

HB 128 INTRODUCED BY HANSEN, S., ET AL.
CREATING A HEALTH CARE COST CONTAINMENT COMMISSION

1/09 INTRODUCED
1/09 REFERRED TO HUMAN SERVICES & AGING
1/09 FISCAL NOTE REQUESTED
1/16 FISCAL NOTE RECEIVED
1/22 HEARING
1/23 TABLED IN COMMITTEE

1 H.B. BILL NO. 128
 2 INTRODUCED BY Stella J. Hansen, Council Fitz
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A HEALTH CARE
 5 COST CONTAINMENT COMMISSION TO ESTABLISH RATES FOR CERTAIN
 6 MEDICAL FACILITIES; DEFINING THE DUTIES AND POWERS OF THE
 7 COMMISSION; REQUIRING REGULATED FACILITIES TO PAY A FEE TO
 8 FUND THE COMMISSION'S ACTIVITIES; AND PROVIDING EFFECTIVE
 9 DATES."

10
 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 Section 1. Health care cost containment commission --
 13 allocation -- composition -- terms -- quasi-judicial. (1)
 14 There is a health care cost containment commission.

15 (2) The commission is allocated to the department of
 16 administration for administrative purposes only as
 17 prescribed in 2-15-121. However, the commission may hire its
 18 own staff, and 2-15-121(2)(d) does not apply.

19 (3) The commission consists of seven members appointed
 20 by the governor. No member may have a pecuniary or
 21 fiduciary interest in the management or policy of an
 22 ambulatory surgical facility, hospital, or long-term care
 23 facility as defined in [section 2].

24 (4) Members shall serve staggered 3-year terms. A
 25 vacancy occurring on the commission other than by expiration

1 of a term must be filled by the governor for the unexpired
 2 portion of the term.

3 (5) The commission is designated as a quasi-judicial
 4 board for purposes of 2-15-124, and its members are entitled
 5 to compensation and travel expenses as provided in 2-15-124.

6 Section 2. Definitions. As used in [sections 2 through
 7 12], unless the context clearly indicates otherwise, the
 8 following definitions apply:

9 (1) "Ambulatory surgical facility" means a facility,
 10 not part of a hospital, which provides surgical treatment to
 11 patients not requiring hospitalization. This type of
 12 facility may include observation beds for patient recovery
 13 from surgery or other treatment.

14 (2) "Commission" means the health care cost
 15 containment commission provided for in [section 1].

16 (3) "Hospital" means a facility providing, by or under
 17 the supervision of licensed physicians, services for medical
 18 diagnosis, treatment, rehabilitation, and care of injured,
 19 disabled, or sick persons. Services provided may or may not
 20 include obstetrical care, emergency care, or any other
 21 service as allowed by state licensing authority. A hospital
 22 has an organized medical staff which is on call and
 23 available within 20 minutes, 24 hours a day, 7 days a week,
 24 and provides 24-hour nursing care by licensed registered
 25 nurses. This term includes hospitals specializing in

1 providing health services for psychiatric, mentally
2 retarded, and tubercular patients.

3 (4) "Long-term care facility" means a facility or part
4 thereof that provides skilled nursing care, intermediate
5 nursing care, or intermediate developmental disability care
6 to two or more persons or personal care to more than four
7 persons who are not related to the owner or administrator by
8 blood or marriage. The term does not include adult foster
9 care licensed under 53-5-303; community homes for the
10 developmentally disabled licensed under 53-20-305; community
11 homes for physically disabled persons licensed under
12 53-19-111; youth care facilities licensed under 41-3-1142;
13 hotels, motels, boardinghouses, roominghouses, or similar
14 accommodations providing for transients, students, or
15 persons not requiring institutional health care; or juvenile
16 and adult correctional facilities operated by the department
17 of institutions. As used in this subsection:

18 (a) "skilled nursing care" means the provision of
19 nursing care services, health-related services, and social
20 services under the supervision of a licensed registered
21 nurse on a 24-hour basis;

22 (b) "intermediate nursing care" means the provision of
23 nursing care services, health-related services, and social
24 services under the supervision of a licensed nurse to
25 patients not requiring 24-hour nursing care;

1 (c) "intermediate developmental disability care" means
2 the provision of nursing care services, health-related
3 services, and social services for the developmentally
4 disabled, as defined in 53-20-102, or persons with related
5 problems; and

6 (d) "personal care" means the provision of services
7 and care which do not require nursing skills to residents
8 needing some assistance in performing the activities of
9 daily living.

