

MINUTES

**MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON PUBLIC HEALTH, WELFARE, & SAFETY

Call to Order: By **CHAIRMAN STEVE BENEDICT**, on January 22, 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
Karolyn 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 90, 1/10/91
SB 144, 1/13/97

Executive Action: None

HEARING ON SB 144

Sponsor: SENATOR TOM KEATING, SD 5, Billings and Yellowstone Co.

Proponents: Jacqueline Lenmark, American College of OB/Gyn.
Chuck Ludden, MD, Kalispell
Van Kirk Nelson, MD, Kalispell
Jim Nickel, MD, Helena
Tom Olson, MD, Billings
Mary Dalton, DPHHS
Claudia Clifford, State Auditor Office
Steve Yeakel, self
Kate Cholewa, Montana Women's Lobby
Shannin Presinger, self
Angela Fult, self

Opponents: Jay Erickson, MD, Kalispell

Tanya Ask, Blue Cross and Blue Shield of MT

Tom Ebzery, Yellowstone Community Health Plan

Tom Hopgood, Health Insurance Association of America

Jim Crighton, Blue Cross and Blue Shield of MT

Steve Turkeiwicz, MT Auto Dealers Insurance Assn. MT
Health Care Purchasers

Anita Bennett, Montana Logging Assn.

*{Tape: 1; Side: A; Approx. Time Count: 1:07 PM}***Opening Statement by Sponsor:**

SENATOR TOM KEATING, SD 5, Billings and Yellowstone Co. said SB 144 which is legislation introduced at the request of the Montana Section of the College of Obstetricians and Gynecologists, referred to as OB/GYN. This legislation is about the health and health care of women and children, and is also about the economics of medical services and insurance costs. It allows a woman the option to choose an OB/GYN as a primary provider and as a gate keeper under managed care without having to go to a primary care physician then referred to the OB/GYN. It deals with the economics by avoiding the original gate keeper under managed care, saving money by not having to get a referral before seeing the OB/GYN. OB/GYN are generally thought of only in terms of pregnancy and child birth but they also treat various conditions and ailments particular to women. By passing SB 144, women are allowed to obtain the health care that she wants and needs.

Proponents' Testimony:

Jacqueline Lenmark, representing the Montana Section of the American College of Obstetricians and Gynecologists, said SB 144 would allow an Obstetrician or Gynecologist to accept primary care physician status within some insurance plans, and to allow women, if they choose, to designate an OB/Gyn as her primary care physician. It also allows women to self refer, within an insurance network within a managed care setting, to self refer for covered services to an Obstetrician or Gynecologist, within the network of their choice. She listed several features of the bill regarding network referrals, covered services being those services recommended by the accreditation council, surcharges and co-pay, and participating physicians requirements. She said it is necessary to request two amendments to SB 144, one being an omission and the other at the request of Blue Cross and Blue Shield. **(EXHIBIT 1)** She said Montana patients want this legislation and submitted signed petitions from several Montana towns. Billings **(EXHIBIT 2)**, Bozeman **(EXHIBIT 3)**, Butte **(EXHIBIT 4)**, Helena-Townsend **(EXHIBIT 5)**, Kalispell-Flathead Co. **(EXHIBIT 6)**, Missoula **(EXHIBIT 7)**

Chuck Ludden, Obstetrician/Gynecologist, Kalispell, said SB 144 is about womens' health care. He said this is not a turf battle or about insurance contracts, it's about what women have always had the right to do, that is to choose the provider they feel will best give them the health care they need. This bill is to give women the right to continue to see the physician they most

frequently have designated as their physician, in the past, for their health care, to serve the unique aspects of women's health care. He said OB/GYNs take care of pregnant women along with any of the complications that may arise during pregnancy, such as diabetes, hypertension, bronchitis, and all of the other things that go with pregnancy. They are taking care of the whole patient. Currently **Dr. Ludden** is a primary care provider with HMO Montana, Blue Cross and Blue Shield. SB 144 is not a mandate that women have to choose OB/GYNs as primary care and not a mandate that OB/GYNs have to be primary care, but gives women the option to choose.

