



Children, Families, Health, and Human Services Interim Committee

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61st Montana Legislature

SENATE MEMBERS

RICK LAIBLE--Vice Chair
ROY BROWN
CHRISTINE KAUFMANN
TRUDI SCHMIDT

HOUSE MEMBERS

DIANE SANDS--Chair
MARY CAFERRO
GARY MACLAREN
PENNY MORGAN

COMMITTEE STAFF

SUE O'CONNELL, Research Analyst
LISA JACKSON, Staff Attorney
FONG HOM, Secretary

MINUTES

April 26, 2010

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.

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COMMITTEE MEMBERS PRESENT

REP. DIANE SANDS, Chair
SEN. RICK LAIBLE, Vice Chair

SEN. ROY BROWN
SEN. CHRISTINE KAUFMANN

REP. MARY CAFERRO
REP. GARY MACLAREN
REP. PENNY MORGAN

COMMITTEE MEMBERS EXCUSED

SEN. TRUDI SCHMIDT

STAFF PRESENT

SUE O'CONNELL, Research Analyst
LISA JACKSON, Staff Attorney
FONG HOM, Secretary

Visitors List and Agenda

CALL TO ORDER AND ROLL CALL

00:00:02 REP. SANDS called the meeting to order at 9:30 a.m. The secretary noted roll. Sen. Schmidt was excused. The minutes of the January 25, 2010, meeting were approved as written.

AGENDA

SJR 35 STUDY OF HEALTH CARE: FEDERAL LEGISLATION

Legislative Branch Health Care Reform Planning - Susan Fox, Executive Director, LSD

00:02:12 Ms. Fox said that a working group is being formed that will be composed of staff from the Legislative Services Division and Legislative Fiscal Division to discuss and analyze the health care reform bill. Sue O'Connell is the lead for the Legislative Services Division and Lois Steinbeck is lead for the Legislative Fiscal Division. A website with links to various organizations and documents is being developed that will provide information to legislators about the bill.

Briefing Paper: Update on Selected Provisions of the Health Care Legislation - Sue O'Connell, Research Analyst, LSD

00:06:57 Ms. O'Connell informed the committee that their packet of meeting documents contains the briefing paper on selected elements of the final federal health care legislation (**Exhibit 1**); State Reaction to Federal Health Reform (**Exhibit 2**); and Federal Tort Claims Act and Community Health Centers (**Exhibit 3**). These papers were provided as background information for the committee.

Consumer Education and Information - Monica Lindeen, Commissioner of Securities and Insurance, State Auditor's Office

00:09:57 Ms. Lindeen gave an update of the activities of State Auditor's Office regarding the implementation of the reforms that are present in the health care legislation. Ms. Lindeen distributed and discussed the Health Insurance Reform Timeline 2010-2014 (**Exhibit 4**). She also distributed a document about high-risk insurance pools (**Exhibit 5**), and a document about small business tax credits (**Exhibit 6**).

Questions

- 00:24:48 REP. MORGAN asked if businesses can get both the Insure Montana Tax Credits and the federal tax credits under this new program. **Ms. Lindeen** said that the Insure Montana Tax Credit is a state credit and the new credit is a federal credit. Some small business owners may qualify for both.
- 00:27:07 SEN. LIABLE asked about the costs to the state for implementing federal requirements. **Ms. Lindeen** said that there will be separate grants available to the state for some activities, but the amounts were not yet known.
- 00:35:54 REP. CAFERRO asked if there has been any discussion about changing the makeup of the Montana Comprehensive Health Association Board? **Ms. Lindeen** said they are looking at adding more consumer representatives to the Board. **Christina Goe** said that the current board is made up of representatives from five insurers with the most premium volume in the state; two at-large member insurance company members that the commissioner appoints; and one consumer representative that the commissioner appoints.
- 00:39:58 SEN. BROWN asked for clarification of Ms. Lindeen's statement that non-profits can get a refundable tax credit but for-profit companies cannot? **Ms. Goe** said the issue of tax credits needs to be clarified and it is her understanding that the federal tax credit is not a refundable tax credit like the state credit is. She said that she would look into the matter and provide more information.
- 00:42:14 REP. MACLAREN asked if HHS has given any indication on what the procedure for the insurance rate review would be. **Ms. Lindeen** said that they are still working on that. However, there are a lot of market reforms, including rate reform, that involves the National Association of Insurance Commissioners (NAIC) and the states. NAIC is working on these issues.
- 00:43:33 REP. MACLAREN asked about the difference in the funding on the high risk pools and how that difference will be made up? **Ms. Lindeen** said that there is potential inequity in terms of what the premium costs is from the existing pool to the new pool that this is temporary. If the 2011 Legislature decides to consider making up the inequity, there could be discussions with the industry to increase the assessment to do that.
- Medicaid and CHIP: Maintenance of Effort and Expansion Proposals - Anna Whiting Sorrell, Director, Department of Public Health and Human Services**
- 00:49:22 Ms. Whiting Sorrell discussed the impacts that the national health care reform will have on the Medicaid and CHIP programs (**Exhibit 7**).

