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Economic Affairs Interim Committee

60th Montana Legislature

MINUTES

HJR 48 Subcommittee
Health Care Insurance Reforms

February 6, 2008

Capitol Bldg. Rm 137
Helena, Montana

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COMMITTEE MEMBERS PRESENT

REP. SCOTT MENDENHALL, Chair
REP. MICHELE REINHART
REP. BILL THOMAS

COMMITTEE MEMBERS ABSENT

SEN. DONALD STEINBEISSER

STAFF PRESENT

ANDREW GEIGER, Lead Staff
BART CAMPBELL, Staff Attorney
CLAUDIA (CJ) JOHNSON, Secretary
LISA JACKSON, Staff Attorney for HJR48
PAT MURDO, Staff for HJR48 & SJR13

Visitors/agenda

Visitors' list, Attachment #1.
Agenda, Attachment #2

COMMITTEE ACTION

- **Introductions of stakeholders**
- **Update on SJR 15 study activities**
- **Adopt minutes from November 7 & 8, 2007**

CALL TO ORDER AND ROLL CALL

00:00:03 REP. SCOTT MENDENHALL called the Economic Affairs Subcommittee to order at 10:00 a.m. REP. MENDENHALL welcomed the committee members and thanked the public for their attendance. The secretary noted the roll. Attachment #3 SEN. STEINBEISSER is absent.

AGENDA

- **Update on SJR 15 Study Activities**

00:01:22 Pat Murdo, Legislative Staff, informed the committee there is a change in the agenda. She introduced the first speaker, Rick Szczebak, who spoke via the polycom phone.

- **Review of Reforms in Other States**
  - Requirements for a Section 125 Plan (Plan).

INTERESTED STAKEHOLDERS:

00:02:40 **Rick Szczebak, Massachusetts Commonwealth Connector**, identified himself and gave a brief overview on the history of the Massachusetts Plan.

00:03:56 Mr. Szczebak discussed several handouts he sent to Ms. Murdo for distribution to the committee. He explained the first handout called "Section 125 Plan - a handbook for employers". **EXHIBIT 1** The Section 125 Plan [the Plan] permits employees to choose between receiving a normal cash wage, or receive certain qualified benefits that can be paid for on a pre-tax basis by employees.

Mr. Szczebak stated there is a power point presentation that he has provided for the committee to follow as he explains how the Section 125 Plan works. **EXHIBIT 2** This handout is called the Code Section 125 Cafeteria Plan. He explained each slide:

- States with Cafeteria Plan Mandates - states that have enacted the Plan, and what the effect is on each state.
- He described how several of the cafeteria plans work.
- Common Cafeteria Plan Names, for example Flexible Benefit Plan, Flexible Compensation Plan, etc.
- Employee Savings, such as annual savings from pre-tax contribution. Without the plan there are no savings.
- Traditional Cafeteria Plan Concepts - It can be an employer sponsored plan. It provides choices among sponsored group plans. It doesn't trigger Employee Retirement Income Security Act of 1974 (ERISA) compliance

issues.

- Cafeteria Plan Defined - where all participants are employees and have several choices.
- Written Plan for Employees only - all participants are employees only. Self-employed individuals are not employees and cannot participate.

00:03:56 Mr. Szczebak talked about the primary benefits that are provided under the Plan, such as accident and health coverage, group-term life insurance, disability, dependent care assistance, 401(k), etc. Once an employee has elected to receive benefits they cannot be revoked. He addressed the rest of the slides explaining the requirements to participate in the Plan, and those who are excluded from the Plan.

00:14:57 Mr. Szczebak said a Cafeteria Plan is one choice among ways to make health care more affordable. He said the U.S. Department of Labor Public Law 96-125 indicates that the Plan is not subject to ERISA.

QUESTIONS FROM COMMITTEE MEMBERS:

00:30:18 REP. REINHART asked Mr. Szczebak if there are any pre-tax benefits available for employers that have 10 or fewer employees or for those that are self-employed. Mr. Szczebak said Massachusetts has drawn the line when there are 10 or fewer employees. He said that 11 or more employees is the threshold for Massachusetts to determine if an employer is large enough to apply the Plan. He said the number 11 is just an arbitrary figure. He said there is nothing in the federal tax code that prohibits an employer with fewer than 11 employees from having the Plan. The Plan is based on 11 or more employees which is the trigger point when an employer can participate. He talked about Montana implementing the Plan with 2 to 9 employees. He stated that the self-employment law is a function of the federal tax code, and for purposes of fringe benefits they are not considered employees.

00:34:34 REP. MENDENHALL asked Mr. Szczebak if the Plan has been challenged in court? Mr. Szczebak responded there was some concern that the Massachusetts Plan might be challenged because of ERISA. He noted that to date there has been no court action. He did say that Maryland was challenged on a different approach, and a court nullified the Maryland law.

00:37:16 Ms. Murdo distributed a handout titled "HJR 48 Briefing Paper: Other States; Health Financing Reforms". **EXHIBIT 3** She directed the committee to Appendix A at the back of the handout, entitled "Options for Montana to Expand Health Insurance Coverage". She said some items are being addressed by the Children, Family, Health and Human Services Interim Committee [CFHHS]. She said that the full CFHHS committee decided to look at consumer-directed health care, especially on issues regarding health care access and delivery. Other issues under the CFHHS Committee's Senator Joint Resolution No. 15 study include economic credentialing and specialty hospital issues. She said there is an effort to obtain cost information from hospitals, providers, and health insurances. She said some states also include pharmaceutical information. This

information will give patients the opportunity to compare, or allow them to know what the costs might be. She also said CFHHS has looked at hospital community benefits and how insurers direct traffic to certain providers. Ms. Murdo informed the committee they will be hearing from David Kendall who is staffing a health care reform initiative involving hospitals, insurers, and providers. She noted that the committee will also be looking at uncompensated care.

