



SJR 22 Joint Subcommittee on Health Care and Health Insurance

57th Montana Legislature

SENATE MEMBERS

JON ELLINGSON, Vice Chairman
DOROTHY BERRY
ROYAL JOHNSON
JERRY O'NEIL
LINDA NELSON
GLENN ROUSH

HOUSE MEMBERS

JOE MCKENNEY, Chairman
KATHLEEN GALVIN-HALCRO
BOB LAWSON
MICHELLE LEE
GARY MATTHEWS
BILL PRICE

COMMITTEE STAFF

DAVE BOHYER
RESEARCH ANALYST
BART CAMPBELL
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.**

Eighth Meeting of Interim
Room 137, State Capitol
August 30, 2002

COMMITTEE MEMBERS PRESENT

Rep. Joe McKenney, Chair
Sen. Jon Ellingson, Vice Chair
Sen. Royal Johnson
Sen. Jerry O'Neil
Sen. Glenn Roush
Rep. Bob Lawson
Rep. Gary Matthews
Rep. Bill Thomas

COMMITTEE MEMBERS EXCUSED

Rep. Kathleen Galvin-Halcro
Rep. Michelle Lee
Rep. Trudi Schmidt
Sen. Dorothy Berry
Sen. Linda Nelson

STAFF PRESENT

Dave Bohyer, Research Director
Bart Campbell, Staff Attorney
Lois O'Connor, Secretary

VISITORS

Visitors' list (ATTACHMENT #1)

Agenda (ATTACHMENT #2)

COMMITTEE ACTION

- Approved draft legislation for a tax credit pilot program for health insurance
- Approved that Rep. McKenney, Sen. Ellingson, a representative from the Governor's Office, and a representative from the State Auditor's Office meet and formalize a recommendation on the expansion of the CHIP program for discussion at the next meeting
- Approved September 12, 2002, as the next meeting date

CALL TO ORDER AND ROLL CALL

The meeting was called to order by Rep. McKenney, Chair, at 8:30 a.m. Attendance was noted; Representatives Galvin-Halcro, Schmidt, and Lee and Senators Berry and Nelson were excused. (ATTACHMENT #3)

Adoption of the July 18, 2002, Subcommittee minutes was postponed.

CHILDREN'S HEALTH INSURANCE PROGRAM (CHIP): CONTINUED EXPLORATION

Maggie Bullock, Administrator, Health Policy & Services Division, Department of Public Health and Human Services (DPHHS), provided a summary of the CHIP program. (EXHIBIT #1) She said that the current CHIP enrollment is 9,300 with 221 children still on the waiting list. The waiting list affects 112 families. Ms. Bullock also provided an overview of the services needed for children with developmental disabilities (DD). (EXHIBIT #2)

Rep. Lawson asked if different qualifications or criteria would be needed to move the DD children to the CHIP program. Ms. Bullock said that the children would be eligible in the same way that they are eligible under the DD program

Sen. Ellingson said that providing DD services is a way of expanding CHIP. He asked how much general fund savings would it provide. Ms. Bullock was unsure because although it would add more children to the CHIP program, the Department was not viewing the concept as an expansion of CHIP. It will be used to maintain the current program levels and keep the DD children in their current services. The Department would need direction to use this method as a means of expanding CHIP. Sen. Ellingson requested information on the general fund savings related to the new way to fund DD children under CHIP. He asked if any other services could be shifted to CHIP and use the general fund savings to expand the program with the federal match. Ms. Bullock said that the issue should be reviewed, but the Department must first figure out how much money it would take to cover the DD children.

Rep. Lawson asked about the the long-term commitment of the federal government for funding the CHIP program. Ms. Bullock said that the CHIP program must be reauthorized but she was unsure when it would take place.

