



SJR 22 Joint Subcommittee on Health Care and Health Insurance

57th Montana Legislature

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SENATE MEMBERS

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HOUSE MEMBERS

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

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.

Final Meeting of Interim
Room 137, State Capitol
September 12, 2002

SUBCOMMITTEE MEMBERS PRESENT

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

SUBCOMMITTEE MEMBERS EXCUSED

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

STAFF PRESENT

Dave Bohyer, Research Director
Eddy McClure, Staff Attorney
Lois O'Connor, Secretary

VISITORS

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

COMMITTEE ACTION

- Approved final report language that the Subcommittee recognizes the importance of the CHIP program in providing medical insurance for uninsured children; and it recognizes the value of the federal match, while at the same time, it recognizes the fiscal difficulties facing the state. Within the context of those difficulties, the Subcommittee urges the Administration to place a high priority on maintaining the size of the CHIP program or expanding it if funding resources could be found. The Subcommittee further recognizes the need to keep other programs in the DPHHS that have proven to be valuable to the health of the entire state
- Approved a recommendation to the full Economic Affairs Committee that the proposed tax credit for health insurance legislation continue to be refined with the objective of it becoming a Committee bill

CALL TO ORDER AND ROLL CALL

The meeting was called to order by Rep. McKenney, Chair, at 9:05 a.m. Attendance was noted; Representatives Lee, Galvin-Halcro, and Schmidt and Senator Nelson were excused. (ATTACHMENT #3)

PRESCRIPTION DRUGS PURCHASING POOL

Dave Bohyer, Research Director, Legislative Services Division, provided a copy of the West Virginia Public Employees Insurance Agency RFP and a copy of its managed prescription drug program agreement with ExpressScripts, Inc. for Committee review. (EXHIBITS #1 and #2)

Rep. McKenney said that language in the final report will include that the Subcommittee explored the option of multi-state purchasing pools, that it urged the Department of Public Health and Human Services (DPHHS) to explore the option of joining a multi-state purchasing pool, and that legislation is not required because state agencies currently have the authority to join purchasing pools if they choose.

Rep. Lawson said that the question he would like answered before the state gets involved in a purchasing pool is "As the West Virginia plan's state membership expands, would the additional savings go to the states already in the plan and are there additional savings for the states that join later?" He also expressed his concern about how joining a multi-state purchasing pool would affect local community pharmacies, particularly as it relates to mail order prescriptions. He suggested that a possible reimbursement to local pharmacists for education or training could be reviewed.

Mr. Bohyer said that Rep. Lawson mentioned the potential option of benefiting from opportunities on Indian reservations that may not be available in other places. He asked how much emphasis should be placed on the option in the final report.

Following a brief discussion, the Subcommittee decided that the final report include language that the option was discussed and found to be a viable option but needed further exploration and that staff also include an update on the Confederated Salish and Kootenai Tribes' investigation of their legal authority under the Hellgate Treaty of 1855 and the Jay Treaty as to whether the federal government will allow them to enter into agreements with Canadian tribes to import drugs.

Sen. Ellingson requested that the final report also include language that the Subcommittee discussed the state's current purchasing pool and whether or not it could be expanded to include a broader spectrum of Montana's citizens.

REPORT FROM CHIP WORKING GROUP

Rep. McKenney said that the focus of the Martz Administration is to address the impending budget deficit and to make the necessary policy decisions required to address it. The Administration will have a very hard time endorsing the expansion of any program at a time when the state is trying to save what it has. He said that the Subcommittee has put much work into the health insurance tax credit plan that has a \$45 million price tag and that it was hanging its hat on it. He felt that the Subcommittee must be very cautious in going forward with any expansion that will cost additional dollars.

Sen. Ellingson said that he understood the impending budget difficulties but that the Subcommittee must keep in mind that the maximum size of the CHIP program is dictated by the maximum size of the federal grant received. The beauty of the CHIP federal grants is the high ratio of federal match--20% to 80%. For the Administration to maximize the amount received from the federal grant would require a comparatively small commitment of additional state resources. He requested that the final report recommend that the Martz Administration consider, as seriously as it possibly can given the context of the budget situation, putting as much resources into the CHIP program as is required in order to maximize the federal match.

