

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON PUBLIC HEALTH, WELFARE, & SAFETY

Call to Order: By **CHAIRMAN STEVE BENEDICT**, on January 20, 1997,
at 1:00 PM, in Room 410.

ROLL CALL

Members Present:

Sen. Steve Benedict, Chairman (R)
Sen. James H. "Jim" Burnett, Vice Chairman (R)
Sen. Larry L. Baer (R)
Sen. Chris Christiaens (D)
Sen. Bob DePratu (R)
Sen. Dorothy Eck (D)
Sen. Sharon Estrada (R)
Sen. Eve Franklin (D)
Sen. Fred Thomas (R)

Members Excused: None

Members Absent: None

Staff Present: Susan Fox, Legislative Services Division
Karlolyn Simpson, Committee Secretary

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

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 156, 1/10/96
SB 162, 1/13/96
Executive Action: None

HEARING ON SB 156

Sponsor: SENATOR CHRIS CHRISTIAENS, SD 23, Cascade County

Proponents: Jerry Loendorf, Montana Medical Association
Susan Good, Project HEAL Montana and Montana
Association of Life Underwriters
John Flink, Montana Hospital Association
Claudia Clifford, State Auditors Office
Andrea Merrill, Mental Health Association of MT
Dick Patterson, Montana Senior Citizens Assn.
Mary McCue, Montana Dental Association
Gloria Hermanson, MT Psychological Assn, MT Academy
of Opthamologists
Al Smith, Montana Advocacy Program

Tom Cherry, representing self
Kip Smith, Montana Primary Care Association

Opponents: Tanya Ask, Blue Cross and Blue Shield
Tom Ebzery, Yellowstone Community Health Plan
Tom Hopgood, Health Insurance of America

Opening Statement by Sponsor:

SENATOR CHRIS CHRISTIAENS, SD 23, Cascade County, said SB 156 prohibits health carriers and managed care organizations from interfering with certain medical communications made by persons providing health care services in the managed care setting. This is also known as the "gag" bill.

He has heard horror stories that have occurred where these provisions were not in place and with services that could not be shared by the medical community with their patients. If a physician is treating a patient for a condition for which there are different kinds of treatment which may or may not work at various times during the course of the disease. Should a physician try one type of treatment and later find it is not giving the results expected, then, perhaps, under a managed care setting without this provision in law, they would be prohibited from recommending a different kind of treatment.

Montana is just beginning to get into the managed care field and we are going to see many companies come into the state, which gives patients the opportunity to choose the proper managed care organization for themselves. We need to have as many options as possible and not gag any provider signed up to provide treatment for those who need services.

Proponents' Testimony:

Jerry Loendorf, representing the Montana Medical Association, said they support SB 156. He said gag clauses vary from one contract to another. A clause will say a provider cannot fully discuss a patient's health care with the patient or matters relating to their health care. He suggested the committee ignore any of the disputes between providers and HMOs. This bill attempts to keep the communication lines open between providers and their patients. He suggested an amendment by adding a sub paragraph B at the end line 15, page 2, "any other communication by a health care provider to an enrollee concerning or relating to the health care of an enrollee."

Susan Good, representing HEAL (Health Education Alliance) Montana and Montana Association of Life Underwriters, said both of these groups support SB 156 because they believe communication between the doctors and patient is essential and should not be restricted as it has been in other states. The companies with HMO's, presently in Montana, do not employ gag clauses, but HMO's are going to proliferate in Montana very soon, and should make certain the citizens of Montana are protected. There is a House

bill, sponsored by **REP. BRUCE SIMON**, which is very similar to SB 156 and she suggested combining the two bills.

John Flink, Montana Hospital Association, said they support the concept embodied in SB 156. He said there are several managed care bills and suggested looking at all them as a whole. The definitions in **SENATOR CHRISTIAENS's** SB 156 are significantly different from those in SB 128 it would be useful to combine them into one bill.

Claudia Clifford, State Auditors Office, said they support SB 156. She said Montana is in a good position to address the concerns other states have had with managed care. There are going to be quite a few bills dealing with managed care. She said SB 128 contains some gag clause provisions and said they would be glad to coordinate those provisions with SB 156 or any other bill that addresses these concerns. She expressed concern about the codification with rest of insurance statutes.

