



Children, Families, Health, and Human Services Interim Committee

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60th Montana Legislature

SENATE MEMBERS

CAROL JUNEAU
RICK LAIBLE
TERRY MURPHY
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

March 17, 2008

Room 137, Capitol Building
Helena, Montana

Please note: These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities. The minutes are accompanied by an audio recording. For each action listed, the minutes indicate the approximate amount of time in hours, minutes, and seconds that has elapsed since the start of the meeting. This time may be used to locate the activity on the audio recording.

An electronic copy of these minutes and the audio recording may be accessed from the Legislative Branch home page at <http://leg.mt.gov>. On the left-side column of the home page, select *Committees*, then *Interim*, and then the appropriate committee.

To view the minutes, locate the meeting date and click on minutes. To hear the audio recording, click on the Real Player icon. Note: You must have Real Player to listen to the audio recording.

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 approved LC 41, LC 42, and LC 43 as draft legislation.
- Staff will work with committee members to draft legislation using Sen. Laible's proposals on tax incentives for SJR 5 Study.

CALL TO ORDER AND ROLL CALL

00:00:12 Rep. Clark called the meeting to order at 1:01 p.m. The committee secretary noted the roll visually. The minutes of the January 25, 2008 meeting were approved as read.

AGENDA

SJR 5: EMERGENCY MEDICAL SERVICES

Summary of Testimony/Options to Date - Sue O'Connell, Lead Staff

00:01:24 Ms. O'Connell talked about the document "Summary of Testimony" regarding EMS showing who testified, a summary of public comment from past meetings, general solutions and ideas, and past legislation (**Exhibit 1**). Ms. O'Connell said that the committee will be focusing on the policy options either through legislation or through additional research on specific topics.

Quality Review of EMS Cases: Issues and Options - Debbie Ogden,

Missoula EMS Council

00:06:02 Ms. Ogden talked about the issues that EMS is facing:

- joint training with all of their agencies so that they can work seamlessly together no matter what the skill levels
- identify training that would be the most beneficial to these different departments and agencies
- the need for legislation to identify that run reviews can be performed in the EMS Council setting in a closed environment without fear of discovery.

Ms. Ogden distributed information on goals of the EMS Council (**Exhibit 2**) to the committee.

Questions

00:12:29 Rep. Sands asked if Ms. Ogden could elaborate on why the EMS Council couldn't conduct run reviews in a closed environment, if it was a privacy issue. Ms. Ogden said that as the EMS Council meetings stand now, they are open meetings, which means that the public has access to them. She said that they would like to close the portion of the EMS Council meeting when conducting the run reviews to insure confidentiality and to also address the discovery issue.

Rep. Sands asked if Ms. Ogden talked to the county attorney's office and if they agreed to that, would that address your concern? Ms. Ogden said that the county attorney's office suggested that the EMS Council go through this legislative process to get that portion of the EMS Council meetings closed.

00:13:23 In response to Sen. Laible's request for a definition of what is a run review, Ms. Ogden said that a run review refers to a report of a medical call that was responded to. A new set of reports are generated when the patient arrives at the hospital which is also a part of the run review.

00:16:13 Rep. Dutton asked Ms. Ogden who they are trying to protect, the patient or the organization? Ms. Ogden said that ultimately it is to protect the patient but they are also looking for general information that they can review that would protect the Council from information going outside of that setting.

00:19:25 Sen. Weinberg asked if the EMS Council's proposal were in place, would he have trouble as a citizen bringing a lawsuit against the people who might have committed an error? Ms. Ogden responded by saying that she didn't think so. **Jay Schaeffer, Missoula Emergency Services**, said that a citizen can still bring a lawsuit. He said that the Trauma Review Committee reviews only trauma calls. They are trying to expand reviews into the medical venue and that is the reason for the proposal, to mirror the trauma registry's legislation to add the medical venue to that.

A Personal Perspective of EMS - Ken Threet

00:23:20 Mr. Threet provided testimony (**Exhibit 3**) as an EMT and citizen.

