

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON PUBLIC HEALTH, WELFARE, & SAFETY

Call to Order: By ACTING CHAIRMAN LARRY BAER, on February 19, 1997, at 3:15 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 365, 2/17/97
Executive Action: SB 331, SB 317, SB 156, SB 162, SB 128, SB 23

{Tape: 1; Side: A; Approx. Time Count: 3:15 PM}

HEARING ON SB 365

Sponsor: SENATOR STEVE BENEDICT, SD 30, Hamilton

Proponents: Jerry Loendorf, MT Medical Assn.

Mark O'Keefe, State Auditor
Kathy Caniparoli, Nurse Practitioner
Tanya Ask, Blue Cross and Blue Shield of MT
Tom Ebzery, Yellowstone Community Health Plan
Tom Hopgood, Health Insurance of America
Jerry Driscoll, MT Life Underwriters
Gloria Hermanson, MT Psychological Assn.
Laurie Ekanger, Department of Health

Kip Smith, Primary Care Assn.
John Flink, MT Hospital Assn.
Bob Torres, MT Chapter Social Workers
Andrea Merrill, MT Mental Health Assn.
Anita Bennett, MT Logging Assn.
Dick Pattison, MT Senior Citizens
Al Smith, MT Advocacy Program

Opponents: Ed Groggans, MT Benefit Plan

Opening Statement by Sponsor:

SENATOR STEVE BENEDICT, SD 30, Hamilton, said SB 365 minimizes regulatory oversight, while assuring quality of care, and access to health care for all Montanans. It will help facilitate the growing managed care market in Montana without placing undue government regulations and red tape on the managed care organizations that now operate in Montana, or wish to enter this market in the future. He wants to make sure the goals of cost cutting don't deny consumers access to quality health care and believes in the free market and wants to maintain high standards for quality care. Senate Bill 365 creates quality and adequacy network standards. Managed care is growing in the nation and Montanans must be protected by legislation that addresses access, affordability, and quality of care.

Proponents' Testimony:

Jerry Loendorf, representing Montana Medical Association, said there are good things to say about this bill because it strikes a balance between providing good care at a low cost and it contains a lots of consumer protections. We need to let managed care be able to flourish, yet grow and need to provide an adequate number and types of providers to ensure covered persons receive the care they contract to receive. Health carriers are required to provide an access plan to the Department, which must show they meet the general requirements. The bill requires high risk persons not be excluded, whose claims may be higher than the average.

Mark O'Keefe, State Auditor, said he supports SB 365 because it is a good bill but has one major flaw and some weaknesses. He said the bill is a result of **SENATOR BENEDICT's** realizing people rejected the Clinton health care plan because they did not want government involved in health care, but now insurance companies are doing what the government did: setting up managed care entities that tell consumers what type of care they can get and from whom they can get it. The goal of the bill is to design a system using available resources with Montanans making the rules, not the government. The goal is guaranteed quality of health care and ensuring managed care entities are financially solvent. It will protect consumers because they need to feel they are treated well and have access to quality health care. This bill creates efficiency by coordination between the Insurance Commissioners Office and the Department of Health, under the direction of the Governor. Senate Bill 365 creates a double regulation of the managed care industry because it removes board of network

adequacy, which was contained in SB 128. That is a key consumer protection provision that should be put back in this bill. It also removed the committee that approved the standards, which leaves the bureaucrats and politicians to set the quality standards for managed care. The Insurance Department would continue to regulate financial solvency, but under the bill there is no institutional coordination with the Health Department which is double regulation of the health industry. Without the board, there will be a doubling of work and cost and this will be passed on to the taxpayers, insurers and consumers. With the removal of the Medical Advisory Council, consumers and providers will not have a voice in quality assurance and managed care. Providers should be included in the quality improvement plan and consumers should be allowed to comment on quality and quality improvement of their health plan, because they are receiving the health care. There are three things that should be considered. Whether or not a board is critical to force the agencies to cooperate with one another, inclusion of a medical advisory council, and the quality improvement provisions of this bill.

Kathy Caniparoli, Nurse Practitioner, representing Montana Nurses Association, said they offer qualified support for SB 365. They believe managed care plans must be accountable to the people of Montana for the quality of services offered. They are offering an amendment to section 15-1. (EXHIBIT 1)

Tanya Ask, Blue Cross and Blue Shield of Montana, said they support SB 365 and have proposed a conceptual amendment to offer a board the inclusion of a board of network adequacy and quality assurance, representing the Governor through the Department of Health, and the Insurance Department, with a delayed effective date of July 1, 2001. The two managed care organizations in Montana are HMO Montana and Yellowstone Community Health Plan are community-based provider-driven organizations. Because they have been responsive, they have not generated the types of complaints that have occurred in other parts of the country. The Blue Cross and Blue Shield focus for the future is an even greater commitment to primary care, to a physician-directed network base, and community-based organization.

