

MINUTES

**MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY

Call to Order: By **CHAIRMAN BRENT R. CROMLEY**, on April 4, 2005 at 3:45 P.M., in Room 317-A Capitol.

ROLL CALL

Members Present:

Sen. Brent R. Cromley, Chairman (D)
Sen. John Cobb (R)
Sen. John Esp (R)
Sen. Duane Grimes (R)
Sen. Lynda Moss (D)
Sen. Jerry O'Neil (R)
Sen. Dan Weinberg (D)
Sen. Carol Williams (D)

Members Excused: Sen. Trudi Schmidt (D)

Members Absent: None.

Staff Present: David Niss, Legislative Branch
Rita Tenneson, Committee Secretary

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

Committee Business Summary:

Hearing & Date Posted: SJ 34, 4/1/2005; HB 749, 3/30/2005;
HB 552, 3/30/2005
Executive Action: SJ 34; HB 704; HB 552; HB 749

HEARING ON SJ 34**Opening Statement by Sponsor:**

SEN. CAROL WILLIAMS, SD 46, MISSOULA, because **SEN. TRUDI SCHMIDT**, sponsor, was presenting several bills in the House, opened the hearing on **SJ 34**, Study rural health care issues and access.

SEN. WILLIAMS has her name on the bill. It is an issue, which has been coming up often, regarding proper medical care in rural areas within the State. This requires an interim study on health care in rural areas.

Proponents' Testimony:

Marg Levine, Montana Primary Care Association rose in support of the bill. Their members face continual challenges in recruiting and retaining health care providers. A work force study in 2004 showed Montana exceeds the national average in professional shortage areas, with over 36% of the population lacking adequate access to dentists, as well as other professional services.

Beda Lovitt, Montana Medical Association, Montana Psychiatric Association, said this is an issue which comes up time and time again. We are faced with medical and psychiatric shortages throughout rural Montana. They strongly support the bill and are willing to participate in solving the problem.

John Flink, Montana Hospital Association (MHA), went on record as endorsing the bill because of the shortage of professionals in rural and some urban areas. They have been working to address this issue, as well.

Pat Wise, Montana Nurses Association, in support, understanding there are very unique circumstances rural hospitals and health care facilities are facing around Montana. They feel the study is worthwhile. There are some tremendous rural models, such as the hospital in Conrad, to look at as far as designing health care systems in rural facilities, that make sense and work.

David Gibson, Associate Commissioner of Higher Education, on behalf of the University System, strongly supported the Resolution. **SB 273** also has terms about the need for studying health care issues. Although the Resolution asks for the support of higher education, they talked to the sponsor to have that inserted. They are full, willing, and active partners, should the Resolution pass.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor: SEN. WILLIAMS told the Committee this is a serious issue. Montanans, all over the State, are talking about it. She hoped they could support it.

EXECUTIVE ACTION ON SJ 34

Motion/Vote: SEN. WILLIAMS moved that SJ 30 DO PASS. Motion carried 8-1 by voice vote with SEN. ESP voting no. SEN. SCHMIDT voted aye by proxy.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 9.6}

EXECUTIVE ACTION ON HB 704

Motion: SEN. MOSS moved that HB 704 BE CONCURRED IN.

Motion: SEN. CROMLEY moved that AMENDMENT HB070402.adn BE ADOPTED. Motion carried unanimously by voice vote. SEN. SCHMIDT voted aye by proxy.

EXHIBIT (phs71a01)

Motion: SEN. GRIMES moved that HB 704 BE CONCURRED IN AS AMENDED.

Discussion: SEN. CROMLEY thought the hearing had a lack of communication. He didn't think it addressed the problem.

SEN. GRIMES said once the Committee understood all the time frames, with the ten day notice, ten day responding, 21 days to set the hearing, much of the work will be done by the surveyors. With all the time frames, he didn't think it difficult for the hearings examiner to get this out in a timely fashion. He had read through the report, given by the department at the hearing, and some of the complaints were quite insignificant. Yet these things will cause them to post the notice. These facilities have some major capital investment in their businesses. They are held to very high standards and have very little recourse when that notice is posted. Having legitimate time frames makes sense from a fairness perspective for the facilities.

SEN. WILLIAMS asked **Mary Dalton** to respond. **Ms. Dalton** told her the department's opposition to the bill is that it takes 135 days to get their decision on this. This narrows the time frame to 45 days. If the bill passes, because it is marked with no appropriation, staffing will have to be taken away from other functions, which could be for survey or fair hearings. Fair hearings have a 90-day, not a 45-day time frame. Someone is going to hurt elsewhere in the department in order to do this, or they will be in contempt of the Legislature because they won't be able to comply. She thought this set the State up for a lawsuit, if they are not able to do this within 45 days. A ten-day provision is in federal guidelines. They are already missing that in 16% of their cases as the duties add on. Conceptually, they don't disagree with the bill, it is just not workable.