Questions

- 00:52:37 REP. MORGAN asked why savings are anticipated in 2016 when costs increase in other years. Is the federal government expecting the states to come up that additional money or is it their anticipation that they will give the states more money to cover the increasing burden to the states? **Ms. Whiting Sorrell** said that bullit 5 describes the matching amounts the federal government will provide. In fiscal year 2016, the federal CHIP match increases by 23% which allows that savings to occur.
- 00:54:39 REP. MORGAN asked how the federal government is going to help states meet the increasing costs. **Ms. Whiting Sorrell** said that the federal government will cover some of the costs because there will be no state match in years 2014, 2015, 2016 for those individuals who are new to this population.
- 00:56:57 SEN. KAUFMANN said, if the federal match is 100%, why does the chart in 2014 show that there are additional costs to the state? Are you expecting increases in the pool that is currently covered? **Ms. Whiting Sorrell** said that since they will be increasing the number of currently eligible individuals, they won't receive the enhanced federal match. They are anticipating what the federal match will be and what their best projection for what the costs will be.
- 00:58:07 SEN. BROWN asked whether people who are now between 100% and 133% of poverty can obtain insurance through Medicaid? **Ms. Whiting Sorrell** said that in Montana, to be eligible for the Medicaid program you must have children and be under 34% of poverty. At this point, there is not enough information for us to know how the exchange will be used to cover adults who may be eligible for Medicaid.
- 01:00:40 SEN. LAIBLE said that he noticed that part of the federal mandate is that physicians be reimbursed at the Medicare rate. His concern is that there will be a point when we don't have enough doctors who will take Medicaid or Medicare patients. Does Ms. Whiting Sorrell have any thoughts on the impact as far as access, of a diminishing number of primary care physicians to provide services to the current and new clients? **Ms. Whiting Sorrell** said the idea about access and the workforce shortage is one that the Office of Higher Education and the Governor have been working on for a period of time, looking at ways of bringing new health care professionals into the state.
- 01:04:03 REP. SANDS said that it is not accurate to think just because you are uninsured means you don't have access. There are many people who have access through community health centers who are uninsured for example, so there is no

correlation between being uninsured and not having access. She asked Director Whiting Sorrell to comment on that relative to the most recent legislation related to veterans in the country.

01:04:53 Ms. Whiting Sorrell said that one of the unique things that the legislation allows is that veterans can access care through Indian Health Service or other rural facilities.

01:05:35 REP. CAFERRO asked if Ms. Whiting Sorrell could comment on what the commitment is to preserve the Healthy Montana Kids plan. **Ms. Whiting Sorrell** said that between now and 2019, states are asked to look at how the CHIP population may move towards the exchange that is developed.

Public Comment

01:09:11 **Joyce Burgett, Montana Public Health Association**, provided information on other measures included in the reform bill to keep people healthy. She distributed and discussed a summary of specific provisions that will target prevention, education, and outreach programs (**Exhibit 8**).

BREAK

SJR 35 STUDY: UPDATES FROM MONTANA HEALTH CARE GROUPS

Barbara Schneeman, RiverStone Health
Rep. Chuck Hunter
Kristin Page Nei, American Cancer Society
Larry White, Montana HealthCare Forum and Montana Healthcare Workforce Advisory Council

01:32:08 Barbara Schneeman gave a brief background of the Montana HealthCare Forum and its working groups.

Ms. Schneeman gave a presentation on the work group that is looking at improving the health of Montana's population (**Exhibit 9**). She said that the next step for the work group will be to look at the provisions that are within the recently passed federal health care legislation to see if there are other funding opportunities for some of the policy objectives.