Tom Ebzery, representing Yellowstone Community Health Plan, testified in support of SB 365 and said they are one of two licensed and operational HMOs in Montana. He offered amendments to SB 365 and said they would not agree to an amendment to put the board back in. If it was a bad idea, it will still be a bad idea in 2001. (EXHIBIT 2)

Tom Hopgood, representing Health Insurance Association of America, said they are interested in health maintenance organizations and in managed care. They are not wide-spread in Montana but they are coming. It's in the best interest of providers of medical service, insurers, and the citizens of Montana to see that medical services are delivered in a timely and cost-effective manner and continued quality of service. This

bill does that and the interests of consumers are protected in this bill.

Jerry Driscoll, Montana Association Life Underwriters, said SB 365 provides for quality of care for participants and provides a level playing field for the agents and insurance companies.

Gloria Hermanson, representing Montana Psychological Association, said SB 365 allows for no provider or consumer input with regard to adequacy or quality of care. They support the bill only if it is amended to include a board of network adequacy and quality assurance, and a quality-review council. They are offering amendments to include the board and council. (EXHIBITS 3 & 4)

Laurie Ekanger, Department of Public Health and Human Services, said they support SB 365. They have worked with the Insurance Commissioner, his staff, and **SENATOR BENEDICT** on language of this bill. It's an important priority to the Governor that we have quality assurance standards and consumer protection for the people of Montana.

Kip Smith, Associate Director, Montana Primary Care Association, said they support this bill but have two concerns and are offering amendments. (EXHIBIT 5) They have struggled with the definition of health maintenance organizations in existing law. That definition of an HMO is in section 3, #7 of the bill. The part they have struggled with is where it defines pre-paid or other financial basis. The change in that definition does not effectively clarify who is going to be affected by this bill. He thought pre-paid capitated is what was wanted but that is not what is in Montana. The Insurance Commissioner's Office interpretation of the existing is that it applies to any insurance plan that has a closed provider network. The language offered in their amendment for health maintenance organization more adequately addresses who is covered by this law. Their other concern is the lack of any periodic reporting regarding network adequacy and quality improvement plan.

John Flink, Montana Hospital Association, said they share the concerns raised about managed care and want to avoid the horror stories that have occurred elsewhere. Senate Bill 365 will enable us to achieve that goal, while striking a balance on the regulatory side. They raised concerns about the impact SB 128 would have on HMO administrative costs, but these issues have been addressed in SB 365. They do not support adding the board. The definition of health carrier because it is vague and may be a problem as to how physician hospital organizations are treated, and has an amendment to deal with this issue. (EXHIBIT 6)

Bob Torres, representing Montana Chapter Social Workers, said they support SB 365 with the provision that the amendments offered by the Montana Psychological Association are included. If it is a bad idea to have a board of network adequacy, it should be found out sooner rather than later.

Andrea Merrill, Executive Director, Montana Mental Health Association, said they support the extra checks and balances contained in the amendments returning the board of network adequacy and quality assurance and the review board.

Anita Bennett, Member Services Director, Montana Logging Association, read a statement of support from the **Montana Association of Health Care Purchasers. (EXHIBIT 7)**

Dick Pattison, President, Montana Senior Citizens Association, said they support SB 365 but are concerned about the lack of a board because consumers need representation and want the board restored to the bill.

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Al Smith, Executive Director, Montana Advocacy Program, said they like the basics of the bill because people with disabilities facing managed care need some protection. They agree with the concerns expressed by **Mark O'Keefe** and the **Montana Psychological Association** and agree with their amendments. The anti-gag order section of the bill lacks effectiveness and really has no enforcement power. They think consumer input is necessary for quality and adequacy of care and would like to have a quality review council included.

Opponents' Testimony:

Ed Groggans, Montana Medical Benefit Plan, said he opposes the bill for two reasons. This is another mandate that will cost consumers more money. There are no horror stories coming from the two operating managed care organizations in Montana, but when too restrictive legislation is passed, only these two will be operating in Montana and possibly keeping others from coming into Montana to do business.

Questions From Committee Members and Responses:

SENATOR FRED THOMAS asked **Tom Ebzery** to address the appeals process and the question about the boards.