Rep. McKenney asked about the best way to reach out to the children and families who are still not covered by any type of insurance. Ms. Bullock said that the Department is doing everything it can to reach out to families with children who are not insured. Cross referrals are being conducted between the local offices of public assistance and CHIP staff to ensure that children who may be eligible for CHIP or Medicaid are being referred to CHIP or Medicaid. She said that unlike Medicaid, the CHIP program is not an entitlement program. She added that the

Department received a state health planning grant in July. The project director is trying to get a handle on exactly how many Montanans are uninsured. The project will be completed in June 2003 and will have some recommendations for the Legislature.

Sen. Johnson said that in the past, the Department has used general funds to leverage federal funds and it did not need authorization from the Legislature to do it. Ms. Bullock said that when finances are very limited, as they are now, that is when the Department does its most creative thinking budget wise. Although the Department does not need permission, it wants to keep the Legislature apprised of what it is doing.

Lois Steinbeck, Senior Fiscal Analyst, Legislative Fiscal Division, provided an update of the most current federal CHIP grant amounts, expenditures, and reversions by state and federal fiscal years. (EXHIBIT #3) She stated the following:

- The CHIP program is authorized for 10 years and reauthorization will take place in federal fiscal year 2005 and 2006.
- There are a number of services that can be refinanced without a waiver in DD and accrue the general fund savings.
- The Special Session implemented across the board reductions of \$2.5 million general fund in DPHHS' budget. If refinancing is not undertaken to save general fund, there will be more service reductions, such as the elimination of children's mental health services for all children except those who are seriously emotionally disturbed resulting in a potential long-term cost shift.
- In CHIP, states can establish a stand-alone program, which the DD refinance would be.
- States can create different eligibility levels and finance services that CHIP would regularly finance.
- The state is currently spending 100% general fund for some of the DD children for services that it could match 80-20.
- Other ways to save general fund are refinancing social worker costs and using intergovernmental transfers. The Department is pursuing both.
- The refinancing ideas are not going to come close to finding the general fund savings to offset the general fund reductions the Legislature will see in the Department's budget request in the next session.
- DPHHS submitted \$78 million in general fund present law adjustments.
- It would take \$78 million in general fund in the next biennium to maintain provider rate increases, pay plan increases, and service expansions.
- The Department must get back to its 1999 or 2000 level of expenditures resulting in a \$116 million to \$120 million reduction in its next budget submission.
- Ideas about refinancing or using CHIP funds to maintain the current level of services become extremely important.
- The waiting list for CHIP is lower because between 70 to 100 children monthly become eligible for Medicaid which means that family incomes are falling.
- It is not known how much the state will spend to maintain CHIP in the 2004-2005 biennium.
- The \$64-dollar question is how much will the future federal CHIP grants be and whether Montana's would be reduced because it is not fully expending the funds.

Sen. Ellingson asked why the state was not spending the CHIP funds available to it and why did the federal grant increase to \$15 million in federal fiscal year 2001 and decrease to \$10 million.

Ms. Steinbeck said that the Department phased in the implementation of CHIP rather than going statewide on day one. Because of the gradual start up, the state could not spend it all.

Dave Bohyer, Director, Research Policy and Analysis, Legislative Services Division, said in the most recent budget cycle, a choice was made as to where to spend general fund. That choice was to go with the DD program rather than the CHIP program. He asked, "If more general fund was available, could the additional funds have been spent on CHIP?" Ms. Steinbeck said that in the Appropriations Subcommittee, a policy decision was made to beef up provider rate increases. It was her opinion that had there been more general fund available, the money would have been spent on provider rates rather than CHIP.

Sen. Johnson asked if the allocation of funds could be done without legislative involvement. Ms. Steinbeck said that some refinancing efforts involve implied policy decisions, for example, means testing for DD programs. As a general rule, there is great cooperation among all the Divisions under DPHHS. However, sometimes those Divisions view their funding sources as their funding sources and they do not want to divert the funds to other programs.

Mike Cooney, Executive Director, Healthy Mothers Healthy Babies, said that the issue that has to be addressed is how much work is being done at the community level for outreach to the uninsured. He requested that the Subcommittee address an organized effort for outreach and provide the necessary resources to do that.

