



Select Committee on Efficiency in Government 62nd Montana Legislature

SENATE MEMBERS

JON SONJU--Chair
EDWARD BUTTREY
MARY CAFERRO
JIM KEANE
EDWARD WALKER
DAVID WANZENRIED

HOUSE MEMBERS

MARK BLASDEL
RON EHLE
GALEN HOLLENBAUGH
PAT NOONAN
SCOTT REICHNER
KATHLEEN WILLIAMS

COMMITTEE STAFF TEAM

DAVE BOHYER, Lead Staff
DAVID NISS, Staff Attorney
DAWN FIELD, Secretary
SUE O'CONNELL, LSD, Health Care
SONJA NOWAKOWSKI, LSD, Nat'l Res.
QUINN HOLZER, LFD, Health Care
TARYN PURDY, LFD, Budgeting Process
BARBARA SMITH, LFD, Technology
LOIS STEINBECK, LFD, Health Care

Medicaid & Health Care Subcommittee MINUTES

February 1, 2012

Room 172, State Capitol
Helena, Montana

Please note: These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities. To the left of each section in these minutes is a time designation indicating the approximate amount of time in hours, minutes, and seconds that has elapsed since the start of the meeting. This time designation may be used to locate the referenced discussion on the audio or video recording of this meeting.

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Hard copies of the exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of the document.

COMMITTEE MEMBERS PRESENT

Rep. Pat Noonan
Sen. Mary Caferro
Sen. Edward Walker
Rep. Mark Blasdel

STAFF PRESENT

Sue O'Connell, LSD, Health Care
Dawn Field, Secretary

AGENDA & VISITORS' LIST

Agenda, Attachment #1.
Visitors' list, Attachment #2.

COMMITTEE ACTION

The Medicaid Subcommittee of the Select Committee on Efficiency in Government recommended that the full committee:

- authorize drafting of a bill to create a tort reform and wellness pilot project for certain Medicaid enrollees and providers;
- authorize drafting of a bill to eliminate unit billing for certain Medicaid mental health services and provide an alternative billing method;
- authorize drafting of a bill to streamline and simplify the Medicaid application and eligibility determination process;
- authorize drafting of a bill for transfer of assets by Medicaid applicants;
- authorize drafting of a bill to revise rules related to the 72-hour presumptive eligibility program for crisis stabilization mental health services;
- ask the Department of Public Health and Human Services to create a stakeholder group to begin planning for the Medicaid expansion in federal health care legislation;
- ask the Department of Public Health and Human Services to work with mental health providers to begin collecting data and outcome measures in three specific areas;
- recommend to the 2013 Legislature that it limit its appropriation for utilization review of Medicaid services to only those services required under federal law; and
- request a formal legal opinion to determine if legal or constitution issues exist related to the Medicaid pilot project proposal.

CALL TO ORDER AND ROLL CALL

00:00:01 REP. NOONAN called the meeting to order at 10:08 a.m., REP. BLASDEL participated via phone (ATTACHMENT 3). Sue O'Connell, Research Analyst, Legislative Services Division (LSD), noted that members were given recent public comment in their meeting folders. Members were provided with staff briefing papers prepared by Ms. O'Connell to aid in the decision-making process.

PUBLIC COMMENT ON MATTERS WITHIN THE SUBCOMMITTEE'S JURISDICTION

00:01:39 **Aart Dolman, Great Falls**, commented on an article that recently appeared in the Great Falls Tribune addressing Montana's national rank of 40th in terms of health care. Mr. Dolman suggested that the Legislature study the issue in order to determine what is going wrong in Montana, particularly in providing medical for children.

00:05:56 **Mike Foster, Catholic Hospitals of Montana**, discussed his support for a pilot project to identify and measure the costs of defensive medicine (EXHIBIT1). Mr. Foster referred to stakeholder suggestions 11 and 12 in the staff briefing paper, "*Proposed Changes to Medicaid Law and Rules*" (EXHIBIT 2), prepared by Sue O'Connell, Research Analyst, Legislative Services Division, in his discussion.

00:17:50 **Dan Aune, Mental Health America of Montana, Bozeman**, discussed four points:

- his support for suggestions 1 and 2 in EXHIBIT 2 regarding Medicaid reimbursement for mental health services provided by a tribal mental health center;
- his support for suggestion 3 (EXHIBIT 2) to eliminate unit billing for mental health services;
- concerns regarding the Medicaid formulary; and

- his support to streamline and simplify the Medicaid registration/application process.

00:21:27 **Jean Branscum, Executive Vice President, Montana Medical Association,** expressed MMA's support of efforts to reduce costs that would not impact quality of care. She discussed the MMA's support for suggestion 11 regarding the pilot project to test tort reforms that would protect Medicaid providers . Ms. Branscum said the MMA also supports the concepts discussed by Dr. Hank Gardner, as presented to the SCEG at its December meeting.