SEN. GRIMES asked **Rose Hughes** to comment. **Ms. Hughes** said the bill has two time frames. A ten-day time frame in which the department is required to meet, is in federal guidelines. They missed it. When they miss it, it's serious. She referred to the handouts she had given the Committee at the hearing. It can cost the facilities payments from Medicaid and Medicare patients, shortening the time frame they have to make a correction, if necessary. The 45-day deadline has to do with dispute resolutions. Those are now taking 145 days. In the meantime, these deficiencies are posted on the wall for everyone to read and may show up on the federal website. Sometimes licensure action is taken against an administrator's license, even though the faction is still pending. This affects liability insurance rates. While they are waiting four or five months, bad things are happening. She thought there are ways for the agency to make the process more efficient and streamlined within the statutes. The agency comes to the facilities making them accountable. They are simply asking the agencies to also become accountable. She said this is a \$2 billion budget, with 5,000 employees. It seems appropriate the department might be able to get these things done.

SEN. GRIMES thought **Ms. Dalton** said they had 34% vacancies. That is high and may have a lot to do with not being able to meet these federal time frames. He said he fully intends to offer an amendment on **HB 2** to provide the department with some additional funds to do this. It is pretty severe when Medicaid payments might be cut off.

SEN. MOSS agreed about the communication. Her notes said the department had 10 to 20% vacancies. The vacancies were in the staff that goes out to the nursing homes to survey. The time the process takes is meant is to develop the recourse which comes from both the nursing homes and the surveyors. Often times the

hearing officer has to look at information coming from very different perspectives.

SEN. COBB said if the bill is going to pass, we need to offer an amendment for appropriations to put the money in the budget and send it back over there.

{Tape: 1; Side: A; Approx. Time Counter: 9.6 - 30}

Ms. Dalton said they would withdraw their opposition if the Committee could find funding. They would be willing to work with the Committee on an amendment to change the time frames.

SEN. COBB said the time frame is a separate issue. He said, with a conceptual amendment, page 2, line 16 and 17, the Committee could clip the appropriations fiscal note in there.

Motion/Vote: **SEN. COBB** moved that **AMENDMENT PAGE 2, LINE 16 and 17, with the fiscal note BE ADOPTED. Motion carried unanimously by voice vote.**

Motion/Vote: **SEN. GRIMES** moved that **HB 704 BE CONCURRED IN AS AMENDED. Motion carried 7-2 by voice vote with SEN. CROMLEY and SEN. WEINBERG voting no. SEN. SCHMIDT voted aye by proxy.**

SEN. GRIMES will carry the bill on the Senate floor.

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

HEARING ON HB 749

Opening Statement by Sponsor:

REP. RICK RIPLEY (R), HD 17, opened the hearing on **HB 749,** Revise nursing home bed tax.

REP. RIPLEY informed the Committee the bill brings Medicaid payment rates in line with costs of care. The fee is now at \$5.30 per patient day. Federal rules limit the amounts of provider funds that can be used to match the federal Medicaid funds to 6% of industry's revenues. **HB 749** brings the utilization fee closer to the federal limit. This means nursing home facility needs will require other funding sources.

Proponents' Testimony:

Bob Olsen, Montana Hospital Association (MHA), told the Committee his association was working with the Health Care Association and DPHHS to put the bill together. He read his testimony contained in the following exhibit.

EXHIBIT (phs71a02)

{Tape: 1; Side: B; Approx. Time Counter: 5.7 - 11.7}

Rose Hughes, Montana Health Care Association read her testimony.

EXHIBIT (phs71a03)

{Tape: 1; Side: B; Approx. Time Counter: 11.7 - 16.3}

Jani McCall, Deaconess Billings Clinic, stated that Deaconess Billings Clinic owns and operates Aspen Care nursing home facility in Billings. They also work with rural affiliates in Columbus, Livingston, Big Timber, Forsyth and Red Lodge. The funding is very important in bringing facilities closer to the cost of care. She strongly urged support.

Opponents' Testimony:

David Ewer, Governor Schweitzer's Budget Director, offered some amendments, saying actual law has no language from the Code Commissioner explaining what this law depends on. The Bush administration has chastised the states about gaming the medicaid system, IGTS. He said this is a tax. Current statute says the money must be in a special revenue fund, as provided in 15-62-11, which is the Medicaid fund. His amendment says no. The feds are creating artificial taxes, having it as a passthrough to leverage Medicaid dollars. The Governor has talked about living within the means. This is a tax, a tax increase. He asked the Committee to keep the current rate. He said they would be a proponent with the amendments.