Andrea Merrill, Executive Director, Mental Health Association of Montana, said they support SB 156 and all pieces of legislation concerning gag orders. (EXHIBIT 1)

Dick Patterson, President, Montana Senior Citizens Association, expressed support, on behalf of the association, for SB 156. He said he hopes all of the HMO-related bills in the Legislature can be combined for the best bill possible.

Mary McCue, representing the Montana Dental Association, said they support SB 156 because they feel dentists should be able to communicate freely with their patients about their dental care in order to provide the best service. She also is representing the Montana Clinical Mental Health Counselors Association and they also support SB 156 for the reasons Andrea Merrill expressed in previous testimony.

Gloria Hermanson, representing the Montana Psychological Association and the Montana Academy of Opthamologists, said both of these organizations, without this kind of legislation, would find themselves, in a managed care situation, in a difficult spot, due to their ethical obligation to their patients versus the contractual agreement with a health care provider in a managed care organization. They urge the passage of SB 156.

Al Smith, Executive Director, Montana Advocacy Program, said they represent persons in Montana with disabilities and many of their clients are members of managed care, HMO's or will soon be. They urge support of SB 156. He said there is a need for this legislation, and many HMO's will deny they even have gag clauses, but it is a pervasive problem throughout the country and this is a good means to address it at this point.

Tom Cherry, representing self, said any reputable managed care organization can live with this regulation, and with this element

out of the rhetoric, managed care can go further and prosper in Montana, because these things are a distraction to the larger issue. He urged a Do Pass.

Kip Smith, Associate Director, Montana Primary Care Association, said the members support SB 156 because it puts some teeth into the law before any problems develop in Montana, such as those that developed in other states. He urged the passage of SB 156.

Opponents' Testimony:

Tanya Ask, representing Blue Cross and Blue Shield, said they do not support gag clauses in managed care contracts. Blue Cross and Blue Shield has been in the managed care business in Montana for ten years and has never had a gag clause in their contracts with personal physicians who see patients on behalf of HMO Montana. She said the other HMO in Montana does not have gag clauses in their contracts. The reason this is an issue, is a fear of the big boys coming into Montana because they have practices counter to what we are used to in Montana. If that is the case, she recommends straight-forward language which specifies that any managed care organization will not have a contract clause which prohibits a physician from discussing treatment options with a patient. There are several managed care bills in this session and suggested they be considered together rather on a piece-meal basis because the result may be conflicting pieces of legislation. She said they think section one, "Medical communications" may conflict with provisions in section two, and have questions as to how these may be resolved, where there is a conflict in a contract when there is a conflict in the legislation. They do support the concept included in this legislation but question this particular legislation.

Tom Ebzery, a Billings attorney representing Yellowstone Community Health Plan, said they are the other HMO in the state. They are a community-based, non-profit organization and has been authorized to do business since 1994. He said they, like Blue Cross and Blue Shield, have no problem with the concept of a gag clause, and they do not have any gag clauses in any of their contracts. Their concern is with the breadth of this particular bill. He said SB 128, page 22, lines 17-21 has a straight-forward provision on gagging and would be easier to deal with and not cause more problems. They are not opposed to the concept of SB 156 but think it would cause more problems in administering it than it's worth.

Tom Hopgood, representing the Health Insurance Association of America, said this bill is trying to say "we want to allow people to discuss their health care options with their health care providers" and said there is other legislation which addresses this same issue and would endorse those bills. The insurance industry does believe one of the keys to managed care is the free communication between the patient and the provider, but think this bill is somewhat over-broad and, he echos the comments made by **Tanya Ask.**

Questions From Committee Members and Responses:

SENATOR DOROTHY ECK asked **Tanya Ask**, if there is more than one major bill, what else might we be faced with.

Tanya Ask said there are six pieces of managed care legislation or legislation to restrict managed care already filed, and this includes SB 156 and SB 162, HB 27, which is a gag prohibition, HB 46, and SB 128, which deals with a number of items including network adequacy and quality assurance. There are four pieces of legislation which specifically restrict any companies inclusion of gag clauses in their contracts.