00:23:46 **Bob Olsen, Montana Hospital Association (MHA),** said the MHA has focused mainly on three areas: work force development, delivery system reform, and Medicaid expansion. Mr. Olsen discussed a white paper prepared by the MHA addressing each topic: work force development (EXHIBIT 3), Medicaid delivery system reform (EXHIBIT 4), and Medicaid expansion (EXHIBIT 5).

00:27:43 **Jani McCall, Yellowstone Boys and Girls Ranch (YBGR), Billings,** discussed the Children's System of Care Account (CSOC) (EXHIBIT 6) and encouraged the Subcommittee to recommend continuation and funding of the CSOC. Ms. McCall urged support for Medicaid suggestion 3 regarding elimination of unit billing for mental health services and suggestion 14 regarding preparing for Medicaid expansion resulting from federal health care legislation (EXHIBIT 2). Ms. McCall asked if the Subcommittee could update her on the status of the utilization review (UR) contract audit request.

00:33:23 **Rose Hughes, Executive Director, Montana Health Care Association,** discussed the Association's recommendations regarding Washington's transfer of asset law, long-term care insurance partnerships, and proposed changes to Medicaid laws and rules (EXHIBIT 7). Ms. Hughes referred to staff briefing papers on Washington's transfer of assets law (EXHIBIT 8) and long-term care insurance partnerships (EXHIBIT 9) in her discussion.

Committee Questions

00:43:02 SEN. CAFERRO discussed with Ms. Branscum the role of the Montana Medical Legal Panel and how or if a pilot project would interface with the Panel or access to the courts (suggestion 11, EXHIBIT 2).

00:46:42 Mr. Foster agreed with Ms. Branscum that the pilot project would have no impediment to access to courts or due process. He referred David Niss' legal memo (EXHIBIT 10, page 4) in his discussion.

00:48:01 SEN. CAFERRO asked if other states are doing similar pilot projects. Mr. Foster said other studies have only surveyed doctors.

00:53:00 SEN. WALKER asked how or if the Medicaid Subcommittee would deal with Dr. Hank Gardner's presentation/recommendations. REP. NOONAN said that even though the full Select Committee on Efficiency in Government (SCEG) heard Dr. Gardner's presentation, it was his hope that the Subcommittee would draft a recommendation for consideration by the whole SCEG.

- 00:54:17 SEN. WALKER asked Ms. McCall to more specifically discuss her recommendations regarding funding for the Children's System of Care account. Ms. McCall referred to the CSOC staff briefing paper (EXHIBIT 6) and said her recommendation is that the Subcommittee leave the SCOC in statute.
- 00:56:55 SEN. WALKER asked Ms. O'Connell to discuss preparations for the Affordable Care Act and what, if anything, has been done. **Sue O'Connell, Research Analyst, Legislative Services Division**, said that the Children, Families, and Health and Human Services Interim Committee (CFHHS) met recently and asked DPHHS what is being done to prepare for the Medicaid expansion. Ms. O'Connell discussed the Department's response.
- 01:00:19 REP. NOONAN said he is still concerned about physician immunity and the shift in burden of proof requirements in the pilot project. Mr. Foster said he did not see an issue but suggested that Tom Ebzery address his concerns.
- 01:02:04 **Tom Ebzery, Attorney, Billings**, said he didn't think a separate burden class would be created. He said that participating physicians would have to document all omissions taken, and that the record would be public and available for court use, which would counteract any impediment to pursuing legal action.
- 01:03:12 REP. NOONAN asked how enrollees in the pilot project would be selected. Mr. Ebzery said all eligible Medicaid enrollees in Yellowstone, Cascade, and Missoula counties would be automatically enrolled and that all participants would be fully apprised of the project.
- 01:04:22 REP. NOONAN asked if there has been any stakeholder participation with the Department in anticipation of the Affordable Care Act (Medicaid expansion). Mr. Foster said it has been discussed informally but that to his knowledge, a work group has not been formed.
- 01:06:09 **Bob Olsen, MHA**, said his association has contacted the Department in an effort to get information about the expansion and that the response has been that there is not much information to share at this point.
- 01:07:40 REP. NOONAN and Mr. Aune discussed obstacles to licensure for mental health services on reservations. Mr. Aune discussed his role as a consultant to the Blackfeet Reservation and efforts to gain sustainability in services.
- 01:14:28 REP. NOONAN asked Ms. Hughes if patients have a choice of whether or not to stay in a hospital swing bed or be moved to a nursing home. Ms. Hughes said they do not, unless a physician agrees that the swing bed is best for the patient. She said the patient does have a choice in what nursing home they are placed in.
- 01:16:34 REP. NOONAN recessed the Subcommittee for a break.
- BREAK**
- 01:31:57 REP. NOONAN called the meeting back to order.