Tom Ebzery said the nurses amendment gets into the credentialing statute, and when an HMO is going through the credentialing process, if someone is excluded there must be clear evidence of limited cost effectiveness or quality of care which lacks scientific support. This is similar to some of the language in SB 190. Any class of providers could be added in to the credentialing process, and they have a problem with this. He hasn't seen the appeal process amendment. The board in **SENATOR HARGROVE's** bill was composed of Department of Health Director, Insurance Commissioner and a medical director, and didn't think it was necessary.

SENATOR EVE FRANKLIN asked **SENATOR BENEDICT** to address the unification of the Department of Health and State Auditors office.

SENATOR BENEDICT said the biggest problem with SB 128 was it created additional bureaucracy that was not necessary. There is no need for a paid medical director because the Department of Health has the capability to either contract out or go in-house for some of those functions. Coordination between the auditors office and Department of Health is excellent now, but doesn't know how it would be in future administrations. He would agree to put something into statute for later on, but thinks the council is not necessary.

SENATOR FRANKLIN said in regard to the communications between the Department of Health and Insurance Commissioner, asked **SENATOR BENEDICT** if he would support any of the amendments for the board.

SENATOR BENEDICT said he would agree to putting a delayed effective date for the board, allowing the board to come into existence when we find out who is going to be in the next administration and Insurance Commissioner. He can't support the council amendment. He is opposed to putting quality improvement standards in statute that can't be met by some of the smaller and start-up HMOs, and it's adequate for the Department of Health, under rule-making, to decide what those quality improvement standards should be.

SENATOR CHRIS CHRISTIAENS asked **SENATOR BENEDICT** what he would consider to be a material change in reporting.

SENATOR BENEDICT said **Al Smith** had mentioned the only thing in plan that needed to be provided to the Department (see page 14, section 7, a through j) was the list of providers that needed to be updated, and why not just submit that every year. **SENATOR BENEDICT** said that is unnecessary, burdensome paperwork and regulation. If the plan changes, notify the department, but if not, why submit a yearly plan. Once the plan is filed, that same plan shouldn't have to be submitted every year.

SENATOR CHRISTIAENS asked what would constitute a need to update that plan.

SENATOR BENEDICT said that is getting into semantics, but sees a material change as not doing one of the things in section 7, a through j.

Susan Fox said she would like to see if there is a legal definition or how it is used in the insurance world.

SENATOR CHRISTIAENS said this bill, like SB 128, does not address durable medical supplies and equipment, and asked what would be included for the person with disabilities.

SENATOR BENEDICT said he would take a look at that issue.

SENATOR ECK asked about the use of the terms quality assessment, quality assurance and quality improvement and the whole section of quality assurance.

SENATOR BENEDICT said that is something the Department of Health would decide, under Department rules. They have the in-house capabilities to determine the standards for network adequacy and quality improvement and quality assurance, and may allow to use their own professional expertise and also to contract out.

SENATOR ECK expressed her concern that certain people would be excluded (network adequacy standard, p 13) and it seems that would cover the services of others such as nurse practitioners, chiropractors, etc. and asked if it does cover them.

SENATOR BENEDICT said it does cover them.

SENATOR ECK said the definitions are confusing because there are several sections.

SENATOR BENEDICT said new definitions are needed under the managed care part of it.

SENATOR EVE FRANKLIN asked about taking out the consumer advisory council and what the process would be if a consumer has a problem.

SENATOR BENEDICT said under DPHHS and their use of the Montana Administrative Procedures Act, there is an adequate forum for consumers to express concerns about network adequacy or quality assurance.

SENATOR FRANKLIN asked if the Department of Health would deal with consumer concerns.

Laurie Ekanger said the Council of Provider Specialties in SB 128 included a health carrier member and one consumer member. The responsibility of that group was to provide medical expertise to help the Department design proposed quality standards. They plan to do this without a prescribed council but would bring in specialties to help.

SENATOR BENEDICT said consumer complaints would be handled by the Insurance Commissioner.

SENATOR FRANKLIN asked how consumer complaints would be handled.

Mark O'Keefe said all of the regulatory muscle is in the Commissioners office and that is the reason for his concern about the board. Because they are a criminal justice agency, they must do things differently than the Department of Health. If the Insurance Commissioner gets a consumer complaint, if there are criminal activities going on, they can deal with it.

Closing by Sponsor:

SENATOR STEVE BENEDICT thanked the committee for its patience and all of those who testified for their input. This bill will be something the legislature can be proud of and the people of Montana can be proud of.