Closing by Sponsor:

SENATOR CHRIS CHRISTIAENS, SD 23, Cascade County, said the testimony from both the proponents and opponents speak for themselves. He believes, as we go into this managed type of program in the future, we are going to see a proliferation of companies coming in to Montana, and offering services. It makes sense to him that putting this kind of law into place before the problem starts, than to wait until problems develop. He said SB 156 and **REP. SIMON's** bill are very similar, the main difference being in the penalty sections of the law. He said there may be room for compromise and work with that, but believes it is time for the State of Montana to adopt a gag bill and make sure consumers are well protected. He is agreeable to working with anyone to make this bill better.

HEARING ON SB 162

Sponsor: **SENATOR CHRIS CHRISTIAENS, SD 23, Cascade County**,

Proponents: Jerry Loendorf, Montana Medical Association
Susan Good, HEAL Montana and Montana
Association of Life Underwriters
Claudia Clifford, State Auditors Office
Al Smith, Montana Advocacy Program
Dick Patterson, Montana Senior Citizens Assn.
Bob Torres, Montana Chapter Social Workers
Kip Smith, Montana Primary Care Association
Mary McCue, Montana Dental Association

Opponents: Tanya Ask, Blue Cross and Blue Shield
Tom Ebzery, Yellowstone Community Health Plan
Steve Turkowitz, Auto Dealer Assn
Tom Hopgood, Health Insurance Assn. of America

Opening Statement by Sponsor:

SENATOR CHRIS CHRISTIAENS, SD 23, Cascade County, said SB 162 requires HMO's to provide certain information about their organization on request. It prohibits the use of the complaint system. He said the toll-free telephone line should not be available just for complaints, but should be in place all of the time for information. There are a number of groups and people who are reluctant to ask questions, and as a result, buy products that may or may not suit their needs. This bill addresses this

issue. The fiscal note has no impact on the state because the cost would be picked up by the carriers. SB 162 could be a cost savings to managed care organizations and the insurance commissioner's office, where complaints are heard about problems. Putting this legislation into place now may prevent some of the problems before they arise as more managed care companies come into the state.

Proponents' Testimony:

Jerry Loendorf, representing Montana Medical Association, made a few comments about SB 162. He referred to page one of the bill, section one, items two and three and said they are important because they tell an enrollee how to gain access to primary care and referral to specialists, plus how referrals are made. He said patients should be able to get necessary information before a contract is signed.

Susan Good, HEAL Montana and Montana Association of Life Underwriters, said they support the concept of open communication between patients, their doctors, and their insurance companies, but any time a feature like this is added, there is additional cost added. Any time there is added cost, there are dropouts because they cannot afford the additional cost associated. It is important for patients and insurance policy owners to understand what they are getting so they don't make decisions based on misleading or erroneous information.

Claudia Clifford, State Auditors Office, said they are proponents of any bill that helps consumers become better aware of their health care policies and the stipulations of the coverage. They handle thousands of calls per year from consumers and help them try to solve their misunderstandings with insurance companies. They have questions as to how SB 162 coordinates with SB 156 and gag clauses, specifically in new section one, subsection four and subsection nine, how health care providers are covered, whether there is conflict of interest in the compensation system, and provisions dealt with in the gag clause legislation. She suggested, if a gag clause bill passes, to drop subsection nine and amend subsection four. But if the gag clause bill does not pass, these would be added protection for the consumer.

Al Smith, Montana Advocacy Program, said they support SB 162 or any other legislation that mandates provision of pertinent information to consumers because more information can empower consumers to make the wise choices and enable them to understand their health care rights.

Dick Patterson, President, Montana Senior Citizens Association, said they support anything that provides the consumer with the information they need to be able to talk to their doctor and understand the coverage they need. There are several bills in the Legislature dealing with this, and hope it results in protection for consumers, and particularly for seniors.

Bob Torres, represent the Montana Chapter of Social Workers, said they are in full support of open communication that SB 162 provides for consumers.

Kip Smith, Association Director, Montana Primary Care Association, said while they have some reservations about some of the details in SB 162, all of the managed care bills that will be coming before this session offer protection for consumers and in many cases, protection for providers. They support this type of bill.

Mary McCue, representing Montana Dental Association, said they support this legislation.