Rep. Matthews asked about the Initiative-146 (I-146) related to the CHIP program and the Montana Comprehensive Health Care Association (MCHA). **Claudia Clifford, State Auditor's Office**, said that the initiative takes 60% of the tobacco settlement funds that are not currently going into trust and designates it for certain purposes. Seventeen percent of the 60% (\$5 million) goes into a special account that is designated for the expansion of CHIP and MCHA. The initiative is not specific on how much of the 17% is to go to each program. If the initiative should pass, the Legislature would be in the position of having an account with \$5 million, and through the appropriations process, it could choose to use the money in whatever amount it wants to either expand CHIP or put toward the MCHA subsidy program. The match on CHIP is 81% federal/19%state.

Sen. Ellingson asked how much additional money it would take to reach the maximum amount of utilization of the federal grant. Ms. Clifford said that if the Legislature reviews all available funds through 2005, \$33 million worth of federal funds could be leveraged. The Auditor's Office suggests a more conservative approach and not take full advantage of all of the funds but do something to take advantage of more of the funds. If all of the funds were to be utilized, programs may have to be dramatically cut back in the future. The DPHHS is also reviewing ways to use CHIP funds as a source of funding for the developmental disabilities (DD) program. Sen. Ellingson said using CHIP funds for the DD program does not expand the amount of the federal grant, it just moves it around. Ms. Clifford said that it does not mean that the funds available to the state are any more, only that it will be using more funds than it is currently projected to use. Sen. Ellingson said that if Montana received a \$30 million grant stretching through fiscal year 2005, it would take a \$6 million general fund match from the state in order to utilize it fully. Over time, the magnitude of maximizing the match is small.

Rep. Lawson asked if the initiative also included a provision to use \$9.1 million for tobacco prevention programs. Ms. Clifford said that the initiative recommends that an amount of money be spent on tobacco prevention programs that is recommended by the Center for Disease Control (CDC).

Rep. Thomas commented that as Montana progresses with CHIP, it must be careful when it considers enlarging the number of people who participate that the state is capable of caring for the children who are already in the program, particularly as it relates to dental services. With the short supply of dental providers in Montana, there are a number of children who are unable to find a dentist because of the \$350 cap within CHIP. One problem happens when the cap is reached and the child continues to need care. Another problem is that Montana needs more dentists before it considers expansion.

Mr. Bohyer commented that if a certain amount of the tobacco funds are used for CHIP or the MCHA, the Legislature may respond by supplanting general fund money that currently goes to those programs with money that would then be coming in from the redirected tobacco settlement funds. He said that the 60% of the tobacco settlement funds that is the issue of the initiative is already being expended on general fund responsibilities. If that is the case, it may actually be that there is no more money available.

Sen. Johnson agreed. He said the reason that the Legislature ran the tobacco settlement funds through the general fund was so that it could be used for matching funds. Instead of the funds going to the programs that it is currently going to, which include many DPHHS programs, it is would be designated to a particular area. Whoever is using those funds on a basis of the leverage would lose that basis. Sen. Johnson also believed that the problem with the tobacco initiative is that it directs the money. He said he would rather direct the Department because it the Department that sees the needs and it knows how to leverage the funds. For the people to direct, through initiative, how the Department is going to do that penalizes the whole state because if the funds are taken out of a particular category and if it cannot be matched, the state pays for it dollar for dollar. Whereas, if the funds are kept in the match situation, the state pays for it with 19 cents on the dollar. He said that is exactly what the Department is currently doing, and he hoped that it would be allowed the latitude to do that for the benefit of the entire Department.

Sen. Johnson asked if the Subcommittee had set a position on what it will say about CHIP in its final report. Rep. McKenney said "no" and that he and Sen. Ellingson agreed that it may very well be irresponsible for the Subcommittee to put together a package of spending increases other than the tax credit. He preferred that the final report include a strong statement urging the Administration to make CHIP a high priority and to maximize the federal match as much as possible.

