

## **MINUTES**

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

#### **COMMITTEE ON HUMAN SERVICES & AGING**

**Call to Order:** By **CHAIRMAN BILL BOHARSKI**, on March 26, 1993, at 3:00 p.m.

#### **ROLL CALL**

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

Rep. Bill Boharski, Chairman (R)  
Rep. Bruce Simon, Vice Chairman (R)  
Rep. Stella Jean Hansen, Vice Chair (D)  
Rep. Ellen Bergman (R)  
Rep. John Bohlinger (R)  
Rep. Tim Dowell (D)  
Rep. Duane Grimes (R)  
Rep. Brad Molnar (R)  
Rep. Tom Nelson (R)  
Rep. Sheila Rice (D)  
Rep. Angela Russell (D)  
Rep. Tim Sayles (R)  
Rep. Liz Smith (R)  
Rep. Carolyn Squires (D)  
Rep. Bill Strizich (D)

**Members Excused:** Rep. Barnhart

**Members Absent:** None

**Staff Present:** David Niss, Legislative Council  
Alyce Rice, Committee Secretary

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

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

Hearing: None  
Executive Action: SB 285

#### **EXECUTIVE ACTION ON SB 285**

**Discussion:** **CHAIRMAN BOHARSKI** presented a table of contents to SB 285 for quick reference. **EXHIBIT 1. REP. BOHARSKI** said all amendments to SB 285 haven't been drafted yet. The plan is to work on the amendments that are available at this time, and finish on Monday when the rest of the amendments will be completed.

Motion: REP. RICE MOVED SB 285 BE CONCURRED IN.

Discussion: CHAIRMAN BOHARSKI said that about a week ago he had met with staff of the insurance commissioner's office, the staff attorney, and people from the industry to discuss technicalities in the second half of the bill. He presented amendments that resulted from that meeting.

Motion: CHAIRMAN BOHARSKI moved to adopt amendments 1 through 16, of amendment 6 to SB 285. EXHIBIT 2.

Discussion: David Niss, Legal Counsel, explained the amendments.

Vote: Voice vote was taken. Motion carried unanimously.

Discussion: CHAIRMAN BOHARSKI presented and explained amendment 5 to SB 285.

Motion/Vote: CHAIRMAN BOHARSKI moved to adopt amendments 1 through 9 of amendment 5 to SB 285. EXHIBIT 3. Voice vote was taken. Motion carried unanimously.

Discussion: REP. NELSON presented and explained amendment 8 to SB 285 which strikes the prohibition against small group carriers using case characteristics other than age without the approval of the Commissioner of Insurance.

Motion/Vote: REP. NELSON moved to adopt amendment 8 to SB 285. EXHIBIT 4. Voice vote was taken. Motion carried 12 to 3. REPS. RUSSELL, DOWELL, and SQUIRES voted no.

Discussion: CHAIRMAN BOHARSKI presented and explained amendment 7 to SB 285.

REP. RICE spoke against the amendments because she said there was an agreement to leave section 33 as is.

Motion/Vote: CHAIRMAN BOHARSKI moved to adopt amendments 7 to SB 285. EXHIBIT 5. Voice vote was taken. Motion carried 10 to 5.

Discussion: REP. SIMON presented and explained amendment 13 to SB 285.

Motion/Vote: REP. SIMON moved to adopt amendment 13 to SB 285. EXHIBIT 6. Voice vote was taken. Motion carried unanimously.

Discussion: CHAIRMAN BOHARSKI presented and explained amendment 9 to SB 285.

Motion/Vote: CHAIRMAN BOHARSKI moved to adopt amendment 9 to SB 285. EXHIBIT 7. Voice vote was taken. Motion carried 9 to 6.

Motion/Vote: CHAIRMAN BOHARSKI moved to adopt a conceptual

amendment to SB 285 that would change the language regarding who pays the administrative costs of the reinsurance committee, back to what was originally in that section of the bill. Voice vote was taken. Motion carried 15 to 0.