01:39:39 Rep. Chuck Hunter, House District 79, said he serves as one of the co-chairs along with Dr. Tom Roberts of the Western Montana Clinic of the cost group of the HealthCare Forum. Their task was to look at the costs of medical care in Montana and try to come up with ideas about how to deal with some of the costs

issues. They looked at a variety of issues about federal reform, cost variation, administrative simplification, malpractice issues, consumer education and the result that could have on the cost issue.

01:46:52 Kristin Page Nei, American Cancer Society, said that the health coverage work group focused on looking at federal health reform as it relates to coverage. The work group discussed the structure of the exchange, eligibility requirements for the high risk pool and what the suitable allotment should be, allocation of outreach and marketing dollars to ensure eligible individuals are aware of the pool and how to apply, and more public participation on the MCHA Board, along with guidance from the State Auditor's Office.

01:51:31 Larry White, Director, Western Montana Area Health Education Center (AHEC), representing Kris Julliar, director of the Office of Rural Health and the Montana Area Health Education Center, Bozeman, presented written comments from the Workforce Advisory Committee (**Exhibit 10**).

Questions

02:00:07 SEN. KAUFMANN asked if there is a way for the people in Rep. Hunter's work group to get some sort of seal of approval on the plans that come into the exchange. **Rep. Hunter** said he believes there are many opportunities for states to pick up cost-related issues as pilot demonstrations tied to the exchange.

02:02:03 SEN. KAUFMANN asked if in Rep. Hunter's examination, he has determined whether a state would apply for a grant for a pilot demonstration, or is it potentially opened to private associations or non-profit groups. **Rep. Hunter** said there are both opportunities for states and for non-profits operating in the medical field.

02:02:35 SEN. LAIBLE asked Ms. Schneenam if her work group look at any employee incentives that might be tied around health care savings accounts to reduce their health care costs? **Ms. Schneeman** said that they did not specifically look at what is going on with the employees outside of the employer incentives.

02:04:38 SEN. LAIBLE asked Rep. Hunter why he did not talk about tort reform or the costs that lawsuits add to the medical costs, particularly defensive costs from physicians and medical providers. **Rep. Hunter** said that they did talk to some degree about tort reform but they relied on the paper prepared by staff.

02:06:52 SEN. LAIBLE asked Rep. Hunter if that would be something that his group would submit to this committee as possible legislation to help tighten it up if other states

are finding success with that. **Rep. Hunter** said that he doesn't think that his group really made any decisions of whether they would go forward with that. He would take that issue to the group and see if they would want to revisit that topic.

02:07:33 SEN. LAIBLE asked Mr. White how the state could increase the number of medical providers or practitioners. **Mr. White** said that state schools need to have a better gauge on what the demand is to warrant the investment of faculty and other resources to increase the production. North Dakota has initiated, as a voluntary activity, to charge registered nurses \$5.00 in addition to their annual fees, to pay costs of collecting data. At the conclusion of a pilot project period, the nurses voluntarily agreed to continue it in perpetuity because the quality of the information was so valuable to policymakers and to educators and to professionals.

02:10:41 SEN. LAIBLE asked if Mr. White's committee looked at the lack of or surplus of practitioners or providers in areas that already have this legislation, and if access to providers or practitioners was impacted as a result of that legislation in other countries, like Canada or England, that have a health care delivery system similar to ours. **Mr. White** said that the two committees that he is a part of have not looked at those kinds of future demand or comparable demand issues.

02:13:23 REP. MACLAREN asked Mr. White if he could give some examples of barriers to licensing. **Mr. White** said that the specific barrier that was brought up at the recent HealthCare Forum meeting involves a change in medical licensure laws that stipulate that in order to be licensed as a physician in Montana, an individual must complete a residency. That is a burden when you are competing with other states for new graduate physicians and when time is money in terms of their ability to earn a living and to start repaying debts.

02:16:07 REP. SANDS asked Mr. White to get specific language to staff that would be helpful if they consider taking that up as an issue, as well as more information on what the factors are that Mr. White thinks should be looked at if the committee should look at a data collection program.