Sen. Roush suggested a statement to the Administration and the Legislature that, if the initiative is adopted, the Legislature or the Department would maximize the federal match as much as possible to keep the CHIP program at its current level of funding.

Sen. O'Neil asked if he were correct in that if the initiative passes, the CHIP program would have less money. Ms. Clifford said that the intent of the language in the initiative is to include a npn-supplanting provision so that the money would not be supplanting current funding that is going toward the CHIP program or any other program. However, supplanting language is only

as good as it written. Sen. O'Neil asked if the initiative required more tax dollars or does it try to capture other dollars. Ms. Clifford said "no", that it addresses money that is currently going into the general fund. It does not raise taxes nor will it impact the tax base of constituents.

Subcommittee members were given copies of Initiative No. 146 regarding the tobacco settlement funds at the request of Rep. Lawson. (EXHIBIT #3) Rep. McKenney said that he was unsure whether the initiative would affect the Subcommittee's decisionmaking process.

Sen. Ellingson **moved** that the Subcommittee recognizes the importance of the CHIP program in providing medical insurance for uninsured children; and it recognizes the value of the federal match, while at the same time, it recognizes the fiscal difficulties facing the state. Within the context of those difficulties, the Subcommittee urges the Administration to place a high priority on maintaining the size of the CHIP program or expanding it if funding resources could be found.

Sen. Johnson requested that language regarding the need to keep other programs in the Department that have proven to be valuable to the health of the entire state be included in the final report.

Sen. Ellingson agreed to include Sen. Johnson's suggestion in his motion. The motion passed unanimously.

HEALTH INSURANCE TAX CREDIT

Mr. Bohyer provided an overview of proposed legislation establishing tax credits for certain insurance premiums paid. (EXHIBIT #4)

Sen. Roush asked if an employer did not provide insurance for spouses or dependents, could employees purchase insurance and receive a tax credit on them. Mr. Bohyer said "yes", provided that the employer does not take advantage of the employer credit.

Sen. Ellingson said that it is important to remember that the tax credit available to employers will cover a small proportion of the employers in the state.

Rep. Lawson asked if there was a reverse match tied to the percentage of federal poverty level threshold. Mr. Bohyer said "no", that the amount expended on the tax credit will trigger a suspension of the credit entirely if the Department of Revenue says that the \$45 million cap is reached, and the credit cannot be continued until the Legislature reauthorizes the expenditure. Rep. Lawson asked, for example, if the federal poverty level were at 185%, would priority be given to individuals at 175% of the federal poverty level. Mr. Bohyer said that there is no priority at all to the degree of poverty. Once individuals are under the federal poverty threshold, individual "A" is as entitled as individual "B".

Sen. Ellingson asked if the definition of "corporations" for small group coverage included non-profits. Mr. Bohyer said "yes", and if the entity engages in some kind of business or commercial activity, they are included. If Legislature does not want them included, it will have to take those entities out.

Ms. Clifford said that the proposed legislation is a work in progress. At the conclusion of the August 30, 2002, Economic Affairs Interim Committee meeting, the State Auditor's office also requested legislation for a tax credit proposal. It is the Auditor's Office intent to have what is in its tax credit proposal be the same as the Subcommittee's proposal, the only differences being a funding source--a tobacco tax--and a proposal for low-income seniors who do not have prescription drug coverage.