Break: 4:24-4:37 PM

CHAIRMAN BENEDICT resumed the chair.

EXECUTIVE ACTION ON SB 331

Motion: SENATOR FRED THOMAS moved SB 331 DO PASS.

Motion: SENATOR THOMAS moved the AMENDMENTS (SB033101.agp) to SB 331 DO PASS.

Discussion: SENATOR THOMAS said this bill was opposed by George Wood concerning the amendments. These amendments clarify the intent of the bill to be understandable by all.

SENATOR SHARON ESTRADA asked SENATOR THOMAS if Don Allen and George Wood were opponents to SB 331.

SENATOR THOMAS said a lot of Don Allen's concerns were explained away after the hearing, and with these amendments, George Wood has no difficulty with the bill.

CHAIRMAN BENEDICT said George Wood also expressed that to him.

Vote: The DO PASS motion for the AMENDMENTS to SB 331 CARRIED UNANIMOUSLY.

Motion/Vote: SENATOR THOMAS moved SB 331 DO PASS AS AMENDED. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 128

Motion: SENATOR EVE FRANKLIN moved SB 128 DO PASS.

Discussion: SENATOR FRANKLIN said she believes strongly in the concept of network adequacy to have those two boards in place and have the consumer and provider on the council. This is a stronger bill in terms of consumer protection and institutionalizing communications between the Governor's office and the Department of Health, and thinks SB 128 is better than SB 365.

Motion/Vote: SENATOR LARRY BAER moved to TABLE SB 128. The motion CARRIED with SENATORS FRANKLIN and CHRISTIAENS voting NO.

EXECUTIVE ACTION ON SB 317

SENATOR ECK said she has been waiting for the fiscal note for SB 317.

Motion: **SENATOR ECK** moved SB 317 DO PASS AS AMENDED.

Discussion: **SENATOR ECK** said it expands Medicaid to 100% of poverty for children under age 17. It will cost the state \$508,490.00 the first year and \$456,490.00 the second year. The question on the fiscal note was the additional 20 FTE's, but the Department has reduced that FTE number to 13. Public assistance offices around the state are in favor of this bill being passed because they have seen families where some of the children are covered by health insurance and others are not. There will be a significant fiscal impact for the Department to provide subsidies or credits for low income children with federal funds available.

SENATOR LARRY BAER said this is significant distinction between reducing revenue to the General Fund and spending money out of the General Fund.

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SENATOR CHRISTIAENS suggested passing the bill out of committee and taking it to the Senate Floor so other members of the Senate can be aware of the implications.

SENATOR ESTRADA said what **SENATOR ECK** is trying to do is admirable, but thinks there will be a major problem getting it through the Senate.

Vote: The DO PASS MOTION for SB 317 AS AMENDED CARRIED by ROLL CALL VOTE with SENATORS BAER, DePRATU, THOMAS, and BURNETT voting NO.

EXECUTIVE ACTION ON SB 23

Amendments: **SENATOR CHRISTIAENS** said he has amendments to SB 23. (EXHIBIT 8)

CHAIRMAN BENEDICT said he, the Department of Health, and **SENATOR CHRISTIAENS** think the amendments will make it a better bill, and he thinks the bill should be taken off the table for discussion purposes.

Motion: **SENATOR CHRISTIAENS** moved to take SB 23 OFF THE TABLE. The motion FAILED with SENATORS BAER, DePRATU, BURNETT, ESTRADA, FRANKLIN and THOMAS voting NO.

EXECUTIVE ACTION ON SB 156

Motion: **SENATOR CHRISTIAENS** moved SB 156 DO PASS.

Discussion: SENATOR CHRISTIAENS said SB 365 addresses the gag provision but there are no penalties and he thinks penalties are important for those with disabilities. They need to be aware of their options for medical care.

SENATOR BAER asked if this is the bill that requires the 800 telephone number.

CHAIRMAN BENEDICT said this is one of two bills that were tabled earlier, and out of respect for SENATOR CHRISTIAENS because he wasn't here, they were brought off the table until they could be considered again.

SENATOR ECK asked where this issue is addressed in SB 365.

SENATOR CHRISTIAENS said pages 17 and 18.

SENATOR ECK asked if there are any penalties contained in SB 365.

SENATOR CHRISTIAENS said no.

CHAIRMAN BENEDICT said the Insurance Commissioner has the authority to impose some sort of penalty if there is a gag clause in the plan.