Opponents' Testimony:

Tanya Ask, Blue Cross and Blue Shield of Montana, said SB 162 is a well-intentioned piece of legislation, but questions the additional regulation and possible additional administrative burden. At what point is this information going to be made available and to whom. A number of the provisions included in this bill are included elsewhere in Montana law, both in the disability insurance sections, HMO section, contracting section and utilization and review sections of the law. This requires the information be provided in easily understood language, but wonder exactly what this means because, right now, there is a law on the books for life and disability insurance policy language simplification act. They also have concerns about other provisions in the bill and said people can be given the information, but they don't always read the information given to them.

{Tape: 1; Side: B; Approx. Time Count: 1:45}

She said the idea of a toll-free telephone number is a good idea and supports **SENATOR CHRISTIAENS's** motion to make that number available for inquiries as well because that one-on-one communication will straighten out a lot of questions before they come up. She said not only are the benefit agreements subject to review and approval in the state of Montana by the insurance department, but before any HMO can get a certificate of authority to operate in Montana, all of the contracts with providers also go through that review process. Referring to page four, section five, she said they have a question about the provision of a retroactive applicability date and how it will apply, whether to current contracts that already have been reviewed and approved, but then retroactively deemed to be a problem. She said there are a lot of laws already on the books to address these concerns as well as other legislation. They urge a no vote on SB 156.

Tom Ebzery, Yellowstone Community Health Plan, said there seems to be the idea there are no regulations or it's inadequate for HMO's in Montana, but that is not the case. Statutes are already in place, and many of the provisions in SB 162 are already covered in the statute, especially one, two, and three of new

section one are already covered. He has questions as to what needs to be shown in terms of financial arrangements made with the physician and the health maintenance organization, and there are other items that already covered. He said there clearly are cases of duplication and should look at what already exists and reconcile so before going further.

Steve Turkowitz, Montana Auto Dealers Association, said they are disturbed with the debate on managed care. He said four years ago there was a debate in the Legislature about the crisis in health care, thousands of Montanans were uninsured or underinsured, costs were spiraling upwards, and health insurance premiums increasing. The Montana Auto Dealers Insurance Trust was formed in 1948 to provide comprehensive health insurance for their members, employees, and families. They have seen a dramatic increase in health care costs since the 1980's. Their benefit payment in 1988 was \$2.2 million to a variety of health care providers and the premiums paid by individual employees was \$65.73 and independent coverage was \$78.95. In the past 12 months, their trust paid out in excess of \$3.4 million to a variety of health care providers. Today's premiums paid by the employee is \$149.00 and \$204.00 for the family. To control premium costs, employers and employees have implemented higher deductible plans, higher patient co-pays, and reduced benefits because these are the only tools they have to control premium costs. Now they are looking at ways assist their members to get quality health care and control costs, and a common method of controlling costs used is managed care. Managed care is a vital tool that can be used to control health care costs in Montana, because there must assurance for patients to receive quality care, but artificial and unfair barriers must no be placed in Montana law that hinders well-designed and maintained managed care programs. It must be remembered, much of the health care crisis has been affordability.

Tom Hopgood, Health Insurance Association of America, said he agrees with the preceding opponents of SB 162.

Questions From Committee Members and Responses:

SENATOR SHARON ESTRADA asked **SENATOR CHRISTIAENS** what is in SB 162, other than the immediate effective date, that is not already covered.

SENATOR CHRISTIAENS said may be the case in the Yellowstone Community Health Plan, but may not be in all other plans that come into the state. He asked what harm can be done to include in this legislation that everybody operates by the same rules and the information is available. There's probably not an industry that is as misunderstood as the insurance industry, and anything that helps consumers understand what they are buying, and understand what's in their policies, and to have this kind of consumer information network in place makes sense.

Closing by Sponsor:

SENATOR CHRISTIANS said health care costs are, again, on the rise. During the time of the health care debate around the country, costs did go down, but in the last six months, costs are spiraling upwards. There are still great numbers of Montanans who are not insured, and it's a matter of affordability. He said this is a vital piece of legislation to go forth to make insurance affordable, available and with clarity of for the consumer and provider and the managed care organization.

ADJOURNMENT

Adjournment: 2:00 PM



SEN. STEVE BENEDICT, Chairman



KAROLYN SIMPSON, Secretary

SB/ks