00:42:48 REP. REINHART asked about creating a fair playing field for competition, and wanted to know if this is part of the scope of study. Ms. Murdo replied that while researching this subject she discovered that some insurers do not pay premiums, and some self-insurers do not pay assessments to the Montana Comprehensive Health Association. She said Appendix B on the back of Exhibit 3, shows some of the unfair playing field in terms of financing, providers, uncompensated care, and some others. Ms. Murdo distributed a report prepared at the direction of the Montana Attorney General's office, called "Montana's Hospitals: Issues and Facts - related to the charitable purposes of our hospitals and the protection of Montana's consumer." She urged the committee to review the report. **EXHIBIT 4**

00:45:31 REP. MENDENHALL asked about the Children and Family Health and Human Services (CFHHS) request to draft a bill related to SJR 15. Ms. Murdo replied that the request for that bill was to remove the termination date and change some of the language. She said some of that language addresses conflict of interests and urged the committee to look at that category separately.

00:47:39 REP. MENDENHALL asked Ms. Murdo about the concept of looking at several angles in regard to conflict of interest and competitive ventures, such as physicians that are employed by hospitals. Ms. Murdo replied there are two proposed bill drafts that deal with self-referral. These bills came from Physical Therapist groups. She talked about HB 700 from Pennsylvania stating this proposal is a broad based reform bill. She said the second bill was better designed for Montana. It addresses conflict of interests and self-referrals. She talked about the Stark Act that affects referrals by physicians. She said it contains some exclusions and exemptions and noted that state law can be more restrictive than the federal government on self-referral.

INTERESTED STAKEHOLDERS:

- **Healthy Montana Kids Initiative**

00:50:34 REP. MENDENHALL introduced **John Morrison, Montana State Auditor**. Mr. Morrison provided background information stating his office regulates the health insurance industry for the state of Montana. He talked about statistics on the uninsured and poverty level coverage;

- Approximately 160,000 people are uninsured in Montana
- Approximately 34,000 of that number are children
- Approximately 30,000 of those children are 205% below the federal poverty level
- The poverty level guideline is approximately $51,000 for a family of four,
- Montana is one of the worst states for uninsured children

- The poverty rate in the last five years for kids living in Montana has gone from 19% to 29%
- Montana is one of four states that has denied CHIP eligibility to kids and families that are above the175% federal poverty level, and
- Montana has one of the lowest ceilings for Medicaid eligibility of children in America at 133% of poverty for small children, 100% of poverty for teenagers, which is the lowest level that the government permits.

Mr. Morrison distributed a letter he received from Reynolds, Motl and Sherwood, Attorneys at Law, in regard to proposed text for an initiative they are writing on behalf of Healthy Montana Kids First, a Montana non-profit corporation. **EXHIBIT 5** He said the initiative adopts an aggressive enrollment program. He said about one-half of the uninsured children in Montana are eligible for the state Children's Health Insurance Program [CHIP] or Medicaid, but for reasons unknown the parents have not signed them up. He said nationally that two-thirds of the kids that do not have health insurance are eligible for coverage.

01:02:23 Mr. Morrison stated there is no excuse for kids not to be covered by health insurance. When a child is born and there is no insurance that information goes into a data base and that child is automatically covered with insurance. He said the initiative directs the Department of Public Health and Human Services [DPHHS] to identify schools, hospitals, government agencies, and private organizations that want to be enrollment partners to assist in actively enrolling kids. He explained how the enrollment partner works. He said when there is an eligible child that has a mom or dad with health insurance through work, if they cannot afford to put their child on their policy through work, then DPHHS would be allowed to use CHIP or Medicaid dollars to pay for that child on mom or dad's core sponsored plan. He said it costs approximately $1,700 to cover a child on CHIP in Montana. CHIP will increase to $2,000 in a couple of years, and he stated it costs about $1,000 to add a child as a dependent on mom or dad's insurance at work.

01:04:46 Mr. Morrison talked about financing the initiative. His office collects approximately $58 million in premium taxes every year. A small percentage of this tax goes into special revenue accounts. The rest of the money is placed in the general fund. This initiative will divert about 35% of the premium tax, which will be about $21 million, into a new special revenue account. This account will be limited to uses that will be consistent with this initiative, namely increasing eligibility and coverage for children through the Healthy Montana Kids Plan. It will still be the duty of the Legislature to consider this issue on how much to appropriate. The initiative reiterates existing statutory language about Montana's obligations under the CHIP program, the Medicaid program, and the New Healthy Montana Kids Plan, but it is also contingent on the federal government continuing to provide its matching funds.

QUESTIONS FROM COMMITTEE MEMBERS:

01:07:13 REP. REINHART wanted to know how DPHHS will know which program a child

is eligible for. Mr. Morrison said the dividing line would be Medicaid up to 185% of poverty, and CHIP would be between 185% to 250% of the poverty level. He said the initiative specifically permits DPHHS to lower that Medicaid ceiling if necessary to draw down additional CHIP funds.

01:08:15 REP. THOMAS asked Mr. Morrison to explain how the general fund will be replenished when the $21 million is taken out and draws down the general funds. He added that Montana is looking at a deficit by the next legislative session. Mr. Morrison replied that the Governor's Budget Office is depicting a fund balance in excess of $100 million. He said the numbers are speculation, but the initiative allows the people of Montana to place a certain level of priority on providing health coverage to all uninsured kids. This initiative doesn't include a tax increase or any additional revenue. He hopes this will work out indefinitely in the Montana budget without any additional tax increases. He said the budget in the foreseeable future can easily afford this without cutting into existing funding priorities.

01:10:00 REP. THOMAS talked about alternate demands for state money, such as the old workers' compensation fund. He said that Montana will have to put money back into the state fund. He asked if the initiative passes and there isn't enough money in the general fund to meet all the needs, such as for fire fighting, etc., how will this process work? Mr. Morrison said it will be up to the Legislature to balance those priorities, but the people of Montana will have an opportunity to express their opinion about the priority that should be placed on this particular issue. He said that "every child in Montana should have health coverage just like every child in Montana deserves to go to school."