Claudia Clifford, Insurance Commissioner's Office, said that Insurance Commissioner Morrison will request legislation to encourage the expansion of CHIP. There are still 41,200 children estimated to be uninsured in Montana. She has been working with Ms. Steinbeck to provide a modest expansion of CHIP that would not leave the state in the position in the future of having to decrease enrollment. The Insurance Commissioner is suggesting that the Legislature appropriate \$2 million which brings an \$8 million federal match for CHIP to insure 7,500 more children. The source of funding would be the tobacco settlement trust fund interest which the Insurance Commissioner's Office believes is dedicated specifically for the expansion of health care coverage. The state also has an initiative on the fall ballot that sets aside a dedicated fund for CHIP and that the funds be made available for both CHIP and the Montana Comprehensive Health Association (MCHA).

Sen. Johnson asked where the initiative funds would come from. Ms. Clifford said the initiative dedicates 60% of the tobacco settlement funds that are not going into trust. Although it sets aside most of the funds for tobacco prevention programs, it also dedicates \$5 million a year for both CHIP and the MCHA.

WEST VIRGINIA PRESCRIPTION DRUG PURCHASING POOLS -- CONFERENCE CALL

Tom Susman, Director, and Bill Schimer, Deputy Director, West Virginia's Public Employees Insurance Agency, provided an overview of West Virginia's Public Employee Prescription Drug Purchasing Pool. (EXHIBIT #4)

Sen. Ellingson asked if Montana joined a purchasing pool, how far could it go in expecting drug discounts and how far could it cut before drug companies say that they cannot discount any further. Mr. Susman said that the market will drive it and put states in a position to receive discounts that they like to see. The key is to maintain the lowest net cost. He added that the

West Virginia plan can save an additional \$6 to \$7 million on top of the savings it has with the PBM contract.

Sen. Johnson asked how Mr. Susman negotiated the administrative contract with ExpressScripts. Mr. Susman said that the contract is general pricing based on prior utilization, volume, and the type of system that a state would have. West Virginia has a 3-tiered co-pay system for the \$15 differential between brand-preferred and brand-nonpreferred. West Virginia received seven contract proposals. It reviewed them and asked for a best and final offer from the two finalists. Sen. Johnson asked if ExpressScripts got its income from the contract only and from no other source, such as discounts. Ms. Susman said yes, it is in the contract. ExpressScripts is a PBM and the combined states have the ability to audit the PBM but it is very expensive. Sen. Johnson asked about the total amount of dollars involved in the \$6 million. Mr. Susman said that West Virginia believe is will save \$6 million out of \$134 million.

Sen. Roush asked about the reaction from independent pharmacies to the ExpressScripts contract. Mr. Susman said that 99% of West Virginia's claims go through local independent or regional community pharmacies and 1% goes through mail. Each state decides what it wants to do in terms of mail. If they want to mandate mail in their benefit design, they can do that. Sen. Roush asked if independent pharmacies in West Virginia received the same rebate that ExpressScripts received. Mr. Susman said that community and independent pharmacies are treated the same with regard to dispensing fees. West Virginia has been looking at a dispensing fee for rural pharmacies to help them get extra money.

Rep. Thomas asked how West Virginia's program compared with other states participating in the program. Mr. Susman said that the pharmacy distribution is left up to each state. West Virginia tries to get the money from the PBMs rather than the pharmacies. Some states have high mail order while other states have low mail order.

Rep. McKenney asked about the people covered under the West Virginia program and what the steps were for a state to get involved in the program. Mr. Susman said that the people covered include higher education, public education, teachers' service personal, state employees, some local government entities, and retirees. States would write West Virginia a letter stating that they want to get involved in the pool. West Virginia would supply states with materials about the program. Participation also depends on a state's statutory requirements related to joint purchasing efforts with other states. If Montana were to investigate joining the multi-state purchasing pool, it should review its purchasing requirements.

Sen. Roush request a copy of the letter sent by West Virginia's Governor Wise explaining the West Virginia program.

