

## **MINUTES**

### **MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON BUSINESS & INDUSTRY**

**Call to Order:** By Chairman J.D. Lynch, on January 9, 1991, at 10:00 a.m.

#### **ROLL CALL**

##### **Members Present:**

J.D. Lynch, Chairman (D)  
John Jr. Kennedy, Vice Chairman (D)  
Betty Bruski (D)  
Eve Franklin (D)  
Delwyn Gage (R)  
Thomas Hager (R)  
Jerry Noble (R)  
Gene Thayer (R)  
Bob Williams (D)

**Members Excused:** None

**Staff Present:** Bart Campbell (Legislative Council).

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

**Announcements/Discussion:** None

#### **HEARING ON SENATE BILL 5**

##### **Presentation and Opening Statement by Sponsor:**

Senator Bob Brown, District 2, sponsor of the bill, said the bill was introduced at the request of the State Auditor's Office. Senator Brown stated that the Auditor in Montana is also the Insurance Commissioner. The bill is essentially a housekeeping bill which generally corrects and clarifies the method of language used in the Securities Act, which is titled 30 of this code.

##### **Proponents' Testimony:**

Robyn Young, Deputy Commissioner of Securities, representing the State Auditor of Montana and Montana Securities Department, testified in favor of the bill (See Exhibit 1).

##### **Opponents' Testimony:**

None.

Questions From Committee Members:

Senator Gage asked in certain circumstances the purchaser is not considered to have received this typical delivery. In as much of that as a commodity investment does not include a contract that requires physical deliver, or are we to understand that under these circumstances those are commodity investment contracts.

Robyn Young responded that Senator Gage was correct and that they have to meet exemption requirements and deliver within seven days.

Senator Gage then asked how that affected people from Florida and all over the country from phoning.

Robyn Young explained that it is not a change in policy but to more clearly incorporate in this section of the act. Salesmen do have to register with their office. And under 105, which is an exemption, that really has to do with private placement and restrictions rather than transactions. They do require the same kind of registration provisions for out-of-state salesmen as for in-state salesmen. One of the reasons for that is that they actively use that to screen out salesmen who have previous records of violations.

Senator Gage asked how they track that, and if it's an on-your-honor type thing.

Young replied that it is, because the Securities Regulatory System is highly computerized and the FCC and the FDM and the State Securities Department all share a computerized system where all important information on licensed security salesmen is kept.

Senator Gage asked what would happen if a salesman called from Florida soliciting and wasn't registered.

Young replied that they encourage all Montana citizens to call the department to double check to see if the salesman who is soliciting on the telephone is registered.

Senator Thayer asked if there was anything a person could do to stop getting called constantly.

Young replied that there was nothing ethical a person can do to stop this soliciting. People who have been victimized in the future because the salesmen share lists of possible victims quite readily.

Young stated that a lot of time is spent warning people about the people who solicit over the telephone because over 80% of enforcement cases involve out-of-state telephone solicitation.

Bart Campbell, committee researcher, stated that in some states they have anti-phone solicitation bills. They require that anyone who is going to solicit by phone within the state must make contact with their agency. They keep a list of people who do not want to be solicited by phone, and it is a violation if you call those people.

Young stated that her department has always supported that.

Senator Thayer asked what the penalty for the violation was.

Campbell stated that generally it is a fairly hefty fine and sometimes they take away their ability to do business in the

state.

Closing by Sponsor:

Senator Brown closed. Senator Kennedy deferred any executive action on SB 5 until Senator Lynch returned.

Senate bill 5 passed unanimously by a roll call vote, and was referred to the consent calendar by unanimous vote.

HEARING ON SENATE BILL 16

Presentation and Opening Statement by Sponsor:

Senator Delwyn Gage, District 5, sponsor of the bill, said senate bill 16 was introduced at the request of the state auditor's office.

Proponents' Testimony:

Dave Barnhill, deputy commissioner of insurance, spoke in favor of the bill (See Exhibit 2).

Stanlee Dull, secretary of Montana comprehensive health association, spoke in support of the bill (See Exhibit 3).

David W. Cunningham, hospital administrator, representing the rimrock foundation, spoke in support of senate bill 16 (See Exhibit 4).