Questions

00:31:17 Sen. Laible asked if Mr. Threet's "5 for Life" program has something to do with safety checks on vehicles. Mr. Threet said that isn't a program in place to certify vehicles for safety. He said that the money generated from this program should be distributed to be used for services in any way to maintain their services.

00:34:50 Rep. Sands asked where the Trauma Care system gets their money and does any of it go to the EMS system. Ms. O'Connell said that the Trauma Care system and the EMS system both receive funds from the general fund and from federal grants that are distributed to the agencies. **Jim DeTienne, DPHHS**, said that the EMS and Trauma System in the Department of Public Health and Human

Services has general funding for their operations and FTEs.

Rep. Sands asked how much of that funding passes to the local level. Mr. DeTienne said that they dedicate \$150,000 per year for the Trauma System out of their EMS budget now.

Stakeholder Proposals - Cliff Christian, American Heart Association and the American Stroke Association

00:38:54 Mr. Christian provided written testimony (**Exhibit 4**) on reform of Montana's volunteer EMT system.

Questions

00:52:21 Sen. Laible asked if all ambulances are required to carry defibrillation equipment. Mr. Christian said that all ambulances carry defibrillation equipment but that is not required.

Public Comment on EMS Study

00:52:59 **Randy Brodehl, Fire Chief, Kalispell Fire Department**, commented on having closed meetings when doing a run review of the calls that they have responded to and the issue of fire-based EMS.

00:58:21 **Don Whalen, Missoula Emergency Services**, commented on their biggest expense, which are their employees, who are underpaid. He said that it all goes back to reimbursement.

01:00:12 **Jim DeTienne, Supervisor of EMS and Trauma System Section, DPHHS**, said that he wanted to bring clarity to the first issue that Ms. Ogden brought up about the EMS Council and that he appreciates Randy clarifying the reason for it. He said that on a service level, you have that protection, that ability to do performance improvement but at a broader level. In the trauma system, legislation that has been presented is a good model to expand that EMS system.

Questions and Discussion

01:02:49 Sen. Murphy said that Sen. Weinberg asked a question several meetings ago that has yet to be answered and that question is, if services are always losing money, how do they stay in business? How do you arrive at a proper charge for calls? Who does that and how do you decide if you are going to send the ambulance and transport somebody to a hospital? **Mr. Whelan** said that you can

charge what you want but Medicare, Medicaid and insurance only pay a certain amount.

Sen. Murphy asked if it is correct that if you respond to a Medicare patient, that you are prohibited from billing that patient for the excess over what Medicare pays by federal law? Mr. Whelan said an ambulance service must accept what Medicare approves for payment and the patient is responsible for 20%. The rest of it is written off. Mr. Whelan said that their reimbursement is basically about 20% below the entire cost of the call.

01:08:22 Sen. Weinberg wanted to talk about an issue that he feels that no one really wants to discuss and that is the issue of a cost shift that is going on. He said that when the Medicare or Medicaid reimbursement is insufficient, somebody else is paying more than they should. He asked Mr. Whelan if it is legal to overcharge some people because other people can't pay the charges for one reason or another and if so, does Mr. Whelan think that that is the right thing to do? Mr. Whelan said that they charge everybody the same amount, whether they are on Medicare, Medicaid, private insurance, or uninsured.

Sen. Weinberg asked if others charge more to compensate for those who can't be charged enough? Mr. Whelan said that he didn't think so because of the federal reimbursement. Sen. Weinberg said that he disagreed. For instance, if somebody has good private insurance, are they asked to pay more than other people who receive services? Mr. Whelan said that question is tough to answer but he said that somebody with good insurance probably pays more than the government insurance does.

01:11:15 Rep. Dutton asked if he was correct in saying that Mr. Whelan bills everybody the same but that he writes off more for government insurance. Mr. Whelan said that yes, you write off more for government insurance.