01:11:42 REP. THOMAS asked if raising the poverty rate will create a problem with parents not paying their own premiums and putting their child in CHIP instead of insuring the kids with their own private plans. Mr. Morrison said this is called a "crowd out or crowding".

01:12:25 Mr. Morrison talked about studies done on kids in other states that migrate from existing plans onto public plans when public plans are expanded. He said that Steve Seninger, a University of Montana health economist at the Bureau of Business and Economic Research, has a grant that is paying for research into the fiscal impact. He said the Governor's Budget Office is also working on this along with David Kendall from the Montana Health Care Forum. He said there is a wide range starting from almost no movement from private plans to approximately 40% movement off of private plans onto a public plan. He said that the most reliable studies from other states indicate between 6% to 14% would move from private to a public plan. He stated that this initiative specifically has a 3-month waiting period. He said under existing CHIP law there is only a 1-month waiting period.

01:15:09 REP. MENDENHALL asked about reimbursement rates and where does Medicaid and CHIP fit in with the payer mix. Mr. Morrison said Medicaid, CHIP, and private plans all have different reimbursement levels for providers. He said that CHIP reimburses more than Medicaid. He said when comparing CHIP to a

private plan it would depend on what private plan a person is using. Rep. Mendenhall asked what the reimbursement plan would be between CHIP and Blue Cross/Blue Shield (BC/BS). Mr. Morrison said he didn't know and the question was deferred to Mark Burzynski, BC/BS.

01:16:43 Mark Burzynski responded to REP. MENDENHALL's question. He will make a call to BC/BS and find out what a typical CHIP compensation rate would be in comparison to BC/BS rate. He said on the professional side that the CHIP rates are about 20% lower than BC/BS normal allowable rate. REP. MENDENHALL and Mr. Burzynski talked about Mr. Burzynski's testimony at the EAIC meeting in Miles City regarding cost-shifting. REP. MENDENHALL talked about the impact of this initiative on the cost-shifting issue.

01:18:41 Mr. Morrison said that most providers are happy with the current reimbursement levels of CHIP. He said that some providers have chosen not to treat Medicaid patients, so it limits some access for Medicaid patients. He hopes that Medicaid provider rates will continue to allow reasonable access. With respect to hospitals that have to treat a person in the emergency room the cost-shifting would be less by definition than it is when people are not paying at all. Mr. Morrison added that by definition a compensation system even though it may be inadequate will reduce the cost-shifting that is going on when there is no compensation for late-stage expensive care.

01:21:01 REP. MENDENHALL asked about statutes from previous Legislatures that have separated the CHIP program from the Medicaid program. Mr. Morrison said this program has not gone that far administratively behind the scenes at DPHHS. The separation remains.

01:22:36 REP. REINHART asked Mr. Morrison four questions: 1) What are the income levels of parents and where does the level fall; 2) What are the people's wages that are putting them in these difficult situations; 3) What would the premium assistance numbers look like for people that fall into these various categories; and 4) What do we need to do to meet the federal match. Mr. Morrison said he will have to get back with that information. He did address the premium assistance stating that a previous version of the initiative had a sliding scale for premium assistance. He added that it met with great resistance at DPHHS and the Governor's office and has been taken out. He said it could be reconsidered by the Legislature. He pointed out that in the 2009 Legislature if the initiative passes it can be adjusted and improved. The initiative process is not as dynamic as the legislative process and when the language is locked in you are stuck with it. He said the premium assistance will no longer exist in that initiative.

01:25:08 REP. MENDENHALL directed REP. REINHART to a handout in her packet that provides the federal poverty guidelines.

01:25:12 Mark Burzynski, BC/BS, said he had the information requested by REP. MENDENHALL regarding what the reimbursement plan would be between CHIP and Blue Cross/Blue Shield (BC/BS). He explained that the current compensation rate for CHIP is 80% of the BC/BS allowable for physicians, which

is currently at $57.70 [for a primary care visit]. He said if you take 80% of that it will give you the CHIP allowable. The Medicaid allowable is approximately $32 per work unit. He said that the compensation levels for hospitals is 80% of their charges. He did say that out-patient services is at 80% of a special diagnostic lab and x-ray agreement that BC/BS has with these services. He said it is typically about half of what hospital charges would be. REP. MENDENHALL asked Mr. Burzynski how would he look at the initiative affecting the issue of cost-shifting. Mr. Burzynski said the impact of receiving funds from children who had previously been uninsured would more than dwarf the loss in compensation from cost-shifting. He reiterated earlier remarks from Mr. Morrison on the 6% to 14% of current covered children might be crowded out or crowded in depending which way a person looks at it. He said the financial implications for providers would be more positive than less. He hopes that it would serve to reduce cost-shifting.

01:27:51 Pat Murdo pointed out to the committee that she has provided them with information from the American Legislative Exchange Council (ALEC), which is a state legislator's guide to health insurance solutions and glossary. (see Attachment #5) She said the glossary will give the committee viable information. She also directed the committee to a Massachusetts General Hospital Dispatches newsletter. (see Attachment #6)

01:29:51 Lunch

02:46:55 REP. MENDENHALL called the committee back to order.

Motion:

02:47:22 REP. THOMAS made the **motion** to adopt the EAIC minutes from November 7 & 8, 2007. The **motion** carried unanimously by voice vote.

02:47:34 REP. MENDENHALL asked Mark Burzynski to talk about previous testimony he presented at the Miles City meeting in November regarding his perspective about premium tax and the insurance groups throughout the state regarding who pays, who doesn't pay, and who should pay or shouldn't pay on premium taxes. REP. MENDENHALL stated it has implications in relation to the initiative.

