

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON PUBLIC HEALTH, WELFARE, & SAFETY

Call to Order: By CHAIRMAN STEVE BENEDICT, on January 24, 1997,
at 1:00 PM, in Room 325.

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 128, 1/10/97
Executive Action: None

{Tape: 1; Side: A; Approx. Time Count: 1:00 PM}

HEARING ON SB 128

Sponsor: SENATOR DON HARGROVE, SD 16, Gallatin County

Proponents: Laurie Ekanger, Department of Health
Claudia Clifford, Auditors Office
Verner Bertleson, MT Senior Citizens Assn.
Jerry Loendorf, MT Medical Assn.
Tanya Ask, Blue Cross and Blue Shield
Al Smith, MT Advocacy Program
Bill McDonald, MT Assn. Health Care Purchasers
Alan Strange, MT Primary Care Assn.
Susan Good, MT Assn. Life Underwriters
Paul Peterson, Coalition Concerned w/Disabilities

Barbara Larsen, MT Program Disabled
Russell Hill, MT Trial Lawyers
Irene Theurer, AARP
Steven Shapiro, Advanced Practice Nurses Association
Dick Patterson, Senior Citizens Assn.
Andrea Merrill, MT Mental Health Assn.
John Flink, MT Hospital Assn.
Tom Ebzery, Yellowstone Community Health
Gloria Hermanson, MT Psychological Assn.
Keith Colbo, Deaconess Hosp. Billings

Opponents: None

Opening Statement by Sponsor:

SENATOR DON HARGROVE, SD 16, Gallatin County, said SB 128 is the guideline for managed care in Montana. About 74% of the workforce in the United States and 10% of Montanans are members of managed care health care plans of one type or another. Even with the small number in Montana, that has grown by about 300% in the last two years. There is a lot of money to be made in managed care because it's a business and this bill institutes good business practices. Because it's a business, there are unscrupulous companies that will take advantage of any opportunity to make a profit, and they will come as Montana law stands now. There have been numerous horror stories about the gate keeper concept in managed care where patient-members are denied access to needed specialty medical care. The gag rule prohibits the health care provider from telling the patient what care is needed or treatment options are available. The gate keeper concept, employed in managed care, does not allow a patient to self-refer to a specialist, thus saving money for the managed care company. This bill establishes the framework for managed care to insure managed care in Montana will be adequate, comparable, accessible, and meet quality standards. It addresses these guidelines before managed care companies envelope Montana. The intent is not to squelch competition, but keep the fly-by-nighters out. It's necessary to take a pro-active approach to put in place controls and guidelines for managed health care companies for the protection of the consumers.

Proponents' Testimony:

Laurie Ekanger, Director, Department of Health and Human Services, said SB 128 will regulate health insurance carriers offering advantage care plans and to insure abuses that have occurred in other states do not occur in Montana. (EXHIBIT 1)

Claudia Clifford, Health Care Quality Specialist, State Auditors Office, said SB 128 was designed to protect consumers but allow business to foster a viable, flexible, and responsible health care market in Montana. (EXHIBIT 2)

Verner Bertleson, representing Montana Senior Citizens Association, said they strongly support SB 128. This kind of

protection is essential with the HMOs that are going to become part of Montana's health care system.

Jerry Loendorf, representing Montana Medical Association, (MMA) said they generally endorse the testimony of **Laurie Ekanger** in regard to the benefit of protection and certain provisions of this bill, critical to the people of Montana to obtain and preserve their health. He referred to SB 156 as it would pertain to sections 21, subsections two and three of SB 128. He offered two sets of amendments. The first MMA had worked out with the Department of Health and Insurance Commissioner (**EXHIBIT 3**) and the other are from the MMA. (**EXHIBIT 4**)

Tanya Ask, Blue Cross and Blue Shield of Montana, said they support reasonable regulations of managed care for the State of Montana and support SB 128. She offered an amendment to SB 128. (**EXHIBIT 5**)

Al Smith, Executive Director, Montana Advocacy Program, spoke in support of SB 128. (**EXHIBIT 6**)

Bill McDonald, Executive Director, Montana Association of Health Care Purchasers, said they support the development of minimum standards for network adequacy and quality assurance for managed care programs in Montana. (**EXHIBIT 7**)

Alan Strange, Executive Director, Montana Primary Care Association, said they fully support SB 128 because it contains strong standards for consumer protection and agree with previous testimony.

