

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 53rd LEGISLATURE - REGULAR SESSION**

#### **SELECT COMMITTEE ON WORKERS' COMPENSATION**

**Call to Order:** By CHAIRMAN CHASE HIBBARD, on February 17, 1993,  
at 3:30 P.M.

#### **ROLL CALL**

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

Rep. Chase Hibbard, Chairman (R)  
Rep. Jerry Driscoll, Vice Chairman (D)  
Rep. Steve Benedict (R)  
Rep. Ernest Bergsagel (R)  
Rep. Vicki Cocchiarella (D)  
Rep. David Ewer (D)

**Members Excused:** None

**Members Absent:** None

**Staff Present:** Paul Verdon, Legislative Council  
Evy Hendrickson, Committee Secretary

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

##### **Committee Business Summary:**

Hearing: HB 628, HB 622  
Executive Action: HB 511, HB 455 (Postponed)

#### **HEARING ON HB 622**

##### **Opening Statement by Sponsor:**

REP. HOWARD TOOLE, House District 60, Missoula, presented HB 628 as a bill that addresses managed care and ratemaking. REP. TOOLE said he developed this bill with the help of George Wood. He said managed care should be delegated to the medical community and should be negotiated through a planning process that involves workers' comp insurers, claimants and care providers.

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

Mike Micone, representing the Montana Motor Carriers Association, said he particularly supported the managed care portion and the planning that went into this bill.

Pat Sweeney, representing the State Fund, reiterated Mr. Micone's

comments with regard to managed care. He recommended that the committee not act on this bill until SEN. HARP'S bill is heard in order that the two bills can be incorporated. He said in section 7 of the bill dealing with NCCI rates these rates would be punitive to a number of industries the State Fund insures. It didn't take into consideration the lower operating costs of the State Fund in comparison to NCCI rates and didn't allow for deviation. He suggested that the State Fund provide the committee with some statistical information with regard to what NCCI rates would do to State Fund policyholders and leave the decision with the committee.

CHAIRMAN HIBBARD asked Mr. Sweeney to provide that information to the committee.

Jan VanRiper said she was generally in support of the bill as it provided a balanced approach to medical cost containment. She noted two concerns on page 3, lines 14 through 19: it would be left to the discretion of the insurer whether or not to arrive at a plan to provide any more medical treatment beyond that. Ms. VanRiper said, if that was the case, she didn't know the rationale behind discontinuing treatment at maximum medical. The other provision she was concerned with was the freedom of choice provision. It gives the claimant the right to choose a treating physician but, on the other hand, it took that right away by allowing the insurance company to come in under a number of circumstances and disallow that treating physician.

Ms. VanRiper suggested if the claimant must have insurance company approval before he or she does anything, there should also be a requirement that the claimant be notified by the insurance company immediately because there may be medical bills to be paid if the insurance company will not pay.

Don Judge of the Montana State AFL-CIO echoed some of the same concerns of Ms. VanRiper.

Mr. Judge said their stance on the choice of physicians was that there should be a procedure for either party to seek a change in the treating physician. Such change should be limited to those incidents where there is legitimate concern over quality and appropriateness of care. Unlimited change of physicians, frequently described as doctor shopping, should not be permitted. This is not intended to restrict referral to suitable specialists or other necessary providers of medical care.

Mr. Judge said managed care organizations have a place in workers' compensation and should be encouraged under the law. There should be a flexible process which provides an opportunity for employees to be involved in the selection of the managed care organization. If there is such a process, the employee's choice of a physician should be limited to physicians who are members of the managed care organization. Appropriate certification and monitoring of such managed care organizations should be the

responsibility of the state agency. Mr. Judge said those items should be incorporated into this legislation, and they weren't convinced that they are.

Bill Conner, representing the Coalition for Workers' Compensation System Improvement, echoed the statements made by the other proponents although they did not agree with some parts of the proposed bill. He said if a person has greater than 10% impairment, this limits a number of the cases where an individual is on time loss but does not have a 10% impairment rating. He said 30 days is not time enough to determine what the impairment will be. If, after 30 days, chances are when the claim is closed the doctor will be hesitant to give them less than a 10% impairment rating.

