

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON HUMAN SERVICES & AGING

Call to Order: By Rep. Angela Russell, Chair, on March 27, 1991,
at 4:15 p.m.

ROLL CALL

Members Present:

Angela Russell, Chair (D)
Arlene Becker (D)
William Boharski (R)
Jan Brown (D)
Brent Cromley (D)
Tim Dowell (D)
Patrick Galvin (D)
Stella Jean Hansen (D)
Royal Johnson (R)
Betty Lou Kasten (R)
Thomas Lee (R)
Charlotte Messmore (R)
Jim Rice (R)
Sheila Rice (D)
Wilbur Spring (R)
Jessica Stickney (D)
Rolph Tunby (R)

Members Excused: Tim Whalen & Carolyn Squires

Members Absent: Bill Strizich

Staff Present: David Niss, Legislative Council
Jeanne Krumm, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

EXECUTIVE ACTION ON HB 93

Motion/Vote: REP. S. RICE MOVED HB 93 DO PASS AS AMENDED.
Motion carried 15-5 with REPS. RUSSELL, DOWELL, HANSEN, MESSMORE,
and SQUIRES voting no.

The committee had previously adopted amendments to HB 93.

EXECUTIVE ACTION ON SB 172

Motion: REP. DOWELL MOVED SB 172 BE CONCURRED IN.

Motion: REP. DOWELL moved to amend SB 172. EXHIBITS 1 & 2

Discussion:

REP. BOHARSKI asked if there was a difference between a low risk pregnancy and a pregnancy that is not high risk. REP. LEE stated that there will always be some risk.

REP. BOHARSKI stated that the low risk language could be a real problem. In the intent section it talks about "low risk" pregnancies and this amendment refers to not "high risk" pregnancies. Mona Jamison, Midwifery Association, stated that the reason for this amendment was there was a mistake in the Senate. The Nurses Association asked that they direct their practice towards low risk pregnancies, and that is their goal. Throughout the bill low risk pregnancy appears many times. Their goal is to identify high risk situations and refer them to physicians.

REP. LEE asked if there was a list of things used to identify a high risk pregnancy. Ms. Jamison said yes, it would be implemented through the eligibility criteria in order for it to be adopted.

REP. LEE asked if it would be better to identify those things that make the pregnancy high risk rather than to identify a situation by the lack or absence of that risk. Ms. Jamison stated that we tried to do that, but it ended up that there are many different states that have licensing. We decided to say that it is up to the board to develop that in consultation with the physician on the board.

REP. LEE asked if it would be better to identify this as not high risk, then you have a list of things that actually identify high risk. Ms. Jamison stated that it will be identified in the rules and then tied into what are considered high risk.

REP. BOHARSKI asked if we can identify low risk pregnancies. REP. MESSMORE stated that the only way to do that would be with the absence of the high risk factors.

Vote: Motion carried 18-2 with REPS. JOHNSON and KASTEN voting no.

Discussion:

REP. LEE stated that it seems to be a moot point that if an M.D. is not within 50 miles of a caesarean capacity hospital, he probably would not have the ability to do an at home caesarean. It really doesn't make much sense one way or the other.

Motion: REP. BOHARSKI moved to amend SB 172. Motion failed 5-15 with REPS. BOHARSKI, LEE, MESSMORE, STICKNEY and TUNBY voting aye.

Discussion:

REP. BOHARSKI stated that this is one of the best bills that we have had presented.

Motion: REP. LEE MOVED SB 172 BE CONCURRED IN AS AMENDED.

Discussion:

REP. MESSMORE asked what the training criteria is in the regulations. Ms. Jamison stated that the reason this is in there is that Dr. Nelson urged us to put it in. He felt that they were the toughest regulations in the U.S. As a result of the negotiations, the Midwives said they are the toughest laws, but they agreed to put them in.

REP. MESSMORE asked what the intent of the lay midwives is. Ms. Jamison stated that midwives want to practice as responsibly as possible. The midwives have already established visits to the State of Washington Midwifery school and are already working with them in trying to set up a satellite program.

REP. MESSMORE asked if that is a one year training program with an extended campus. Ms. Jamison said she doesn't know.

REP. STICKNEY stated that she is gravely concerned that the committee will be licensing people who do not have the training to be doing what they are doing. I still cannot support this bill.

REP. HANSEN stated that they are going to practice whether we let them or not. The practical aspect of that is that we would much rather see them regulated rather than not regulated. As far as putting our stamp of approval on it, that isn't the way to look at licensing. We are controlling the practice by licensing the practice. When you don't have licensing, then you don't have any control.

