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## Economic Affairs Interim Committee

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### 60th Montana Legislature

#### SENATE MEMBERS

KEN HANSEN--Vice Chair  
ROY BROWN  
FRANK SMITH  
DONALD STEINBEISSER

#### HOUSE MEMBERS

SCOTT MENDENHALL--Chair  
MIKE MILBURN  
MICHELE REINHART  
BILL THOMAS

#### COMMITTEE STAFF

ANDREW GEIGER, Lead Staff  
BART CAMPBELL, Staff Attorney  
CLAUDIA (CJ) JOHNSON, Secretary  
LISA JACKSON, Staff Attorney for HJR48  
PAT MURDO, Staff for HJR48 & SJR13

# MINUTES

June 17, 2008  
Room 137

Capitol Bldg.  
Helena, MT

Please note: These are summary minutes. Testimony and discussion are paraphrased and condensed. **Exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of the document.**

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#### **COMMITTEE MEMBERS PRESENT**

REP. SCOTT MENDENHALL, Chair  
SEN. KEN HANSEN, Vice Chair

SEN. ROY BROWN  
SEN. FRANK SMITH  
SEN. DONALD STEINBEISSER

REP. MIKE MILBURN  
REP. MICHELE REINHART  
REP. BILL THOMAS

#### **STAFF PRESENT**

ANDREW GEIGER, Lead Staff  
BART CAMPBELL, Staff Attorney  
Cj JOHNSON, Secretary  
LISA JACKSON, Staff Attorney for HJR48  
PAT MURDO, Staff for HJR48 & SJR13

## Agenda

Agenda, Attachment #1

### COMMITTEE ACTION

- None.

### AGENDA

- Review of HJR 48
- Mandate Light bill draft, LC7777

### CALL TO ORDER AND ROLL CALL

00:03:04 Sen. Hansen called the committee to order at 8:00 a.m. by teleconference. The secretary noted the roll. Everyone is present. Rep. Mendenhall had technical difficulties and was connected later.

### Stakeholders at the table:

Angela Huschka, New West Health Services  
Steve Yeakel, Montana Council for Maternal and Child Health  
Anna Whiting-Sorrel, Governor Schweitzer's office  
Hal Harper, Governor's Office  
Christopher Herriges, Blue Cross/Blue Shield (BC/BS) Montana  
Don Allen, Montana Association of Insurance and Financial Advisors  
Virginia Summey, State Auditors Office

- **Update on Remaining Meetings and Overview of Today's meeting**

00:06:18 Andrew Geiger briefed the committee for the reason of the conference call. He stated that the rest of the interim meetings will be out of town, one meeting at Bozeman, and one in Missoula. He said the study on HJR 48 needed more time and he wasn't able to tie it in with the next two meetings. He said time has run out for any further study on HJR 48, and the committee will need to achieve what results they want in a shorter amount of time. He stated that this committee can report to the legislature that they have done a tremendous amount of work on a large topic, but with fall approaching the committee will not be able to work on this any longer. He reiterated that this topic will not be on the agenda in the upcoming meetings.

00:09:04 Pat Murdo, Legislative Researcher for HJR 48, discussed the Mandate Light bill draft, LC7777. **Exhibit 1** She said this draft is from a bill the committee had reviewed at the Economic Affairs meeting in Missoula this last May. It has now been revised from suggestions that had been made by the members and the

stakeholders. She talked about meeting with several of the insurance people to collect what they would be interested in, and that she also met with Rep. Mendenhall to determine what his thoughts and interests would be. She said this draft is for discussion purposes only, but stated that it will require federal mandates. She informed the committee that section one is the main part of the bill, which reflects the federal mandates for the individual health benefit plans. She listed some of the services that will be covered such as, mastectomy and post constructive mastectomy, and severe mental illness, etc. She said there are issues with maternity care that has been left out of the mandate light bill. She discussed a Montana Supreme Court case, and the Attorney General's opinion regarding health insurances not being equitable and denying maternity care. She said the draft also requires the companies to report on the number of policies issued, and if there are not enough policies sold the bill will sunset in 2016. If the policy doesn't work than the stakeholders can come back to another legislature to extend the sunset or do away with the sunset. She closed this part stating that the rest of the bill amends various sections.

00:14:22 Sen. Hansen asked the committee members if they had any response or comments. No one replied.