Mr. Conner said the majority of the claims that are time loss have no impairment, or they have less than 10% impairment, so most of them wouldn't be covered under this managed care.

Bonnie Tippy, representing the Montana Chiropractic Association, said the whole issue of preferred providers in managed care is extremely difficult. This bill gets at the root of the problem of the multiple injured severe cases and those people should go to managed care. It is a compromise between what the insurers want and what the providers want.

Mona Jamison, representing the Montana Chapter of the American Physical Therapy Association, strongly supported this bill. She said they would like to work with the committee on the 10% impairment level. That may be very difficult for physicians to determine and she hoped the executive committee would find other ways of addressing this. Ms. Jamison also asked that the committee consider allowing the patient to see their provider for the first 30 days and then enter the managed care system.

George Wood, representing the Montana Self Insurers Association, said they supported the bill in concept. The managed care provisions of this bill are more in line with what is considered managed care nationally. Mr. Wood said the mandatory aspects make it difficult; the other bill discussed confuses managed care providers by putting managed care in the provider system.

Jacqueline Lenmark, representing the American Insurance Association, reiterated testimony in support of the bill.

Opponents' Testimony: None

Questions From Committee Members and Responses:

REP. DRISCOLL asked REP. TOOLE if he had any objections to an amendment that would prohibit the medical caseworker, such as physicians, from referring within their own clinic if they had a

monetary interest in that clinic. REP. TOOLE responded that he would have no objection.

REP. DRISCOLL said there was nothing in the bill that said they couldn't contract out. REP. TOOLE said they are not forbidden from doing so, but he did not think they would be doing that. He wanted someone concerned that the medical community was going to run the bill up too high.

REP. BENEDICT asked Bill Conner if his group had a position on adopting NCCI rates with no deviation until such time that the actuary says there is enough money to start giving dividends back. Mr. Conner said they have not discussed that particular item in this bill. Because they are a coalition, he would have to talk to the members before there would be any decisions made.

REP. COCCHIARELLA asked REP. TOOLE to refer to Section 3 where it states "to develop and maintain an authorized medical procedure manual." She asked what the incentive would be for any of these people earning large salaries to serve as volunteers on this committee. Would there be any pay and why would they want to do this? To REP. COCCHIARELLA this appeared as a time-consuming project. REP. TOOLE said that, from a practical standpoint, there probably has got to be a commitment to it.

REP. COCCHIARELLA asked Pat Sweeney the same question. He said the manuals that REP. TOOLE speaks of are not manuals per se; they are not something that has been put together with physicians. He said the State Fund has fee schedules. Mr. Sweeney said they do consult with their staff physicians as to what treatment plan should take place.

REP. COCCHIARELLA asked Mr. Sweeney if this would be a full-time job and would it be a paid staff person that would coordinate and make this work. Mr. Sweeney said for the first year, but he didn't think it would be a paid position.

REP. BENEDICT asked REP. TOOLE if the bill called for budget protocol and who would police it and determine compliance. REP. TOOLE said the bill contemplates that the plan will be developed by the insurer and it would be in the insurer's interest to have it in place to control costs. REP. TOOLE said as the bill was written, it was a document between the insurer and the claimant and anyone helping the claimant.

CHAIRMAN HIBBARD asked REP. TOOLE if any other states had a managed care system like that being contemplated in this bill. REP. TOOLE said he did not know whether states had implemented this type of program, but there were efforts taking place to develop this kind of protocol for medical care and development of a treatment plan per claimant.

CHAIRMAN HIBBARD noted that section 3 states that committee members must be selected by the Governor. He asked REP. TOOLE if

another selection process was considered. REP. TOOLE said he didn't have any views on that but believed the expertise and the ability to get a quality product was the most important consideration.

