



Economic Affairs Interim Committee

57th Montana Legislature

SENATE MEMBERS

DALE MAHLUM, CHAIRMAN
DOROTHY BERRY
JON ELLINGSON
GLENN A. ROUSH

HOUSE MEMBERS

KATHLEEN GALVIN-HALCRO, VICE-CHAIRMAN
GARY MATTHEWS
JOE MCKENNEY
STEVE VICK

COMMITTEE STAFF

GORDON HIGGINS
RESEARCH ANALYST
BART CAMPBELL, STAFF ATTORNEY
EDDYE McCLURE, STAFF ATTORNEY
LOIS O'CONNOR, SECRETARY

MINUTES

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Committee tapes are on file in the offices of the Legislative Services Division. **Exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of documents.**

Second Meeting of Interim
Room 137, State Capitol
September 7, 2001

COMMITTEE MEMBERS PRESENT

Sen. Dale Mahlum, Chair
Rep. Kathleen Galvin-Halcro, Vice Chair
Sen. Glenn A. Roush
Sen. Jon Ellingson
Rep. Gary Matthews
Rep. Joe McKenney
Rep. Steve Vick

STAFF PRESENT

Gordon Higgins, Research Analyst
Bart Campbell, Staff Attorney
Eddy McClure, Staff Attorney
Lois O'Connor, Secretary

VISITORS

Visitors' list (ATTACHMENT #1)
Agenda (ATTACHMENT #2)

COMMITTEE ACTION

- Approved the minutes from the June 15, 2001, meeting
- Approved that the Committee urge the Department to establish an advisory committee to address the chiropractic fee schedule for a 90-day time period and report back to the Committee on the first meeting after the 90-day limit

- Approved the adoption of the SJR 22 Subcommittee draft work plan

CALL TO ORDER AND ROLL CALL

The meeting was called to order by Sen. Mahlum, Chair, at 9:40 a.m. Roll call was noted, all Committee members were present. (ATTACHMENT #3)

Sen. Ellingson **moved** that the minutes from the June 15, 2001, meeting be approved. Motion passed unanimously.

UPDATE ON OFFICE OF ECONOMIC OPPORTUNITY

Dave Gibson, Chief Economic Development Officer, Office of the Governor, stated the following:

- His major priority is to get his staff in place. He has hired a Workforce Development Specialist and hopes to have the remaining staff in place by the first week of October.
- His second priority is to develop a strategic plan that will guide the state's future efforts to accomplish the goals that are set. This priority will happen in the following phases:
 - Phase I--To receive input, establish benchmarking data, and travel throughout the state, with his objective being to meet with political, labor, tribal, and business leaders; economic development professionals; and Chambers of Commerce, to better understand the themes around the state about what it will take to attract, retain, and grow businesses in Montana. The formal period for public input and meetings will end approximately the fourth week of October.
 - Phase II-- A draft economic plan will be available for review by the second week of December. After December, two more months will be given for public comment on the draft.
 - Phase III--A legislative agenda will be implemented by the middle of March 2002.
- His goals are threefold:
 - to build the groundwork for meaningful economic development for administrations to come;
 - to institutionalize the types of things that need to happen so that as administrations and elected officials come and go, Montana still has a framework to move the state forward; and
 - to leave a strategy and program legacy that, with appropriate modifications over time, can continue to guide the state forward for many years.
- Speed and transparency will be major components in how Montana can improve in the economic development arena. Montana may not like all of the "hoops" that it must jump through, but its biggest problem is that it does not know what they are so it cannot move forward quickly. There may be recommendations for policy changes.
- His general philosophy is that over time, Montana must work on improving the median income and to establish good, better paying jobs for Montana's citizens.
- The key role of his position is to be solely focused on business development and to provide a singular point of leadership within the Governor's Office to bring together the various governmental entities and private stakeholders needed for economic development.

- Economic development is a 3-legged stool. There must be entrepreneurial growth, support the businesses that already exist, and the state needs to bring in new business that will provide good jobs.
- Montana must also understand its role as a state government, and he will try to define where the state would be most appropriate in affecting economic policy.
- Economic development is a local issue. If local communities are not energized and capable of supporting and attracting business, economic development will not happen.

Sen. Ellingson was concerned about the economic development strategic plan's February 2002 implementation date because it gives the Legislature only 10 months before the 2003 Session to ask what types of results have come from the Office of Economic Opportunity. Mr. Gibson said that it is vitally important for Montana citizens to understand that economic development is self-sustaining entity--that it pays for itself. His office is very focused on bringing economic development to Montana, and he will spend 30% to 40% of his time on immediate things that can be done to attract new businesses. For example, there is no mechanism for businesses to look at Montana as a whole and understand what kind of infrastructure Montana has. His office can provide a central database for businesses to look at Montana's assets and develop a path for business to relocate to Montana.