{Tape: 1; Side: B; Approx. Time Count: 1:49}

Susan Good, representing Montana Association of Life Underwriters, said they support SB 128 and have been included in the discussion of managed care since its inception. She urged the committee to remember there are other legislative bills dealing with managed care and is concerned there may be a conflict in the provisions among the different bills.

Paul Peterson, State Board Chairman, Coalition of Montanans Concerned with Disabilities, said they support SB 128 and the set of principles included in the testimony from **Al Smith**. (**EXHIBIT 6**) He said the quality control council is to be made up of six health care providers, one representative from the insurance industry, and one consumer, but would like to see an equal balance of consumers represented. He expressed caution should be taken to protect people with chronic diseases and disabilities because they, almost always, require a specialist as their personal primary care provider. He suggested having specialist as primary care providers or have standing referrals available to a specialist, as required. He referred to the terms "reasonable and adequate" and wondered what is meant by these terms.

Barbara Larsen, representing Montana Program for the Disabled (MONTECH), said SB 128 is very important to provide some regulation and framework for people to access managed care services. She submitted a letter from the director of MONTECH. (EXHIBIT 8)

Russell Hill, representing Montana Trial Lawyers Association, said they support SB 128. Is not a perfect compromise but is a good one. He said there are references to SB 128 being a consumer protection bill and nobody benefits from insurance regulation, not even the insurance industry. Insurance regulation props up consumer confidence in the industry, but doesn't stop the problems. He cautioned looking at the SB 128 as a consumer protection bill.

Irene Theurer, representing American Association of Retired Persons (AARP), said she is pleased the problem is being recognized before there is a problem. They support the passage of SB 128.

Steven Shapiro, representing the Advanced Practice Registered Nurses Association, said they are generally in support of SB 128 and referred to section 20, Selection of Providers, saying they have concern the public have access to nurse practitioners and other forms of mid-level health care. He offered an amendment to SB 128, that classes of providers not be excluded. (EXHIBIT 9)

Dick Patterson, Senior Citizens Association, said they support SB 128 and believe Montana has a unique opportunity to properly regulate managed care. They are concerned there is only one consumer representative on the council and the amendments. He said he hoped the intent of the bill will not be amended away.

Andrea Merrill, Executive Director, Mental Health Association of Montana, said they support SB 128. The mental health community learned a lot in the last two years when the state decided to offer contract services for mental health care.

John Flink, representing Montana Hospital Association, said they support the goals of SB 128 and avoid the horror stories that have happened in other states. (EXHIBIT 10)

Tom Ebzery, representing Yellowstone Community Health Plan, Billings, said they have questions about SB 128 regarding the board, network, and quality assurance. They question the necessity of the board and said the inclusion of specialists as the primary care physician gets away from the gate keeper concept. He suggested eliminating the council. This is not just HMOs but also pertains to part of the preferred provider agreement section of the code, saying the PPO section for emergency services be consistent with the HMO definition, and suggested the definition for "medically necessary." On page eight, the removal from the existing HMO statute of financial basis eliminates some of the ability of the commissioner to be

flexible and approve some market-driven products and they would not support taking that out. The effective dates are quite soon, but don't mean much to those HMOs who may be coming to Montana, and he thinks the effective dates could use some flexibility. He said the concepts are here, there's a positive feature for the gag rule, they want to regulate what is right but not create a bureaucracy that is difficult to control.

Gloria Hermanson, representing the Montana Psychological Association, said they would like to offer an amendment for section 21-5, contract termination between participating providers and the carrier. She said she would be working on that amendment with her association and get to the committee for consideration.

Keith Colbo, representing Deaconess-Billings Health System, said they support SB 128 and endorse the testimony from the Montana Hospital Association. (EXHIBIT 11)

Opponents' Testimony: None

{Comments: some questions and answers difficult to understand due to distance from microphones and echo in room.}

Questions From Committee Members and Responses:

SENATOR SHARON ESTRADA asked **Laurie Ekanger** to clarify new section 10-B.

Laurie Ekanger referring to page 12, section 10, said it limits the amount of premium increase in an HMO, and B allows exceptions to that limit.

Claudia Clifford said it is similar to language already in law for indemnity carriers, and it will apply to HMOs. An exception is granted if the Commissioner or Department determines a hardship to pay the existing premium was caused by an injury or impairment.

SENATOR ESTRADA asked if the HMO is in financial trouble, then they can increase premiums.

Claudia Clifford said that is right.

SENATOR BOB DePRATU said he is concerned this is building a bureaucracy and it would be get larger and larger. There have been concerns expressed there is only one consumer on the board.