Motion/Vote: REP. SIMON moved to adopt amendment 10 to SB 285 which adds hospitals to the list of providers exempt from certificate of need, which the authority is to study to determine if that exemption should be continued. EXHIBIT 8. Voice vote was taken. Motion carried unanimously.

Motion/Vote: CHAIRMAN BOHARSKI moved to adopt amendment 11 to SB 285, which adds "Information in the data base not required by law to be kept confidential must be made available by the authority upon request of any person", to page 33, line 3. EXHIBIT 9. Voice vote was taken. Motion carried unanimously.

Motion/Vote: REP. SIMON moved to adopt amendment 12 to SB 285. EXHIBIT 10.

Discussion: REP. SIMON said the bill establishes a target for cost containment so that by 1999, the annual average percentage increase in statewide health care costs does not exceed the average annual percentage increase in the gross domestic product, as determined by the U. S. Department of Commerce, for the five preceding years. REP. SIMON said that is an unrealistic target, and he didn't see the relationship between gross domestic product and health care provisions. The amendment would strike "component", and add "including annual cost containment targets".

Motion/Vote: CHAIRMAN BOHARSKI made a substitute motion to adopt amendments 1, 3 and 4, of amendment 12 to SB 285. Voice vote was taken. Motion carried 7 to 6.

Motion: REP. SIMON withdrew the motion to adopt amendment 2 of amendment 12 to SB 285.

Discussion: REP. RICE presented and explained amendment 1 to SB 285. REP. RICE referred to the amendments as "anti-trust" amendments. The amendments would allow hospitals to enter into cooperative agreements.

Motion/Vote: REP. RICE moved to adopt amendment 1 to SB 285. EXHIBIT 11. Voice vote taken. Motion carried unanimously.

Two draft amendments were discussed but not voted on. EXHIBITS 12 and 13.

CHAIRMAN BOHARSKI said executive action on SB 285 would be continued on Monday at 3:00 p.m.

ADJOURNMENT

Adjournment: 5:55 p.m.

*Wm E Boharski*

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WILLIAM BOHARSKI, Chairman

*Alyce Rice*

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ALYCE RICE, Secretary

*by Patricia Miller*

WB/ar

# HOUSE OF REPRESENTATIVES

HUMAN SERVICES AND AGING

COMMITTEE

ROLL CALL

DATE

3-26-93

NAME	PRESENT	ABSENT	EXCUSED
REP. BILL BOHARSKI, CHAIRMAN	✓		
REP. BRUCE SIMON, VICE CHAIRMAN	✓		
REP. STELLA JEAN HANSEN, V. CHAIR	✓		
REP. BEVERLY BARNHART			✓
REP. ELLEN BERGMAN	✓		
REP. JOHN BOHLINGER	✓		
REP. TIM DOWELL	✓		
REP. DUANE GRIMES	✓		
REP. BRAD MOLNAR	✓		
REP. TOM NELSON	✓		
REP. SHEILA RICE	✓		
REP. ANGELA RUSSELL	✓		
REP. TIM SAYLES	✓		
REP. LIZ SMITH	✓		
REP. CAROLYN SQUIRES	✓		
REP. BILL STRIZICH	✓		

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Amendments to Senate Bill No. 285  
Third Reading Copy

For the Committee on Human Services and Aging

Prepared by David S. Niss  
March 26, 1993

1. Page 20, line 22.  
Strike: "By January 1, 1994, the"  
Insert: "The"
2. Page 44, line 2.  
Strike: "may"  
Insert: "shall"
3. Page 45, line 13.  
Strike: ". In"  
Insert: "; in"
4. Page 45, line 21.  
Strike: "."  
Insert: ";"
5. Page 46, lines 12 through 15.  
Strike: subsection (e) in its entirety  
  
Renumber: subsequent subsections
6. Page 47, line 6.  
Strike: ". In"  
Insert: "; in"
7. Page 47, line 14.  
Strike: "."  
Insert: "; and"
8. Page 48, line 10.  
Strike: "may"  
Insert: "shall"
9. Page 61, line 7.  
Strike: "must have"  
Insert: "has"