EXHIBIT (phs71a04)

{Tape: 1; Side: B; Approx. Time Counter: 16.3 - 24.4}

Informational Testimony:

Kelly Williamson, Administrator, Senior and Long Care Division DPHHS, made herself available to respond to any technical questions.

Questions from Committee Members and Responses:

SEN. CROMLEY, in response to the opposition, said we would have problems with the title of the bill as the bill, by title, increases the utilization fee and provides an appropriation.

SEN. WEINBERG asked what was the preference of the budget office's present law, with his amendments. **Mr. Ewer** told him the present law expires. The amendments are present law, with the exception of having the bill on the patient's bill.

SEN. GRIMES asked **Mr. Olson** to respond. **Mr. Olson** said the Governor's office is raising the concerns expressed by the President. There is a lot of debate over the use of provider taxes. On this bill, the provider tax on nursing homes does not expire. This bill stays within the current fee structure on the books. There was an amendment, put on last session, not to put the fee on the patient's bill. It was agreed to by the provider community, because you don't put your costs on the bills, you put your charges on your bills. He added that it would be provocative to the private pay patients to see this tax on their bill. In response to the comment on federal concerns about appropriate use of these fees, he said this particular fee has been in place in Montana since 1991. It has been approved by the federal government, under the current statute and program requirements, continually since 1991. Nothing within the structure being proposed changes that. The federal government's concern with states is that if you put this money in the patient's bill, then send it to the nursing homes and require them to return it back to you, this is converting Medicaid money into the state general fund, using these pass-through programs to accomplish this. Montana doesn't do this. Other states have. This is why the feds have sent out auditors to see this isn't happening.

{Tape: 1; Side: B; Approx. Time Counter: 24.4 - 30}

SEN. ESP told **Mr. Ewer**, in order to move this bill, we will have to have some increase. If we move the bill out with a .50 cent increase, it will give the budget office time to figure out what we can and can't do. **Mr. Ewer** responded that was the Committee's right. He said if the bill remained the same dollar amount, the bill would remain alive. If the Committee changed that, the House Bill would put the bill on the patients bill. He suggested changing the state's special revenue fund provision from a "must" to a "may". This further protects Montana from the allegation that Montana is leveraging, at no cost to itself, Medicaid dollars which President Bush has made such a large issue about.

Closing by Sponsor:

REP. RIPLEY said we have to live within our means, so should the government. He added that we came into session with a three hundred million dollar surplus. If we can't find \$44,000.00 per year to take care of our nursing homes, and the constituents in those nursing homes, something is wrong. There hasn't been a problem since 1991. He said your constituents want this bill, and they need this bill.

SEN. COBB will carry the bill on the Senate floor.

{Tape: 2; Side: A; Approx. Time Counter: 0 - 2.8}

HEARING ON HB 552**Opening Statement by Sponsor:**

REP. MARY CAFERRO (D), HD 80, opened the hearing on **HB 552**, Change asset test for children for medicaid.

REP. CAFERRO told the Committee that the bill increases family assets, from \$3000 under the Medicaid program, to the limit of \$15,000. By doing this 3,000 children, currently on CHIP, would move over to Medicaid and 3,000 uninsured children would come into CHIP. It would also bring in some federal dollars to Indian health services and school based services which do not require a state match. For about \$1.8 million, we would bring a little over \$5.2 million in federal match to the State. This is included in **HB 2**. It is funded with I-149 dollars, and it fits within the purposes.

Proponents' Testimony:

Erin Dininny, resident of Helena, single mother of four daughters, receiving little or no child support, rose in support of the bill. She applied for Medicaid for her family and was denied because of a \$4000.00 tax refund she received from a child tax credit. She didn't think needy families should be excluded.

Kim Abott, Working for Equality and Economic Living, gave the Committee handouts and read her testimony.

EXHIBIT (phs71a05)

Linda Gryczan, League of Women's Voters of Montana, stated that **HB 552** is a good investment, with \$1.8 million already raised and

budgeted. It will bring in \$5.2 million from the feds. She urged support.

Jim Ahrens, Alliance for Healthy Montana, told the Committee it fits within the goals of I-149, and urged support of the bill.

Jani McCall, Deaconess Billings Clinic and Montana Children's Initiative Provider Association urged support.

Bonnie Adee, Mental Health Ombudsman, said one of her office's recommendations, for several years, was to increase access to mental health care for children. The bill does that. For the quality of mental health care for children who are seriously emotionally disturbed, Medicaid is a comprehensive mental health care benefit, as compared to CHIP benefits. Getting mental health care sooner would be a great asset to these children.