10 Section 3. Officers of commission -- meetings --
11 quorum. (1) The members of the commission shall elect a
12 chairman and other necessary officers. Commission officers
13 serve 1-year terms.

14 (2) The commission shall meet at least once every 2
15 months and may hold additional meetings at the call of the
16 chairman or at the request of four members.

17 (3) Four members constitute a quorum for transaction
18 of business, and no action of the commission is effective
19 without the concurrence of four or more members.

20 Section 4. Staff. The commission shall appoint an
21 executive director, who serves at the commission's pleasure,
22 to act as the commission's chief administrative officer. The
23 executive director may employ additional staff as necessary
24 to perform the duties assigned by the commission.

25 Section 5. Commission to establish rates. (1) The

1 commission shall initiate reviews or investigations of
2 ambulatory surgical facility, hospital, and long-term care
3 facility rates and shall by rule establish and adjust rates
4 as necessary to assure health care purchasers that:

5 (a) the aggregate costs of the ambulatory surgical
6 facility, hospital, or long-term care facility are
7 reasonably related to its total services;

8 (b) the aggregate rates of the ambulatory surgical
9 facility, hospital, or long-term care facility are
10 reasonably related to its aggregate costs; and

11 (c) rates are set equitably among all purchasers of
12 health care without undue discrimination or preference.

13 (2) The rates established by the commission must be at
14 a level that permits an ambulatory surgical facility,
15 hospital, or long-term care facility to render effective and
16 efficient service in the public interest.

17 (3) An ambulatory surgical facility, hospital, or
18 long-term care facility may not charge for services at rates
19 other than those established by the commission.

20 Section 6. Methodology for establishing rates. (1) The
21 commission shall develop and apply any reasonable, relevant,
22 or generally accepted methodology to establish rates for
23 each ambulatory surgical facility, hospital, and long-term
24 care facility. The methodology must provide that ambulatory
25 surgical facilities, hospitals, and long-term care

1 facilities treat payers, employees, and patients equitably.

2 (2) In the interest of promoting the most efficient
3 and effective use of services, the commission may use
4 various methods of rate determination. The commission may
5 also adopt experimental methods of charges and payments as
6 long as the methods are in the public interest and
7 consistent with the purposes of [sections 2 through 12].

8 Section 7. Initial rate schedule -- adjustments. (1)
9 The commission shall by rule establish an initial schedule
10 of rates for each ambulatory surgical facility, hospital,
11 and long-term care facility on or before January 1, 1989.

12 (2) After establishing the initial schedule of rates,
13 the commission shall from time to time, but at least
14 annually, determine the need to adjust the rates to account
15 for any of the following changes:

16 (a) the mix of patients with regard to case type or,
17 if feasible, severity of illness;

18 (b) the costs of goods and services purchased by the
19 ambulatory surgical facility, hospital, or long-term care
20 facility; or

21 (c) the mix of goods and services used in providing
22 diagnostic analysis and treatment that results from
23 technological advances.

24 (3) A rate schedule adjustment made to reflect
25 inflation in the cost of goods, services, and technology

1 must conform to a formula established by the commission that
 2 equitably reflects changes in the prices that all ambulatory
 3 surgical facilities, hospitals, and long-term care
 4 facilities pay. In devising this formula, the commission
 5 shall whenever possible use appropriate price-change,
 6 wage-change, and wage level rates of increase measures
 7 published by the bureau of labor statistics, United States
 8 department of labor.