10. Page 61, line 12.

Strike: "must have the specific authority to"

Insert: "may"

11. Page 61, line 21.

Strike: "assessments"

Insert: "premiums"

12. Page 62, line 5.

Strike: "rules,"

Following: "conditions"

Strike: ", "

13. Page 64, line 8.

Strike: "business"

Insert: "health benefit plan"

14. Page 69, line 12.

Strike: "practitioner"

Insert: "practitioners"

15. Page 73, line 20.

Strike: "36"

Insert: "28, 35, and 36"

16. Page 73.

Following: line 21

Insert: "(4) [Sections 30 through 34] are effective July 1,  
1993."



Amendments to Senate Bill No. 285  
Third Reading Copy

For the Committee on Human services and Aging

Prepared by David S. Niss  
March 26, 1993

1. Page 36.

Following: line 7

Insert: "(3) "Assessable carrier" means all individual carriers of disability insurance and all carriers of group disability insurance, the state group benefits plan provided for in Title 2, chapter 18, part 8, the Montana university system health plan, and any self-funded disability insurance plan provided by a political subdivision of the state."

Renumber: subsequent subsections

2. Page 59, line 18.

Following: "section]"

Insert: "and on or before March 1 of each year after that date"

Strike: "small employer carrier"

Insert: "assessable carrier"

3. Page 59, line 20.

Strike: "to small employers"

4. Page 61, line 2.

Strike: "reinsuring"

Insert: "assessable"

5. Page 62, line 13.

Strike: "and"

Insert: "(h) to the extent permitted by federal law and in accordance with subsection (11)(c), make annual fiscal yearend assessments against assessable carriers and make interim assessments that are reasonable and necessary for the expenses of organizing and operating the program; and"

Renumber: subsequent subsection

6. Page 66, lines 15 through 17.

Following: "(b)" on line 15

Strike: the remainder of line 15 through "." on line 17

Insert: "To the extent permitted by federal law, each assessable carrier shall share in any net loss of the program for the year in an amount equal to the ratio of the total premiums

earned in the previous calendar year from health benefit plans delivered or issued for delivery by each assessable carrier divided by the total premiums earned in the previous calendar year from health benefit plans delivered or issued for delivery by all assessable carriers in the state.

(c) The board shall make an annual determination in accordance with this section of each assessable carrier's liability for its share of the net loss of the program and, except as otherwise provided by this section, make an annual fiscal yearend assessment against each assessable carrier to the extent of that liability. If approved by the commissioner, the board may also make interim assessments against assessable carriers that are reasonable and necessary for the expenses of organizing the program and operating the program until the next fiscal yearend assessment. Any interim assessment must be credited against the amount of any fiscal yearend assessment due or to be due from an assessable carrier. Payment of a fiscal yearend or interim assessment is due within 30 days of receipt by the assessable carrier of written notice of the assessment. An assessable carrier that ceases doing business within the state is liable for assessments until the end of the calendar year in which the assessable carrier ceased doing business. The board may determine not to assess an assessable carrier if the assessable carrier's liability determined in accordance with this section does not exceed \$10."

7. Page 67.

Following: line 11

Insert: "(15) On or before March 1 of each year, the commissioner shall evaluate the operation of the program and report to the governor and the legislature in writing the results of the evaluation. The report must include an estimate of future costs of the program, assessments necessary to pay those costs, the appropriateness of premiums charged by the program, the level of insurance retention under the program, the cost of coverage of small employers, and any recommendations for change to the plan of operation."

8. Page 73.

Following: line 15

Insert: "NEW SECTION. Section 38. {standard} 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 or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Renumber: subsequent section

9. Page 73, line 17.

Following: "37,"  
Insert: "and 38"

EXHIBIT 3  
DATE 3/26/93  
SP 285

Amendments to Senate Bill No. 285  
Third Reading Copy

Requested by Rep. Simon  
For the Committee on Human Services and Aging

Prepared by David S. Niss  
March 26, 1993

1. Page 48, lines 7 through 9.  
Strike: subsection (j) in its entirety

Renumber: subsequent subsection.