HEALTH INSURANCE TAX CREDIT ISSUE

Sen. Ellingson provided an overview of a proposed health insurance tax credit pilot project. (EXHIBIT #5)

Mr. Bohyer briefly discussed an issue paper for tax credits for health insurance premiums (EXHIBIT #6) He asked if the Subcommittee wanted staff to craft legislation for its review at the September 12 meeting.

Ms. Clifford said that the Tax Credit Working Group's tax credit proposal is targeted to the most uninsured population in Montana. Tax credits work best at targeting people who are between 150% to 200% of the federal poverty level. The Working Group was also trying to help some of Montana's smallest businesses that have the most difficulty paying for benefits. It is also the intent of the Working Group to provide the ability for those employees who are getting onto a small group policy that they could still use the individual credit to help buy coverage into the plan for their spouses and children. In addition, it is reviewing the individual tax credit as being available for MCHA.

Tanya Ask, Blue Cross Blue Shield of Montana (BCBSMT), said that the Working Group has also tried to keep its proposal as simple as possible coupled with another concern raised about the cost of insurance being based on age and addressing older individuals who may have higher premium costs. The third area that it wanted to address was to identify the composition of the smaller groups versus groups with more employees. This outline also allows the Legislature to consider the federal legislation that allows tax credits with the Trade Adjustment Act.

Rep. Lawson said that he was interested in the Subcommittee coming out with a proposed tax credit outline but was also concerned about the estimated amount of money to put into it. With the limited revenue streams that are available, he is concerned about the citizens who are facing higher premiums, copays, more deductibles, and less services. His interest is that as the Subcommittee refines the proposal, it look at the limited revenue stream and review diversification to cover people other than those who are completely uninsured.

Sen. Johnson asked if the 2003 Legislature was going to see a \$45 million additional unfunded structural imbalance by establishing the pilot program. Rep. McKenney said yes.

Sen. Ellingson said that the \$45 million cost could be adjusted because it is a pilot program. He asked about the constitutionality of a pilot program and whether it was a denial of equal protection of the law. Mr. Bohyer said that he requested a legal opinion on whether making a tax credit available on a first-come-first-serve basis could create an equal protection issue under Montana's Constitution. The opinions that he received were that there is a equal protection issue on one hand but not on the other. The risk is that if the tax credit is adopted and capped and one individual does not receive the credit and the other one does, the individual who does not receive the tax credit may sue leaving the state on the hook for some additional amount of money in the future.

COMPARISONS IN RE: CERTIFICATE OF NEED

Pat Murdo, Research Analyst, Legislative Services Division, provided a certificate of need (CON) comparison among the states. (EXHIBIT #7)

Sen. O'Neil said that he requested the CON study to see if they increased the cost of health care services, and he believed that they did. The CON fee is \$10,000, it takes months to receive it, and those costs must be reflected in the costs of health care some place. Other problems with a CON is the fact that states have other federal regulations on who goes into the health care business and they are tailored to keep prices high and the price of labor low. For example, the CON requirement would somewhat eliminate the demand for more nurses or other health care providers. Therefore, the labor force would have less clout to raise wages resulting in an anti-labor government mandate. He added that when the CON program was crafted, the federal

government repealed the Federal National Health Planning and Resource Development Act of 1974. However, some states, and Montana is one of them, have continued to fund it even after it was repealed. He believed that it should be repealed in Montana because it is not good policy for the general public.

Ms. Murdo clarified that the \$5,000 to \$15,000 is not a fee that the state charges. It is the cost that health care facilities pay when they come into the state.

Mr. Bohyer said that the CON debate has come up periodically. In the early 1990s, the state went through an extensive review of the CON statutes and a number of statutory requirements were repealed. There is a report available from DPHHS that discusses its review of the CON process and he will provide it to the Subcommittee.

Sen. O'Neil asked Sen. Johnson how much the Billings hospital paid to go through the CON process. Sen. Johnson said that St. Vincent's Hospital wanted to build an addition next door. Although Billings got it accomplished, it was a painful process and he never saw the good of it.

