, discussed a letter he sent to the subcommittee on proposed language. **EXHIBIT**

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- 04:35:04 John Flink talked about concerns of physician's owning hospitals and sending patients to those hospitals. He said the MHA is willing to talk with everyone. Dr. Kelly said that physicians employed by hospitals have a vested interest in that hospital.
- 04:38:39 Dr. Rumans talked about compensation being performance based, which is a conflict of interest when a physician owns a hospital. He said currently there are no specialty hospitals, and that the bill draft only addresses the technical side.
- 04:42:15 Jerome Anderson asked that hospitals, doctors, and all the stakeholders sit down together to work things out.
- 04:58:42 SEN. WEINBERG said there is an agenda for someone to identify a specialty item. He will have comments at the next meeting and hopes it will be the last subcommittee. He said the next subcommittee will be on March 17. Rep. Clark informed the subcommittee they are allowed only one more meeting to come up with legislation that can be made into a bill.
- 05:02:34 REP. DUTTON said the subcommittee will be meeting on the morning of March 17, 2008. He talked about a new proposed bill draft to present to the full committee with recommendations.
- 05:04:05 SEN. WEINBERG adjourned the subcommittee at 4:07 p.m.

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