NOTE: This amendment strikes the prohibition against small group carriers using case characteristics other than age without the approval of the Commissioner of Insurance. Proposed by the Blues.

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3-26-93  
285

Amendments to Senate Bill No. 285  
Third Reading Copy

For the Committee on Human Services and Aging

Prepared by David S. Niss  
March 26, 1993

1. Page 69, line 12.

Strike: "does"

Insert: "and a law that requires the coverage of a health care service or benefit do"

2. Page 69, line 15.

Following: "through 26]"

Insert: "but do apply to a standard health benefit plan delivered or issued for delivery to small employers in this state pursuant to [sections 22 through 36]"

Amendments to Senate Bill No. 285  
Third Reading Copy

Requested by Rep. Simon  
For the Committee on Human services and Aging

Prepared by David S. Niss  
March 26, 1993

1. Page 42, line 15.

Following: "taxation"

Insert: "or that are members of an association that has been in  
existence for 1 year prior to [the effective date of  
sections 22 through 36] and that provides a health benefit  
plan to employees of its members as a group"

Amendments to Senate Bill No. 285  
Third Reading Copy

For the Committee on Human services and Aging

Prepared by David S. Niss  
March 26, 1993

1. Page 67.

Strike: lines 15 and 16

Insert: "the following members:

- (a) one health care provider;
- (b) one representative of the health insurance industry;
- (c) one employee of a small employer;
- (d) one member of a labor union; and
- (e) one representative of the general public who may not represent the persons or groups listed in subsections (1)(a) through (1)(d)."

Amendments to Senate Bill No. 285  
Third Reading Copy

Requested by Rep. Simon  
For the Committee on Human Services and Aging

Prepared by David S. Niss  
March 26, 1993

1. Page 26, line 12.  
Following: "process for"  
Insert: "hospitals and for"

NOTE: This amendment adds hospitals to the list of providers exempt from CON which the authority is to study to determine if that exemption should be continued



EXHIBIT - 7  
DATE 3-26-93  
PAGE 285

Amendments to Senate Bill No. 285  
Third Reading Copy

For the Committee on Human Services and Aging

Prepared by David S. Niss  
March 26, 1993

1. Page 33, line 3.

Following: "."

Insert: "Information in the data base not required by law to be  
kept confidential must be made available by the authority  
upon request of any person."

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Amendments to Senate Bill No. 285  
Third Reading Copy

Requested by Rep. Simon  
For the Committee on Human Services and Aging

Prepared by David S. Niss  
March 26, 1993

1. Page 15, line 1.  
Following: "component"  
Insert: ", including annual cost containment targets"
2. Page 15.  
Strike: lines 2 through 8
3. Page 15, line 11.  
Strike: "target"  
Insert: "targets"
4. Page 16, line 6.  
Strike: "target"  
Insert: "targets"

Amendments to Senate Bill No. 285  
Third Reading Copy

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

Prepared by David S. Niss  
March 23, 1993

1. Title.

Page 2, line 9

Following: "ACT;"

Insert: "ALLOWING HEALTH CARE FACILITIES TO ENTER INTO  
COOPERATIVE AGREEMENTS WITH THE APPROVAL AND SUPERVISION OF  
THE AUTHORITY;"

2. Page 6.

Following: line 5

Insert: "(6) A statement of intent is also required for this  
bill because [section 44] requires the authority to adopt  
rules implementing [sections 37 through 44]. The rules  
adopted by the authority must specify the form and content  
of applications for certificates of public advantage;  
details of the reconsideration, revocation, hearing, and  
appeal processes; and such other matters as the authority  
determines necessary. The rules adopted by the authority  
must also provide the authority with direct supervision and  
control over the implementation of cooperative agreements  
between facilities."