Rep. Dutton said the question then is how much do you typically write off on Medicare claim versus private insurance versus an individual paying himself. **Tim Brester, Polson and Ronan Ambulance**, said that it is difficult to answer because you are mixing apples and oranges. He said that everybody gets the same bill, no matter what. What Medicare says is, if you bill \$500, it is worth \$300 but Medicare will pay you \$250, and you get the additional \$50 from the patient. Their billing system is simple: you estimate your man hours, your expenses

divided by your revenue based off of previous year's call volumes, divided out, and that is how you figure out how much to charge. That is not cost shifting but common practice in health care. Medicare reimburses them at a lower rate than it costs them to run the call. They are not getting paid to be ready and to staff a crew 24/7. He said that all they are trying to do is to be reimbursed for the call for their patient.

01:22:57 **Eric Henslin, Director of Operations, Polson Ambulance**, said that if you are a patient that is covered under Medicare and you have Ambulance Company A that charges \$500 for transport and Ambulance Company B that charges \$1 M for transport, when Medicare deems that that is worth \$300 and they pay \$250, it doesn't matter what the bill is. In conclusion, Mr. Henslin said that you can raise your rates all you want, you are still only getting fixed reimbursement.

Committee Direction to Staff

01:23:54 Ms. O'Connell asked the committee in what direction do they want to go with the study, if there were legislative options that they wanted to pursue, if there was further research to be pursued, and how to incorporate the results of the audit with the study.

01:24:56 Some of the comments from the committee included:

- there is a lack of transparency resulting in not knowing where the money is going, where it's coming from, who pays what, who's getting a good deal, who's getting a bad deal.
- where is the money needed the most, what is the priority.
- the biggest issue is recruitment and retention.
- Medicare reimbursement issue.

TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF) - Hank Hudson, Human and Community Services Division, DPHHS

01:35:20 Mr. Hudson gave an update on Montana Temporary Assistance for Needy Families Program (TANF) (**Exhibit 5**) and how they are adjusting to the changes in federal law that have occurred recently.

Questions

01:58:48 Rep. Dutton said under the TANF program, services are available to people with chronic disorders for only 60 months. He asked if there were other programs that provide services for those people that are in a lifelong situation. Mr. Hudson said

that if they assess that a person should be in the Social Security Disability System, they would try to assist them in pursuing that option.

02:00:44 Rep. Sands asked if Sheila Hogan could briefly address how the issue of restrictive penalties are affecting the providers who actually deliver the services. **Sheila Hogan, Career Training Institute**, said that the Career Training Institute assists people with multiple barriers through a labor intensive, one-on-one program. She said that funding cuts of programs directly impacts staffing. If you have fewer staff, then you have fewer people to work directly with people.

Public Comment

None at this time.

DRAFT LEGISLATION FOR 2009: CORRECTIVE LEGISLATION - Sue O'Connell, Lead Staff

02:12:35 Ms. O'Connell said that at the last meeting, the committee authorized the drafting of three bills to correct errors either in existing law or legislation that was passed last session. The three bill drafts are: LC41, LC42, and LC43.

- LC 41 - Clarifying exclusions from drug schedules (**Exhibit 6**).
- LC 42 - Repealing the sunset provision for the utilization fee for hospital inpatient bed days (**Exhibit 7**).
- LC 43 - Clarifying the duration of the caretaker relative educational authorization affidavit (**Exhibit 8**).

Public Comment

02:16:31 John Flink, Montana Hospital Association, supports the bill that affects the hospital bed tax and encourage a do pass.

Motions

02:16:53 Sen. Weinberg moved to approve LC 41 as draft legislation. The motion passed unanimously.

02:17:30 Sen. Weinberg moved to approve LC 42 as draft legislation. The motion passed unanimously.

02:18:08 Sen Weinberg moved to approve LC 43 as draft legislation. The motion passed unanimously.

BREAK

Motion on EMS Study

02:37:20 Sen. Laible moved that he and Rep. Sands work on draft legislation with Ms. O'Connell, using Sen. Laible's preliminary proposals on tax incentives and other items and Ms. O'Connell's Summary of Testimony of SJR 5. The motion passed unanimously.

02:40:06 Sen. Juneau requested that Ms. O'Connell look into why ambulance services are not covered under the children's health insurance program. Sen. Weinberg said that he wanted to look at what is the current Medicaid reimbursement and what opportunities might be for raising the reimbursement and by doing so, what would be the state's contribution to that.

