

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
59th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON HUMAN SERVICES

Call to Order: By **CHAIRMAN ARLENE BECKER**, on March 21, 2005 at 3:00 P.M., in Room 472 Capitol.

ROLL CALL

Members Present:

Rep. Arlene Becker, Chairman (D)
Rep. Tom Facey, Vice Chairman (D)
Rep. Don Roberts, Vice Chairman (R)
Rep. Mary Caferro (D)
Rep. Emelie Eaton (D)
Rep. Gordon R. Hendrick (R)
Rep. Teresa K. Henry (D)
Rep. William J. Jones (R)
Rep. Dave McAlpin (D)
Rep. Tom McGillvray (R)
Rep. Mike Milburn (R)
Rep. Art Noonan (D)
Rep. Ron Stoker (R)
Rep. Pat Wagman (R)
Rep. Bill Warden (R)
Rep. Jonathan Windy Boy (D)

Members Excused: None.

Members Absent: None.

Staff Present: Susan Fox, Legislative Branch
Mary Gay Wells, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 33, 3/12/2005; SB 82, 3/12/2005;
SB 440, 3/12/2005;

Executive Action: SB 21, Be Concurred In
SB 322, Be Concurred In
SB 479, Be Concurred In

HEARING ON SB 33

Sponsor: SEN. JOHN COBB, SD 9, AUGUSTA

Opening Statement by Sponsor:

SEN. JOHN COBB opened the hearing on SB 33. The bill will eliminate the unified budget requirement for Interagency Coordinating Council (ICC). He submitted the ICC's "Unified Prevention Budget" for fiscal year 2004 and the proposed 2007 biennium proposal. When ICC was first proposed, a unified budget was requested for all prevention programs. In reality, this did not work. Federal dollars were difficult to coordinate. State dollars were more easily put together for a proposed budget. The Department will continue to coordinate prevention programs and work together on certain issues, but preparing a budget just doesn't work.

EXHIBIT (huh62a01)

{Tape: 1; Side: A; Approx. Time Counter: 0 - 5.7}

Proponents' Testimony:

Vicki Turner, Prevention Resource Center, DPHHS, gave her testimony and submitted a written copy.

EXHIBIT (huh62a02)

{Tape: 1; Side: A; Approx. Time Counter: 5.7 - 8.6}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. WAGMAN asked what year the unified budget was implemented.

SEN. COBB replied that it was in 1993.

REP. WAGMAN was curious about the overall structure of the Department in relationship to the administration and wondered why the executive branch would not weigh in on this bill. SEN. COBB replied that this is a small issue. The Department wanted this bill and it is mostly a clean-up bill.

{Tape: 1; Side: A; Approx. Time Counter: 8.6 - 12.1}

REP. STOKER asked what happens if the State no longer receives funding. SEN. COBB replied that if the money doesn't come in, the programs close down.

REP. STOKER asked if the coordinating report is no longer required, how would the Legislature know if these eight programs are really effective. **Ms. Turner** said that currently on the Prevention Resource Center's website there are five goals for the ICC. In 1997, the ICC said there were too many goals and benchmarks. They then identified five goals: 1) Reducing child abuse and neglect, 2) Substance use and abuse, 3) Youth violence, 4) School dropout, and 5) Teen pregnancy. These will continue to be posted on the website.

REP. STOKER inquired if Federal funding would be in jeopardy if all the programs are not listed. **SEN. COBB** responded, "No, and the money still comes."

{Tape: 1; Side: A; Approx. Time Counter: 12.1 - 20.7}

CHAIRMAN BECKER said originally it was thought by putting the budget together, everything would be coordinated; but that didn't happen. **SEN. COBB** replied that was correct and only one or two legislators would look at the unified budget. The whole intent was to get the different departments to work together. The unified budget didn't work.

CHAIRMAN BECKER stated that by getting rid of the unified budget, the ICC would still encourage the departments and their programs to work together. **SEN. COBB** responded that was correct and they are working toward the above five goals.

CHAIRMAN BECKER asked if HB 31, concerning the drug commissioner, would work in with the ICC. **SEN. COBB** did not think so.

REP. STOKER asked for a rundown on the \$16 million of Federal money that is coming in for these programs. **Ms. Turner** did not answer the question but did say that it was a mandate without staff or resources. The staff was spending most of their time gathering data and numbers and no action was taken. In 2002, the ICC said that it was unmanageable and they narrowed the focus.

Closing by Sponsor:

The Sponsor closed.