3. Page 7, line 14.

Following: "20"

Insert: "and 37 through 44"

4. Page 7.

Following: line 18

Insert: "(3) \"Certificate of public advantage\" or \"certificate\"  
means a written certificate issued by the authority as  
evidence of the authority's intention that the  
implementation of a cooperative agreement, when actively  
supervised by the authority, receive state action immunity  
from prosecution as a violation of state or federal  
antitrust laws.

(4) \"Cooperative agreement\" or \"agreement\" means a written  
agreement between two or more health care facilities for the  
sharing, allocation, or referral of patients; personnel;  
instructional programs; emergency medical services; support  
services and facilities; medical, diagnostic, or laboratory

facilities or procedures; or other services customarily offered by health care facilities."

Renumber: subsequent subsections

5. Page 10.

Following: line 15

Insert: "(8) The attorney general is an ex officio, nonvoting member of the authority only for the purpose of the authority's approval or denial of certificates of public advantage, supervision of cooperative agreements, and revocation of certificates of public advantage pursuant to [sections 37 through 44]."

Renumber: subsequent subsection

6. Page 22, line 17.

Strike: "shall"

Insert: "may"

Following: "legislation"

Insert: "in addition to [sections 37 through 44]"

7. Page 73.

Following: line 8

Insert: "NEW SECTION. Section 37. Finding and purpose. The legislature finds that the goals of controlling health care costs and improving the quality of and access to health care will be significantly enhanced in some cases by cooperative agreements among health care facilities. The purpose of [sections 37 through 44] is to provide the state, through the authority, with direct supervision and control over the implementation of cooperative agreements among health care facilities for which certificates of public advantage are granted. It is the intent of the legislature that supervision and control over the implementation of these agreements substitute state regulation of facilities for competition between facilities and that this regulation have the effect of granting the parties to the agreements state action immunity for actions that might otherwise be considered to be in violation of state or federal, or both, antitrust laws.

NEW SECTION. Section 38. Cooperative agreements allowed. A health care facility may enter into a cooperative agreement with one or more health care facilities.

NEW SECTION. Section 39. Certificate of public advantage - standards for certification -- time for action by authority.  
(1) Parties to a cooperative agreement may apply to the authority for a certificate of public advantage. The application for a certificate must include a copy of the proposed or executed agreement, a description of the scope of the cooperation

contemplated by the agreement, and the amount, nature, source, and recipient of any consideration passing to any person under the terms of the agreement.

(2) The authority may not issue a certificate unless the authority finds that the agreement is likely to result in lower health care costs or in greater access to or quality of health care than would occur without the agreement. If the authority denies an application for a certificate for an executed agreement, the agreement is void upon the decision of the authority not to issue the certificate. Parties to a void agreement may not implement or carry out the agreement.

(3) The authority shall deny the application for a certificate or issue a certificate within 90 days of receipt of a completed application. When considered necessary or appropriate by the authority, it may hold a public hearing on the application.

NEW SECTION. Section 40. Reconsideration by authority.

(1) If the authority denies an application and refuses to issue a certificate, a party to the agreement may request that the authority reconsider its decision. The authority shall reconsider its decision if the party applying for reconsideration submits the request to the authority in writing within 30 calendar days of the authority's decision to deny the initial application.

(2) The authority shall hold a public hearing on the application for reconsideration. The hearing must be held within 30 days of receipt of the request for reconsideration unless the party applying for reconsideration agrees to a hearing at a later time. The hearing must be held pursuant to 2-4-604.

(3) The authority shall make a decision to deny the application or to issue the certificate within 30 days of the conclusion of the hearing required by subsection (2). The decision of the authority must be part of written findings of fact and conclusions of law supporting the decision. The findings, conclusions, and decision must be served upon the applicant for reconsideration.

NEW SECTION. Section 41. Revocation of certificate by authority. (1) The authority may revoke a certificate previously granted by it if the authority determines that the cooperative agreement is not resulting in lower health care costs or greater access to or quality of health care than would occur in absence of the agreement.