Van Kirk Nelson, Obstetrician/Gynecologist, Kalispell, said he has seen many changes in medical care through the years. Access to obstetrical care was withdrawn from the people of Montana due to high liability costs, when 50% of the family practice physicians in Montana gave up the practice of obstetrics, then the Legislature gave relief to again allow access through tort reform. Now we're faced with another access issue, and that is about 250,000 Blue Cross and Blue Shield insured people in Montana, and future people in Montana in an HMO in which there is no access to their providers who provided care in the past. To deny that access could cause physicians to leave Montana because physicians depend on patients for their source of income for themselves, their medical office and employees. The majority of women's health issues relate to female problems and the four major causes of death in women are breast cancer, ovarian cancer, uterine cancer, and cervical cancer. All of these things are within the OB/GYN area of training. Women should not be denied access under any program. Women don't overuse the services of OB/Gyn providers, but women need access to that care.

Jim Nickel, Obstetrician/Gynecologist, Helena, said the education of an OB/GYN consists of four years of medical school plus four years of specialization, with one of those years, six to eight months of which is devoted to primary care specialties, two to three months in geriatric medicine, one month in pediatrics, and one to two months in continuing care programs which are designated primary care. Each year there are voluntary upgrading and continuing medical education programs offered to physicians.

Tom Olson, Obstetrician/Gynecologist, Billings, said a patient he had been caring for for several years, recently told him her husband's insurance had been changed to an HMO program and she would have to find another provider to care for her. He said this is the kind of thing that is happening and will be more frequent as more HMO's come into Montana.

Mary Dalton, Health Policy and Services Division, DPHHS, said they support the first part of SB 144. She said they are requesting an amendment (**EXHIBIT 8**) because that language is broader than just applying to people under Medicaid in the HMO program.

Claudia Clifford, State Auditor Office, said they acknowledge the gate keeper system has some shortcomings, especially for our population that doesn't have much a presence of HMO's. Legislation like this addresses those kinds of issues and makes it more reasonable for women who consider their OB/GYN to be someone they see more often than their general practitioner.

Steve Yeakel, representing self, said he spends a lot of his volunteer time working on the state-wide program "Healthy Mothers, Healthy Babies." They are involved in any issue that promotes better care for mothers and their babies during pregnancy, and thereafter. They have not taken an official position on SB 144, but do support the concept.

Kate Cholewa, Montana Women's Lobby, supports SB 144.

Shannin Presinger, representing self, supports SB 144.

Angela Fult, representing self, supports SB 144.

Opponents' Testimony:

Jay Erickson, Family Practice physician, Whitefish, representing the American Academy of Family Practice, spoke in opposition to SB 144. (EXHIBIT 9). He provided copies of American Academy of Family Practice definitions. (EXHIBIT 10)

Tanya Ask, Blue Cross and Blue Shield of Montana, said she would specifically address one part of this bill. (EXHIBIT 11)
{Tape: 1; Side: B; Approx. Time Count: 1:46}

Tom Ebzery, Yellowstone Community Health Plan, said they oppose SB 144. Yellowstone Community Health Plan does have OB/GYNs as primary care physicians but they must meet and be trained to treat a variety of conditions. They have direct access, but there is a problem when the OB/GYN is a primary care physician, because it results in more referrals, higher costs, and gets away from the gate keeper concept.

Tom Höpgood, representing the Health Insurance Association of America, said one of the phrases he heard during the proponents testimony was "deny access" and "HMO's deny access to medical care." He said he didn't think that was correct. There has been anecdotal evidence from other states, but hasn't heard of anybody in Montana who was denied access to medical care by an HMO gate keeper. For years we have been dealing with a so-called crisis in health care and the crisis of the uninsured. The insurance industry has come up with some innovative ideas to make health insurance more accessible and provide people with needed access to needed medical care. HMO's are a large part of the solution to the problems in this country for people not being able to get the adequate health care they need. He said during the debates about mandated health insurance benefits that occurred eight to ten years ago, several groups of providers (chiropractors, licensed professional counselors, naturopaths, and others), each

testifying as to the services each could provide. And just like the OB/GYNs, an argument can be made that their services aren't going to cost very much and they can solve these problems, but each group being brought in, cost is added, and the HMO concept has been gutted and countered the cost savings that are accomplished by managed care.