00:14:52 Sen. Hansen stated with this being an unofficial draft he is cautious of new legislation. He talked about his concerns with the wording "shall" and "may". He also addressed the "numbers", and the way they are reported. He asked "will these numbers continue after they reported." He feels this isn't required and asked if one of the stakeholders would respond. Angela Huschka from New West responded. She addressed section 4 that states "shall report by March 31st annually starting in 2010" in regard to the number of plans sold the previous year. She said currently there is a requirement for insurance companies that are not self-funded or for third party administrators (TPA) to report this anyway. Sen. Hansen stated that "one size doesn't fit all." He talked about this continuing to 2016, and asked "how will we know at that time what will be good numbers and what will be bad numbers."

00:17:40 Rep. Reinhart asked for clarification on what is covered under the Women's Health and Cancer Rights Act on the federal level. Ms. Murdo responded by reading an excerpt from **Exhibit 2**, "Mandates and Insurance in Montana." Ms. Murdo replied that it includes; mastectomy care and post mastectomy care. She directed the committee to the mandate sheet. She stated there are some federal

statutes that refer only to group health insurance, but, the individual insurances are the ones that include: post mastectomy, reconstructive, and the minimum stay. She said the above are also included in some of the federal plans and does affect individuals. Ms. Murdo said that means health insurances will have to cover these services. Rep. Reinhart asked if we took that out of our statute will the federal plan still require it. Ms. Murdo said yes. She continued stating that the draft was written to follow the mandated coverage requirements. She said it was written for federal government on individual policies to include those services listed in the Women's Health and Cancer Rights Act.

00:21:03 Sen. Hansen said he would like more clarification in regard to the words "shall and may", and asked that someone address this issue. He wanted to know why those words have to be put into the draft. Ms. Murdo responded why she placed "shall and may" in the draft, and said it doesn't change much from the current mandate light policy. She said those words give permission to the insurance companies to offer this type of plan. She had discussed this with Frank Cote, Blue Cross Blue Shield Montana (BC/BS), who said they had to offer hospitalization, and he asked that it be kept open ended, for example no requirements except to include the federal mandates. She said by leaving it open ended the insurance companies can be creative in how they develop an individual policy. She said the reporting requirement is the "shall" part. She said "shall" could say "if they offered these plans" then they could report if it works or not.

00:23:36 Rep. Mendenhall asked Sen. Hansen if he is ok with the wording. Sen. Hansen said the wording could be too tight for insurance companies. Rep. Mendenhall commented on wording in the last part that could have language say something to the affect "shall include" on the mandates that are required.

#### **Public Comment**

00:26:05 Don Allen, Montana Association of Insurance and Financial Advisors, stated that the bill is ok the way it is. He feels that Ms. Murdo's explanation was good.

00:26:77 Angela Huschka responded stating that an insurance company or carrier may offer limited plans that exclude A, B, or C. She said part 4 could be changed to say "if a health insurer does offer that kind of a product, then they are the ones that report that information rather than each issuer."

00:27:36 Christopher Herriges, BC/BC, said he feels the language is pretty clear. He said the committee might want to clarify subsection 4 to indicate "if an insurer does in fact offer one of these policies then and only then in this case will they have to report the number of policies sold".

### **Comments from Committee Members**

00:28:24 Rep. Reinhart talked about how limited policy was to cover emergencies, and she noted that emergencies have been taken out along with issues that concern women and children. She questioned the purpose of an individual policy. She referred to exhibit 2, page 7, stating they show high deductibles. She thought these kinds of policies were to help people out that do not have coverage and needed emergency care. She asked, does this serve the purpose. She talked about emergency care not offering cost savings, and a reduction in coverage is the not the best way to save costs.

00:29:53 Rep. Mendenhall asked Sen. Steinbeisser his thoughts. Sen. Steinbeisser talked about choice. He said the reason the committee is doing this is to try to cover more people with health insurance. He said if people want more in their insurance it should cost more, and less insurance would cost less.

00:30:53 Rep. Mendenhall responded to Rep. Reinhart's comment regarding people that don't have insurance and would be wiped out financially if there was a catastrophic event. Rep. Reinhart agreed with Rep. Mendenhall, but stated that she is concerned that emergency services are excluded, and that most of the events referred to are catastrophic events that require some emergency services. She directed the committee to pages 35, 36, and 37 in exhibit 1. She said it looks like emergency services can be excluded from a limited plan, and she questioned the purpose of having coverage that would deal with catastrophic injuries or illnesses that require emergency care. She said it could defeat the purpose of having this type of coverage. Ms. Murdo responded that the language falls under the Health Maintenance Organization, chapter 36, stating that the insurance codes cover several different types of insurance, and apply to certain insurances.