REP. LEE stated that midwives have been real easy to work with. They have not been a group that has been resistive to changes. They have proved to be good to their word. As time goes on we will find them established as a real viable alternative. He encouraged the midwives to come back to the committee and report how things are going and how else we might be able to assist them in providing a safe reliable service to people in Montana.

REP. BOHARSKI stated that it is with reluctance that he urges this committee to support this bill. Unlike the other bills, we made the decision last session to approve the practice of midwifery. I went against my will and agreed with that. This is a step that we don't have a choice in making.

Vote: Motion carried 18-2 with REPS. KASTEN and MESSMORE voting no.


March 27, 1991

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ADJOURNMENT

Adjournment: 5:30 p.m.


ANGELA RUSSELL, Chair


Jeanne Krumm, Secretary

AR/jck

HOUSE OF REPRESENTATIVES

HUMAN SERVICES AND AGING COMMITTEE

ROLL CALL

DATE 3-27-91

NAME	PRESENT	ABSENT	EXCUSED
REP. ANGELA RUSSELL, CHAIR	✓		
REP. TIM WHALEN, VICE-CHAIR			✓
REP. ARLENE BECKER	✓		
REP. WILLIAM BOHARSKI	✓		
REP. JAN BROWN	✓		
REP. BRENT CROMLEY	✓		
REP. TIM DOWELL	✓		
REP. PATRICK GALVIN	✓		
REP. STELLA JEAN HANSEN	✓		
REP. ROYAL JOHNSON	✓		
REP. BETTY LOU KASTEN	✓		
REP. THOMAS LEE	✓		
REP. CHARLOTTE MESSMORE	✓		
REP. JIM RICE	✓		
REP. SHEILA RICE	✓		
REP. WILBUR SPRING	✓		
REP. CAROLYN SQUIRES			✓
REP. JESSICA STICKNEY	✓		
REP. BILL STRIZICH		✓	
REP. ROLPH TUNBY	✓		

57.10
3-27-91
JD13

HOUSE STANDING COMMITTEE REPORT

March 23, 1991

Page 1 of 10

Mr. Speaker: We, the committee on Human Services and Aging report that House Bill 93 (first reading copy -- white) do pass as amended.

Signed: _____
Angela Russell, Chairman

And, that such amendments read:

1. Title, line 7.

Following: "ON"

Strike: "EACH NURSING FACILITY"

Insert: "NURSING FACILITIES"

Following: "FOR"

Strike: "EACH BED DAY"

Insert: "BED DAYS REIMBURSED BY THIRD-PARTY PAYORS"

2. Title, line 8.

Strike: "1993"

Insert: "1992"

3. Title, line 9.

Following: ";

Insert: "TO PROVIDE FOR THE ASSESSMENT, COLLECTION, AND REFUND OF THE FEE;"

4. Title, line 10.

Strike: "DEPOSITED IN THE GENERAL FUND"

Insert: "USED FOR CERTAIN MEDICAID REIMBURSEMENTS"

Following: ";

Insert: "TO PROVIDE AN APPROPRIATION;"

5. Title, line 11.

Following: "DATES"

Insert: ", AN APPLICABILITY DATE, AND A TERMINATION DATE"

6. Page 1, line 12.

Following: line 11

Insert: "WHEREAS, the Legislature recognizes that the failure to fully fund the cost of nursing home care for Medicaid beneficiaries creates a burden on individuals who pay privately for nursing home care by shifting cost from Medicaid to non-Medicaid residents in our state's nursing homes; and

WHEREAS, the state has the potential of facing a lawsuit from nursing homes if the Legislature fails to fully fund the cost of nursing home care; and

WHEREAS, the Legislature desires to alleviate the cost-shifting from Medicaid to other patients, while bearing in mind the financial circumstances facing the state; and

WHEREAS, it is the intent of the Legislature to find creative financing solutions and to maximize federal participation in the cost of programs wherever possible; and

WHEREAS, it is the intent of the Legislature to use the utilization fee established in this bill as a means of providing additional Medicaid reimbursements to nursing homes; and

WHEREAS, it is the intent of the Legislature that nursing homes carefully consider the increased Medicaid revenues made available by this legislation when determining reasonable rates to be charged to non-Medicaid patients in their facilities; and

WHEREAS, the Legislature enacts the following legislation as a means of relieving privately paying individuals in nursing homes from the burden of costs shifted from the Medicaid program and of maximizing federal funding of this program."

7. Page 1, lines 15 and 17.

Page 2, line 10.