02:48:42 Mark Burzynski, BC/BS, opened by informing the committee that funding for the Healthy Montana Kids program is basically funded by the premium tax. He said that BC/BS and New West are both exempt from the premium tax. He emphasized that self-insured employers and health plans that are administered by third-party administrators [TPAs] are also exempt from the premium tax. He said the services that are offered through programs such as the Healthy Montana Kid's initiative will benefit self-funded plans for dependents or children, and members as well as the fully insured who will also bear the burden of paying the premium tax. He said the implications of adding a premium tax [for BCBS] and the burden of adding the cost of mandated benefits to plans like those of BCBS or New West will eventually drive employers toward self-funding of insurance, which will decrease the pool of funds that the state could other wise work with. He said that BC/BS is finding out that, because of mandates and premium taxes,

firms that would have been inappropriate for self-funding in the past, such as groups as small as 50 people, are moving toward self-funding of insurance to reduce the overhead cost associated with mandated benefits and a premium tax. The move will decrease the pool of funds [for programs like the Healthy Montana Kids Initiative]. Mr. Burzynski asked the committee to keep in mind when looking at these two programs is "how do we spread the burden over all Montanans that would benefit from having all children or as many children in the state covered as possible?"

02:51:06 REP. REINHART asked why not impose the premium tax on BC/BS, New West, and TPAs for self-funded insurance plans. Mr. Burzyinski said if it applied across the board to all payers it would make sense to apply to BC/BS as well. From a business perspective, when a mandate or premium tax comes there is an incentive to avoid it at all costs so they can stay competitive. He said a payer such as BC/BS, which focuses on the larger groups in the state, would be inclined to pursue self-funded groups.

02:52:54 REP. REINHART talked about section 6 in Exhibit 5, stating it allows the DPHHS to evaluate whether it is cheaper to cover kids under CHIP or pay the premium for an insurance plan that would include the kids. She wanted to know if this would also apply to BC/BS on plans to cover kids. Mr. Burzynski replied that it would apply to BC/BS. The opportunity to maintain children currently covered through BC/BS would be enhanced by the program. REP. REINHART asked if this program goes out for bid will BC/BS be the administrator and is BC/BS currently the administrator for the CHIP program. Mr. Burzynski replied yes to both questions.

02:54:55 REP. MENDENHALL said as it relates to the issue of premium tax as written in the initiative section that REP. REINHART referred to, and stated it doesn't deal with the underlying issue on who pays premium tax and who doesn't. Mr. Burzyinski said that is correct; it does not address that issue. REP. MENDENHALL asked Mr. Burzynski how Susan Witte [a representative of Allegiance Benefit Plan Management, Inc, a TPA] would respond. Mr. Burzynski stated that Ms. Witte had commented that the premium tax of 1% or 2.75% should not apply to self-funded groups. He said the self-insured are exempt from this. It enhances her services to keep costs down. REP. MENDENHALL asked if the self-insured plans would benefit with other plans under the Healthy Montana Kids initiative because of opting to help pay for kids as mentioned by REP. REINHART. He asked Mr. Burzynski if this included self-insured. Mr. Burzyinski replied yes. REP. MENDENHALL commented that from a policy standpoint , regarding assessing self-insurers a premium tax, that would include the state's 32,000-some state employees and would have its own fiscal impact. Mr. Burzynski responded that the best way to look at this is to hope that if all payers invested some percentage of the premium to cover otherwise uninsured children in the state, he stated "you would hope that you would be robbing Peter to pay Paul and it would all come out in the wash." He said a person would hope that the provider's cash flow was improved and you would see a moderation in their charge increases over a period of time because the need to cost-shift would be reduced.

- **Update on Health Care Forum Activities**

02:59:43 David Kendall said he works on health care policies out of Missoula and works on health care issues nationally. He distributed a handout on the Montana Health Care Forum work groups based on discussion from a January 7, 2008 meeting. **EXHIBIT 6** He discussed the initiative that came out of the forum and what the workgroups focused on:

- Consumer Engagement - incentives for prevention of illness and partnerships between employers and insurers to cover employees.
- Coverage - long-term goals, and defining a set of essential benefits, such as addressing high risk individuals.
- Delivery System - expanding access to dentists, telemedicine, and loan repayment for rural health professionals.
- Transparency - information about health care costs; and
- Value - how to deploy nationally developed evidence-based medicine.

03:02:00 Mr. Kendall informed the group that the Montana Health Care Forum information will be published on the website. This is an effort to engage a diverse group of people in a focused effort to take concrete steps on health care reform. He stated that the committee can look at big change, but doing it with small steps is what makes a difference. He stated that "health care in this country costs too much, covers too few, and delivers quality inconsistently."

Mr. Kendall talked about the transparency group headed by Mike Foster, and the urgency to get moving on this quickly, because the timeframe is too short to prepare for the coming legislative session. He said that many of the committee members are participating in the workgroups, and he encouraged everyone that has time to participate. He said the workgroups can be a vehicle for testing out ideas that come out of this committee, and they are a good sounding board. He said not everyone will agree on what needs to be done, but, he said "at least we will know where our differences lay."

PUBLIC COMMENT:

03:08:39 REP. MENDENHALL asked if anyone in the audience would like to comment on information already heard.

03:09:02 Mark Burzynski talked about the Health Care Forum. He said that the forum originated because of some of his experiences from the Legislature and provided several examples. He said legislators need to become more involved and participate in the Health Care Forum work groups so when the time comes they can provide health care leadership on behalf of the state of Montana.

03:12:01 **Claudia Clifford, AARP Montana**, said AARP was involved in the Health Care Forum group. She stated that health care reform is a national priority for AARP. She said this is a complex issue and she encouraged the members to get together and work with the stakeholders during the interim to work on proposals that a number of people can agree on.