Closing by Sponsor:

REP. TOOLE said there were some concepts that might need to be reworked in the bill, but the essence was something he hoped would be part of the final product. Managed care is something that could be done through interaction between the insured, the claimant and the claimant's treating physician. It has to be a system that implements a plan and a budget. A modest claim should not have a full budget or a full plan created. A serious injury would have to be set into a plan to fast track the injured person back to work and to finish up the claim. Managed care could be imposed on existing cases as well as those occurring in the future. It would not be unconstitutional to set simple budgetary systems and managed care plans for cases where the injury had already occurred. He attempted, with this bill, to find a way to plan for the amount of dollars that the individual claim is going to require without infringing on the claimant's ability to receive the full benefits to which he is entitled. This bill has that potential. This proposal would establish a benchmark for ratemaking.

HEARING ON HB 622

Opening Statement by Sponsor:

REP. DAVID EWER, House District 45, Helena, presented the bill on behalf of the Coalition. He reviewed the bill section by section and said he would have an amendment. He believed there should be more board members. He didn't know of any businesses of \$100 million plus a year with only five board members; he would be proposing seven board members. He also said he was going to include in the amendment a composition of board members to meet monthly and be paid \$12,000 a year plus per diem.

Proponents' Testimony:

Don Allen, Coalition of Workers' Comp System Improvement, expressed the Coalition's appreciation to REP. EWER for introducing this bill. He said the Coalition had four committees working over a period of three months: on law, safety, administration and medical. This bill attempts to address issues not included in other bills presented.

Bill Conner with the Coalition said the bill was a compromise of some issues the Coalition saw as some problems with existing work

comp law. He highlighted some of the changes proposed in the and reviewed the bill section by section.

**Harlee Thompson, Manager of Intermountain Truss in Helena,** gave his testimony and urged a do pass. **EXHIBIT 1**

**Jim Murphy** representing the **State Fund,** said he was a proponent/opponent because there were a number of things to discuss; he referred to the temporary partial disability section.

**CHAIRMAN HIBBARD** asked **Mr. Murphy** to submit his changes in amendment form. **Mr. Murphy** said he would like to work with everyone on this bill. **CHAIRMAN HIBBARD** also asked **Mr. Conner** to submit his changes in writing as soon as possible.

**Bill Crivello, Legislative Representative for the Rehabilitation Association in Montana, and Branch Manager of Crawford Health and Rehabilitation,** referred to page 11, line 16. **EXHIBIT 2** He said the reality was there are nurses in Montana working on workers' comp cases on behalf of insurers. His firm and several others have nurses trying to work with insurers to move cases. **Mr. Crivello** said he has worked with the task force on recommendations and with the coalition in formulating language such as that on page 11. The intent of this language is to allow medical providers, nurses particularly, who are doing much the same thing as vocational providers in the rehabilitation return-to-work process, to meet with the injured worker and/or physical therapists or physicians to move the case forward.

He asked that the committee pay particular attention as they work on modifying this bill and the managed care bill to protect the right of the insurers to designate somebody other than a vocational person to help move the process forward.

**Oliver Goe, representing MMIA, MSGIA & MACO,** addressed the concept of temporary, partial disability as defined in page 6 of the bill, starting on line 25 and also covered in section 14 of the bill. He said part of the success of the programs of self insurers has been the early return-to-work programs even if they are modified positions. They work with the doctors and rehabilitation programs. To make these programs a success, benefits of some kind must be paid. If the person can only work 20 hours a week, they make up the difference.

**Mr. Goe** referred to page 10 on the use of alcohol and had a problem with the term "medically."

**George Wood, representing the Self Insurers Association,** said there were so many amendments that this should be a gray bill because that would be the only way to make sense out of all the amendments. He echoed what **Mr. Goe** said about the temporary, partial. He said the self insurers have been using that for years and have been uncomfortable with the fact that they were paying benefits not required in the law. **Mr. Wood** said the

incentive would be the best therapy for the employee to have an early return to work.

Opponents' Testimony:

Don Judge, representing the Montana State AFL-CIO, said he had some concerns with the lack of incentives by changing the statutes. He referred to page 10 line 2 through 5 and didn't think that should be deleted in HB 622.