HEARING ON SB 82

Sponsor: SEN. JOHN COBB, SD 9, AUGUSTA

Opening Statement by Sponsor:

SEN. JOHN COBB opened the hearing on **SB 82**. He first explained about provider taxes. The State taxes themselves and the Federal Government reimburses the State for that tax which helps pay for some of the Federal mandates. For every 30 cents, the Federal funding is 70 cents. This bill clarifies the definition of what an Intermediate Care Facility (ICF) is and raises the tax from five percent to six percent which will bring in additional funds. Basically, the State is putting up \$600,000 and the Federal Government is reimbursing the State with \$1.4 million which helps pay for the facility at Boulder. There is a concern that the Federal Government will crack down on provider taxes. He submitted a flow chart showing the projected income from the bed tax.

EXHIBIT (huh62a03)

{Tape: 1; Side: A; Approx. Time Counter: 20.7 - 32; Comments: SEN. COBB's statements continued onto Tape 1, Side B; Approx. Time Counter: 0 - 0.5}

Proponents' Testimony:

Gail Briese-Zimmer, Office of Planning, Coordination and Analysis, DPHHS, stood in support of the bill.

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. STOKER asked if this tax is the same as the hospital bed tax. **Ms. Briese-Zimmer** explained how it works. The facility is charged a tax on the ICF that is Medicaid related. The facility pays that money to the Department of Revenue. They deposit that money into the Stabilization Account at DPHHS. That money is then used by the Department to provide other services.

REP. MCGILLVRAY asked what some of the mandates are. **SEN. COBB** said that in Medicaid, they set the level of staffing, how high the rates can be set, certain services that have to be provided, etc. He offered to bring a list to the Committee.

REP. MCGILLVRAY asked what services would be cut if the requested raise in fees did not go through. **SEN. COBB** responded that the General Fund would have to come up with the shortfall.

REP. JONES wondered if there was private pay and private insurance involved. **Ms. Briese-Zimmer** replied that the Montana Developmental Center is the only ICF in the State. The reimbursements come mainly from Medicaid. Small amounts come from Medicare, third party and other insurance.

REP. JONES was concerned that there would be cost shifting to private pay and insurance programs. **Ms. Briese-Zimmer** said that is not correct. The money is not charged back to those individuals. The facility itself is funded by the tax.

REP. CAFERRO asked if the beds that are private pay are not taxed and the beds that are paid for by Medicaid are taxed. **Ms. Briese-Zimmer** explained that the amount of money that is reimbursed by insurances is very small and may be for costs that are provided by outside doctors or things like that which are charged to the facilities. Individuals do not pay for their care at the institution.

REP. CAFERRO asked for a description of the programs in prevention and stabilization. **SEN. COBB** replied there was money for low birth weight babies which is a State program. Another was for a call line for poison control. Part went to child care to keep 1,600 families from going back onto welfare. There were seven different programs from last session which has been partially changed by this administration.

{Tape: 1; Side: B; Approx. Time Counter: 0.5 - 12.4}

REP. JONES was surprised that the State had a hospital which had virtually all Medicaid patients. **Ms. Briese-Zimmer** replied that the individuals who are at the ICF in Boulder are those with developmental disabilities. They are adults and have no income. They are civilly committed to the facility. The income they do have would be Social Security or Social Security Disability Insurance (SSDI).

REP. JONES could not understand why no effort is being made to have their families participate in the payment. **Ms. Briese-Zimmer** said that it would be a mixture and most of the people are adults with no other resources.

Closing by Sponsor:

SEN. COBB said this bill had nothing to do with what happened at Glendive. This is a way to help pay for the General Fund costs at Boulder. At one time there were over 1,000 people at Boulder. There are less than 100 now. Montana has been on the leading edge of moving people into other communities. These people at Boulder are the most seriously impaired. Institutions cost a lot

of money It costs over \$100,000 or more per person per year. The State has to follow Federal guidelines in order to receive that Federal funding.

SEN. KAUFMANN will carry the bill.

{Tape: 1; Side: B; Approx. Time Counter: 10.3 - 18.3}

EXECUTIVE ACTION ON SB 21

Motion: REP. ROBERTS moved that SB 21 BE CONCURRED IN.

Discussion:

REP. ROBERTS explained that the bill had come out of the Legislative Council as a result of SJ 32. There was a concurrence of support from trial attorneys, defense attorneys, hospitals, practitioners, etc. It defines the probability of recovery.

REP. WAGMAN was concerned that physicians perform diagnostic tests as a defense against litigation which is not right.

Vote: Motion carried unanimously by voice vote 16-0. REP. HENDRICK, REP. FACEY and REP. WINDY BOY voted by proxy.

REP. ROBERTS will carry the bill.

{Tape: 1; Side: B; Approx. Time Counter: 18.3 - 24.9. REP. FACEY returned to the meeting following this vote.}

EXECUTIVE ACTION ON SB 322

Motion: REP. ROBERTS moved that SB 322 BE CONCURRED IN.

Discussion:

REP. ROBERTS explained that if an orthopedist examined a patient's knee as a second opinion, that doctor would not be held liable if he had not detected a heart murmur.