Page 6, line 25.

Page 7, lines 2 and 4.

Strike: "10"

Insert: "15"

8. Page 2, line 14.

Following: "care"

Strike: ", "

Insert: "or"

9. Page 2, line 15.

Following: "care"

Strike: ", or intermediate developmental disability care"

10. Page 2, lines 17 and 18.

Following: "facility"

Strike: ", regardless of the source of payment for the resident's care"

Following: "."

Insert: "The term includes all periods for which the nursing facility is reimbursed by a third-party payor, including but not limited to a private or governmental insurer or public assistance program, but it does not include any period for which the nursing facility may be reimbursed only by the resident, a friend of the resident, or a member of the resident's family."

11. Page 2.

Following: line 24

Insert: "(3) "Department" means the department of revenue."

Renumber: subsequent subsections

12. Page 3, line 2.

Strike: "long-term care"

Insert: "nursing"

13. Page 3, line 3.

Following: "skilled nursing care"

Strike: ", "

Insert: "or"

14. Page 3, lines 3 and 4.

Following: "intermediate nursing care"

Strike: ", or intermediate developmental disability care"

15. Page 3, line 5.

Following: "includes"

Strike: "all"

16. Page 3, line 10.

Following: "care"

Strike: ", "

Insert: "and"

17. Page 3, line 11.

Following: "care"

Strike: ", and "intermediate developmental disability care""

18. Page 3, line 21.

Following: "amount of"

Strike: "\$1"

Insert: "\$1.25"

Following: "facility"

Insert: "during fiscal year 1992 and \$1.50 for each bed day in
the facility during fiscal year 1993"

19. Page 3, line 23.

Following: "fee."

Insert: "(1)"

20. Page 4, line 2.

Following: "due"

Strike: "within 30 days following the end"

Insert: "on or before the last day of the month following the
close"

21. Page 4, line 6.

Following: line 5

Insert: "(2) The department of health and environmental
sciences shall provide the department at the end of each calendar
quarter with a list of facilities as defined in [section 1(4)]."

22. Page 4, line 15.

Following: "inspection"

Insert: "by the department"

23. Page 4, line 20 through page 5, line 7.

Strike: subsections (4) and (5) in their entirety

Insert: "NEW SECTION. Section 5. Periods of limitation. (1)
Except as otherwise provided in this section, a deficiency may
not be assessed or collected with respect to the quarter for
which a report is filed unless the notice of additional fees
proposed to be assessed is mailed within 5 years from the date
the report was filed. For the purposes of this section, a report
filed before the last day prescribed for filing is considered
filed on the last day. If, before the expiration of the period
prescribed for assessment of the fee, the facility consents in
writing to an assessment after the 5-year period, the fee may be
assessed at any time prior to the expiration of the period agreed
upon.

(2) A refund or credit may not be paid or allowed with
respect to the year for which a report is filed after 5 years
from the last day prescribed for filing the report or after 1

year from the date of the overpayment, whichever period expires later, unless before the expiration of the period, the facility files a claim or the department has determined the existence of the overpayment and has approved the refund or credit. If the facility has agreed in writing under the provisions of subsection (1) to extend the time within which the department may propose an additional assessment, the period within which a claim for refund or credit is filed or a credit or refund allowed in the event no claim is filed is automatically extended."

Renumber: subsequent sections

24. Page 5, lines 9 through 20.

Following: "waiver." on line 9

Strike: subsections (1) and (2) in their entirety

Insert: "(1) If the fee for any facility is not paid on or before the due date of the report as provided in [section 3(1)], a penalty of 10% of the amount of the fee due must be assessed unless it is shown that the failure was due to reasonable cause and not neglect.

(2) If any fee due under [section 2] is not paid when due, interest is added to the tax due at the rate of 12% a year from the due date until paid."

25. Page 5, line 21 through page 6, line 8.

Strike: section 6 in its entirety

Insert: "NEW SECTION. Section 7. Estimated fee on failure to file. (1) If a facility fails to file the report as required, the department is authorized to make an estimate of the fees due from the facility from any information in its possession.

(2) For the purpose of ascertaining the correctness of any report or for the purpose of making an estimate of bed day use of any facility where information has been obtained, the department may:

(a) examine or cause to have examined by any designated agent or representative any books, papers, records, or memoranda bearing upon the matters required to be included in the report;

(b) require the attendance of any officer or employee of the facility rendering the report or the attendance of any other person in the premises having relevant knowledge; and

(c) take testimony and require production of any other material for its information.

NEW SECTION. Section 8. Deficiency assessment -- hearing.