Rep. McKenney suggested that the Office of Economic Opportunity enter into dialog with Montana groups who usually oppose any suggestion in the area of growth in Montana.

Rep. Matthews asked if Miles City was considered a certified economic development group. Mr. Gibson said that he uses the term "certified economic development group" to include every business or community in the state that has any interest in economic development.

Rep. Galvin-Halcro suggested that the Office of Economic Opportunity enter into dialog with the education community in all of the communities that it visits over the next few months. She asked if Mr. Gibson's Office had an itinerary for all of the community visits. Mr. Gibson said that his Office is working hard to include educators throughout the state and his time line for the next two months is in flux. He will send a copy of the itinerary to the Committee.

Rep. Vick said that according to the Federal Reserve Newspaper, the gross state product (GSP) of Montana is the third lowest in the nation behind Mississippi and West Virginia. He asked how the GSP is calculated and how can it be improved. Mr. Gibson said that the GSP is the value of goods and services produced in a state. If the number of goods and services is improved and if there is improvement to the ratio of the output, improvement will be seen in wages paid in the median income in Montana.

Sen. Ellingson asked about the appropriate role of Montana in the arena of economic development and about Mr. Gibson's thoughts on offering incentives to businesses that want to relocate to Montana. Mr. Gibson said that Montana businesses must accept the fact that they are competing with other states. Every business that Montana retains means that it is another state's loss and every business wants to win other businesses' customers. Sometimes, the best thing that can happen is to let the other state win if the conditions and the deal are so poor that Montana would have to pay too much. Montana must develop a framework on how it wants to deal with incentives. It ultimately must be competitive but it can never lose sight of the fact that some deals it may want to walk away from. Mr. Gibson hoped that his economic development strategic plan will include the boundaries for offering incentives for out-of-state business and the criteria needed to decide when Montana should walk away from a deal.

ROLE OF THE ECONOMIC DEVELOPMENT DIVISION WITHIN THE DEPARTMENT OF COMMERCE

Mark Simonich, Director, Department of Commerce, provided an overview of the reorganization of the Department of Commerce under Senate Bill No. 445 that removed all regulatory functions from the Department and created a Department of Commerce that focus on business and community development. He also provided an organizational chart explaining how the Department currently looks after the implementation of SB 445, an overview of the Department's functional areas and responsibilities, and provided two brochures (1) Business Montana: A STATE of Prosperity and (2) MONTANA: An Ideal Work Environment that was a special edition published as an addition to the July edition of Horizon Air Magazine. Both brochures are intended to promote Montana and use the expertise of Travel Montana to assist the Department and Governor's Office in business promotion. (EXHIBITS #1, #2, #3, #4, and #5) respectively) The focus of the Department's promotional efforts will target businesses that are looking for property in Montana, determine a media plan to determine the appropriate markets to bring to Montana, and to assist local governments in their economic development efforts.

Sen. Roush asked about the status of the 1-stop grant and loan assistance program established under House Bill No. 650. Mr. Simonich said that HB 650 is a companion bill to SB 445. HB 650 was intended to create a single point that people instate or out of state could go to receive information about certain types of economic programs in the state. It was determined that the Department would be the repository and clearinghouse for the information. The information specifically relates to economic programs that may be a grant or loan program or tax incentives that may be in place. The programs under HB 650 will focus on infrastructure development or economic development. The Department is in the process of developing the website and

anticipates that it will be available for public use within the next two months. Sen. Roush asked if Mr. Simonich has heard any comments about Montana not having a good transportation system to develop economically. Mr. Simonich said that he often hears comments about Montana's transportation system and about the fact that Montana is geographically isolated and far away from the markets. However, Montana is very central to some markets and the state needs to focus on those markets and focus on opportunities to get products to market. Governor Martz has directed Director Galt of the Department of Transportation to do a study on making 4-lane roads out of 2-lane roads to improve Montana's transportation system.