AGENCY DRAFT LEGISLATION - Sue O'Connell

02:43:18 Ms. O'Connell talked about the process that the interim committee will be going through regarding agency legislation.

SJR 15 STUDY: HEALTH CARE DELIVERY SYSTEMS

LC 8888 Specialty Hospitals Discussion

02:45:25 Rep. Dutton said that his subcommittee was charged with two issues: economic credentialing and conflict of interest and specialty hospitals. To the issue of economic credentialing and conflict of interest, the subcommittee has a bill draft that is close to being ready to be presented to the full committee. To the issue of specialty hospitals, Rep. Dutton said that the Montana Hospitals Association expressed strong support that the subcommittee should wait on any draft legislation until the federal government makes its decision regarding specialty hospitals. Part of what LC8888 would do is allow specialty hospitals only under certain conditions. The subcommittee has come up with a bill draft but they are not prepared to present it today but it is available for review by the full committee.

Sen. Weinberg said that the federal government is dealing with this issue and perhaps within a few months we will know if the federal government is going to outlaw specialty hospitals. If they do, then this committee doesn't have to proceed with a bill draft. If the federal government doesn't outlaw specialty hospitals, then MHA will work with the subcommittee to fine tune the legislation that is already drafted. Sen. Weinberg said that the subcommittee will meet before the full committee meeting to discuss this issue.

LC 0038 Economic Credentialing Discussion

02:52:50 Pat Murdo, Research Analyst, LSD, discussed the draft legislation LC0038, marked 3:46 p.m. **(Exhibit 9)**. Ms. Murdo discussed changes to the following sections:

- New Section 1. Disclosure required.
- New Section 2. Contracts -- referrals -- primary responsibility -- definition.
- New Section 3. Primary responsibility -- referrals.
- Section 4. Definitions.
- Section 5. Unprofessional conduct.
- Section 6. Discrimination prohibited.
- Section 7. Economic credentialing of physicians prohibited -- definitions.
- Section 8. Denial, suspension, or revocation of health care facility license -- provisional license.

03:09:24 Sen. Weinberg told the committee that this draft legislation is an attempt to introduce the idea of full disclosure so that if physicians, no matter where they work, have an obligation to disclose to their patients alternatives services that they could use, that the referrals must be based on the welfare of the patient and not based on how the physicians can generate more income on the deal, and also to recognize that physicians who work for hospitals might come under some pressure by the hospitals to refer within the hospital even though referrals outside the hospital might be more appropriate.

Public Comment on LC 0038

03:18:19 **Jim McLean, Montana Physical Therapy Association**, thanked Pat Murdo, Sen. Weinberg and Rep. Dutton on the hard work they have done on LC 0038.

03:19:06 **Mark Taylor, General Counsel for Montana Hospital Association**, talked about their draft legislation **(Exhibit 10)** and compared their bill with LC0038. He said that MHA believes that their version is more workable and is consistent, and in their view, is giving up additional things based on comments that came from the Montana Medical Association.

Questions

03:34:40 Sen. Weinberg asked Mr. Taylor how his version addresses the referral patterns of doctors who work for the hospitals. Mr. Taylor said that the initial statutes dealing with economic credentialing do not get to the issue. He does not think that the bill gets to the concept of self-referral, employed physician or not. He

said that that discussion has merit but from a cleaner standpoint, he thinks keeping it outside of the current economic credentialing statutes is the best way to go.

Sen. Weinberg said that from the standpoint of fairness, it does belong there. He said that he doesn't want to put together a statute that hammers one side and lets the other side go free. If we want to talk about the referral patterns among doctors, independent doctors, we have to also address the referral patterns of hospitals and their doctors. In response to a comment from Sen. Weinberg, Mr. Taylor said that philosophically speaking, an employee's interest is always going to be aligned with the interest of the employer. He does not necessarily agree as to the conflict of interest within an employed physician's situation.