CHAIRMAN BECKER said that if a physician did see another problem though, they would be obligated to let the patient know.

REP. JONES thought that practitioners were starting to refuse patients for second opinions because of lawsuits.

Vote: Motion carried unanimously by voice vote 16-0. REP. HENDRICK and REP. WINDY BOY voted by proxy.

REP. ROBERTS will carry the bill.

{Tape: 1; Side: B; Approx. Time Counter: 24.9 - 30.4. REP. WINDY BOY returned to the hearing after this vote.}

EXECUTIVE ACTION ON SB 479

Motion: REP. MCGILLVRAY moved that SB 479 BE CONCURRED IN.

Discussion:

REP. MCGILLVRAY explained that the bill dealt with pathology labs and how they should do their billing. The bill would require the pathology lab to bill the patient directly and not the doctor. This bill would keep the process open and ethical.

REP. ROBERTS said that rebates within referral systems is considered unethical in the American Medical Association. This bill is a good one.

Vote: Motion carried unanimously by voice vote 16-0. REP. HENDRICK voted by proxy.

REP. MCGILLVRAY will carry the bill.

{Tape: 2; Side: A; Approx. Time Counter: 0 - 2.3. REP. HENDRICK returned to the hearing.}

EXECUTIVE ACTION ON HB 449

Motion: REP. ROBERTS moved that HB 449 DO PASS.

Discussion:

REP. MCGILLVRAY questioned why the bill was still being considered. He thought it had passed the deadline.

CHAIRMAN BECKER explained that it had an appropriation in the bill and did not have to be acted on before transmittal.

The executive action on this bill was put on hold and was going to be acted on at another time.

{Tape: 2; Side: A; Approx. Time Counter: 2.3 - 7.4}

HEARING ON SB 440

Sponsor: SEN. DAN HARRINGTON, SD 38, BUTTE

Opening Statement by Sponsor:

SEN. JON TESTER, SD 15, opened the hearing for **SEN. DAN HARRINGTON** on **SB 440** which would require licensure of specialty hospitals. There is no fiscal note. On Page 8, Line 1, a specialty hospital is defined. On Page 8, Lines 8-9, the requirements are put forth for licensure of a specialty hospital. There is a termination date of July 1, 2007.

Proponents' Testimony:

REP. ART NOONAN, HD 73, said that they had an experience in Butte in dealing with a specialty hospital. Generally, if there is a big enough market place, these hospitals which are normally owned by physicians and deal with very specific types of surgery, can increase competition and be very good for the general market place. However, in Montana, there is a system of community hospitals that are the safety net that hold up the communities. In Montana communities, specialty hospitals can cause economic dislocation. The Federal Government is undertaking the task of producing a policy to deal with specialty hospitals. This bill places a moratorium of July 1, 2007 on these hospitals until the Federal studies have been completed.

{Tape: 2; Side: A; Approx. Time Counter: 7.4 - 11.1}

James Kaiser, Hospital Administrator, St. James Health Care, Butte, said there is a misunderstanding that this is an issue of competition. It is a matter of the common good. A typical hospital has a professional component, the physician, and the technical component, the hospital. The healthcare system is flawed especially in how it gets paid for. There are services that are profitable and those are used to subsidize the costs that are not covered. This bill would only come into play if the Federal bill is not passed to extend the moratorium.

Tom Ebzery, Attorney, St. Vincent Health Care, Billings, Holy Rosary Health Care, Miles City and Wheatland Memorial, Harlowton, said that SB 440 is an important bill. Congress has been wrestling with the issue of for-profit specialty hospitals and the potentially devastating impact on non-profit community hospitals. This bill essentially adopts the recommendation of extending the moratorium and further extends the moratorium another six months to July 1, 2007. He pointed out that the two existing limited services hospitals in Montana, one in Kalispell

and one in Great Falls, are not affected by this legislation as they are provided with an exception to the moratorium through a grandfather provision that is in the bill.

{Tape: 2; Side: A; Approx. Time Counter: 11.1 - 16.8}

John Flink, Montana Hospital Association, stood in support of the bill and urged a concurrence.

Opponents' Testimony: None

Informational Testimony:

Mary Dalton, Quality Assurance Division, DPHHS, said she was in attendance to answer any questions.

Questions from Committee Members and Responses:

REP. ROBERTS questioned why the words "certificate of need" were not in the bill. **Mr. Kaiser** did not think a "certificate of need" arises when there is a level playing field in the effect that if one has the service already, is another one needed. They would not duplicate the services being provided. It would only duplicate profitable services.

REP. ROBERTS asked if the facilities that become specialty hospitals offer emergency care. **Mr. Kaiser** answered, "Not typically." They realize that is often a request, so they do it in name only and seldom staff it. It is the same with OB services. Sixty to 80 percent of community hospital deliveries are Medicaid.

