

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON HUMAN SERVICES AND AGING

Call to Order: By Chairman Stella Jean Hansen, on January 6, 1989, at 2:00 p.m.

ROLL CALL

Members Present: All except Rep. Simon

Members Excused: None

Members Absent: Rep. Simon

Staff Present: Mary McCue, Legislative Council

Announcements/Discussion: None

DISPOSITION OF HOUSE BILL 33

Executive Session Discussion: Rep. Brown recommended a DO PASS with Rep. Whalen seconding the motion.

Rep. Knapp requested discussion on the language on lines, 22, 23, 25 on page 4 which involved the wording.

Rep. Knapp indicated that this terminology that takes away a person's right to a choice.

Rep. Hansen requested that the researcher answer this question. Ms. McCue stated that it must be.

Rep. Brown then stated that there was to be an amendment addressing this portion of the bill.

Rep. Whalen said that the language as it now stands states that if a medical doctor must furnish the impairment rating. Under the W.C system, there is a dispute as to what the level and entitlement of benefits is going to be, the Montana Rules of Civil Procedure provide for a party to the litigation, that the W.C. can request an independent medical examination and under that independent medical examination all of the matters that are before the Division or the W.C. relating to the extent of the injuries into and independently evaluated. Rep. Whalen believes that an amendment is not needed.

Rep. Good stated that an amendment would be in order that the term "must" is too strong and "may permit" would be better than "must". She feels that the freedom of choice is taken away and that it would be counterproductive to require a chiropractor. She feels that this is an option.

Rep. Boharski stated testimony given by the W.C. on Monday's meeting. There was a problem with the term medical practitioner and the other sections of the codes which were addressed. They were going to create a code violation by allowing a chiropractor under the definition of chiropractic physician. This evaluator would not be eligible to give a purely medical determination. Additionally, two sections 39-71-711 would be a legal problem because a chiropractic physician is not listed in state code. He questioned if this would be a violation.

Mary McCue said that in the licensing chapter for chiropractor it says that they may not practice medicine but they may call themselves doctors. In the W.C. chapter, amending of this bill would be involved. It has a definition of what a physician is and it is very broad. She feels by virtue of this language, for the purposes of making impairment ratings, a chiropractor is a physician even though his own licensing chapter would not refer to him in that fashion. There is no conflict because you are going into title 39-71-711 that "for this purpose we are going to think of a chiropractor as a physician and he can make what has been a medical determination."

Rep. Whalen then questioned more details on page three.

Mary McCue stated that a word search was done because of the questioning language and the terms medical physician and doctor are used approximately 131 times and 41 different ways. The term medical to include various kinds of treatment and that might be appropriate to go into just the impairment rating statute and say it is not a purely medical determination. The amending language is referring to a chiropractor physician so the changing on page 3 is not necessary.

Rep. Stickney states that her problem with the bill in changing it in any way is that the need to not be

concerned with defining chiropractic or anything else and that is what we are attempting to do. The rating is a medical problem and consequently she speaks against the motion.

Rep. Hansen stated that she had attended the W.C. hearings last session and said that the impairment ratings are one of the biggest stumbling blocks in controlling W.C. payments because its relatively easy for a person, particularly those with back injuries, to get an impairment rating from a doctor. Doctors will continue to sign these ratings even after the employer is certain that the injured worker is able to do the work. Doctors don't really give the worker an examination, they waiver the evaluation. Therefore an evaluator should not be a physician who has never treated this patient.

Rep. Good said that she felt the treating physician or chiropractor is never the evaluating chiropractor or physician even if they may have had some ongoing relationship, they will never be one and the same person. Rep. Good then moved that we amend HB 33 to say that on page 4, line 24 the word "must" should be stricken and "may" be inserted.

Rep. Whalen then said Rep. Brown had a motion on the floor previously. Yes, a DO PASS motion was stated as reported by Rep. Hansen.

Rep. Hansen asked for a second on Rep. Good's motion. Rep. Stickney seconded this motion.

Rep. Whalen then stated that it was not true that most impairment ratings are given by a physician other than the treating physician. Most often, the treating physician does not desire to do the impairment rating but most of the time they do perform this service. Insofar as the amendment is concerned, Whalen opposes this amendment and desires an amendment to read that a medical doctor, if he did not want to do the impairment rating, could obtain the services of a chiropractor and vice-versa. Rep. Whalen then asked for the opinion of the researcher as to who would give the impairment rating, the Division or the insurance carrier. Can the patient ask for that?

Ms. McCue stated that she was uncertain but she felt the Division or the claimant may ask for the first rating. Then, if the opposing party disagrees with this action, they may ask for their own rating.

Rep. Blotkamp indicated that if it is primitized, do these laws have any bearing?

Rep. Hansen said that it only had bearing on W.C.

Ms McCue said that it applies to all claimants and all insurers.

Rep. Whalen said that if there were potentially three evaluations that an amendment with the insertion of "the claimants's evaluator" must be a chiropractor.