Public Comment

03:39:03 **Mona Jamison, Attorney and Lobbyist for Great Falls Clinic**, first complimented the committee chair and the participants for their hard work, and said that LC0038 represents fairness to the players which translates to better health care delivery to the citizens.

03:47:25 **Dr. Kurt Kubicka, Montana Medical Association**, said that they support the recent draft of LC0038 in its current formulation.

03:48:09 **Dr. Mark Rumans, Billings Clinic**, believes that disclosure is good thing but it needs to be clear on what is being disclosed and how it is disclosed. He talked about the key word "effective" and as the bill moves forward, some language needs to be put in about what is effective and how that is defined. He commented on referral patterns of both hospital employed physicians and individual physicians, the use of exclusive contracts, and policies adopted with the concurrence of the medical staff to manage health care costs to improve quality.

Public Comment

04:00:03 **Cory Swanson, Montana Orthopaedic Society**, said that the proposed bill is a good solution that deals with economic credentialing and doctors in hospitals who are referring patients for services. Mr. Swanson also talked about the issue of enforcement, disclosures, exclusive contracts, and the issue of medical staff concurrence. He said that the Orthopedic Society supports LC0038.

04:06:39 **Mike Foster, Sisters of Charity Hospitals, St. Vincent in Billings, St. James in Butte and Holy Rosary in Miles City**, said that physicians like this draft while hospitals have concerns. He said that he is in favor of compromise.

04:15:27 **Cory Swanson** commented on the heavy burden that is put on a hospital's ability to exclude someone with a conflict of interest from their Board of Director's proceedings on issues. He indicated that if you look at the definition that is in statute, you would have to prove that the chair of the medical staff on the board of directors has committed an abusive referral pattern based on economic issues before the board could exclude them from issues relating to a competing interest. He recommended some type of language where the board would be able to exclude a physician from certain aspects of the board's proceedings, not after they have proved that he or she has abused the referral process, but when they have established when he or she has some kind of an investment interest in a competing facility.

04:18:49 **Dr. Kurt Kubicka** discussed conflict of interest definitions and Rep. Dutton was in concurrence with the definition as it applies to this section.

04:19:37 **John Flink, Montana Hospital Association**, talked about the definitions of conflict of interest contained in Mr. Taylor's bill and the one that MMA proposed. He said that MHA would prefer their definition found in Mr. Taylor's bill. He also commented that it is important to tell patients what their treatment options are and where they can go to get treatment, but it would be better in a separate bill.

Questions

Rep. Dutton asked the Montana Medical Association to respond to the conflict of interest definition in Mr. Taylor's bill. Dr. Kubicka said that the definition in the Mr. Taylor's bill was part of the definition that was included in the LC0038 version time stamped 3:11 p.m. He said that MMA agrees as long as it is clear that that definition applies only for the purposes of that section and the exclusions under subsection (2)(b).

04:24:21 **Jeannie Warsech, Executive Director, Board of Medical Examiners, Department of Labor and Industry**, said that she is here for informational purposes or if the committee had any questions.

Rep. Dutton asked Ms. Warsech if she has read the bill and the requirements

that it would impose for the Department of Labor and Industry to review issues of economic behavior and referral patterns, and is that something her Board could deal with. Ms. Worsech said that she has read the bill and would like to take it back to their legal counsel and their Board.

04:25:38 **Lisa Mecklenberg Jackson, Staff Attorney**, said that she wanted to discuss the word "punitively" with regard to exclusive contracts. She said that it would be a good idea to leave that word in there but there should be a definition for that word.

04:26:28 **Jim McLean, Montana Physical Therapy Association**, said that the Association supports the definition that was contained in the 3:46 p.m. draft. He said that they are concerned that the definition in Mr. Taylor's bill does not include fee splitting.

Committee Business

04:27:14 Ms. O'Connell discussed the Legislative Council's request for input regarding the adequacy of the budget, the number of meetings for the next interim, whether meetings should be held primarily in Helena or out of town, and how that affects committee work.

ADJOURNMENT

04:27:55 Rep. Clark adjourned the meeting at 5:29 p.m., to reconvene at 8 a.m. March 18, 2008.

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