REPORT ON THE STATE LOAN PROGRAMS FROM THE BOARD OF INVESTMENTS

Carroll South, Executive Director, Board of Investments (BOI) stated the following:

- The BOI is comprised of nine members appointed by the Governor.
- The primary responsibility of the Board is a constitutional one that requires a unified investment program that includes all state money, such as pensions, trust, and cash. The Board is the only entity that can invest state money, and it also invests local government money at their discretion.
- Currently, the Board manages over \$9 billion in state and local government funds. The amount fluctuates daily based upon the stock market.
- The instate loan program was born in 1984 by a legislative referendum and the Build Montana Program was adopted by voters. Out of that program came the instate loan program.
- The instate loan program was a program through which the Board was to invest up to 25% of the permanent coal tax trust fund in Montana business loans.
- The instate loan program has never been a direct loan program because the Board is prohibited by law to lend directly to borrowers. The Board deals with Montana lending institutions. It participates with them in three different loans:
 - A participation loan in which the bank takes a portion and the Board takes a portion. State law limits the Board to 80% of these loans. If the loan is risky, the Board negotiates the ratio with the bank for a percentage of the risk. If the loan goes into default or if it is foreclosed on, they split the collateral fifty-fifty.
 - A 100% loan that is federally guaranteed. Under state law, if the loan has a 100% federal guarantee, the Board can purchase all of it.
 - The Board also created the link-deposit program. The Board buys a large CD through a lending institution. The CD amount matches the loan that the bank makes to the borrowers. The bank must pledge collateral, usually U.S. treasury bonds; there is no risk to the Board; and the CD is always linked to the loan. This loan program has not grown much since its inception because it was found to be very bureaucratic in nature. The Board has since changed its attitude to a can-do attitude regarding this program. The Board operates under the "prudent investment principal". In the last two years, the Board has marketed the 100% loan program and the changes reflect \$47.5 million in loans to Montana businesses.
- Currently, the Board has \$144 million worth of outstanding loans from the coal tax trust fund, 22% of the 25%.

- The largest loan that the Board can make is 10% of the permanent coal tax trust fund (\$65 million).
- During the 1990s, the Legislature has placed more and more economic development responsibilities on to the Board of Investments.
- As a result, the Board created the infrastructure loan program which is the one loan exception that the Board has where banks are not involved.
- The Infrastructure loan program provides local governments trying to entice a business into their jurisdictions with funds to improve infrastructures. The Board makes the loan directly to the local government. The local government owns or has an easement on the infrastructure and they charge the business a user fee for the use of the infrastructure. The local governments then assign the user fee to the Board as loan payback provisions. Local governments also get the user fee back on a dollar-for-dollar, state income tax credit assuming that they are profitable enough to pay state income taxes.
- The minimum loan size is \$250,000 and the maximum loan size is the number of jobs created times \$16,666.
- Currently, the Board has \$3 million in funded loans and another \$4.6 million committed.
- Both the infrastructure loan program and the value-added loan program, which was introduced by Sen. McNutt under SB 6, have statutory \$50 million caps on the aggregate loans.
- The biggest problem with the value-added loan program is that the Legislature chose not to define what "value-added" is. The Board very narrowly wrote a definition of what it believed "value-added" which does not subscribe to the overall economic theory of "value-added". The Board's philosophy has been that handling and transporting a product does not add value because, at some point, a product needs to be changed or created. The Board has included intellectual properties as value-added. For example, the Board has funded bakeries, trust manufacturing, industrial coding companies, lumber mills, and brewing companies.
- The Board believes that the value-added program will grow rapidly because of the 2% interest rate and because it also allows for job retention.
- HB 474, introduced in the 2001 Session, provided the Board with a loan program to finance electrical generation facilities. It has had 12 inquiries, 6 or 7 were serious inquiries. The loans, if made, are subject to the same criteria and collateral requirements. Based upon the Public Service Commission's (PSC) stance of not preapproving energy contracts until MPC get its entire portfolio, the Board has taken the position that it not entertain applications for energy generation facilities unless there is a firm out-take price contract with MPC with no caveat relative to the PSC having to approve it or if it is approved by the PSC prior to the time of the deal. The Board believes that unless there is a guaranteed out-take price that protects the Board fiduciarily, it does not want to be involved in lending money to power plant generators.

Sen. Roush asked about the history of defaults on the loans provided by the BOI and how are they handled. Mr. South said that the default has been minimal. His is only aware of two defaults. One in Billings where the Board did not lose principal but did lose interest and another principal loss was an ethanol plant in Ringling. Currently, the Board has some businesses that are not doing very well, and the lending institution watches them. The reason the default rates have been low is because state law requires the Board to operate under the prudent investment

principals which means that the Board cannot invest anyone else's money any differently than it would invest its own. The second protection is that there is always collateral involved.