Ms. Clifford said one detail that may need some adjustment is in a small employer tax credit in that if the small employer is required to match the tax credit, for example, \$200 a month, but the premium is less than \$200 a month, what happens? The Auditor's Office will try to address the question in its legislation. She suggested that the Subcommittee staff and the Auditor's Office work together to address the details. Ms. Clifford added that the language "During a claim period, only one individual per household may file a claim for a credit." should be clarified. The intent of the Tax Credit Working Group was to say that each individual could only benefit from one credit. If a person is filing for an individual credit, the person could still have a credit for the spouse and up to two children as individual credits. In addition, the provision "The credit must be increased by \$40 per month for the claimant's spouse" should also be clarified. Her tax credit outline provisions includes two \$40 a month mentioned. Under the individual credit, it is \$40 per month credit if an individual is adding a dependant on to adult coverage. Generally, it is a less expensive premium for the dependent. Ms. Clifford added that federal Trade Assistance Act credits are only available to individuals who have lost their jobs and they are an assistance to help them pay for coverage as a result of losing employment so the provision may not be needed. Finally, the Subcommittee may want a specific definition of "employee" under the small group credit. Insurance law generally talks about groups, the definition of "employee" needs to address very part-time employees. The intent was to address that the employee was eligible for benefits not the part-time employees in the head count of the size of the group.

Rep. Matthews asked what the take up rate might be, for example, if 175,000 individuals were uninsured and everyone was capped out. Mr. Bohyer was unsure because the legislation's structure includes tax credits at \$75, \$125, or \$200 per eligible individual. If all of the people are at the \$200 level, there would be fewer people covered than if they were at the \$75 level so the take up rate is not known. This is why the legislation requires the Department of Revenue to capture the mean-average and the median-average amount of credit; to get a sense the types of people who are being covered.

Rep. Matthews believed that there was the possibility of a tax increase in tobacco products. He asked if the Auditor' Office had discussed a 100% increase in the tax on cigarettes rather than the \$1-per-pack increase on cigarettes. Ms. Clifford said not specifically, although the Office is aware of some public opinion polling that has been done at various amounts, and there seems to be strong support at \$1 per pack. Rep. Matthews did not believe that a \$1-per-pack cigarette tax would pass the Legislature, but maybe a 25-cent-a-pack tax would. At 25 cents a pack, it would still raise \$10 million to \$12 million. He felt that a tax credit package for the uninsured was a benefit for the state. If the \$1 per pack will take a 50% take up rate, the state is trying to insure too many people because it is too big of a dollar amount. If the funding source was \$10 million and the state was able to insure 25% of the uninsured, he felt it would be better.

Sen. Johnson asked if there were consequences for violators and how would the Department police the language "A corporation may not claim a credit for an employee who claims a credit under the federal Trade Assistance Act of 2002." Mr. Bohyer said that there are consequences

for violators, and the Department of Revenue probably has the ability to cross check the state's individual insurance information within Montana's individual income tax and corporation license tax returns with federal returns. To the extent that the Department sees the proposed tax credit taken on federal returns, it can cross check it to the Montana returns to see if the tax credit is also claimed. If it is, it is a fraudulent claim. Sen. Johnson asked what happens when the \$45 million cap is reached and time remains for people to apply for the credit? Mr. Bohyer said that either the suspension is allowed to go through and people pick up their insurance coverage on their own or their insurance premium will disallow them economically to do that and they will return to the ranks of the uninsured. If the Legislature chooses, a special session could be called to appropriate more money to make it work. Sen. Johnson was concerned that the tax credit proposal created another structural imbalance. He said as long as citizens use the tax credit and the state keeps it going, the cost continues to rise because the more people who take advantage of the tax credit, the more it will cost in the future. He could not see how the Subcommittee could look at a \$250 million current structural budget imbalance and add another \$45 million to it. His personal feeling was that taxes may have to be raised to rid the state of the current structural imbalance and that the 2003 Legislature would not be filling in the "holes" like it did in the Special Session.

Sen. Roush questioned how the tax credit applied to corporations or small groups in rural areas, such as farm corporations, that are owned by several family members. Mr. Bohyer said that the answer was unclear. For example, it was his understanding that farm corporations are typically set up so that the income that they receive from the corporations can be used to pay their employees who are usually sons, daughters, etc. The corporation, to the extent that it had four or fewer employees, could receive the tax credit under a policy provided by the corporation only if the farm corporation did not have \$750,000 or more in net income.