Mona Jamison, an attorney representing rocky mountain treatment center, spoke in support of the bill. She proposed an amendment, not in writing, which is to seriously consider an amendment that would make PPO agreements in this state illegal. She then proposed an amendment (See Exhibit 5).

Pat Melby, attorney representing the rimrock foundation, spoke in favor of senate bill 16 and also supported the amendment that Mona Jamison proposed. He also spoke in support of the language which is currently in Senate Bill 16, at a minimum, expressing that the proposal distributed by Jamison is much clearer, with much less opportunity for interpretation or for avoiding allowing a willing provider to enter into a PPO agreement. Preferred provider organization is a fine concept. An insurance company talks to a health care provider and asks them to lower their rates to x amount. The insured will be encouraged to use the facility and throw a deterrent in their contract if they go someplace else. It works fine in large communities and in areas where one insurance company does not have a near monopoly on health care insurance coverage. It works fine in areas where many hospitals and other health care providers are private or profit hospitals are competing with one another and not with nearby rural hospitals. That same concept will not work fine in rural state Montana. There are very few health care providers in Montana and most are not for profit hospitals; they are religious affiliated hospitals, community hospitals, hospitals owned by the government or by hospital

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districts. Montana has one health care insurer who does have a near monopoly and under the elements of some anti-trust cases in other states, 55% of the market in health care insurance would have been considered a monopoly. Blue Cross Blue Shield carries possibly 55% of the market. Entering into a preferred provider agreement with one health care facility can have a devastating affect on the others. A preferred provider agreement with an urban hospital could sound the death knell for the smaller, already struggling rural hospitals in the surrounding communities. There are small hospitals near the large metropolitan areas like Helena, Great Falls, Billings, that are having a horrible time competing with the larger hospitals in those larger communities. This preferred provider agreement with a large urban hospital is going to intensify that competition with the small rural hospitals in the surrounding communities. Not only the financial well-being of health care providers are excluded from being preferred providers, but also the freedom of choice of consumers.

Tom Hopgood, representing the commercial health insurance companies doing business in the state of Montana, gave testimony in support of senate bill 16. He does not represent Blue Cross Blue Shield. He commented on section 19, which amends the Montana PPO bill. The idea behind PPO is for a health insurer to be able to contract with a provider, or a number of providers, to provide their services. These providers then become preferred providers. They offer their services to PPO subscribers at a reduced rate. The insurer then signs people up to be members of this arrangement. This is the key to the entire arrangement that a provider or several providers reduce their prices to subscribers. The economic theory is that the more patients will come to these providers that are preferred providers and, although they are providing their services at a lesser price, they make it up in volume. In the 1987 session, there was a movement to insert language into the model PPO bill which would have destroyed the PPO concept. That language is included in the amendment which has been proposed today and it is the willing provider amendment. Any person that provides those services is able to force their way into the preferred provider arrangement.

Jim Ahrens, president of the Montana hospital association, spoke in favor of the bill. The fear is, in the rural hospitals, that someone will take the down share of the margin, come in and say that these are the terms and that is it. It has happened in other states and it happened to Montana. You cannot make it up in volume in rural areas. There is no volume. Rural hospitals are probably the most precarious hospitals financially in this state. thirty are in the red every year. The whole work of the association is trying to keep health care viable and alive to the citizens of this state. anything that tips that in one direction too much eliminates hospitals. Every year one hospital closes. This is a very serious situation.

Tom Ebzery, attorney from Billings, representing St. Vincents hospital spoke in favor of senate bill 16 focusing on section 19. The statute must clearly show that there cannot be discrimination amongst the providers. The is a very critical

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issue for our hospitals. Clear language, as suggested by Mona Jamison, should be inserted to prohibit against discrimination against or among providers, particularly when other providers of health services are competitive and clearly qualified to offer these services. A second provider should be willing to meet the terms and conditions established by a health care insurer in PPO, in a planner program, that this provider should have the right to enter into that same similar type of agreement. But in no event should be forced or excluded or precluded from entering this program. There have been other amendments put onto this recently. Wyoming has added a non-discrimination amendment the last session of their legislature. The issue is public policy in this state and if it is public policy in this state to discriminate, it ought to be changed.