03:13:34 **Mike Foster, St. Vincent Healthcare, St. James Healthcare, and Holy Rosary**

Healthcare, talked about the three entities working together in developing ideas to bring forth to the Legislature. Mr. Foster stated he is heading up the Transparency workgroup. He said they have already met two times, and will be meeting again in the near future. The workgroup consists of hospitals, physicians, insurers, consumers, legislators, and several of the Legislative Services Division staff. He said the focus is "how will this benefit consumers?" He feels the dialogue that has already taken place will benefit the health care industry. He said the work group will be presenting ideas that the Legislature will be able to work with.

03:16:04 **Don Allen, Montana Association of Insurance and Financial Advisors (MAIFA)**, said that he and two other people from his association had attended the forum. He stated it is important to be involved in those discussions. He said those agents who are involved trying to match the coverage that is available in Montana with the needs of the consumers is a real issue, and it is a challenge. He said the list distributed by Mr. Kendall has left his association off and he would appreciate if it would be corrected. Mr. Allen said the association hopes to participate in future meetings.

03:18:33 **Susan Witte, Allegiance Benefit Plan Manager, Third Party Administrators (TPA), and Allegiance Life and Health Insurance Company**, praised the Health Care Forum, stating its agenda is not going to be dictated by any one organization or group. She said the information coming out of the various workgroups will be broad based.

03:19:33 REP. REINHART asked Mr. Kendall about the gap in coverage for those people that are self-employed, part-time employees, students, and others who are falling through the cracks. She asked what ideas are currently available for consumer choice. Mr. Kendall stated that one possibility is a Healthy Montana Purchasing Group. He said it is not a choice for those who do not have access to an employer health coverage. He said it is on the agenda, but at this time they do not have any ideas how to solve that issue. He said the interim committees have to help do some of the work to get something going.

03:21:34 REP. REINHART redirected her question to Jan VanRiper, State Auditor's Office (SAO). Ms. VanRiper said she co-leads the Health Care Forum work group that deals with coverage. She said it is the consensus of that work group that there are a number of efforts underway and existing programs need funding. She said at this late date the work group is looking at ways to support existing programs and proposals such as the initiative to cover all kids. She talked about programs like Insure Montana that offers coverage and subsidies to people working with a small employer. She said that program has 700 people on the waiting list. She said her group is looking to expand this type of program, and stated it is an effort to lower costs.

03:23:30 REP. REINHART asked why mandates increase costs. She thought mandates served their purpose, and wanted to know Mr. Burzynski's thoughts. He responded stating that the downside of mandates requires someone to buy something that they normally wouldn't do. He gave an example of someone

grocery shopping, and walking down an isle with a cart and someone placing an item in that cart that you didn't want and required you to buy it, but, you cannot afford to purchase that item. He said that BC/BS would rather have people buy the basic coverage they can afford without having additional mandates that may not be of interest to them and not have to buy it. He said when mandates are added it is forcing someone out of their ability to purchase that particular coverage. Mr. Burzynski said it would be better if coverage isn't mandated. He doesn't feel that mandates accomplish very much.

03:26:17 REP. REINHART said she is concerned that through employer coverage the employee is not deciding what is in the plan - the employer is. She wanted to know what is being done to give an individual the say on what they want covered and to be able to choose a plan that best fits their needs. Mr. Burzynski said that currently on a national basis it is estimated that most employers pay about 80% of the cost of coverage. He said it comes down to who is basically covering that cost. He said if an employer determines that health coverage helps attract and retain valuable employees they could customize their benefit plan for the employees. He said there are some employers that are not able to do this, because they are a small business where employees would probably want more than less. It also depends on what that business is able to offer.

03:28:40 REP. MENDENHALL asked David Kendall if there is a prescribed time line for the Health Care Forum and what are its anticipated outcomes. Mr. Kendall said they are setting guidelines, but would like recommendations by this July 1 so they can be ready for the next forum by November or December of this year.

▸ **Reform discussions in other states**

03:30:51 Ed Haislmaier, Heritage Foundation, opened by talking about the number of states he has worked in, and how they regulate insurance markets. He said the United States is an employment-based health insurance system. He gave an example of a defined benefit plan for employee benefits, employee pensions, etc. He said the pension and health care model being used today was developed 70 years ago for large employers and it isn't working well in today's world. He said at the federal level they created new vehicles for retirement savings such as IRAs and 401ks. He said health care hasn't made that transition to self-funding or an alternative arrangement. The small market group is eroding across the country especially in states where there is a larger number of small businesses. Since 1979 the number of independent workers covered by employment-based insurance has dropped below 60%.

Mr. Haislmaier talked about the authority between state and federal government and what they can and cannot do. The federal government supports this system with a generous tax preference, for example using pre-tax dollars to purchase health insurance. The federal government also has set rules on what an employer plan looks like. He said a state can regulate the products that an employer may or may not purchase for health care.

Mr. Haislmaier talked about a proposal he worked on in Washington D.C. to design a "hybrid" product in which group insurance would qualify under federal

law, with premiums paid by the employer and employee with pre-tax dollars. The employer would have the protection of federal law but state regulation of portable individual products from which an employee would be free to choose. This hybrid insurance has the best features that would be seen in the individual market, which is choice and affordability. He said an individual would also receive the protection and have tax advantages. He talked about the states having to decide what is best suited for them. He said there is no one perfect model. Questions remain: 1) how will insurance be adjusted, 2) how will it be a geographic adjustment, and 3) how will the market be organized or administered. He went on to compare it with the Massachusetts' Plan.