PRESENTATION ON THE RULES BEING PROPOSED PERTAINING TO THE BUILDING CODES BUREAU AND THE EFFECT OF SB 242 (DONUT BILL) ON THE PROPOSED RULES

Kevin Braun, Chief Counsel, Department of Labor and Industry, provided a copy of SB 242 and a copy of the proposed rules related to SB 242. (EXHIBITS #5 and #6 respectively) He stated the following:

- The "donut area" was defined statutorily to be the 4 1/2-mile area surrounding an incorporated municipality where the municipality can enforce the city building codes within the 4 1/2-mile area that extends outside the city limits.
- The exercise of the extended jurisdiction has been controversial.
- SB 242, passed in the 2001 Session, is somewhat confusing and internally inconsistent. The inconsistency is the result of two conflicting provisions. One provision strikes the language that defines the extended jurisdictional area from provisions in the law which caused some people to believe that the ability of the municipality to enforce the building codes in the extended jurisdictional area lapsed because of the repeal. SB 242 also requires the county in which the municipal jurisdictional area exists to hold an election by the end of the year 2001 to determine whether the donut area should continue.
- The language states that if a majority of the person returning the ballots vote against the retention of the municipal jurisdictional area beyond the corporate limits of a municipality, that area is terminated on the day on which the Board of County Canvassers declares the results of the election.
- This provisions indicates that the donut area continues to exist until it declared that it no longer exists as a result of the conflict.
- In addition, both provisions apply retroactively.
- As a result, Eric Fehlig, Attorney for the former Building Codes Division, Department of Commerce issued a legal opinion which concluded that the donut area continues to exist until an election terminates the extended jurisdictional area. Greg Petesch, Director of Legal Services, Legislative Services Division, on behalf of Speaker of the House Dan McGee, also issued an opinion which found Mr. Fehlig's opinion to be a reasonable interpretation of the law.
- Mr. Petesch has advised people that if they are building in the donut area of a municipality and if the city is enforcing building codes, they should pay for the permits and report to the area that they are paying for the permits under protest and ask that the permit fees be kept in escrow. If the jurisdictional area lapses by virtue of the election, the people can request their money back.
- The Department has a rulemaking project that is currently underway. The public hearing is scheduled for September 26. The only rule that implements any portion of SB 242 is one which struck reference to a county being able to rescinded consent for the donut area to the municipality. The reason it is being stricken is because that is what SB 242 corrected and because it only refers to the decertification provisions of the rule.
- There has been a request from Billings for an Attorney General's opinion to seek clarification with regard to the donut area.

Rep. Vick asked if the rule is not issued and the county does not hold an election, will the extended jurisdiction continue indefinitely. Mr. Braun was unsure because the statutory mandate exists and someone could bring a writ of mandamus action to compel the county to hold an election because it has not conducted the affirmative action that is required under statute. Rep. Vick asked if there have been any court challenges by the property owners. Mr. Braun said that there has been one case brought by a property owner, but the Court dismissed the matter. The Department is waiting to see if some light can be shed by the Attorney General's Office. If that does not occur, the Department will have to gather its forces to see how it will proceed to provide guidance to the public.

Rep. McKenney asked if the only way that the donut area is rescinded is by an election by those affected. Mr. Braun said that the current legal opinion indicates that the donut area will continue to exist until an election strips it away. Rep. McKenney said that the legislative intent of SB 242 was to rescind the donut area unless an election was held. He asked how legislative intent fit into the challenge that exists. Mr. Braun said that the first rule of statutory construction comes down to looking at the plain language of the statute. If the statute is plain on its face, the terms are applied as written. If ambiguity exists, the Department refers to legislative intent. In speaking with Mr. Fehlig, the controversial language was inserted during a Free Conference Committee and the legislative intent could not be derived from the proceedings.

Sen. Mahlum asked if SB 242 were of any use. Mr. Braun was unsure whether SB 242 was completely useless but it is a bill that is subject to different interpretation and could be subject to a Court interpretation.

UPDATE ON A RECENT PACIFIC NORTHWEST ECONOMIC REGION (PNWER) CONFERENCE FROM MONTANA'S REPRESENTATIVES

Sen. Roush provided an overview of the PNWER governance structure and provided a copy of a letter written to him to congratulate him on being selected Montana's representative on the PNWER Executive Committee. (EXHIBITS #7 and #8) He stated the following:

- During the 2001 Session, legislation introduced by Sen. Dale Berry was passed that allowed Montana to join PNWER.
- In joining, PNWER would waive the dues required to be a member for a 2-year period. The dues for Montana are set at \$30,000.
- There is currently no funding in place to finance PNWER working group or Executive Board memberships and that private donations would also have to be sought.
- He requested that the Committee consider either submitting the \$30,000 to the Governor's Office to be included in its budget and hope that the Legislature will fund

Montana's participation in PNWER or request that the funds come from the contingency fund located under the Legislative Council.