SENATOR FRANKLIN said the Commissioners's office supported SB 156 and so, recognized that provided the tools to enforce the gag clause that was not in SB 128.

SENATOR THOMAS said if the gag clause is to be included in SB 365, amendments could be made to that bill, but should retain SB 156 in case it is needed later.

Motion/Vote: SENATOR THOMAS moved to TABLE SB 156. The motion CARRIED with SENATORS BAER, CHRISTIAENS, ECK, and FRANKLIN voting NO by ROLL CALL VOTE.

EXECUTIVE ACTION ON SB 162

Motion: SENATOR CHRISTIAENS moved SB 162 DO PASS.

Discussion: SENATOR CHRISTIAENS said the only objection to this bill for the toll-free line was the retroactivity.

Motion: SENATOR CHRISTIAENS moved the proposed AMENDMENT (remove section 5) to SB 162 DO PASS.

Discussion: Susan Fox explained the proposed amendment. The effective date would be October 1, 1997.

CHAIRMAN BENEDICT asked if what was left in the bill is provider disclosure?

SENATOR CHRISTIAENS said yes.

CHAIRMAN BENEDICT asked about the complaint system and if everything in section 2 is being stricken, then it reverts to current law?

Susan Fox said the only section being stricken is section 5.

CHAIRMAN BENEDICT asked if the toll-free number is being left in.

SENATOR CHRISTIAENS said yes because that is the purpose of the bill.

CHAIRMAN BENEDICT said it will say, HMOs already in existence don't have to have a toll-free number, but new ones which come in after the effective date of the act would have to, then asked what the rationale is for this.

SENATOR CHRISTIAENS said as HMOs come in to Montana, it's difficult for consumers to make educated decisions without being able to ask questions. The toll-free number would allow consumers to clarify information so they can make sure they are purchasing the right product.

CHAIRMAN BENEDICT asked if the current HMOs operating in Montana have toll-free numbers.

Tom Ebzery said Yellowstone Community Health Plan and Blue Cross and Blue Shield do have toll-free numbers, but the other managed care organization in the state does not.

SENATOR CHRISTIAENS said Blue Cross supported it if section 5 is taken out because it's something they already offer. Right now it is not a major problem, but as more companies come into Montana offering these services, consumers need to feel they made the right choices.

Vote: The DO PASS motion for the AMENDMENTS to SB 162 CARRIED UNANIMOUSLY.

Motion: **SENATOR CHRISTIAENS** moved SB 162 DO PASS AS AMENDED.

Discussion: **SENATOR THOMAS** said he doesn't see the need to put business practice into law because needs are met by the existing programs. A toll free number should not be dictated by law.

SENATOR CHRISTIAENS said most states don't have this requirement and it creates a problem for consumers.

SENATOR ECK said she sees this as a consumer protection and we don't know what is going to happen with HMOs.

SENATOR BAER said it's a commendable act of good faith that the two in Montana provide toll free numbers, but doesn't want to set

a precedent, which requires anyone to provide a toll-free number for their business operation is unacceptable.

SENATOR THOMAS said if the bill allows for the suspension of the certificate of authority for this plan if they have a toll-free number, he finds this to be too much.

Vote: The DO PASS motion for SB 162 AS AMENDED FAILED with SENATORS BAER, DePRATU, THOMAS, BURNETT and BENEDICT voting NO.

Motion: SENATOR THOMAS moved to TABLE SB 162.

Discussion: SENATOR ECK said if the bill fails to pass, the choice is for a Do Not Pass motion or table and it would not go to the Floor.

SENATOR THOMAS said the motion to pass the bill failed so the motion is gone, so the bill is still in the committee. Any motion is in order.

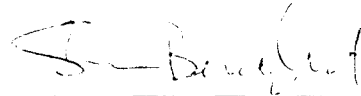
CHAIRMAN BENEDICT said he would entertain a positive motion on the bill.

Motion/Vote: SENATOR FRANKLIN moved SB 162 DO PASS AS AMENDED.

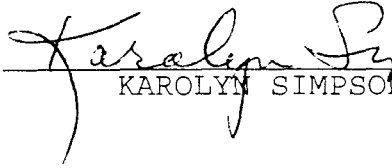
Motion/Vote: The TABLE motion for SB 162 CARRIED with SENATORS FRANKLIN, CHRISTIAENS, and ESTRADA voting NO.

ADJOURNMENT

Adjournment: 5:00 PM



SEN. STEVE BENEDICT, Chairman



KAROLYN SIMPSON, Secretary

SB/ks