COMMITTEE DECISIONS AND RECOMMENDATIONS

Tax Credit for Health Insurance

Sen. Ellingson said that the Subcommittee was charged with the responsibility of addressing the problem of the uninsured in Montana and the momentum is focused on using a tax credit as the mechanism for doing it. He **moved** that the Subcommittee request draft legislation for a tax credit pilot program for health insurance for discussion at the next meeting.

Sen. Roush was concerned about the constitutionality of the pilot program and preferred to put a 4-year sunset on the legislation. Mr. Bohyer said that according to the legal opinions that he received, a pilot program would be easier to defend against an equal protection question that may arise and tax credits would be more defensible because they provide a benefit rather than impose a penalty.

Rep. McKenney said that even though the proposed legislation has a \$45 million price tag, he was still supportive of it. It is a question of where the Legislature chooses to spend its limited funds.

Sen. Ellingson's motion passed unanimously.

Staff will draft the proposed legislation with a 4-year sunset provision.

Prescription Drug Purchasing Pool

Jeff Buska, Health Policy Services Division (DPHHS), said that there is a perception that a prescription drug purchasing pool could be used for the Medicaid program which is not the case. The Medicaid program already does many of the things that the West Virginia purchasing pool is doing, such as the implementation of a mandatory generic drug substitution program and realizing cost savings on the processing of claims. The Department does not pay by the claim for claims processing in Medicaid; it has a flat-rate contract. If the claims volume increases 10% a year, it does not cost any more money.

Sen. Johnson asked if after what Mr. Buska has heard about the West Virginia purchasing pool, did he believe that Montana would see a 4.5% or better savings on what the state is seeing currently. Mr. Buska said that Mr. Susman was describing a savings within a public employees retirement plan which has nothing to do with a Medicaid program. Purchasing pools have nothing to do with the buying of drugs. They involve getting people into volume groups to receive more leverage with drug manufacturers to negotiate rebates. He added that he did not believe that the state would realize a 4.5% savings within the Medicaid program. The savings that West Virginia is realizing is related to the mandatory generic drug program that is outside of the Medicaid program. The Department has already implemented a mandatory generic drug program and it is realizing a reduction in its Medicaid budget. It also continues to work on other ways to reduce expenditures in its Medicaid budget.

Rep. Matthews asked who receives the rebates if any are realized. Mr. Buska said that the state receives the rebates through the federal Medicaid Drug Rebate Program. The flat-rate contract is a contract that the Department has with ACS CouncilTech that is the overall claims adjudicator for the entire Medicaid program which includes all pharmacy claims. The Department takes the claims, it sums up the amount paid on a per-unit basis for each drug, it matches that to a unit rebate amount, and collects all rebates for all of the drugs that are paid for by Medicaid. This amounts to approximately 20% in rebates.

Mr. Bohyer said that Mr. Susman stated that the six or seven states that originally worked on the pooling aspects of the West Virginia program already had the statutory authority to enter into intergovernmental purchasing arrangements or they needed to adopt the concept. The changes that the Legislature made to the purchasing laws would allow Montana to enter into purchasing pools. The Medicaid program is not part of the West Virginia program. It deals only with current and former public employees in West Virginia. If the Subcommittee chooses to look into the purchasing pool concept like West Virginia's, individuals joining the pool may approach 50,000 so there could be the possibility that the state could accrue the 4.5% savings but it would be in a whole different area from the Medicaid program.

Jim Smith, Montana Pharmacy Association, said that he was encouraged with Mr. Susman's statement that West Virginia was attempting to change the business model of the PBMs because it attempts to get unregulated entities back to their original role which was claims processing. The Association's concern was that PBMs have deviated from their original and traditional role in that they are making pharmaceutical decisions. They also became involved in establishing rates and reimbursement in terms and conditions that are passed on to local pharmacies. Other statements that were encouraging is that West Virginia was trying to get money from the PBMs not the local pharmacies and that it was moving toward generic drug substitution.