(1) If the department determines that the amount of fees due are greater than the amount disclosed by the report, it shall mail to the facility a notice of the additional fees proposed to be assessed. Within 30 days after the mailing of the notice, the

facility may file with the department a written protest against the proposed additional fees, setting forth the grounds upon which the protest is based, and may request in its protest an oral hearing or an opportunity to present additional evidence relating to its fees liability. If no protest is filed, the amount of the additional fees proposed to be assessed becomes final upon the expiration of the 30-day period. If such protest is filed, the department shall reconsider the proposed assessment and, if the facility has so requested, shall grant the facility an oral hearing. After consideration of the protest and the evidence presented in the event of an oral hearing, the department's action upon the protest is final when it mails notice of its action to the facility.

(2) When a deficiency is determined and the fees become final, the department shall mail notice and demand to the facility for payment, and the fees become due and payable at the expiration of 10 days from the date of the notice and demand. Interest on any deficiency assessment bears interest from the date specified in [section 5] for payment of the fees. A certificate by the department of the mailing of the notices specified in this section is prima facie evidence of the computation and levy of the deficiency in the fees and of the giving of the notices.

NEW SECTION. Section 9. Closing agreements. (1) The director of the department or any person authorized in writing by him is authorized to enter into an agreement with any facility relating to the liability of the facility in respect to the fees imposed by [sections 1 through 15] for any period.

(2) An agreement under this section is final and conclusive, and except upon a showing of fraud or malfeasance or misrepresentation of a material fact:

(a) the case may not be reopened as to matters agreed upon or the agreement modified by any officer, employee, or agent of this state; and

(b) in any suit, action, or proceeding under the agreement or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance with the agreement, the agreement may not be annulled, modified, set aside, or disregarded.

NEW SECTION. Section 10. Credit for overpayment -- interest on overpayment. (1) If the department determines that the amount of fees, penalty, or interest due for any year is less than the amount paid, the amount of the overpayment must be credited against any fees, penalty, or interest then due from the facility and the balance must be refunded to the facility or its successor through reorganization, merger, or consolidation or to its shareholders upon dissolution.

(2) Except as provided in subsections (2)(a) and (2)(b), interest is allowed on overpayments at the same rate as is charged on delinquent fees due from the due date of the report or from the date of overpayment, whichever date is later, to the date the department approves refunding or crediting of the overpayment. Interest does not accrue during any period during which the processing of a claim for refund is delayed more than 30 days by reason of failure of the facility to furnish information requested by the department for the purpose of verifying the amount of the overpayment. No interest is allowed:

(a) if the overpayment is refunded within 6 months from the date the report is due or from the date the return is filed, whichever is later; or

(b) if the amount of interest is less than \$1.

(3) A payment not made incident to a discharge of actual utilization fee liability or a payment reasonably assumed to be imposed by [sections 1 through 15] is not considered an overpayment with respect to which interest is allowable.

NEW SECTION. Section 11. Application for refund -- appeal from denial. If the department disallows a claim for refund, it shall notify the facility. At the expiration of 30 days from the mailing of the notice, the department's action becomes final unless within the 30-day period the facility appeals in writing from the action of the department to the state tax appeal board. If an appeal is made, the board shall grant the taxpayer an oral hearing. After consideration of the appeal and evidence presented, the board shall mail notice to the taxpayer of its determination. The board's determination is final when it mails notice of its action to the taxpayer."

Renumber: subsequent sections

26. Page 6, lines 12 through 14.

Following: "7."

Strike: lines 12 through 14 in their entirety

27. Page 6, lines 17 and 18.

Following: "deposited in"

Strike: "the state general fund"

Insert: "an account in the state special revenue fund to be used for medicaid reimbursement to nursing facilities"

28. Page 6, line 20.

Following: "section"

Strike: "3"

Insert: "2"

29. Page 6.

Following: line 25

Insert: "NEW SECTION. Section 16. Appropriation. The following money is appropriated from the account established in [section 13] to the department of social and rehabilitation services to fund increases in medicaid rates to nursing facilities:

Fiscal Year 1992

State special revenue funds	\$ 923,626
Federal funds	<u>2,341,223</u>
Total funds	\$ 3,264,849

Fiscal Year 1993

State special revenue funds	\$ 1,465,300
Federal funds	<u>3,749,294</u>
Total funds	\$ 5,214,594"

Renumber: subsequent sections

30. Page 7, line 5.

Following: line 4

Insert: "NEW SECTION. Section 18. Contingent voidness. (1) If federal law or policy is amended to allow a nursing facility to bill a person receiving nursing care for which the facility is being reimbursed by medicare or medicaid for the utilization fee provided in [section 2], [this act] is void as of the effective date of the change in federal law or policy.