WORK SESSION

- 01:32:41 **REP. NOONAN** moved to direct the DPHHS to assemble a stakeholder group to begin work on the Medicaid expansion. The Subcommittee discussed the motion.
- 01:35:27 **The motion passed on a 3-1 roll call vote. SEN. WALKER** voted no.
- 01:36:09 **SEN. CAFERRO** moved to recommend that the DPHHS utilization review contract for the Children's Mental Health Bureau currently funded at \$1.70 million in fiscal year 2012 be reduced to fund the review of only those services required to be reviewed by existing federal law. **REP. CAFERRO** said that the action would save \$1.52 million.
- 01:43:39 **REP. NOONAN** spoke in support of the motion. **The motion passed on 3-1 roll call vote. SEN. WALKER** voted no.
- 01:45:11 **SEN. WALKER** moved to recommend to the full SCEG that it consider the 5-year pilot project tort reform for Medicaid.
- 01:46:01 The Subcommittee and Ms. O'Connell discussed whether subcommittee motions should be to simply make recommendations or to approve drafting of legislation for consideration by the full SCEG.
- 01:48:43 **SEN. WALKER** amended his motion to recommend that the full SCEG authorize drafting of legislation to establish a 5-year pilot project to test tort reform that would protect Medicaid providers.
- 01:49:05 **SEN. CAFERRO**
- 01:50:25 **REP. NOONAN**
- 01:52:26 **SEN. WALKER**
- 01:54:58 **The motion passed on a 3-1 roll call vote. REP. NOONAN** voted no.
- 01:55:21 **REP. BLASDEL** moved to amend administrative rules to eliminate unit billing increments for mental health services (suggestion 3, proposed changes to Medicaid Law and Rules-EXHIBIT 2).
- 01:56:43 Ms. O'Connell discussed several avenues through which to accomplish the change. The Subcommittee discussed the motion.
- 01:58:54 **REP. BLASDEL** withdrew his motion and moved to authorize drafting a bill to amend administrative rules 37.87.808, ARM and 37.87.809, ARM, to eliminate 15-minute billing increments and to have the full SCEG discuss alternative reimbursement methods.
- 02:01:09 **REP. NOONAN**

02:05:40 **REP. BLASDEL** agreed to amend his motion to include all 15-minute unit billing services.

02:05:48 SEN. WALKER

02:06:34 REP. NOONAN

02:07:36 **The motion passed on a unanimous roll call vote.**

02:07:55 REP. NOONAN

02:11:03 **REP. NOONAN** moved to recommend that the Department of Public Health and Human Services improve the efficiency and effectiveness of services delivered through its provider networks by developing and implementing a department-provider relationship model based on the measurement and reporting of specifically described outcomes. He further moved to recommend that the Department pilot this effort through its Disabilities Services Division with emphasis on but not limited to the Children's Mental Health Bureau. Specifically the Department should articulate in a measurable form specifically what is to be accomplished in three areas (EXHIBIT 11).

02:12:23 REP. NOONAN

02:14:13 SEN. CAFERRO

02:16:16 SEN. WALKER

02:17:17 REP. NOONAN

02:18:45 **REP. NOONAN's** motion passed on a 3-1 roll call vote. **SEN. WALKER** voted no.

02:19:11 **SEN. CAFERRO** moved to authorize draft legislation for an omnibus Medicaid eligibility bill with five key components (EXHIBIT 12). The motion passed on a unanimous roll call vote.

02:27:26 **REP. BLASDEL** moved to approve drafting the transfer of assets bill (Washington transfer of asset law-EXHIBIT 8) for consideration by the full **SCEG**. **SEN. CAFERRO** asked if he would be amenable to include a certain level of flexibility in setting a floor for value of assets. **REP. BLASDEL** said he would be amenable to that. **The motion passed on a unanimous roll call vote.**

02:32:29 **SEN. CAFERRO** moved to amend 37.89.509, ARM, and to eliminate 37.89.521, ARM, to change payment and reimbursement requirements as they pertain to the 72-hour presumptive eligibility for crisis stabilization services and to also consider language regarding the condition under which a person can present and be cared for (suggestions 1 and 2, proposed changes to non-Medicaid laws and rules, EXHIBIT 13).

02:37:06 REP. NOONAN

02:38:03 REP. BLASDEL

02:40:09 **The motion passed on a unanimous roll call vote.**

ADJOURNMENT

02:41:40 REP. NOONAN thanked the members and stakeholders for their participation and work. He adjourned the meeting at 12:48 p.m.

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