- The most important issue at the PNWER conference focused on energy. There is a strong effort made by Alberta, Canada, to come into Montana with a power line to introduce itself into the northwest power-grid system.

Rep. Vick stated the following:

- The first sustainable development working group that he attended was dominated by the environmental groups.
- During the working group on energy, he was struck by the amount of energy (i.e., oil, coal, and natural gas) that is located in Alberta and British Columbia and they are building two hydro-electric dams. They are aggressively looking at exporting electricity because they generate more electricity than they need. It could be an opportunity for Montana to be involved in the transmission of the energy.
- In the WestTrends working group, he found that the population of Colorado grew more in the past 10 years than what the entire population of Montana currently is. Because most of the U.S. population is moving west, Montana could learn from Colorado on how to handle population growth.
- He attended a symposium on Canadian health care and the doctor who spoke was quite critical of the Canadian health care system.
- Another symposium was on alternative energy.
- There would be some value for Montana to be a participant in PNWER.

Sen. Berry said that Montana needed to belong to PNWER because she did not want to see Montana bypassed or left out because it was not a paying member.

Director Simonich said that he had several conversations with Governor Martz prior to the PNWER about Montana participation. The Governor's decision was since the Legislature passed the resolution intending that Montana would be a member for the next two years, that the Administration would also participate. He has been appointed to be Administration's PNWER representative. Given the nature of the PNWER discussions and the nature of the diversity of the two governments, he found it very informative to be at the conference. He added that any time a state participates in an organization and it does not pay dues, the state is not looked upon as kindly by the other members. If Montana benefits from the participation in PNWER, he strongly recommended that the state find the funds to pay the dues.

DEPARTMENT OF LABOR AND INDUSTRY RULES REGARDING WORKERS'

COMPENSATION REIMBURSEMENTS FOR CERTAIN MEDICAL PRACTITIONERS

Jerry Keck, Administrator, Employment Relations Division, Department of Labor and

Industry, provided an overview on workers' compensation medical fee schedule as they relate to the disparity between the chiropractor and occupational and physical therapists fees, a copy

of 39-71-704, MCA., and a copy of the Department's adopted conversion factors for use with the unit values for workers' compensation services. (EXHIBITS #9, #10, and #11 respectively)

Mark Staples, Attorney, MT Chiropractors' Association, stated the following:

- The Association has never considered taking away from the physical therapists or occupational therapists fees.
- The problem that has arisen is institutionalized discrimination against chiropractors.
- The problem began years ago with one State Fund employee's vendetta against chiropractors.
- The Department of Labor and Industry has twice proposed and, under pressure, withdrawn proposals to standardize fees.
- The consequence was a decrease in physical therapists fees along with an increase in chiropractic fees, but this was not the intent behind the rule proposal. The intent was to standardize fees.
- The Association is not interested in establishing another task force to work out some solution to the problem nor does it think it is fair to send chiropractors, hat in hand, to the Legislature to ask for money to increase chiropractic fees.
- He asked the Committee to give some emphasis to raising the chiropractic fees because it is right and just.
- He proposed that the Committee gather the stakeholders (i.e., the most knowledgeable people from the Physical Therapy Association, the MT Chiropractors' Association, and the three major insurer representatives) to come up with a solution to the problem within a 90-day time frame without making the chiropractors go to the Legislature to ask for money.
- In the meantime, chiropractors will be framing their lawsuit.
- Chiropractors are just asking for fairness and are asking that they not be put in a position with separate codes, all against them, that no other state has.

Dr. Robert Weinreis, Billings; Dr. Lee Hudson, Great Falls; Dr. David Gray, Missoula; Dr. Kathleen Fellows, Billings; Dr. John Sando, Butte; and Dr. Gary Bloom, Helena, stood in support of an equitable and fair solution to the problem.

Mona Jamison, attorney and lobbyist, MT Chapter of the American Physical Therapy Association, stated the following:

- Chiropractors believe that they are being discriminated against, that old codes are being used, and that they deserve and should get a higher reimbursement rate.
- The Association will not pass judgment and may actually agree that they deserve to be paid more.
- However, when the result of a governmental action, be it for a proposed rule or an old rule, is to decrease the amount of what another provider group is receiving, it will not have acceptance in terms of the methodology used to solve the problem.
- It was not anyone's intent to rob from Peter to pay Paul, but it was the result of going after the goal of standardizing the codes and equalizing the rates that physical therapists,

under the proposed rule that was withdrawn, would have taken a 30% to 38% decrease in their rates.