Mr. Haislmaier talked about the Health Insurance Exchange or as they call it in Massachusetts, the Connector. He discussed how people will be able to pick or choose what menu of products they want. The state authorizes the options, which must be approved by the state's insurance commissioner. He said the Health Insurance Exchange allows people to choose plans that match the dollars they or their employers provide to purchase insurance. He talked about responsibility and trade-offs. He said the states will have to decide how much responsibility they want to shift off of the employers and onto the Exchange and how much they want to leave with the Exchange. Or do they want to charge it off to some entity who will be responsible. He said some banks in Utah are talking about going virtual by expanding their business to include health insurance. He said then a big bureaucracy isn't needed, and the banks will have to decide who will be the insurance plan administrator. He discussed: 1) will the employer be the plan administrator, 2) what happens by not shifting as much responsibility away from the employer, and 3) who would be responsible to make sure the employer is complying with federal law. He said unless there is an entity called a plan administrator, it goes back onto the employer. He talked about the number of states that are considering this, and said he just came from Mississippi. His final point was that for state lawmakers, there are a number of advantages to creating something that benefits the business community and constituents by giving them a new option with flexibility. He talked about the other benefits that come with the Health Insurance Exchange, such as gathering data on the uninsured. He said over a period of time it has been determined that uninsured people go in and out of coverage repeatedly. He said if the coverage sticks to the person instead of the job then some of the problems will go away. He talked about the number of the uninsured above the 200% of poverty level, and the data over a four-year period show that these people were insured more often than they were uninsured. Mr. Haislmaier talked about the administrative infrastructure already in place to handle this new arrangement and how it becomes easy for state government to piggyback on it administratively to subsidize those people who need assistance in purchasing health insurance coverage.

Mr. Haislmaier told how Massachusetts used an uncompensated care funding mechanism that consisted of $1 billion in federal and state monies and paid this out to two hospitals to cover the uninsured. The state couldn't figure out why the number of uninsured kept going up, because the spending kept going up, and they had no idea where the money was going. He said that finally the federal

government came in and said they didn't want to play this game anymore. So Massachusetts went back and checked their data and discovered there were 150,000 people that didn't qualify for the service or made less than 300% of poverty that the hospitals were covering. This is when Massachusetts took the $1 billion into their control, and instead of handing it out with virtually no accountability and transparency to a couple of hospitals they used the $1 billion to purchase coverage for those people that didn't have any insurance. He said that Massachusetts found one mechanism they could piggyback on that was able to streamline the payment down to one payment instead of to 150,000 people. He said that each state will have to customize a Health Insurance Exchange to fit their needs. He said that Montana is different because they don't have money identified as public money in one pot. He stated that this approach gives Montana the tools and the mechanism to start thinking creatively outside the box.

QUESTIONS FROM COMMITTEE MEMBERS:

03:50:26 REP. REINHART wanted to know where other states are getting money to pay for the public sector and for subsidized coverage. Mr. Haislmaier said that states need to look at their current system and where the money is now. He said there are several pots of money, such as people that are currently covered by a public program, for example non-elderly, non-disabled people that are on Medicaid or children that are on the state's health insurance program. He asked if the state wants to offer these non-elderly, non-disabled a different option. He said the lawmakers need to ask: 1) does the state want these types of people mainstreamed with everyone else, and 2) is this a way to provide these people extra money. He said this is an attractive alternative because it provides a sliding scale as opposed to someone who happens to earn an extra dollar and then becomes ineligible. He said another alternative is for the lawmakers to look at the uncompensated care expenditures in their state to determine where that money is going. He said it becomes a matter of where the lawmakers want the money to go. He said that Montana will need to look at who would contribute to the Plan and who is getting paid.

03:55:16 REP. THOMAS asked what was first state to adopt the Plan. Mr. Haislmaier said that Massachusetts was the first state. He said there are other states that are in the process of adopting the Plan or starting in that direction. He said Washington state did adopt a very scaled back version last year, and New Mexico started, but the proposal didn't make it through the House.

03:56:08 REP. THOMAS asked if there is opposition from the current line of carriers when this type of legislation is proposed. Mr. Haislmaier said yes, it changes the policy line. He stated that consumers don't want to be told they have the cheapest Plan and cannot go to a doctor. He said that people's business models will change, and there are legitimate concerns from carriers in the design of this model. He did state that physicians have been supportive of this in other states.

03:59:05 REP. THOMAS asked if the Heritage Foundation has a template for states to follow. Mr. Haislmaier said yes. He has written a model bill and said he will share it with Montana. He does want to make the bill more clear and offer more

options. He has published several articles that address his experiences, such as those regarding trade-offs and financing.

04:01:30 REP. MENDENHALL wanted to know what Massachusetts' administrative costs are per policy and unit of measure. Mr. Haislmaier said exclusive of commissions passed back to brokers, and exclusive of regulatory functions that the state provided to the Exchange, the cost is running approximately 2% of premium. For purposes of estimating, it has been cross-checked with the more successful voluntary pool arrangement, and other places are also looking at about 2%. He said a state could follow the Massachusetts functions such as making it a single point of contact where it could be determined if a certain person qualifies for programs like Medicaid or for CHIP. He said the Plan could be paid for out of the state budget just like it is being paid to DPHHS, or it could be a line-item to be contracted out or keep it at DPHHS.

04:04:43 REP. MENDENHALL questioned if the Massachusetts model is in arrears by $750 million dollars, having problems, etc. Mr. Haislmaier responded that Massachusetts has been putting information out on its website and is continuing to gather information to determine where the process stands. He said it is a program that is being phased in over a two-year period. He stated that Massachusetts started by implementing the subsidized part of this, and not the portion for small businesses. He said Massachusetts started the Plan for small businesses just this month.

04:08:09 Mr. Haislmaier said insufficient information is available to analyze:

- the flow of funds and the transition; and
- transparency.

He talked about budgeting problems with subsidies and concluded that the political issues can be criticized, but there is a commitment in Massachusetts to "own" this, and work through the issues.

04:11:02 REP. REINHART asked about; 1) affordability, 2) the consequences if a person doesn't purchase the Plan, and 3) how affordability is defined. Mr. Haislmaier said there are several issues: 1) there is a requirement for those who are uninsured to purchase the Plan if they can afford it, and 2) there is a standard that exempts people from that requirement on the grounds they cannot afford a minimal package. He said there is a standard that sets what qualifies as coverage. He said the consequence of not paying if a person is able to afford it is the loss of the personal income tax exemption on the state income tax. In the second year, a person will be fined an amount equal to half the cost of buying the low cost policy. He questioned if it is the right way to do it, and he stated that he didn't think it was.