REP. ROBERTS asked if 60% to 70% of hospitals' reimbursements are from Federal programs like Medicaid and Medicare. **Mr. Kaiser** replied that without the commercial insurer and the cost shifting that occurs, they would be operating in the red. They have experienced two years of volumes that are higher than anticipated. Sadly, their uncompensated care, such as charity care and bad debt, has gone from four percent from two years ago to ten percent. They are operating on a thread.

{Tape: 2; Side: A; Approx. Time Counter: 16.8 - 21}

REP. FACEY asked Mr. Flink's opinion of the bill. **Mr. Flink** replied that his Association strongly supports the bill. They helped put it together. This is an issue that should be solved at the Federal level.

REP. STOKER inquired how many of these specialty hospitals are currently licensed. **Ms. Dalton** responded that two are licensed,

but currently there is no category for specialty hospitals. They are licensed as a hospital.

REP. STOKER asked which two hospitals are being referred to. **Ms. Dalton** replied that they are Health Center Northwest in Kalispell and Central Montana Surgical in Great Falls.

REP. STOKER asked if these two for-profit hospitals would be secure under their current licensing even after the July 1, 2007 date. **Ms. Dalton** responded that they would be secure, but she had not considered if the two hospitals would have to convert to another type of license after July 1, 2007.

REP. STOKER understood the concern of the non-profit hospitals; but if the flip side comes about, would they become bankrupt or non-profit as well. **Ms. Dalton** said that non-profit hospitals are able to provide some limited services of a specialty hospital. They would not have to become any broader than they are right now.

{Tape: 2; Side: A; Approx. Time Counter: 21 - 25.1}

Ms. Fox explained that the bill will terminate on July 1, 2007. The applicability clause states that specialty hospitals would be established after the moratorium on referrals to specialty hospitals referred to in (Section 4) expires. It is staggered. First the bill has to be put into effect by the contingency in Section 4. It only affects hospitals established after the fact. The two hospitals are grandfathered in permanently. When the law terminates in 2007, the Legislature will have to deal with it again.

REP. FACEY asked Ms. Dalton to explain the difference between a hospital, a specialty hospital and a stand-alone surgery center. **Ms. Dalton** said that a specialty hospital is primarily engaged in care and treatment for either patients with a cardiac condition, an orthopedic condition, patients receiving surgical procedure, or other specialized categories of service. A hospital in Montana must offer organized medical staff on call and available within 20 minutes, 24 hours a day, seven days a week, and provide 24-hour nursing care by licensed and registered nurses. She continued in her explanation. The stand-alone surgery centers are not hospitals. They do not have overnight care.

REP. FACEY asked about a bill that would have allowed the out-patient surgery centers to go to 72 hours. **Mr. Flink** said that bill did not pass and the stay in an out-patient surgery center was 24 hours. They are licensed separately from hospitals.

{Tape: 2; Side: A; Approx. Time Counter: 25.1 - 32}

REP. HENDRICK wondered how this bill would affect the critical access hospitals in the rural areas. **Mr. Flink** responded that this bill would not affect them at all.

REP. HENDRICK questioned the date of termination on Page 8, Line 22. **Ms. Fox** said that if the bill terminates on July 1, 2007, anyone could get a specialty hospital license unless the Federal Government passes further law concerning specialty hospitals.

CHAIRMAN BECKER stated that the bill puts a moratorium on in Montana until July 1, 2007 and basically, the next Legislative Session has to deal with it again.

Ms. Fox agreed but added it will depend on what the Federal Government does.

Closing by Sponsor:

The Sponsor closed.

REP. NOONAN will carry the bill.

{Tape: 2; Side: B; Approx. Time Counter: 0 - 4.3}

EXECUTIVE ACTION ON HB 449

Motion: REP. FACEY moved that HB 449 DO PASS.

Discussion:

There was a great deal of discussion about the bill. The bill addressed at-home infant care. Currently, there is no funding for this program. This bill directs that state funding would be made available. There was an amendment by REP. CAFERRO which would have allowed the law to be changed to say that if there is state funding available, then the program would go forward.

At the time a vote would have been taken on the amendment, REP. CAFERRO asked that the proceedings cease because REP. ROBERTS was not at the hearing any longer and she did not think that the proxy vote was what he would have wanted.

All motions were withdrawn without objection and the meeting adjourned.

{Tape: 2; Side: B; Approx. Time Counter: 4.3 - 12.5}

ADJOURNMENT

Adjournment: 5:30 P.M.

REP. ARLENE BECKER, Chairman

MARY GAY WELLS, Secretary

AB/mw

Additional Exhibits:

EXHIBIT ([huh62aad0.PDF](#))