Steve Brown, representing Blue Cross Blue Shield of Montana, spoke in favor of the bill. He stated that he has concerns about the bill. The first is on section 1, page 3, line 12. That is the change from de novo hearing requirements at the district court level. That is the existing law under this particular bill. When there is an appeal from the commissioner's decision, it goes to district court and the statute says the district court has to have a de novo trial of the same issues. The appeal to district court is based on the record made at the administrative level. The commissioner is not bound by the rules of evidence when conducting her hearings under this law. It is a matter of policy. The second concern of the bill has to do with section 12, page 22, lines 14 through 19. He stated that he has listened to the commissioner's office on several occasions explain the purpose of this language and they have consistently explained the purpose as being to make master group policies conform to the laws of Montana. The language says that the policy is going to be automatically conformed with the laws of the foreign state where that individual now resides. This is not a housekeeping provision. Their concern is the effect on other providers who aren't part of the PPO arrangement. Our concern is to keep health insurance affordable for Montanans.

#### Opponents' Testimony:

None.

#### Questions From Committee Members:

Senator Williams commented that this dispels his thinking that all of the insurance companies are abandoning Montana.

Senator Thayer wondered what this does to the rural hospitals. In the rural areas, there is only one hospital in each area, at least in the Great Falls area and there is one in Fort Benton, one in Conrad and one in Chouteau, and so on. He stated that he is trying to figure out if a provider goes on and has a contract in those rural areas with those providers, how then is that going to put those people out of business is it being suggested that Great Falls is the only place that would get such a contract to have the effect on the rural communities.

Pat Melby said that any insurance company especially with a large share of the health policies issues could enter into a PPO contract with Montana Deaconess hospital. They could make that area as large or small as they want. They could make it to simply be the community of Great Falls or they could make it include Cut Bank, Conrad, Shelby, Fort Benton. So that individuals who need health care services can either go ahead and have that service in Cut Bank. In emergency situations they are going immediately to their local hospital, but when having elective surgery and long lengths of stay in the hospital, the patients are going to take the cheapest course.

Randy Cline stated that what occurs when talking about PPO, local providers must have one preferred provider. The issue of rural Montana hospitals, it's not an area of concern, one can only assume, for the commercial carriers. There is no interest in going to Cut Bank and entering into a PPO agreement with their hospital. The PPO agreement is going to be with the big hospital in the urban area.

Senator Thayer stated that only the people who have policies in the immediate Great Falls areas would be offered the opportunity to have the PPO arrangement. He understood that they are not intending to go out and offer this and force rural areas to come into Great Falls for treatment.

Pat Melby stated that anytime you look at the law, you don't look at what somebody who is operating under it intends to do in the future, you look at what they can do under that law. There has been a lot of concern that Blue Cross Blue Shield is going to enter into some chemical dependency treatment facility for the state of Montana to be the PPO. It can be done under the present law. That is the concern. If you live in Butte, and you need services and the PPO is Frances Mahan Deaconess hospital for chemical dependency in Glasgow you either go to Glasgow or you go someplace else and pay the 25% differential.

Senator Williams asked under the PPO it offers a patient the one hundred a day charge. How is this cost reduction supposed to hurt the efforts of Blue Cross Blue Shield.

Randy Cline answered that it would for one year. Under the principal of PPO, on a very short term basis it works fine, but over a long period of time it does not because essentially the PPO arrangement and that is that each facility is getting 50% of the business. After the first year there is no special deal because nobody has redirected any revenue to a particular provider.

Senator Williams asked if there was a fear that by doing these PPOs that the damage could be done to the second hospital would be great enough to put them out to loose not only one facility, but the price has gone up because then they have the whole market for Great Falls, Missoula, or Billings, Montana.

Randy Cline answered yes, from the other providers perspective that certainly would be a concern. They develop their own PPO with a hospital in Billings, because the other hospitals would have had already gone out and put together an arrangement. What has occurred under those circumstances is that you do then, save additional money on the part of consumers for health care

costs because you have two facilities and you have two different carriers. They are selling competitive PPO products and what is wrong with having competition in terms of the insurance product in a PPO environment. This arrangement that we have as a carrier can be done by any insurance carrier or obviously by any third party administrator, which is already being done. It is a very simple competitive measure.