Jim Crichton, Family Practitioner, and Medical Director for Blue Cross and Blue Shield, said it's difficult to oppose the idea of OB/GYNs doing primary care when they have the training and desire to do it. He said he does not oppose section three, but opposes section four, which allows direct access without using the referral system. It isn't possible to have a system where each specialty carves out a special deal, because if you do that, it's no longer managed care. He said they haven't much trouble with people complaining about access or quality of medical care, but it's the cost that is the problem.

Steve Turkeiwicz, Montana Auto Dealers Insurance Press, and representing the Montana Association of Health Care Purchasers, said they are interested in looking at managed care and oppose SB 144 for the reasons stated in previous testimony.

Anita Bennett, representing Montana Logging Association, said they have a health insurance program and do not oppose the environment of access, but are concerned with managed care helping them keep their costs of medical services down, and oppose SB 144.

Questions From Committee Members and Responses:

SENATOR SHARON ESTRADA asked about the rising cost aspect that **Mr. Hopgood** spoke of.

Dr. Van Kirk Nelson said Medicaid has statistics based on their managed care programs, 40% of pregnant women in Montana receive Medicaid benefits, and in the Flathead, 52% of pregnant women are Medicaid recipients. The length of stay and cost of per illness to Medicaid for obstetricians taking care of patients is less than that of family practitioners. The cesarean rates are lower and our rates are lower.

SENATOR ESTRADA asked about the statement **Tanya Ask** had made regarding the problems of doctors making referrals and duplicating tests, and wondered if doctors request copies of results from the other physician.

Tanya Ask said they are concerned with the potential duplication services, which is one of the large costs in medical care. They do agree with **Dr. Nelson** regarding obstetrical services and that is why HMO Montana allows direct access for this service. With respect to direct access, in a managed care program, a patient chooses a personal care physician who is responsible for treating comprehensive health care needs, and that physician has already been paid up-front, a dollar amount for the care of a full range

of services. That physician has a lot of information and has results from various tests. SB 144 says a patient has the opportunity, for any gynecological services, can opt out of seeing the HMO doctor and go to a gynecologist for those services. The primary care physician and gynecologist may or may not coordinate or share information or test results. The primary care physician has already been paid for performing these tests, and without any coordination, the OB/GYN could perform those same tests, be paid for them, thus duplicating tests and payments.

SENATOR ESTRADA asked what is meant by "up front."

Tanya Ask said under managed care, payment is called capitation, which means the managed care organization or HMO has paid a primary care an amount for patient care and that doctor is supposed to take care of patients for specified services under the plan. The doctor is paid up front for a full array of services, whether patients use them or not.

SENATOR DOROTHY ECK said **Tanya Ask** had stated, under a managed care program or HMO a person can choose their primary care provider. **SENATOR ECK** asked if there was any objection to a person's choice is an OB/Gyn for that primary care.

Tanya Ask said Blue Cross and Blue Shield of Montana does have, within their network arrangement, family practitioners, internists, pediatricians and some obstetrician-gynecologists with that network who have agreed, and want to be under, the personal care contract. The concern Blue Cross and Blue Shield has is with the direct access provision.

SENATOR ECK said our insurance law would not guarantee that other companies wouldn't provide that a person could choose and OB/Gyn as their primary care provider.

Tanya Ask said there is nothing in the insurance code that says obstetrician/gynecologist could be a personal care physician.

SENATOR ECK asked how specific is the law about choosing a primary care provider.

Tanya Ask said, under current HMO law lays out some specific notification criteria for individuals who are going to be under a managed care contract. It says there must be providers within an area, there must be reasonable access, and the HMO must explain to its member what a personal care physician, who is included on that panel, and what happens if there are disputes between the patient and the personal care physician.

SENATOR ECK asked whether a person could choose to have a nurse as a personal care provider.

Tanya Ask said there is nothing which says who will be contracted with or who can be contracted with to be the personal care physician.

SENATOR LARRY BAER said he believes choice must be preserved and avoid the duplication of services and cost. He asked about the potential for increased cost by first seeing a primary care physician then referred to a specialist.

Tanya Ask said she is not saying people are restricted from choosing managed care organization, but people may not have a choice because they can't afford the present system. One of the goals of the managed care system, is preventing an illness or treating it in the early stages. In a primary care organization, services are paid for up front and if a specialist care is needed, the consultant charges a fee.