9 Section 8. Request for rate change. After the
 10 commission has established an initial schedule of rates or
 11 approved a rate adjustment as provided in [section 7], an
 12 ambulatory surgical facility, hospital, or long-term care
 13 facility may file in writing with the commission a request
 14 for a hearing on the question of whether a change in the
 15 rate schedule should be made. Upon receipt of the request,
 16 the commission shall hold a hearing on the request in
 17 accordance with the provisions of the Montana Administrative
 18 Procedure Act concerning contested cases. If the commission
 19 determines that a rate change is warranted, it shall adjust
 20 the rate schedule in accordance with the Montana
 21 Administrative Procedure Act.

22 Section 9. Reporting requirements. (1) The commission
 23 shall obtain from ambulatory surgical facilities, hospitals,
 24 and long-term care facilities relevant financial and
 25 utilization data necessary for a proper and thorough review

1 of rates. At a minimum, the commission shall obtain data on
 2 operating expenses, uncompensated care expenses incurred in
 3 rendering services to patients who cannot or do not pay,
 4 interest charges, and depreciation expenses based on the
 5 expected useful life of real property and capital equipment.

6 (2) After holding public hearings, the commission
 7 shall establish a uniform system of financial and
 8 utilization reporting to be used by all ambulatory surgical
 9 facilities, hospitals, and long-term care facilities. The
 10 commission may prescribe a uniform fiscal year to be used by
 11 these facilities. To the greatest extent possible, copies of
 12 reports required to be filed with federal, state, and local
 13 agencies may be used in completing the reports required by
 14 this section. All ambulatory surgical facilities, hospitals,
 15 and long-term care facilities shall adopt the reporting
 16 system established under this section for the fiscal year
 17 beginning July 1, 1988.

18 (3) The commission may modify the reporting system
 19 based on differences in the scope, types of service, or
 20 financial structure among the various categories, sizes, or
 21 types of facilities.

22 (4) The commission shall require that financial and
 23 utilization reports be certified by a certified public
 24 accountant who is independent from the facility submitting
 25 the reports. The commission may also require officials of

1 the facility to attest that the reports have been prepared,
2 to the best of their knowledge and belief, truthfully and in
3 accordance with the prescribed reporting system.

4 (5) The commission may examine and investigate records
5 and accounts of a reporting facility to verify the accuracy
6 of reports. As a part of the examination, the commission may
7 order the facility to conduct a full or partial independent
8 audit of all records and accounts, the expense of which must
9 be paid by the facility.

10 Section 10. Powers of the commission. The commission
11 may:

12 (1) hold hearings, conduct investigations, and require
13 the filing of information relevant to matters affecting the
14 cost of services in facilities regulated by the commission;

15 (2) subpoena witnesses, papers, records, documents,
16 and other data sources relevant to matters affecting the
17 cost of services in facilities regulated by the commission;

18 (3) administer oaths or affirmations in its hearings
19 and investigations;

20 (4) create committees from its membership and appoint
21 advisory committees consisting of commission members, other
22 individuals, and representatives of interested public and
23 private groups and organizations;

24 (5) solicit, receive, and accept grants, payments, and
25 other funds and advances from any governmental body and

1 enter into agreements with respect to the grants, payments,
2 funds, and advances, including agreements that involve
3 conducting studies, plans, demonstrations, or projects; and

4 (6) adopt rules setting rates in accordance with
5 [sections 2 through 12].

6 Section 11. Funding of commission. There is an account
7 in the state special revenue fund. Money from fees collected
8 under [section 12] must be deposited in the account. The
9 legislature shall appropriate money from the account to the
10 commission to fund the commission's activities, including
11 salaries of the executive director and other staff.

12 Section 12. Determination and payment of fees. (1) The
13 department of revenue shall assess each ambulatory surgical
14 facility, hospital, and long-term care facility a fee to
15 fund the commission's activities.