Erik Schiedemayer, Montana Catholic Conference, said the current \$3000 asset limit is ridiculous. A working family, with a couple cars, is way over that. Investing this money in our children increases the odds these children will become happy, healthy, productive adults. This is a great place to spend some of the I-49 money.

Michele Jackson, single mother of two children, encouraged the Committee to support the bill. She added that children should always be a first priority.

Opponents' Testimony: None.

Informational Testimony:

Jeff Buska, Senior Medicaid Analyst, DPHHS stated that his office coordinated preparation for the fiscal note. There is staff present for questions regarding eligibility changes relative to this legislation.

Questions from Committee Members and Responses:

SEN. WEINBERG, asked **Mr. Buska** if the department had problems with the change. **Mr. Buska** told him they had no concerns about the change. It changes the eligibility for the poverty related programs. It moves a lot of kids from CHIP into the Medicaid program, freeing up a lot of slots for children under CHIP. It addresses the number of uninsured children in the State.

Closing by Sponsor:

REP. CAFERRO thanked the Committee and the witnesses, especially the mothers. She added that this specific category of Medicaid is not targeted for cuts by President Bush's budget.

{Tape: 2; Side: A; Approx. Time Counter: 2.8 - 17.8}

EXECUTIVE ACTION ON HB 552

Motion: SEN. WILLIAMS moved that HB 552 BE CONCURRED IN.

Discussion: David Niss explained a technical amendment for the appropriation.

EXHIBIT (phs71a06)

Because the Committee had to return to the Senate floor, **SEN. CROMLEY** recessed the hearing at 4:15. The hearing will continue when the Senate session ends.

Executive action on **HB 552** resumed at 6:30 p.m.

Mr. Niss explained that page 5, line 20 strikes the reference to 53-6-113, putting other language in front of it. There are nine subsections covering department rules which were unintentionally included in the bill. The change says the money has to be used for providing Medicaid services to children under 19 years of age, for whom the department may not apply by natural criteria, as provided in subsection 6. This is consistent with the sponsor's intent.

Motion/Vote: SEN. WILLIAMS moved that AMENDMENT HB055201.adn BE ADOPTED. Motion passed unanimously by voice vote.

Motion/Vote: SEN. WILLIAMS moved that HB 552 BE CONCURRED IN AS AMENDED. Motion carried 6-3 by voice vote with SEN. ESP, SEN. GRIMES, and SEN. O'NEIL voting no.

SEN. COBB will carry the bill on the Senate floor.

{Tape: 2; Side: A; Approx. Time Counter: 17.8 - 26.4}

EXECUTIVE ACTION ON HB 704

Motion/Vote: SEN. COBB moved to RECONSIDER THE MOTION on HB 704. Motion carried unanimously by voice vote.

SEN. COBB explained he could not put the amendment he suggested on the bill. He said the amendment must be removed. He had suggested putting the appropriation in the bill and sending it to the House. The House can put the appropriation in, but the Committee can't put an appropriation in **HB 2**.

Motion/Vote: **SEN. COBB** moved that **AMENDMENT PAGE 2, LINES 16 AND 17 WITH THE FISCAL NOTE BE STRICKEN**. Motion carried 6-3 by voice vote with **SEN. CROMLEY, SEN. ESP** and **SEN O'NEIL** voting no.

Motion/Vote: **SEN. COBB** moved that **HB 704 BE CONCURRED IN AS AMENDED**. Motion carried 5-4 by voice vote with **SEN. CROMLEY, SEN. ESP, SEN. MOSS,** and **SEN. WEINBERG** voting no. **SEN. SCHMIDT** voted aye by proxy.

SEN. GRIMES will carry the bill on the Senate floor.

SEN. GRIMES stated that he will try to fix the bill in Finance Committee.

{Tape: 2; Side: A; Approx. Time Counter: 26.4 - 30}

SEN. MOSS thanked **SEN. COBB** for trying to fix the bill.

EXECUTIVE ACTION ON HB 749

Motion/Vote: **SEN. COBB** moved that **HB 749 BE CONCURRED IN**. Motion carried unanimously by roll call vote.

SEN. WEINBERG objected to the fact that, slightly under the surface of the bill, was a political game regarding the tax. He was resentful we had to put up with that becoming a political issue. He felt it clouds judgment as to how to make good legislation.

SEN. COBB will carry the bill on the Senate floor.

{Tape: 2; Side: B; Approx. Time Counter: 0 - 7.3}

ADJOURNMENT

Adjournment: 7:10 P.M.

SEN. BRENT R. CROMLEY, Chairman

RITA TENNESON, Secretary

BC/rt

Additional Exhibits:

EXHIBIT ([phs71aad0.PDF](#))