Senator Williams asked how the hospitals were determined, by negotiating and bidding.

Randy Cline answered that it could be done a number of different ways. If the bid requirements required that a preferred provider arrangement be offered in order for that coverage to be considered through a particular carrier, a PPO was developed, so that the business can operate in Montana. This is the only place Blue Cross does business.

Senator Williams asked if there was any discrimination against those of us in areas that PPOs aren't available. The cost balloons about \$400 a month in the school district but we will never have an opportunity to reduce our rates by 15%.

Cline answered that actually he will. The reason is that eventually rural networks will be developed which will do this. The primary care services that are available in that local rural area will be provided in that local rural hospital. But if you need services that are unavailable in that local area, then through a preferred provider arrangement or contract, your employer will be able to take advantage of those discounts that we have in place through our PPO arrangements in the larger communities.

Mona Jamison stated that there are other plans in the structure to meet people whose income does not support more of the Cadillac coverage. There are a range of offerings of plans and some actually try to cut down on the services to increase the number of insured. The issue that you are facing is one of public policy. Mr. Cline makes our best argument and that is we are going to favor in the cities with two hospitals one hospital by the 25% reduction. She believes that the willing insurer provision puts the competition getting the price down the way the free market is supposed to operate. If the other hospital is willing to buy on to those figures and those particular costs, they should be entitled to.

Senator Williams asked Tom Ebzery if the Blues didn't have the ability to go to Deaconess, would they have an edge with your program at St. Vincent's to go to the county to bid.

Ebzery stated that what he heard was that since St. Vincent's created a PPO with computer claims that they went after Yellowstone employees for 300.

Senator Williams stated that he did not understand Cline's program with the computer claims.

Cline stated that there is another PPO but would welcome if they would change the law and they could need that same situation. Deaconess could do the same.

Senator Williams asked if Mr. Cline would welcome the suggestion of Larry Akey to bring this PPO in on a separate bill.

Mr. Cline stated that he has no problem with having this in

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the bill right now.

Senator Thayer stated that there were three minor suggestions made on the housekeeping portion of the bill and perhaps the auditor's office could respond to them.

Dave Barnhill stated the state auditor's office agreed with an amendment to section 1 that would require that their hearings conform to the rules of evidence. That is no problem whatsoever. With respect to section 12, the language makes claim that conformity to the laws of the state would mean conformity to the laws of Montana because a master group policy is issued in Montana. What triggers the application of the law is the big fat policy becomes effective and the insured would reside in Montana at that time and the policy would conform to the laws of Montana. Even if the insured at a later date moves to another state the policy would still conform to the laws of Montana and not some other state. The other concern was with section 26 where there is a conformity to state statute and a suggestion that instead of having to parrot that language, equivalent language could be used.

Bart Campbell stated that he had an amendment which came through with some additions he had to make that could have been done as a re-do. He didn't get to them in time so he had to do an amendment. They came from the department and they went over these, but did not go through them section by section.

Senator Williams stated that he could give us a summary of what those will do to the bill, particularly because for the most part those are noncontroversial.

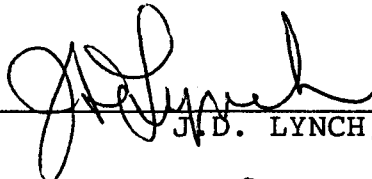
Senator Gage urged that as they look at this bill to give great weight to perhaps putting section 19 in a separate bill.

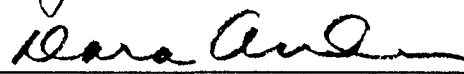
Closing by Sponsor:

Senator Gage closed. Senate bill 16 passed unanimously with amendments.

ADJOURNMENT

Adjournment At: 12:30 p.m.

  
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J.D. LYNCH, Chairman

  
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DARA ANDERSON, Secretary



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MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration Senate Bill 5 (first reading copy -- white), respectfully report that Senate Bill 5 do pass.

Signed:

  
John "J.D." Lynch, Chairman