Norm Grosfield, Attorney from Helena, said he was involved in workers' compensation litigation. He said there were some good provisions in the bill. He submitted amendments. EXHIBITS 3 and 4

Mike Micone, representing the Montana Motor Carriers' Association, stated there are some good ideas in the bill but the bill is too broad and too encompassing. Mr. Micone believed that the task was too great to deal with in this particular piece of legislation.

Questions From Committee Members and Responses:

REP. DRISCOLL had several questions concerning the occupational disease portion of the bill and particularly in the instance of medical benefits being prorated with industrial disease in Section 10.

REP. TOOLE said the bill was entirely different when it was drafted and there would be an amendment proposed. There needs to be a determination of liability in the case of occupational disease, particularly when the worker has been with the same employer but there have been different insurers. There has always been a problem of determining the date of the disease. The date of the occupational disease is the date of the diagnosis. In that way, an assignment of liability can be made.

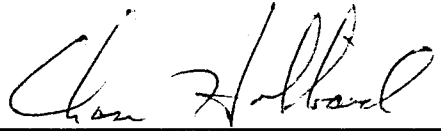
Closing by Sponsor:

REP. BENEDICT closed for REP. EWER and said he was asked to convey to the committee and to the people attending that he was aware of the fact that technical changes and minor clerical changes need to be made to the bill. He believed the bill was a very necessary bill and the problems need to be worked out.

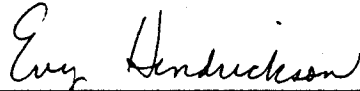
CHAIRMAN HIBBARD said the executive session would be postponed on HB 511 and HB 455.

ADJOURNMENT

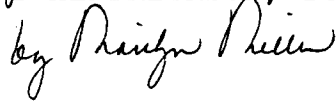
Adjournment: 6:05 p.m.



REP. CHASE HIBBARD, Chairman



EVY HENDRICKSON, Secretary



CH/eh



HOUSE OF REPRESENTATIVES  
53RD LEGISLATURE - 1993  
SELECT COMMITTEE ON WORKERS COMPENSATION

ROLL CALL

DATE 2-17-93

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HR:1993

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# House Select Committee on Workers' Compensation