Mr. Smith said that the state should learn something from the Montana Mental Health Managed Care Program and not rush into things. The issue of a \$25 million savings over the next three years or \$6 million savings this year was a rosy scenario. The West Virginia program is two months old and it may be too early to start making firm projections of that magnitude. He added that there is much that needs to be worked out before entering into a purchasing pool concept. Currently, Montana has no money and a very limited staff to protect its interest. The purchasing pool concept may have merit, but ease into it.

Rep. Lawson said that the Subcommittee should also keep in mind the possibility of purchasing pools with the various Indian tribes since Montana tribes trade with the Canadian tribes.

Sen. Ellingson asked if the Subcommittee investigated the possibility of joining a purchasing pool, that it also investigate the possibility of making it open to other individuals or entities to bring more people under the umbrella and have a program that could address the escalating drug costs. Mr. Bohyer said that if Montana developed a contract along the lines of the West Virginia contract, other groups could join in, whether private or public, but it may take changes to the statutes. The state's purchasing laws were changed in the 1999 Session to allow for the issuance of an RFP and working with other states on purchasing. Current law also allows groups of individuals to form associations and those associations have access to certain statutory authority or coverage that allows them to apply as groups for certain types of insurance coverage. In addition, the Legislature could expand the state employee health insurance scheme to allow anybody's participation in the program. Sen. Ellingson believed that if the state comes up with a proposal to enter into a drug purchasing pool, that the proposal include not only public employees and retirees but other citizens of the state who face the same need for relief from the escalating costs.

Rep. McKenney said that if the Subcommittee wants the state to enter into negotiations to join a purchasing pool, it could state it in a resolution or it could be in the form of clear language in its final report.

Subcommittee members requested the following:

- that the information from West Virginia's purchasing pool be sent to the Subcommittee for review;
- that the state investigate the savings associated with joining a multi-state purchasing pool;
- that the final report suggest that the Children, Families, Public Health and Human Services Committee continue to investigate the concept of joining a purchasing pool; and
- information on what statutory changes may be required if the state opened up accessibility of the purchasing pool to private individuals and insurance companies.

No formal action was taken on this issue.

CHIP Program

Rep. McKenney was unclear where to go with the CHIP program expansion. He suggested that he, Sen. Ellingson, a representative from the Governor's Office, and a representative from the State Auditor's Office meet and formalize a recommendation for discussion at the next meeting.

Sen. Johnson **moved** Rep. McKenny's suggestion. Motion passed unanimously.

PUBLIC COMMENT

Connie Welsh, Chief, Employee Benefits Bureau, said that Montana participates in a large employer purchasing pool that encompasses 60,000 people and includes the state of Montana, the Montana University System, Northwestern Energy, and a few other large employers. Through the purchasing pool is where Montana has its contract for its prescription drug manager-- Eckard Health Services. The state's contract has captured a 4% savings. What the State Employees' Benefit Plan has done that parallels what West Virginia has done is encourage the

use of generic or formulary drugs and it captures administrative savings with more lives in the program. The contract also requires that Montana get 90% of the rebates back. To answer the question of why the state changed from ExpressScripts, it changed because the State Plan is under state purchasing law and it hit the end of its contracted period. The contract had to be reproced and Eckard Health Services was the successful bidder.

Sen. O'Neil asked if private drug companies would be allowed to participate in the State Employees' Benefit Plan. Ms. Welch said that Eckard Health Services currently contracts with retail pharmacies within the state and the contract has a mail order aspect.

Letter to Children, Families, Health and Human Services Interim Committee (CFHHS)

Mr. Bohyer provided a brief overview of the letter to the CFHHS regarding the continuation of a health care subcommittee. (EXHIBIT #8)

Following a brief discussion, the Subcommittee agreed that the letter be sent to Rep. Schmidt, current Chair of the Child and Families Committee and its Committee members, Susan Fox, Research Analyst for the Children and Families Committee, the members of the Economic Affairs Committee members, and the Legislative Finance Committee.

The Subcommittee approved September 12, 2002, as the next meeting date.

Their being no further business, the meeting adjourned at 12:00 p.m.

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