LUNCH

SJR 35 STUDY: PHARMACY PROFESSION -- TRENDS AND ROLE IN HEALTH CARE - Starla Blank, Chair, Montana Pharmacy Association

03:31:25 Ms. Blank gave a presentation on the pharmacy industry in Montana:

- Background on pharmacy technicians, types of practice, number of licensed

pharmacists in the state, number of licensed drug wholesalers, number of prescriptions filled

- Challenges in pharmacy practice
- Topics in pharmacy: medical marijuana, medication disposal, Operation Medicine Cabinet, prescription drug abuse and diversion
- Sources of where you can get prescription drugs
- Attitude of teens getting prescription drugs
- Importing drugs from Canada

HJR 39: STUDY OF COMMUNITY SERVICES - Sue O'Connell, Research Analyst

03:54:47 Ms. O'Connell presented a White Paper on the HJR 39 Study to the committee (**Exhibit 11**). The study examined services to developmentally disabled people who also have a mental illness.

Public Comment

04:13:33 **Anita Roessmann, Disability Rights Montana**, said that the recommendations in the report are excellent with respect to training in particular. She suggested that the committee look at what is going on at the Montana Developmental Center, as well as the need for training in the community.

04:19:41 **Jeff Folsom, AWARE Inc.**, encouraged the committee to keep the dialogue going regarding the people with a dual diagnosis. Mr. Folsom commented on the area of autism which he feels is an issue that is a mental health diagnosis and a developmental disability that is served by the Developmentally Disabled System.

DRAFT COMMITTEE LEGISLATION ON HB 130: Cleanup Bill (LC 65) - Sue O'Connell

04:27:12 Ms. O'Connell talked about the change in LC 65 (**Exhibit 12**) that occurs on page 2, striking the word "commitments" and substituting the word "admissions". Section 2 would make the bill immediately effective.

Public Comment

04:28:29 **Mike Foster, Catholic Hospitals in Montana**, said the committee should check with Sen. John Esp because the language that the committee has in question here was written by Sen. Esp. This change that is being considered would be consistent with the intent that was put together with that legislation.

04:29:21 **Anita Roessmann, Disability Rights Montana**, said the language at issue was a last-minute addition by Sen. Esp during the 2009 Legislature. She would be interested to hear from the Department how this paragraph has influenced the

way money is allocated and whether they could get better results in the future if they could target these funds differently.

04:31:31 Ms. O'Connell said that while she did not talk with Sen. Esp regarding the bill, she did talk with Sheri Heffelfinger, research analyst for the Law and Justice Interim Committee, and she has looked at the "whereas" sections of the bill. The committee's intent was always to try to reduce admissions to the State Hospital by diverting people to other locations. Ms. O'Connell said that Lou Thompson did have a conversation with Sen. Esp on the intent of the amendment he made.

04:32:18 **Lou Thompson, Administrator, Addicted and Mental Disorders Division,** said the Department uses admissions rather than commitments because it is a broader term. By using admissions, they were able to include individuals who were admitted to the hospital under an emergency or court-ordered detention, which technically is not a commitment.

04:33:18 REP. SANDS said that the committee will take no action on this issue until tomorrow's meeting.

ADMINISTRATIVE RULE REVIEW - Lisa Mecklenberg Jackson, Staff Attorney

04:34:03 Ms. Mecklenberg Jackson gave a presentation on administrative rules (**Exhibit 13**).

Questions

04:37:06 REP. CAFERRO asked Ms. Mecklenberg Jackson to explain the rule on page 4. **Ms. Mecklenberg Jackson** said that it seemed to her that it might be a large issue if they are saying that they can't send young people to an out of state PRTF and they have been using them before.

04:37:48 REP. CAFERRO said that this rule will change the way the Department is currently doing business because now they are sending children to places that don't fit this and that will need to be changed. **Ms. Mecklenberg Jackson** said that is her understanding.

04:38:13 REP. CAFERRO asked if Ms. Mecklenberg Jackson knew if this same problem applies to children who are being placed in state and are there in-state providers who don't meet this criteria for the Medicaid reimbursement? **Ms. Mecklenberg Jackson** said that this particular rule relates to out-of-state placements so there hasn't been any changes with regard to in-state placements.

SJR 35 STUDY: COSTS OF DEFENSIVE MEDICINE - Dr. Carter Beck, Missoula

04:39:24 Ms. O'Connell said that the topic, Defensive Medicine, was requested by Sen. Brown. Ms. O'Connell distributed a document that gave background information and terminology for defensive medicine (**Exhibit 14**).

04:40:41 **Dr. Carter Beck, Neurosurgeon, Missoula**, discussed how defensive medicine plays into the practice of medicine as it occurs in the United States. He said that when it comes to the costs of medicine, the malpractice awards and the malpractice premiums turns out to be a relatively small figure when compared to the estimated costs of defensive medicine.