16 (2) Within 30 days after enactment of the legislative
17 appropriation to the commission, the department shall
18 determine the fee to be charged each regulated facility for
19 the first year of the biennium. To determine the fee, the
20 department shall:

21 (a) determine the total gross operating revenue
22 generated by all regulated facilities for the previous
23 fiscal year;

24 (b) divide the facility's gross operating revenue for
25 the previous fiscal year by the total determined in

1 subsection (2)(a); and
 2 (c) multiply the amount calculated in subsection
 3 (2)(b) by the commission's appropriation for the first year
 4 of the biennium.
 5 (3) On or before May 30 of the first year of the
 6 biennium, the department shall determine the fee to be
 7 charged each facility for the second year of the biennium by
 8 repeating the steps required in subsections (2)(a) and
 9 (2)(b) and by multiplying the resulting amount by the
 10 commission's appropriation for the second year of the
 11 biennium.
 12 (4) Each facility shall file a statement with the
 13 department reporting its gross operating revenue as required
 14 by the department.
 15 (5) A facility shall pay its annual fee to the
 16 department on or before July 1 of the year in which the
 17 department determines the fee.
 18 Section 13. Appointment of initial commission --
 19 terms. (1) Within 30 days after the effective date of
 20 section 1, the governor shall appoint members to the health
 21 care cost containment commission.
 22 (2) Notwithstanding section 1(4), two members
 23 initially appointed to the commission shall serve 1-year
 24 terms, two members shall serve 2-year terms, and the
 25 remaining members shall serve 3-year terms.

1 Section 14. Codification instruction. (1) Section 1 is
 2 intended to be codified as an integral part of Title 2,
 3 chapter 15, part 10, and the provisions of Title 2, chapter
 4 15, apply to section 1.
 5 (2) Sections 2 through 12 are intended to be codified
 6 as an integral part of Title 50, chapter 5, and the
 7 provisions of Title 50, chapter 5, apply to sections 2
 8 through 12.
 9 Section 15. Effective dates. (1) Sections 1, 2, and 11
 10 through 15 are effective on passage and approval.
 11 (2) Sections 3 through 10 are effective July 1, 1987.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB128, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act creating a health care cost containment commission to establish rates for certain medical facilities; defining the duties and powers of the commission; requiring regulated facilities to pay a fee to fund the commission's activities; and providing an effective date.

ASSUMPTIONS:

N/A

FISCAL IMPACT:

It is not possible to determine the fiscal impact of the proposed law. Although the cost containment commission expenditures are to be completely offset by a fee imposed on regulated health care facilities, the activities of the commission could impact the state share of medicaid costs. Predicting what medicaid costs would be with and without rate regulation cannot be done with any degree of certainty.

It is not possible to accurately estimate the increased expenditures that would be necessary to fund the commission's activities. Nor is it possible to accurately predict the fee that regulated facilities would pay to fund the commission.

There is only one commission similar to that created under the proposed law. The commission is in New Jersey and it regulates 90 acute care facilities. This five member commission meets once a week, but it does not set rate schedules as would the commission proposed in HB128. The rate schedules are set by the state department of health. The New Jersey commission has a staff of three professionals, two clerical, and consultants as necessary. The annual budget for the New Jersey commission is about \$225,000 and is paid for by a charge of \$1.70 per admission in each regulated facility. The rate setting activities are conducted by 40 to 50 FTE in the department of health at a cost of about \$1.2 million per year.

EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

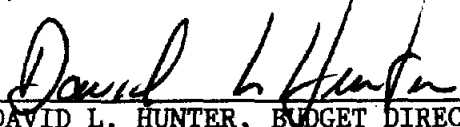
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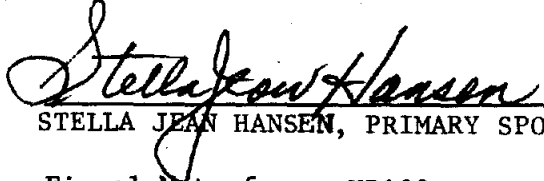
LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Unknown.

TECHNICAL OR MECHANICAL DEFECTS IN PROPOSED LEGISLATION OR CONFLICTS WITH EXISTING LEGISLATION:

N/A

 DATE 1/15/87
DAVID L. HUNTER, BUDGET DIRECTOR
Office of Budget and Program Planning

 DATE 1/16/86
STELLA JEAN HANSEN, PRIMARY SPONSOR
Fiscal Note for HB128, as introduced.