04:12:30 Mr. Haislmaier talked about the difference between the California and Massachusetts Plan. The California proposal would have required everyone to purchase insurance but there were problems figuring out how they could raise the money to subsidize what they felt everyone should have. He said that starting with mandates and money would only expand the current system. Massachusetts started by trying to define what is needed such as: 1) how can

they make it more affordable, 2) how can it be made more accessible, and 3) how can it be made more simple for employers to offer it. Then Governor Mitt Rodney said if they mandated the current system it would be unfair and unworkable, but he suggested the state seek to lower the cost of coverage and create a mechanism to make it easier for every employer to sign their people up for the Plan. By doing this the employer is not on the hook any longer as long as they bring their people in and sign them up for this tax-free mechanism so they can have some type of insurance they can afford. He said they will subsidize people who need help buying insurance by taking the money that had been in the hospitals' uncompensated care fund. Gov. Rodney's position was that by making insurance cheaper, easier to get, and subsidized then there would be no excuse for not having it. The Governor proposed if a person is unwilling to buy this insurance then that person is on the hook to pay for their own medical bills and the state would hold tax refunds back and put them into a special account in case that person runs up a medical bill they cannot pay. The Massachusetts' Legislature said no, either that person will buy insurance or they will be fined.

PUBLIC COMMENT:

04:18:21 David Kendall talked about employees taking their insurance with them when they change jobs, same as what Congress has.

04:20:09 Claudia Clifford asked about the self-employed market in Montana stating it is a large pool. Mr. Haislmaier responded stating that the state has an option to decide what they want and when to do it. He said it can be done, but you have to be careful about the selection, and there needs to be conversation with the stakeholders about what is achievable and what needs more study He talked about the subsidy benefits being provided on an income basis regardless of where a person works.

04:24:40 REP. REINHART asked about getting the data on sole proprietors, such as how people are receiving their coverage from an individual market and how many people are receiving employer-based coverage. She stated that she feels we need the information for the study. Ms. VanRiper wasn't sure that the State Auditor's Office [SAO] would have that kind of data. She said the SAO doesn't have regulation over health insurance rates. She will get back to the committee if the SAO has that information. REP. REINHART asked about expanding programs that are currently in place, and if the Health Care Forum work group is looking at these programs for portability and choice. Ms. VanRiper reiterated that the subcommittee is looking to fund programs that are currently in place.

04:26:24 Mr. Haislmaier responded to REP. REINHART's question. He said that the data can be found from the National Income Products of Accounts Data, IRS data that is aggregated. He stated that the numbers could be run against the Montana taxpayers who claimed the tax deduction for self-employed health insurance, and they would come close to the number of individuals that are receiving employer-based coverage. Ms. Murdo interjected that the State Department of Labor and Industry did a study two years ago that talked about independent contractors, and the number of independent contractors in Montana is one of the highest in

the nation and correlates with Florida.

04:28:09 REP. MACLAREN talked about the survey done by Steve Seninger, a University of Montana professor and health economist at the Bureau of Business and Economic Research, who has information on the demographics of who doesn't have insurance.

04:28:51 REP. MACLAREN asked Mr. Haislmaier what type of governing body would be needed if a state were to establish a connector. Mr. Haislmaier said the state could determine what they wanted the governing body to look like. The Legislature could charter an entity and provide a unique charter. He said this would allow the Legislature to specify what that entity could or could not do.

04:30:35 REP. THOMAS asked if this is adding a new government program or can we as a state go through an existing one. Mr. Haislmaier said there is an issue in federal tax law and federal employee benefit law that states that if an employer provides the coverage they will get various tax subsidies. He said if a person is given cash, there is no subsidy. He said both the Employee Retirement Income Security Act [ERISA] and the Health Insurance and Portability Accountability Act of 1996 [HIPAA)] contain standards that have to be met.

04:36:27 Pat Murdo talked about Exhibit 3, "Other States' Health Financing Reforms", and explained what the other states are doing. She stated that Colorado has a new blue ribbon commission that is looking at requiring a Section 125 (cafeteria Plan). Colorado is also providing incentives for medical homes. She said this part is being addressed in the SJR 15 subcommittee. REP. MENDENHALL asked Ms. Murdo to give an explanation of a medical home. Ms. Murdo said it can be a primary care provider or case manager, someone that knows their patient.

04:45:53 Mr. Haislmaier talked state plans that required an employer to "pay or play". Federal courts disallowed these plans, saying states were not allowed to tell the employers what to do. He said that Massachusetts had some of those provisions, but the reason they were not thrown out in court is because no one has bothered to challenge them. He said the reason they have not been challenged is because those provisions were cosmetic by the time they got done with the legislation, and it was easy for the employers to avoid. Mr. Haislmaier advised the legislators and governors not to go there. He said it isn't worth the hassle to force an employer to do something they cannot or do not want to do.

04:48:31 REP. THOMAS and Ms Murdo talked about developing clinics with nurse practitioners to serve those that don't have health insurance and are in need of basic care, and how are they referred to a doctor or a hospital. There are community health clinics and satellite health clinics that are available. REP. THOMAS wanted to know if they are cost-effective, and is it a better way to address health care. Ms. Murdo said this is being addressed somewhat in the SJR 15 committee. She said that community health centers are able to treat people without insurance plus take people with insurance.

PUBLIC COMMENT:

04:55:36 Mike Foster, representing St. Vincent Health Care, Billings, Holy Rosary-Miles City, & St. James-Butte, addressed the Ronald McDonald Care Mobile. He said a dentist and a physician travel around the state in this van helping children that otherwise would not receive this service. He said the Care Mobile travels mainly around eastern Montana. He said it is heavily used, and is a tremendous service to the rural areas.