(2) A certificate may not be revoked by the authority without giving notice and an opportunity for a hearing before the authority as follows:

(a) Written notice of the proposed revocation must be given to the parties to the agreement for which the certificate was issued at least 120 days before the effective date of the proposed revocation.

(b) A hearing must be provided prior to revocation if a party to the agreement submits a written request for a hearing to the authority within 30 calendar days after notice is mailed to the party under subsection (2)(a).

(c) Within 30 calendar days of receipt of the request for a hearing, the authority shall hold a public hearing to determine whether or not to revoke the certificate. The hearing must be held in accordance with 2-4-604.

(3) The authority shall make its final decision and serve the parties with written findings of fact and conclusions of law in support of its decision within 30 days after the conclusion of the hearing or, if no hearing is requested, within 30 days of the date of expiration of the time to request a hearing.

(4) If a certificate of public advantage is revoked by the authority, the agreement for which the certificate was issued is terminated.

NEW SECTION. Section 42. Appeal. A party to a cooperative agreement may appeal, in the manner provided in Title 2, chapter 4, part 7, a final decision by the authority to deny an application for a certificate or a decision by the authority to revoke a certificate. A revocation of a certificate pursuant to [section 41] does not become final until the time for appeal has expired. If a decision to revoke a certificate is appealed, the decision is stayed pending resolution of the appeal by the courts.

NEW SECTION. Section 43. Record of agreements to be kept. The authority shall keep a copy of cooperative agreements for which a certificate is in effect pursuant to [section 37 through 44]. A party to a cooperative agreement who terminates the agreement shall notify the authority in writing of the termination within 30 days after the termination.

NEW SECTION. Section 44. Rulemaking. The authority shall adopt rules to implement [sections 37 through 43]. The rules shall include rules:

- (1) specifying the form and content of applications for a certificate;
- (2) specifying necessary details for reconsideration of denial of certificates, revocations of certificates, hearings required or authorized by [sections 37 through 43], and appeals; and
- (3) to effect the active supervision by the authority of agreements between health care facilities. These rules may include reporting requirements for parties to an agreement for which a certificate is in effect."

Renumber: subsequent sections

8. Page 73, lines 10 and 12.  
Following: "20"  
Insert: "and 37 through 44"

9. Page 73, line 17.  
Strike: "37,"  
Insert: "44, and 45,"

MMA PROPOSED AMENDMENTS TO SENATE BILL 285

Page 13, Line 18  
Following: {Section 5}  
Insert: "should consider"  
Strike: "must contain"

Page 15, Line 1  
Following: "plans"  
Insert: "should consider"  
Strike: "must contain"

Page 15, Line 16  
Following: "authority"  
Insert: "may consider:"  
Strike: "shall include"

Page 16, Line 21  
Following: "plan"  
Insert: "should consider"  
Strike: "must contain:"

Page 20, Line 2  
Following: "plan"  
Insert: "should consider"  
Strike: "must contain"

Page 21, Line 11  
Following: "authority"  
Insert: "should consider"  
Strike: "must include"

March 19, 1993

Amendments to Senate Bill No. 285  
(Re: Universal Health Care Access)  
2nd Reading Copy

1. Page 7, line 10.  
Following: ";"  
Strike: "and"

Page 7, lines 12.  
Following: "care"  
Strike: "."  
Insert: "; and"

Page 7.  
Following: line 12  
Insert: "(g) facilitate universal access to current health  
sciences information."

2. Page 14.  
Following: line 3  
Insert: "(f) consideration of state government funding  
limitations;"  
Renumber: subsequent subsections

3. Page 15, line 16.  
Following: "shall"  
Insert: ", at a minimum,"

4. Page 17, line 19.  
Following: ";"  
Strike: "and"

Page 17, line 20.  
Following: ";"  
Insert: "and"

Page 17.  
Following: line 20  
Insert: "(x) health sciences library resources and services;"

5. Page 30, line 2.  
Following: "from"  
Strike: "local"  
Insert: "public and private"

-end-