Laurie Ekanger referred to the fiscal note saying, they are asking for some positions and some funding. She said there will be an ongoing workload and quite a bit of sensitivity went into the development of that particular resource. The council's primary responsibility will be to look at adequacy of conditions as they relate to provider care and will only make

recommendations, not decisions, and is directed to seek public input. The board has rule-making authority.

SENATOR CHRIS CHRISTIAENS asked how and what effect the starting date will have on existing HMOs in Montana, and if they are already in compliance, as they are currently structured.

Laurie Ekanger said she didn't know how they will meet the criteria for HMOs.

Claudia Clifford said there are staggered effective dates in the law. The effective date for the access plan which deals with the network is October 1, 1998 for current HMOs. The effective date for the quality assessment plan, which consists of data of various services rendered, and the quality improvement plan is October 1, 1998. For new HMOs, HEDIS (Health Plan Employer Data Information Set) phases in, so compliance is not required the first day the HMO starts operating.

SENATOR CHRISTIAENS asked about the date.

Tanya Ask said Blue Cross and Blue Shield understands the compliance requirement with SB 128. Particularly the quality assurance is going to be a massive task requiring a great deal of time and background work to accomplish.

SENATOR CHRISTIAENS said if an out-of-state HMO enrollee who comes to Montana for a visit and needs medical care, do Montana HMOs have to provide care, and sees nothing in SB 128 to address that issue.

Claudia Clifford said HMOs licensed to operate in Montana are to provide services to residents of Montana.

SENATOR CHRISTIAENS said the issue of visitors from other states, who become ill and need services should be addressed.

Claudia Clifford said she did not understand the question.

SENATOR CHRISTIAENS related the specifics of a situation where a visitor, who belonged to an HMO in Pennsylvania, was visiting Montana and was denied services at an HMO in Montana.

Claudia Clifford said she would talk to **SENATOR CHRISTIAENS** about the specifics of this case after the hearing.

SENATOR LARRY BAER said he has no major problems with the substance of this bill, but does have a problem with the testimony. Most regulatory agencies have a relationship with the people they regulate and are self-supporting with special revenue funds derived from means and charges to the people they regulate. He said the fiscal note is over \$400,000.00, most of which will be a burden on the taxpayers by way of the General Fund. He asked **Claudia Clifford** if she would be receptive to language in this

bill that would provide for some special revenue funding and put the cost of the regulatory agency on the people it's regulating.

Claudia Clifford said she had suggested that to the Insurance Commissioner and he is receptive to that idea.

SENATOR BAER asked **Claudia Clifford** if she would prepare an amendment that would reflect this approach, and allow him to review it before executive action is taken on this bill.

Claudia Clifford said she would do that.

SENATOR FRED THOMAS asked why create a Board rather than those responsibilities being in the State Auditor's office.

Claudia Clifford said the insurance department's responsibility should be with the solvency issue, licensing issues and consumer complaints. They did not want to duplicate the Department of Health in doing network adequacy and quality assessment. The purpose of the Board is to provide formalized communications between the Insurance Commissioner and the Department of Health, so if it becomes necessary for the Insurance Commissioner to take action against a company who has repeatedly not met standards, the Board would have been part of the rule making process and understand the standards and corrective measures for compliance, and there would have been good communication with the Department of Health.

SENATOR THOMAS asked about the seven members of the council and their job, pursuant to this bill, if anything in other areas is currently being done with health insurance.

Claudia Clifford said not in the area of health insurance, but that council helps provide advise to the Task Force program. The concept of that was the Medical Advisory Council was proposed by the Department of Health because they had had success with the advisory to the Passport program.

SENATOR EVE FRANKLIN asked about the issue of contracting for some of these services.

Nancy Ellery said the Department of Health contracts for medical expertise. They had decided it would be more cost efficient to use an advisory council with medical representation to give DPHHS input on the standards. Referring to the fiscal note, she said they have contracted for the medical director and a physician to some of the systems analysis.

Closing by Sponsor:

SENATOR DON HARGROVE said this a very important proposition and the best thing in the interest of the people of Montana. With one exception, the Board would be made up of people who are already in existence and this bill delineates their responsibility. The costs are somewhat adjustable, but there are certain things that

have to be done to implement this plan, and could be compromises as to who pays for what. We must remember that if these costs are passed on to the HMO's, they will then be passed on to the consumer, and that's just another tax.

ADJOURNMENT

Adjournment: 2:30 PM



SEN. STEVE BENEDICT, Chairman



KAROLYN SIMPSON, Secretary

SB/ks