Rep. Lawson asked what the definition of "corporation" included; and would the definition exclude small business that are not incorporated. Mr. Bohyer said that the definition of "corporation" includes everything from a sole proprietorship with one employee, as long as it was incorporated, all the way up to General Electric. Small businesses that are not incorporated would be excluded under the business tax credit but would be eligible for individual tax credits provided that they not exceed 175% of the federal poverty level. Rep. Lawson said that limiting the tax credit to corporations was not his intent. He was interested in looking at all small businesses. He asked if he worked for a corporation that made \$750,000 a year and had four employees or less but he as an individual made \$1 million a year, would he still be eligible for the tax credit. Mr. Bohyer said "yes", and if the Subcommittee wanted to cover small businesses that are not corporations under the definition of the tax code, it must use some vehicle other than the corporation license tax to refund the tax credit. If this is not done, money will have to be appropriated, which has the same effect on the general fund, to purchase health insurance.

Sen. Ellingson said that the Subcommittee conceptualized that the tax credit would go to small businesses regardless of whether they were incorporated. However, the proposed tax credit was still a work in progress and it needed refining. He added that the Subcommittee was given the responsibility to define what might be a contribution to a serious problem that is facing the state--the uninsured--and if, after the 2003 Session, a funding source for the tax credit has not been identified, the Subcommittee has still made progress by defining the price tags and the magnitude of the problem to the Legislature. He **moved** that the Subcommittee recommend to the full Economic Affairs Committee that the proposed tax credit for health insurance legislation

continue to be refined with the objective of it becoming a Committee bill. Motion passed unanimously.

MEMBER ISSUES AND ADJOURNMENT

A letter regarding the continuation of a SJR 22-type investigation and study of health insurance and health care costs is completed. Copies will be sent to the Chairman of Legislative Finance Committee; Sen. Bob Keenan, Chairman, HJR 1 Subcommittee on Mental Health; Legislative Council members; and members of the Economic Affairs Committee.

Out Line of SJR 22 Final Report

Mr. Bohyer provided an overview of an outline for the Subcommittee's final report. (EXHIBIT #5)

Rep. Lawson requested that a discussion of legislatively mandated benefits and their ramifications on health insurance costs be included in the final report.

Rep. McKenney said that mention may also be given to the Subcommittee's discussions of tax policy changes, medical savings accounts, the subsidized buy-in to the state employee purchasing pool; the full-cost buy-in to the public health insurance programs, the CHIP employer buy-in, the expansion of CHIP to cover parents, single-payer systems; purchasing pools for health insurance, the MCHA and its needs, hospital rate review regulations, certificate of need, prescription drug costs, assistance for senior citizens and purchasing pools, the West Virginia multi-state purchasing pool, the reestablishment of the former Health Care Authority, the need for a health care inventory and ombudsman, and a defined contribution plan for health benefits. However, the Subcommittee narrowed its focus to a multi-state purchasing pool, the CHIP program, and the tax credit proposal for the purchase of health insurance for individuals and small businesses.

Staff will send the Subcommittee a draft of the final report for its review and comment.

Sen. Johnson asked **Maggie Bullock, DPHHS**, for an update on the state health planning grant received by the Department. Ms. Bullock said that the grant was awarded in July; and its purposes are to focus on the number of uninsured in the state, where they are located, and to get a better sense of what the population looks like. The Department knows that a majority of these individuals are employed. The grant has been contracted out and will utilize a survey developed by the University of Minnesota and adapted for Montana by the University of Montana. A steering committee has been appointed by the Governor and will hold its first meeting soon. She hoped that the meeting will receive a good cross section of stakeholders to gather the information.

PUBLIC COMMENT

Tanya Ask, Blue Cross and Blue Shield of Montana (BCBSMT), clarified the discussion of group credits and the amount of credit that is allowed per employee. She said that the idea behind the amounts of the credits was that they would be predicated on the average age of the group because that is usually how a group premium is written. Therefore, if the average of the group is 19 years of age or under, the credit would be \$40 per employee. If the average age is between 19 and 45, the credit per employee would be \$100 because the entire group is rated on that average age.

Ms. Ask added that in the event that additional funding should become available, BCBSMT would support the opportunity for the state to take advantage of the ongoing federal dollars available through the CHIP.

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

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