- The Association does not believe that the chiropractors support the decrease and it does not believe that the Department wanted it either. However, when the result is to do it, either through acquiescence or applied consent, then the result is supported and adopted.
- The Association goes on record to say that it has no problem with chiropractors getting reimbursed at a fair and better rate, but it does not believe that it should be done by taking from the physical and occupational therapists to do it.
- The Association believes that the Department's interpretation of 39-71-704, MCA., is incorrect. The section states that the percentage increase in medical costs payable under the chapter may not exceed the annual percentage increase in the state's average weekly wage. The Association has spent countless hours analyzing the legislative history of this section and believes that the Legislature never intended an overall cap to the entire system. The cap was intended per provider and per procedure and somewhere along the line, the Department got to the overall cap which is part of what is causing the problem.
- If the Association's interpretation is correct, based on the analysis of the legislative history and reading the plain language of the law, there will be no problem.
- She suggested that the Committee request an Attorney General's opinion and that it be expedited.
- One assumption that is "driving the train" is that chiropractic, physical therapy, and occupational therapy are the same professions and should be paid the same amount for similar procedures. The Department, in its rule notice, stated that they were different but similar enough, therefore, they should be paid the same.
- Licensure sets the standards in minimum levels of competency. If the three occupations were the same or similar enough, there would be only one license statute for the three of them. If the occupations were the same, then the argument that they should have the same reimbursement would prevail. To try to create a system where they are equal under workers' compensation reimbursement when they are three different statutorily recognized professions, sets up another wrong assumption that is also "driving the train".
- The Association urges the Committee to examine the issue outside of the box, and if it means that more money may have to go into the system, it may be time to find it.
- To cause the small businesses of Montana, in terms of the independent health care providers, to be pitted against each other because government is saying it will take from one provider and give to another is causing the few businesses that Montana has to focus their energies against each other instead of trying to improve the condition for workers and their other patients.
- The Association also supports the establishment of a stakeholder task force.

Gary Lucene, Physical Therapist, Bozeman, read a letter from the President of the Montana Chapter of the American Physical Therapy Association. (EXHIBIT #12) He stated the following:

- It should not be on short notice that the Association is asked to come to a meeting to discuss how it is going to reduce physical therapy fees so that someone else can get paid more.
- The Association is opposed to a reduction in physical therapy fees.
- The RVP coding system for fee schedules is currently being used at the State Fund and the Department of Labor and Industry. It is not the most widely used system. The better

system to use is the federal Resource Based Relative Value System (RBRVS). He requested that the development of a better coding system should be a part of the Committee's discussions.

- It is true that these fees are nonhospital-based fees. However, hospital physical therapy and occupational therapy services are provided at the hospital. If the hospital has a contract with the Managed Care Organization (MCO), the fees apply to those services.

Amy Sullivan, Lobbyist, MT Occupational Therapy Association, stated the following:

- Occupational therapists are affected as greatly as physical therapists under the scenario that the Department put forward in the rules.
- Looking at a scenario whereby one group is robbed to pay another, it transfers the institutionalized discrimination mentioned by Mr. Staples.
- The 30% to 38% decrease in physical and occupational therapists rates is a huge hit in fees.
- Occupational therapists are not just physical medicine, they also deal with the psychosocial aspects of the people that they provide their services to.
- The Association concurs with the establishment of a task force that has clear guidelines and has the goal of coming up with a solution.
- Occupational therapists have no problem using the national codes (RBRVS) and eliminating Montana's codes. However, the question should be asked as to whether there should be national conversion rates.

Rep. McKenney agreed with the idea of a task force that is under a time limit (90 days) and report back to the Committee. He asked if there is not a funding cap, why are physical and occupational therapist fees decreased to pay for an increase in chiropractic services. Mr. Keck said that the Department has used the statutory cost cap to apply to the conversion factors which have increased every year. It would not be possible for the Department to look at the total amount that is spent each year on workers' compensation medical fees and say that the system can only be increased by that amount because it does not take into account that Montana's economy is growing, there are more workers, and there will be more injuries. It also does not control the number of services that are provided each year, and it does not make any attempt to limit the total amount that can be spent for workers' compensation medical fees but only the amount that can be charged for each procedure can only go up by the average weekly wage each year. Mr. Keck added that the Department believes that it was its directive in managing increases in workers' compensation medical fees that it could not decide that it was okay to allow the fees in one area to increase. He requested the Committee's direction to move forward with a fee schedule that allowed chiropractors to be brought in line with other providers using a standardized coding system and relative value. It will mean an increase in the overall costs paid in the workers' compensation medical field arena at which time the Department would like to talk to with all insurers so that it is not viewed as going outside of its authority.