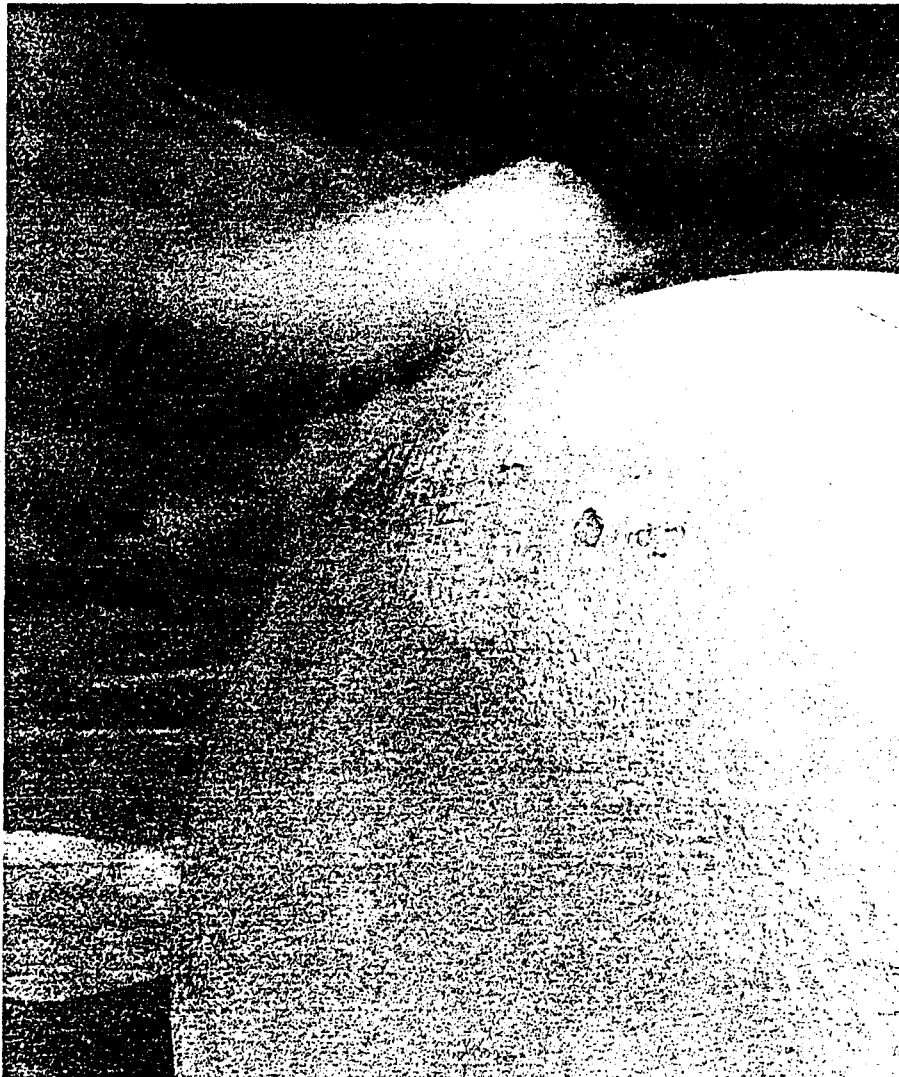
EXHIBIT \_\_\_\_\_

DATE 2-17-93

XI \_\_\_\_\_

C E N T R E R E I N S U R A N C E

The original is stored at the Historical Society at 225 North Roberts Street,  
Helena, MT 59620-1201. The phone number is 444-2694.



I O O I

A N N U A L

P E P O P T

Homebuilders Assoc. of Billings  
252-7533

N. Montana Home Builders Assoc.  
5-8181

Great Falls Homebuilders Assoc.  
452-HOME



Flathead Home Builders Assoc.  
752-2522

Missoula Chapter of NAHB  
273-0314

Helena Chapter of NAHB  
449-7275

EXHIBIT 1  
DATE 2-17-93  
HB 622

Nancy Lien Griffin, Executive Director  
Suite 4D Power Block Building • Helena, Montana 59601 • (406) 442-4479

**HB 622**

**Temporary Partial Disability, Apportionment of Preexisting Conditions**

**Recommend:**  
**Do Pass**

Mr. Chairman, Ladies & Gentlemen of the Committee:

I am Harlee Thompson, manager of Intermountain Truss in Helena, and a delegate from the Montana Building Industry Association to the Coalition for Work Comp System Improvement (CWCSI).

This bill represents several important changes which have been considered by the Coalition for Work Comp System Improvement (CWCSI). After extensive review of all of the diverse Work Comp proposals before this Legislature, the Coalition has offered this legislation as a vehicle for introduction of issues we have considered in our interim meetings which were not considered by other groups concerned about Work Comp reform.

The most important aspect of HB 622 is the identification of preexisting injuries. These injuries have proved to be a major drain on the Work Comp system. An injury not solely related to the particular claim is often solely a Work Comp liability. This bill, HB 622, authorizes the apportionment of preexisting conditions, which does not serve to limit benefits, but assigns liability to the appropriate rate payers.

Another critical component of this legislation is the creation of the definition for temporary partial disability. The coalition has discussed at length the need for this addition to Work Comp injury definitions. The categorization of temporary partial disability encourages employers, employees and insurers to find alternative work placements within allowable medical limitations. This alternative work placement reduces insurer benefits, but allows the employee earned income, ~~which in total is in excess of what benefits would be~~. This encourages early return to work, yet limits system liabilities. Authorization of this alternative work placement is dependent upon acceptance by the employee and releases doctors from liability if acceptable medical practices have been followed.