00:35:56 Chris Herriges, BC/BS, responded to Rep. Reinhart's concerns. He replied that this bill takes out all of the state mandates and preserves some of the federal mandates by allowing insurance companies to design packages that may be cheaper than what is offered now with all of its mandates. He said it gives the

insurance companies the ability to design insurance coverages that a company feels is important for individuals in the work place. He said that BC/BS would have to look at what coverages they would want to include. He said just because this bill takes emergency services out of the HMO product doesn't mean that if this bill passes and BC/BS decided to design and offer a mandate light bill that didn't offer emergency services, that BC/BS would have to make a decision based on the market demand if they (BC/BS) would want to include emergency services or not. He feels that just because this bill has taken out emergency services that it will not exclude it from being in any mandate light coverage.

Rep. Mendenhall responded noting that more can be done in a policy than what this draft sets out. He wanted to know why this issue is even in the bill and why is the exclusion in there. He feels it defeats the purpose. Ms. Murdo replied that a model called the "demonstration project" was used along with Rep. McGillvray's bill that was also used as a model. Ms. Murdo said that emergency services would include services, such as an ambulance to the hospital, but once you are in the hospital it is not considered an emergency and the insurance would pay for that service. Ms. Murdo said the model "demonstration project" will expire in 2009. She talked about the wording in this bill draft "for health maintenance organizations" could exclude emergency services. She referred to the language on page 37 in exhibit 1, where it gives the effective date of July 1, 2009. She said without the amendment it would say "a health carrier offering a managed care plan shall provide or pay for emergency services." She said when the demonstration project model goes away the language will read what the bill is without the mandate light policy.

00:41:41 Angela Huschka, New West, explained the definition of emergency services is when a claim comes through to the insurance company, and how the providers code it that determines if it is an emergency service, and how it is billed. Rep. Mendenhall asked Ms. Murdo to work with Ms. Huschka to clarify this language. Rep. Mendenhall commented that the committee is not going to solve this issue today.

00:43:05 Sen. Brown talked about the committee trying to come up with a complete mandate free bill, and said that the committee needs to find something that is going to cover absolute catastrophic issues. He gave an example of a catastrophic event, such as heart surgery, and the emergency part would be a small portion like the ambulance part. He stated that the heart surgery would be

covered under the policy. He said what the committee is trying to achieve here is to protect people from catastrophic costs.

00:44:05 Rep. Milburn said we need to keep in mind the people that do not have insurance, how will they be treated, and who will be paying for it. Ms. Murdo interjected that hospitals that offer emergency services have to take care of those people that don't have insurance coverage. Rep. Mendenhall asked that language be clarified to explain how this policy will be enacted if a spouse provided the transportation instead of an using an ambulance. He talked about a portion of the bill applying only to HMOs, and wanted to know if this part can be utilized in Montana. Ms. Murdo said she will get back with that information.

00:47:31 Rep. Reinhart asked about the maternity section. She referred to a statement on page 39 of the bill draft that states "it is not a violation of the prohibition of discrimination on the basis of sex to exclude maternity benefits." She discussed a Supreme Court decision on Bankers Life Casualty vs. Peterson that insures and provides men with comprehensive coverage, but it doesn't cover pregnancy for women, which is in violation of the Montana Human Rights Act. She stated her opposition in having any of that taken out as it could result in unequal policies offered to men vs. women. Ms. Murdo responded to Rep. Reinhart's concerns regarding some of the decisions from the State Supreme Court in regard to the Banker's Life Insurance, and the U. S. Supreme Court that referenced Title 7 of the Civil Rights Act. She said this part of the draft is the most controversial. When she met with the insurers they wanted her to present to the committee to have that part taken out. She said this issue is the one that can be the most expensive by driving the cost up or, it can lower the cost, depending what the committee wants to do. She left this part in for discussion purposes only.

### **Comments from Committee Members**

00:50:09 Rep. Mendenhall asked Ms. Murdo if she knew what the cost of that expensive mandate part might be. She talked about the work of the SJR 15 committee and their discussions on the various costs of health care services. She said that discussions with the State Auditor's office have said that severe mental health issues and coverage of new borns (unless a bad birth), are two of the more expensive items. She said that approximately 50% of births in Montana are Medicaid births. She questioned if maternity isn't covered will it push more births onto Medicaid, and if it is covered will it still be 50%. Rep. Mendenhall asked if there was an actuarial estimate of the cost from that mandate not being a policy.