Sen. Ellingson asked about the relationship between chiropractors and physical and occupational therapist which requires an increase in chiropractic fees that results in an decrease in the other fees and what is the relationship between the reimbursable charges and the customary fees. Mr. Keck said that there are 10 codes that can be commonly used by chiropractors and physical and occupational therapists. The physical medicine arena of the codes is shared by the three professions. The Department's rule proposal stated that if the three professions were supplying the same procedure, they should be paid the same amount of money. It also discussed a yearly restriction the amount of increase across the whole system and use a certain amount of money generated from the state's average weekly wage to bring chiropractors up in parity. Mr. Keck said that there is disagreement in what 39-77-701, MCA. means. The statute that addresses usual and customary fees relates to what the provider is to bill for. The Department believes that there is no connection to what the workers' compensation fee schedule establishes in that there is no language the ties the fees to current usual and customary charges. Sen. Ellingson asked if it were a fair assessment that if chiropractic fees were based on a percentage increase overtime; and if 20 years ago, it was put in statute that chiropractors could only get an x-amount regardless of what their customary fees were and the Department continues to reference back to percentage increases, the rationale for 20 years ago is being carried forward today regardless of whether the rationale is justified. Mr. Keck said yes, adding that if there is unfairness, it was institutionalized years ago and the statute constrains the Department of what it can do regarding the percentage increases every year.

Rep. Galvin-Halcro asked if any chiropractor was involved in writing the codes. Dr. Hudson said that the result of the Committee hearings held in 1991 was a recommendation to go to a single coding system based on relative values for physical medicine procedures. There was an individual employee of the State Fund who had a problem with chiropractors and he "nixed" the recommendation resulting in chiropractors be relegated back to the same fees schedule that they had been laboring under since the 1970s. The MTPA was asked to establish a fee schedule that was accepted which is how the problem got to where it is today. In addition, chiropractors were not afforded reasonable medical services without limited time and dollar amount, remained under a specific fee schedule, and were not afforded the 90% of usual and customary charges set forth in statute in 1981. Chiropractors are also the only provider group with treating physician status under the workers' compensation rules who are not allowed the full scope of their practice.

Rep. Vick asked if physical and occupational therapists overpaid according to relative value. Mr. Keck said no, that they are right in line with other medical providers. Rep. Vick asked if it were a fair assumption that if it took a 38% decrease for physical and occupational therapists that there

were many more chiropractors who give services. Mr. Keck said that the Department's projection was that physical therapists would take a 23% decrease while chiropractors would get a 38% increase. There are approximately 800 licensed physical therapists in Montana. Of the 800, approximately 150 operate in private practice and the remaining 650 operate in institutional settings. There are 300 licensed chiropractors in Montana. Rep. Vick ask what percentage of the Department's fees paid is workers' compensation related. Mr. Keck said that chiropractors represented 3% to 4% of the medical fees paid by the State Fund and it was approximately the same percentage for physical and occupational therapy fees. Mr. Staples disagreed and stated the percentage was between 10% and 20% and Mr. Lucene added that physical therapist fees were a smaller percentage.

Rep. Matthews asked if there could be any resolution to the problem if a task force was established for 90 days or is the problem better resolved by directing the Department to develop rules and let it be decided in courts. **Nancy Butler, General Counsel, State Fund**, said that the State Fund would work on the issue with all the stakeholders because it supports the efficiencies that the providers are looking for and it supports equity among the providers. However, discussion surrounding the idea of whether the statute is being applied appropriately in regards to the cap which be reviewed. If the rates are not adjusted between providers, it means a potential increase to employers. Ms. Butler also agreed that a time limit should be put on the task force to come up with a solution.

Sen. Roush asked if there was enough money in the State Fund to make it possible to go back to January 1, 2001, for chiropractors to recover their costs. Ms. Butler said that all insurance companies maintain surpluses to cover unexpected contingencies and the money could be used to recover chiropractic costs. However, each year, the State Fund prices based on what it anticipates the cost will be. This would be an unanticipated cost to the State Fund and there would be a large administrative cost attached to it.

Rep. McKenney **moved** that the Committee urge the Department to establish an advisory committee to address the chiropractic fee schedule for a 90-day time period and report back to the Committee on the first meeting after the 90-day limit. Motion passed unanimously.