Some other important issues corrected by this legislation are as follows:

1. HB 622 gives the insurer direct access to medical records.
2. Allows suspension of benefits for unreasonable failure to keep medical appointments.
3. Allows workers and insurers to negotiate for termination of benefits.
4. Ask that insurers appraise workers and employers of medical progress & potential benefits.
5. Assesses fines for uninsured employers in the amount of 10 times what their unpaid premium would have been.

These are critical changes to getting more employers on the system, encouraging early return to work and limiting Work Comp system expenses, yet retaining the level of benefits and injury compensation for injured workers.

**We urge a do pass for HB 622**

EXHIBIT 2  
DATE 2-17-93  
HB 622

REQUEST FOR AMENDMENT--House Bill 622

PAGE 11. Line 18,

Following: "designated"  
INSERT: "rehabilitation"

Line should read, "...insurer's designated rehabilitation agent direct access to medical service...."

RATIONALE:

This language was formulated in direct response to the difficulties encountered by rehabilitation nurses who are asked by insurers to assist them by providing medical case management and medical services coordination for selected worrkers comp cases. At the present time injured workers must comply with vocational rehabilitation providers, but there is no provision for registered nurses who are assisting with case management for the insurer. Those firms providing this service have been hindered by attornies who refuse to allow the case manager access to their client to assess their medical status/condition. This language assists/supports those insurers using nurse case managers for managed care on difficult cases.

NOTE:

There is similar language in Senate Bill 347; however, it pertains to managed care and compliance to medical treatment only. By also keeping this language in the statutes, AND by including the additional descripto you will ensure injured worker cooperation with medical case managers regardless of whether they are a part of a managed care program under the new managed care legislation/definitions, or they are a part of an existing rehabilitation/managed care effort on a workers comp. case.

*Norma Gansfield*

EXHIBIT 3  
DATE 2-17-92  
HB 622

Amendments to House Bill No. 622

1. Page 10, line 13.  
Strike: lines 13 through 25
2. Page 11, line 1.  
Strike: lines 1 through 3
3. Page 23, line 16, and pages 24 and 25.  
Strike: New Section 13 in its entirety

EXHIBIT 4

DATE 2-17-93

Amendments to House Bill No. 622 HB 622

1. Page 20, line 9.  
Strike: lines 9 through 15

HOUSE OF REPRESENTATIVES  
VISITOR REGISTER

Select Union Corp

COMMITTEE

BILL NO. 622

DATE 2-17

SPONSOR(S)

REP. D. EWGR

PLEASE PRINT

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
<u>Roxanne Versora-Alba</u>	<u>Self</u>		
<u>Rich Hill</u>	<u>Gov. Office</u>		
<u>Bill Crivello</u>	<u>Lehigh Assn of MT</u>	x	
<u>John Murphy</u>	<u>State Guard</u>		x x
<u>Don Allen</u>	<u>CWCSI</u>	x	
<u>Charles R. Brooks</u>	<u>MIT Nat'l Assoc</u>	x	
<u>Harlee Thompson</u>	<u>MBDA &amp; CWCSI</u>	x	
<u>Jim Twilley</u>	<u>MT Chambers</u>	w/AMC	
<u>JAMES D. Putman</u>	<u>Coalition For Work Camp</u>	x	
<u>Bill Lerner</u>	<u>CWCSI</u>	x	
<u>Kent Kleinkopf</u>	<u>self</u>	x	
<u>Jan Van Riper</u>	<u>self</u>		x
<u>Jacqueline Denmark</u>	<u>Am. Inv. Assoc.</u>		x
<u>Kelly Johnson</u>	<u>NFIB</u>	✓	

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HOUSE OF REPRESENTATIVES  
VISITOR REGISTER

Select Workers Comp  
DATE 2-17-93

COMMITTEE

BILL NO.

672

SPONSOR(S)

REP. D. EWGR

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PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
George Wood	MT Self Insurance Assoc	with Amendment	
Alan Green	MMFA - MSCI + MACO	✓	
Russell B Hill	MTLA		—
Don Judge	MT STATE AFL-CIO	Amend	Amend
Mark Egan	MT Conf. of Elec. Wks.	Amend	Amend

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.