Rep. Hansen then asked if Rep. Whalen was going to amend the former amendment or is Rep. Whalen making a totally new amendment.

Rep. Whalen asked if this could be done and Rep. Hansen stated that it could be done if both he and Rep. Good could agree on this. Rep. Whalen suggested then that rather than striking "must" and inserting "may" on page 4, line 4 a better amendment might be to insert between "the" and "evaluator" on the same line, the "claimant's evaluator". Before Rep. Whalen suggests this motion he wished to ask the researcher if this was feasible.

Ms. McCue asked that if the claimant is the first one to choose to get an impairment rating, that if the worker had been treated by a chiropractor, that the first rating had to be done by a chiropractor?

Rep. Whalen asked that if the first impairment rating is not always given by the treating physician.

Ms. McCue said on page 3, subsection 2, it states that claimant or insurer both may obtain an impairment rating from a physician of the parties choice. This means that if the insurer is at the point where they should have an impairment rating, they could request it and that if they do not agree, subsection 3 states that upon the request of the claimant or insurer a second evaluation is granted.

Rep. Whalen said subsection 3, page 3 states that if the insurer is the first party to request that the claimant be directed to an evaluator for the purpose of obtaining an impairment rating, then the claimant has to rely on the Division to pick an evaluator for him. If the insurer is first to ask for an impairment rating then the claimant loses control over having an evaluator of his own choice and the Division then chooses the evaluator.

Ms. McCue said that if he is treated by a chiropractor, he is entitled to have at least one evaluation be done by a chiropractor?

Rep. Whalen agreed. Rep. Whalen then proposed that an amendment be proposed that the injured worker have at least one evaluation be done by a chiropractor and one of his own choosing. Whalen then proposed the amendment with the agreement of Rep. Good, that each injured worker receive his impairment rating by the physician of his choice whether he be a chiropractor or a medical doctor.

Rep. Good then said that the language is too restrictive, but she did agree with his intent.

Rep. Whalen made the substitute motion to the last amendment. It would be mandatory of the claimant to choose a physician or chiropractor.

Rep. Boharski asked that it would be more appropriate to strike all of the new code subsection 4 and also that the need of lines 23, 24 and 25 of page 4 would stricken.

Rep. Hansen then ask if the treating physician must make the evaluation?

Ms. McCue stated that it did not.

Rep. Hansen then stated that if the removal of this section was accomplished, it would not require that the treating physician would be the evaluator.

Ms McCue said that language to that effect would be in need here. The language must be inserted that would show that a chiropractor could be a physician giving an impairment rating.

Rep. Strizich then made a motion to table this bill with

Rep. Squires seconding the motion. Vote was taken with Rep. Good and Rep. Whalen opposing. A subcommittee was appointed which consisted of Rep. Whalen, Boharski, Good, and Pavlovich to meet with the researcher.

DISPOSITION OF HOUSE BILL 37

Executive Session Discussion: Motion: Rep. Gould made a motion which was seconded by Rep. Strizich to DO PASS this bill.

Ms. McCue stated that the personnel officer at the Department of Health was contacted by two physicians in the Bureau which were mentioned during the course of the hearing, Family/Maternal Health Care Bureau and the Preventive Health Services Bureau are headed by physicians and their job requirement form required them to be medical doctors.

Rep. Boharski asked the researcher who had a set of these job requirements and Ms. McCue indicated that it had been someone in the Department of Health.

Rep. Stickney stated that some of the concern of the committee was that the Department of Health have within it at least the medical profession represented. The concern is that in the areas of newborn and child care that would be specifically tied in with medicine, indeed have physicians.

Rep. Squires asked Ms. McCue how long the criteria for being a physician has been in the statute. Is a legislative audit of the department part of the criteria?

Ms. McCue stated no.

Rep. Hansen then stated that the previous question had been moved and requested a vote. All voted aye with the exception of Rep. Whalen and Stickney. Motion carried.

ADJOURNMENT

Adjournment At: 3:00 p.m.


STELLA JEAN HANSEN, Chairman

SJH/AJS

0507.MIN

DAILY ROLL CALL

HUMAN SERVICES AND AGING COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date January 6, 1989

NAME	PRESENT	ABSENT	EXCUSED
Stella Jean Hansen	✓		
Bill Strizich	✓		
Robert Blotkamp	✓		
Jan Brown	✓		
Lloyd McCormick	✓		
Angela Russell	✓		
Carolyn Squires	✓		
Jessica Stickney	✓		
Timothy Whalen	✓		
William Boharski	✓		
Susan Good	✓		
Budd Gould	✓		
Roger Knapp	✓		
Thomas Lee	✓		
Thomas Nelson	✓		
Bruce Simon		✓	

STANDING COMMITTEE REPORT

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Mr. Speaker: We, the committee on Human Services and Aging
report that HOUSE BILL 37 (first reading copy -- white) do
pass.

Signed: _____
Stella Jean Hansen, Chairman