(2) If federal law or policy is amended so that the utilization fees collected pursuant to [this act] may not be considered as the state's share in claiming federal financial participation under the medicaid program, [this act] is void as of the effective date of the change in federal law or policy.

(3) If the federal government refuses to participate in or denies approval of any plan for medicaid payments to nursing facilities on grounds that it considers the payments to be reimbursement to facilities for payment of the utilization fees, [this act] is void as of the date of receipt by the department of social and rehabilitation services of notice of an official determination of such refusal or denial.

(4) If [this act] becomes void under the provisions of

this section, all fees received or collected by the department prior to the date upon which the act becomes void must be deposited in accordance with [section 13] and a person or party may not receive a refund of any fees received or collected by the department prior to the date upon which [this act] becomes void.

NEW SECTION. Section 19. Coordination. If SB 445 is passed and approved and if it includes a section adopting a uniform tax appeal procedure, then the language contained in [sections 7(1) and 11 of this act] is void and the provisions of SB 445 govern the appeal procedures.

NEW SECTION. Section 20. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 21. Nonapplicability. [Sections 1 through 15] and the fee established under [section 2] do not apply to facilities licensed to provide intermediate developmental disability care and facilities reimbursed as institutions for mental disease under the medicaid program."

Renumber: subsequent section

31. Page 7, line 6.

Strike: "10, 11"

Insert: "15, 17 through 21, 23"

32. Page 7, line 7.

Strike: "October 1, 1991"

Insert: "on passage and approval"

33. Page 7, line 8.

Strike: "9"

Insert: "14 and 16"

Strike: "1992"

Insert: "1991"

34. Page 7, line 9.

Strike: "1992"

Insert: "1991"

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35. Page 7, line 10.

Following: line 9

Insert: "NEW SECTION. Section 23. Termination. [This act]
terminates June 30, 1993."

Jeanne

11:00
3-28-91
JDB

HOUSE STANDING COMMITTEE REPORT

March 28, 1991

Page 1 of 2

Mr. Speaker: We, the committee on Human Services and Aging report that Senate Bill 172 (third reading copy -- blue) be concurred in as amended.

Signed: Angela Russell
Angela Russell, Chairman

Carried by: Rep. Lee

And, that such amendments read:

1. Page 5, line 5.

Strike: "NO RISK FACTORS HAVE BEEN IDENTIFIED"

Insert: "the pregnancy is not a high-risk pregnancy"

2. Page 12, line 14.

Following: "K"

Strike: ", "

Insert: "{"

3. Page 12, line 15.

Following: "PREPARATIONS"

Strike: ", "

Insert: ")"

4. Page 14, line 24.

Following: "through 23]"

Insert: " and if the other state extends similar privileges to direct-entry midwives licensed under [sections 1 through 4 and 6 through 23]"

5. Page 16, line 25.

Strike: "and"

6. Page 17, line 2.

Strike: "."

Insert: "; and"

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Page 2 of 2

7. Page 17.

Following: line 2

Insert: "(g) that a health care provider's liability in rendering care or assistance in good faith to a patient of a direct-entry midwife in an emergency situation is limited to damages caused by gross negligence or by willful or wanton acts or omissions."

Amendments to Senate Bill No. 172
Third Reading Copy

Requested by Sen. Svrcek
For the Committee on Human Services and Aging

Prepared by David S. Niss
March 28, 1991

1
DATE 3-27-91
SB 172

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Insert: " and if the other state extends similar privileges to
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entry midwife in an emergency situation is limited to
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acts or omissions."

2
3-27-91
SB 172

Amendments to Senate Bill No. 172
Third Reading Copy

Requested by Sen. Svrcek
For the Committee on Human Services and Aging

Prepared by David S. Niss
March 20, 1991

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Strike: "NO RISK FACTORS HAVE BEEN IDENTIFIED"

Insert: "the pregnancy is not a high-risk pregnancy"

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Strike: ", "

Insert: "("

3. Page 12, line 15.

Following: "PREPARATIONS"

Strike: "L"

Insert: ")"

4. Page 17, line 2.

Strike: "!"

Insert: "; and"

5. Page 17.

Following: line 2

Insert: "(g) that a health care provider's liability in rendering care or assistance in good faith to a patient of a direct-entry midwife in an emergency situation is limited to damages caused by gross negligence or by willful or wanton acts or omissions."