Questions

04:56:18 SEN. BROWN said that Dr. Beck mentioned safe harbor. Does he have an idea of what this legislation would look like? **Dr. Beck** said that it would be a short bill that would say that if doctors perceive that they need to order a test to defend themselves, not because it is their judgment that it is in the patient's best interest they would not be held liable in a lawsuit if they don't order the test.

04:58:42 SEN. LAIBLE said that Dr. Beck spoke about disability patients and workers comp. Would his idea on safe harbor apply to them as well? **Dr. Beck** discussed his view on issues with the workers' compensation program.

05:01:33 REP. SANDS reminded the committee that the workers' comp issue is taken up by the Economic Affairs Interim Committee.

05:03:56 REP. CAFERRO asked Dr. Beck to explain what the sanctuary or the safe harbor is protecting the doctors from? **Dr. Beck** said that what he sees as the major problem when it comes to defensive medicine is that we have no sanctuary where the physician's judgment is the last word. The last word today is the outcome.

05:13:56 REP. MACLAREN asked if other states have safe harbor provisions. **Dr. Beck** said not that he is aware of, but they may exist.

BREAK

TRANSITIONAL JOBS PROGRAM, DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES - Sheila Hogan, Executive Director, Career Training Institute

05:35:35 Ms. Hogan gave a presentation on The Career Training Institute (CTI) and the transitional jobs program.

05:41:45 Ray Kuntz talked about his experience with people who went through CTI and

were employed by Watkins & Sheppard Trucking.

05:48:09 Troy Hayward shared his experience as a participant in the CTI program.

05:52:26 Rebekah Holgate shared her experience as a participant in the CTI program.

06:02:37 Ms. Hogan said that the transitional jobs program has been renamed the Pathways Program.

Questions

06:02:59 SEN. LAIBLE asked Ms. Hogan how the program is funded. **Ms. Hogan** said that the program is funded out of the American Recovery and Reinvestment Act stimulus money.

06:04:43 SEN. LAIBLE asked what the criteria is for people applying for the Pathways Program. **Stacy Kagle** said that a person has to be TANF eligible but not on TANF, at home, and below or at 185% poverty level.

SJR 35 STUDY: CHILDHOOD HEALTH PROMOTION

Steve York, Assistant Superintendent, Office of Public Instruction

Ellen Leahy, Association of Montana Public Health Officials, and Health Officer, Missoula County Public Health Department

Katie Bark, Chairperson of Montana Action for Healthy Kids

06:11:29 Steve York gave a presentation on preventing childhood obesity in Montana. He distributed a briefing book "Preventing Childhood Obesity in Montana Panel" (**Exhibit 15**) to the committee.

06:23:27 Ellen Leahy talked about what is being done to address obesity in children. She recommended that there be proposed legislation to require that a body mass index be performed on school-age children so that obesity can be monitored.

06:32:46 Katie Bark said that Montana Action for Healthy Kids is a non-profit coalition made up of health and educational professionals, as well as parents and community groups dedicated to the health and wellness of children through supporting better nutrition and physical activity. Ms. Bark talked about federal legislation that can be leveraged to help support evidence-based steps to prevent or reduce childhood obesity in Montana.

Public Comment

- 07:10:28 **Sue Buswell, President of Montana Association of School Nurses,** commented that school nurses can provide a healthy environment to support balanced nutrition and activity and provide leadership to students to deal with issues of obesity through prevention, early education and early intervention.
- 07:20:44 **Kristin Page Nei, American Cancer Society Cancer Action Network,** encouraged the committee to consider taking the same approach that lawmakers have taken on tobacco disease prevention.
- 07:23:52 **Erin McGowan Fincham, Executive Director, Association of Montana Public Health Officials,** distributed information on Mission: Readiness, Military Leaders for Kids (**Exhibit 16**). She talked about the reason why the military organizations have flagged the issue of obesity in children as a high priority because obesity is one of the top reasons why young adults are not getting into the military.
- 07:26:37 **Christina Davis, State Director, Children's Defense Fund of Montana,** distributed a timeline of issues related to children in health care reform (**Exhibit 17**) and a document showing a comparison of Medicaid and CHIP in its implementation (**Exhibit 18**).

RECESS

- 07:33:02 Rep. Sands recessed the meeting at 5:04 p.m., to reconvene on April 27, 2010.

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