CHAIRMAN STEVE BENEDICT asked **SENATOR BAER** if his question has been answered, and **SENATOR BAER** said no it had not. It was an explanation but did not address the question. He was addressing the potential of increasing the cost of health care because of the necessity of requiring a patient to get a referral prior to consultation with an obstetrician/gynecologist. He said **Tanya Ask** said there was a duplication of services and he does not agree with that. He asked **Tanya Ask** if she was saying people are giving up their right of choice for a physician and different types of health care because they cannot afford to have health care insurance unless they choose an organization like hers, which would restrict them from choice.

Tanya Ask said she is not saying people are being restricted into choosing our particular type of organization, but is saying in the overall arena of health care, people may have that choice about health care because people cannot always afford the health care they need. Choices are made for a number of people on whether or not they can afford health care. Regarding consultation fees and duplication of services, there are consultation fees, but in a primary care model, an array of services have been paid for up front and a patient may not need specialty care. But, if specialty care is needed, it works the same way in a primary care HMO as a fee for service environment. If specialty care is needed, a fee will be charged by that specialist, regardless of the type of system. Where there is direct access, the primary care provider has already agree to perform certain services, and the specialist provider will also need to do some things, so there could be a duplication. Within a managed care environment, they have not seen HMO costs to be higher than fee for service. Whether a person chooses an HMO or fee for service, the cost is the same, but under the HMO there is a greater level of benefits, because primary and preventative services are built in.

SENATOR FRED THOMAS asked if it is possible to capitate OB/GYN services under the preferred provider network and bring the care providers together.

Tanya Ask said that is possible if the obstetricians and gynecologists are interested in being included, then it is a spin off and is more like a point of service product, and is actually a second level network of providers.

CHAIRMAN BENEDICT said to **Tom Ebzery**, we have heard about the denial of access and wondered how someone in the Yellowstone Community Health Plan would access an OB/Gyn, and asked if they would be denied access because the OB/GYN is not a primary provider.

Tom Ebzery said they have a panel of OB/GYN in their plan and women have a choice of the contracted providers.

CHAIRMAN BENEDICT asked what happens if a patient wants to go outside this group of OB/Gyns.

Tom Ebzery said the patient would not be denied access because the OB/GYN is not in the plan, but the patient would have to pay for those services.

CHAIRMAN BENEDICT asked if a patient can self refer, even if the OB/GYN is in the plan.

Tom Ebzery said no, but they provide for OB/GYNs, if they choose to be primary care physicians, otherwise, patients must be referred by the primary care.

SENATOR ESTRADA said one closest relationships a woman has is with her doctor, outside of her husband and family. She has gone to her gynecologist for primary care because of her trust and confidence in him.

{Tape: 2; Side: A; Approx. Time Count: 2:15 PM}

Closing by Sponsor:

SENATOR KEATING said OB/GYNs have extra education in other health areas, other than just the gynecological/obstetrical services they provide, and therefore qualify as a primary care provider. There is referral back and forth between the family physician who is the primary care provider or gate keeper and the OB/GYN. This is a bill of choice, not a mandate for anyone. OB/GYNs can choose to be a primary care provider and a gate keeper for certain patients, who, by choice, prefer access in that direction. That doesn't prevent those same people from choosing family practice physician. There was testimony that the cost is less by choosing an OB/GYN as the primary care provider. If one group can be capitated in the plan, there is no reason another group can't be capitated in the plan, so the cost seems to balance out. SB 144 is only for access for OB/GYNs. He said there is a difference between a primary care provider and direct access for a

particular specialty. If someone doesn't want to belong to a play, they stay outside and pay for the services elsewhere, but if the OB/GYNs are in the network, he sees no reason someone can't choose entry to those services from an OB/GYN who is qualified as a primary care provider or a family physician who is a primary care provider.

AT THIS POINT, CHAIRMAN BENEDICT TURNED THE MEETING OVER TO VICE CHAIRMAN JIM BURNETT.