Sen. Ellingson reminded the Committee that the proper interpretation of 39-71-704, MCA, was in question and he asked for an opinion by the Committee's legal staff. **Eddy McClure, Staff Attorney, Legislative Services Division**, felt that it would be inappropriate for her to interpret the statute as it currently reads without researching the legislative history. Sen. Ellingson said that until there was a consensus on what the law requires, it would be difficult for the proposed

advisory committee to reach a consensus. He asked if the Committee could ask for an Attorney General's opinion as requested by Ms. Jamison. Ms. McClure said that on its own, the Committee does not have the power to request an Attorney General's opinion. It would have to approach Leadership to request it. At the time of the request, the Legislative Service Division's legal staff would have to conduct the research necessary to provide the background necessary to do the opinion or the Department's director could request the opinion. Sen. Ellingson **moved** to amend Rep. McKenney's motion to include that the Committee ask the Department to request an Attorney General's opinion on the interpretation of 39-71-704 to assist the proposed advisory committee.

Rep. McKenney preferred to proceed with the proposed advisory committee with the 90-day limit in hopes of a solution. If a solution is not found within the 90-days, the Committee could then ask that the Department Director request an Attorney General's opinion.

Rep. Vick requested that the overall workers' compensation rates be taken into the advisory committee's analysis and how it would affect other providers.

Sen. Ellingson withdrew his amendment and Rep. McKenney's motion passed unanimously.

REVIEW OF SJR SUBCOMMITTEE ACTIVITIES AND PROPOSED STUDY PLAN

Rep. McKenney stated the following:

- The SJR 22 resolution calls for the Subcommittee to study health care and the increasing costs of health insurance.
- The first meeting was to entertain comments from the public and stakeholders to build a foundation of knowledge and to pick a direction for the Committee to go.
- Presentations were provided by Mary Dalton of the Children's Health Insurance Program (CHIP) and Insurance Commissioner John Morrison of the State Auditor's Office expressed his concerns regarding health care issues. Consumer and insurance carrier concerns were also heard; and they discussed strategies to decrease the number of uninsured Montanans, purchasing pools, doctors who are causing health insurance rates to raise faster than rate of inflation. It also heard presentations from hospitals and other providers regarding provider reimbursement rates and cost shifting of health care costs.
- Another discussion was held on the dramatic increase in the cost of prescription drugs.
- The Subcommittee's recommended that its two goals be: (1) to recommend a policy to provide access to affordable health insurance to as many Montanans as possible and (2) to recommend a policy to provide quality, cost effective health care for as many Montanans as possible.
- The Subcommittee adopted an interim meeting calendar that coincides with the full Economic Affairs Committee calendar.
- Response from stakeholders was overwhelmingly positive and they were excited that the Subcommittee is making an attempt to address the challenges before Montana regarding health care and health insurance costs.

Sen. Roush added that health care costs should not be a partisan issues, and the State Auditor's Office has also scheduled a number of public hearings around the state on health care costs. He recommended that the State Auditor's Office take up several issues that were discussed at the Subcommittee meeting during those public hearings and possibly come up with solutions to bring before the Subcommittee for discussion. It would be cost effective and it could save the Subcommittee a lot of extra work. He said that the State Auditor's Office is going to present legislation at the 2003 Session so why duplicate the efforts of both.

Gordy Higgins, Research Analyst, Legislative Services Division, provided an overview of the SJR 22 Subcommittee's draft study plan to study health care costs and health insurance costs in Montana. (EXHIBIT #12)

Claudia Clifford, State Auditor's Office, stated the following:

- The Subcommittee needs to continue asking hard questions and keep looking for federal grant funds to address Montana's uninsured.
- It must also keep asking itself how a particular solution will result it getting more health care or health care coverage to the target population--do not settle for vague answers.
- Look at the health care system as a financing system and a whole system that has cost shifts and if a solution is found in one area, will it affect another group.
- The solutions will be limited to funding or new federal money that may be available and the Subcommittee will have to choose which programs best use the dollars.
- She suggested that the Departments of Public Health and Human Services and Revenue be among the stakeholders.
- She will provided a copy of the State Auditor's proposed public hearing schedule to the Committee.

Rep. McKenney **moved** the adoption of the SJR 22 Subcommittee draft work plan. Motion passed unanimously.

INSTRUCTIONS TO STAFF AND ADJOURNMENT

Ms. McClure will monitor the proposed advisory committee regarding the Department of Labor and Industry's rules regarding workers compensation reimbursements for certain medical practitioners.

There being no further business, the meeting adjourned at 3:55 p.m.

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