Ms. Murdo replied that Frank Cote, BC/BS, said they have an actuary working on this part, but said there are no numbers to report at this time. Rep. Reinhart asked if the actuaries are factoring in the calculation of the costs of individual policies, and the value of prevention, such as mammogram screening. She also asked if the actuaries will be doing this mandate by mandate. Ms. Murdo replied they are doing a plus/minus on individual and group plans.

### **Public Comment**

- 00:54:58 Don Allen, Montana Association of Insurance and Financial Advisors (IFA), said there are issues that still need to be re-solved, but IFA is willing to go on record in support of a mandate light policy in hopes it will help in reducing the costs to the insured.
- 00:56:00 Chris Herriges, BC/BS, said they agree with the comments made by Don Allen.
- 00:56:16 Jan VanRiper, State Auditor's Office (SAO), said this will shift access to coverage and not assist with costs. The coverage will shift from the pool of healthy people and shift the costs to those who are too sick to buy the product. She feels this will create a class of underinsured people, which is what the state is trying to avoid as well as access to coverage. She said the mandate light will prevent a number of preventative types of mandated coverages, such as maternity and mental health. She addressed Insure Montana that is administered from her office, and said that many of the costs in this last coverage year was due to a lot of babies that are born prematurely or without adequate prenatal care, and now this mandate will provide additional prenatal care. She talked about the cost-savings analysis that BC/BS is doing, and that maternity would be a cost-savings, where mental illness would increase cost-savings.
- 00:59:14 Sen. Christine Kaufmann said she is before the committee today speaking as the director of the Montana Human Rights Network and not as a legislator. She said the rest of the world looks at health care as a human right, the same way we look at socialized education, and said that health care needs to be looked at the same way. She said this proposal goes the wrong way. It is going towards deregulation of an industry and socialized medicine. She talked about roles of other companies that have universal plans around the world that are not socialized, but private providers, such as Japan, France, Germany, etc. She said these other countries' plans are highly regulated insurance industries. They are required to cover everyone and are not allowed to make money on what is called

a basic health care plan. She said this bill doesn't cover or address any one that needs it. Sen. Kaufmann asked the committee to not move forward with this program of deregulation.

01:02:05 Stacy Anderson, Public Affairs Director for the Planned Parenthood of Montana, said that Planned Parenthood oppose this mandate. She said they see approximately 20,000 patients, mostly women, uninsured, and this mandate light will not begin to address their interests and concerns. Healthy Mothers have said this bill doesn't address any of the issues these women need.

01:02:50 Claudia Clifford, AARP Montana, suggested that if this is truly to cover people that need it, to find out how many were actually covered before the mandate. She talked about actuaries working on projected savings for exempting the mandated benefits. She stated that the deductible levels will have an impact on the savings for those benefits. She talked about the mandates that are currently in law, and for reasons the legislature has chosen to say there is a good preventive health reason that policies should cover these benefits.

01:05:00 Allyson Hagen, Executive Director of Naral Pro-Choice Montana Foundation, addressed some of the concerns that Rep. Reinhart had addressed. She talked about the language on page 39, regarding changes to Montana's non-gender insurance code. She wanted to know what this will mean for the Attorney General's opinion on contraceptive equity, such as the plan to not include birth control coverage.

01:05:44 Jessica Rhoades, said she is an Insurance consumer from Helena. She pointed out that the term "mandate" that is being used in this hearing is what the public calls "consumer protection". She said eliminating consumer protection from insurance coverage is a bad idea.

### **Comments from Committee Members**

01:06:50 Rep. Mendenhall closed the public testimony on the Mandate Light draft LC7777.

01:07:04 Ms. Murdo summarized the suggested outline for the final report on HJR 48 study.  
**Exhibit 3**

01:08:43 Rep. Reinhart asked about the EAIC July meeting. Andrew Geiger said that any information that the members want included in the report to contact Ms. Murdo.

He said the committee will discuss in Bozeman whether they want a committee bill. If so, it will be presented in Helena at the September 12th EAIC meeting.

01:10:12 Rep. Mendenhall and Rep. Reinhart talked about e-mailing some of her ideas to the rest of the members. She would like to see Insure Montana and its effectiveness as a way to cover small business and the Montana Comprehensive Health Association that covers high risk people as options through insurance and be cost effective. Ms. Murdo said she will include this in the report.

01:11:06 Rep. Mendenhall adjourned the committee meeting at 9:09 a.m.

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