HEARING ON SB 90

Sponsor: SENATOR LORENTS GROSFIELD, SD 13, Big Timber

Proponents: Nancy Ellery, DPHHS

Ed Henrich, MT Innkeepers, Fairmont Hot Springs Resort
Joan Miles, City/county Sanitarian, Helena
Jim Kembel, City of Billings

Opponents: None

Opening Statement by Sponsor:

SENATOR LORENTS GROSFIELD, SD 13, Big Timber, said SB 90 was requested by the Department of Health and Human Services. It revises the laws related to public swimming pools. Since the agency deadline of December 31, 1996 for this bill, there have been some negotiations between the affected parties and the Department of Health. He has some suggested amendments to SB 90, which cut back the scope of the bill. (EXHIBIT 12)

Proponents' Testimony:

Nancy Ellery, Health Policy and Services Division, Department of Public Health and Human Services, said they support SB 90. (EXHIBIT 13)

Ed Henrich, General Manager, Fairmont Hot Springs Resort, President of Montana Inn Keepers Association, said they were concerned about SB 90 as introduced, but have had several meetings with the Department of Health resulting in several amendments to the bill, and they support to the amendments. They are requesting section nine, Facility Plan Review Required, of the bill be amended. He referred to page six, line 27, and suggested the word "alteration" be eliminated and insert a new word to make it clear that Facility Plant Review is not required for something as minor as moving pool lockers a few feet in the same pool area. They support an amended SB 90, but urge the Department of Health to be aware of the cost of any new regulations which generate more paper work and cost for the industry.

Joan Miles, Director, City/County Sanitarian for Lewis & Clark County, said they support SB 90 with the proposed amendments. She said SB 90 with the amendments really don't make a lot of major changes to current law, but do make sensible and worthwhile

changes to the benefit of the operators and the local health departments.

Jim Kembel, representing the City of Billings, said they support SB 90 for the reasons stated in previous testimony.

Opponents' Testimony: None

Questions From Committee Members and Responses:

SENATOR DOROTHY ECK said, we hear a lot from the county health departments that the state does not allow them to make adequate charges for services to cover the county's costs for inspections.

Joan Miles said they do swimming pool inspections in Lewis & Clark county and have no problem because of their access to the state health department and the technical staff, and have been able to do the inspections in a cost effective way, but other health departments don't do it because they feel there is not adequate reimbursement. That is a concern if local health departments are required to do these inspections and is not addressed in SB 90, but may come back to the Legislature in a couple of years if there are not adequate funds for training and the expertise for the program.

SENATOR ECK asked if this bill allows the counties to charge something, but maybe not enough.

Joan Miles said the state collects a license fee and the county cannot charge a fee for inspections.

SENATOR ECK asked if the counties can choose to do the inspections or not.

Joan Miles said the proposed language says the state may enter into an agreement with local health departments, and that language combined with other statutory requirements of local health departments will make inspections mandatory.

SENATOR ECK asked if this is mandating additional cost.

Joan Miles said yes, to local governments.

VICE CHAIRMAN BURNETT asked, what was the motivation for the Department of Health to request this bill.

Nancy Ellery said it was due to an audit of Department of Health's food and consumer safety programs by the Legislative Auditor, and the recommendation they made are included in this bill. There were also things the Department of Health felt they needed to improve the management of the workload and insure public health and safety in the state.

VICE CHAIRMAN BURNETT asked why didn't they just request the local health officer to administer this.

Nancy Ellery said under current law, local health departments have the option, but if they don't do it, they do not get any of the revenue that would come back from that inspection. Like other programs, this is a responsibility of the local board and wanted to clarify that in the statutes. The state makes sure the operators are trained and know how to be in compliance with the law.

SENATOR ECK asked if the Department of Health budget has enough funds for the inspections they are required to do.

Nancy Ellery said this is a real concern, and there is another bill that will be coming before the Public Health Committee regarding food service establishment inspections which will generate more revenue for those inspections. They want to put money into local public health through the public health improvement issue both in HB 196 and some money they will be requesting in their budget subcommittee.

SENATOR ECK asked if there is any provision for the industry to pay for the inspections.

Nancy Ellery said swimming pools and spas pay a license fee, which pays some of the costs for inspections. This bill would allow the facility to also pay for the plan and review fee required for any kind of remodeling, rather than that coming out of the General Fund.

Closing by Sponsor:


SENATOR LORENTS GROSFIELD said many local county health departments do that, but Gallatin, Lake and Missoula counties don't. It is a funding issue and an unfunded mandate issue. He said the proposed amendments would make for a better bill.

ADJOURNMENT

Adjournment: 2:51 PM



SEN. STEVE BENEDICT, Chairman


KAROLYN SIMPSON, Secretary

SB/ks