Options/impacts for expanding Medicaid coverage in Montana
John Chappuis and Mary Dalton, DPHHS

04:58:01 John Chappuis, DPHHS, distributed handouts on Medicaid. **EXHIBIT 7** He first addressed REP. THOMAS' previous question on Community Health Centers. He said the DPHHS and the Legislature have provided some funding to assist with dental clinics. He said there is funding to assist in the development of these types of services in other communities. He informed the committee that the 2007 Legislature provided seed money to help develop new community health centers. He said there is approximately $1 million in grant money that is available for health services, and he thought that the Flathead area would be receiving some of the dollars.

Mr. Chappuis gave an overview of Montana's Medicaid system in comparison with other states. He explained what Medicaid does for the people that are in need of these types of services. He said that Congress passed a bill for medically needy and it covers better than Social Security's Supplemental Income payments.

05:03:24 Mr. Chappuis talked about:
- the 1115 HIPAA waiver.
- Medicaid waivers.
- where Medicaid stops and CHIP starts.
- the well-child checkups under the Medicaid Early and Periodic Screening, Diagnosis, and Treatment program where the state has to pay for "anything", no matter what it is.
- the services that are provided in Montana.

05:08:58 Mr. Chappuis explained:
1) Medicaid eligibles for FY 2007 & FY 2008.
2) that Medicaid pays for 40% of births that take place in Montana.
3) transitional Medicaid.

Mr. Chappuis said that the federal government requires a waiver to be budget neutral. He stated there are 500 developmentally disabled people on a waiting list for assistance to move out of institutions.

05:21:41 Mary Dalton, Administrator of Health Resources, CHIP, DPHHS, distributed a handout on CHIP. **EXHIBIT 8** She briefed the committee on what CHIP does. She said there are currently over 15,000 children enrolled in Montana. Ms. Dalton addressed the reasons for changes in the CHIP population, such as when a child turns 18 he or she has to go off the rolls.

05:24:05 Ms. Dalton talked about eligibility. It is estimated there are over 37,000 children in Montana that could be covered based on poverty level guidelines. She stated that approximately 20,000 of these children may meet the CHIP and Medicaid guidelines. She said that Montana ranks 5th in the nation for the percentage of uninsured children. The Legislature put in extra money in 2007 for a CHIP dental benefit, approximately $465,000. She said that money was gone by the end of December. She said that DPHHS uses 500 community partners to assist in an active outreach program throughout the state to enroll children in CHIP, including on Indian reservations.

Ms. Dalton informed the committee that Congress extended CHIP preauthorization through March of 2009. She said that Congress had wanted to preauthorize the program for a five-year period, but they couldn't come to an agreement. She said that President Bush's budget for 2009 is for a $19 billion increase in CHIP. She said President Bush has proposed that CHIP be limited to 200% of the poverty level for children.

05:27:49 REP. THOMAS asked if the committee could look at some areas such as, legislation to implement some of these programs, are there laws needed to make changes at the state level. Mr. Chappuis said that DPHHS is proposing some flexibility for children on Medicaid because Medicaid eligibility currently is at 133% of the federal poverty level [PPL]. He would like the Legislature to consider giving DPHHS the flexibility it needs within the budget regarding eligibility so children wouldn't lose coverage.

05:30:25 REP. THOMAS asked Ms. Dalton what she is going to propose for legislation regarding CHIP. Ms. Dalton said that current statute talks about going from 150% to 175% of the PPL, but most states are going to 200% of PPL. She said the reason Montana is less is because our income is less. She said that Montana can suggest "up to the 200% PPL if the dollars are available". This could be done through the budgeting process in HB 2. She said the last Montana Legislature raised the income for pregnant women to 175% of poverty. She said DPHHS could use the flexibility for eligibility guidelines and to expand the slots for children who are developmentally disabled [DD].

05:32:32 REP. REINHART asked Ms. Dalton about waivers. Ms. Dalton said a waiver is an alternative to an institutional placement. She said that Montana has the oldest DD institutional waivers in the United States, and commented that Montana has been very progressive in serving children with DD. If there were more slots they could serve more children. She talked about not enough transition services for the DD kids to go into adult services. She said there is more of a need for waivers in the community.

05:35:52 REP. REINHART directed questions to John Chappuis and talked about autism being on the rise and the needs of DD services in the communities. He said that DPHHS has rerouted money into the Montana Developmental Disability program. REP. REINHART asked about the low reimbursement rates for Medicaid, and wanted to know why some providers do not accept Medicaid patients. She asked if the department has addressed that issue. John Chappuis talked about a

statute starting in 2010 that will increase physician Medicaid rates by 6% each year until 2013, when the department will have to reconcile to become 84% of the average payer e.g., BC/BS. He said Montana currently is in the top five in the nation for physician rates, and will be number one. He said that the Legislature made a good choice, because if they hadn't done that there would be the risk of not having access or having a two-tiered system, e.g., a person on Medicaid would not have access and a choice of physician in the same way as a person with private insurance might. REP. REINHART asked if it would be more flexible to raise the poverty level up to 300%. Mr. Chappuis said yes. The department needs the flexibility. He said that CHIP is at 78% federal match, and Medicaid is at 68% federal match.

05:41:40 REP. MENDENHALL asked for clarification about the Medicaid match levels and wanted to know as our incomes go up in Montana, does that match level with the federal government go down. Mr. Chappuis said that is correct. The dominant figure is for per capita income comparing Montana to the whole nation, and the inverse is true the other way.

05:42:18 REP. MENDENHALL thanked the stakeholders for their ideas and for addressing the issue at hand.

05:43:17 Pat Murdo directed the committee to Exhibit 3, Appendix A & B. She addressed and explained each of the ideas listed, including:

- Expand Insure Montana to include independent contractors.
- Revise Medicaid eligibility - be more restrictive for certain nursing home patients.
- Expand CHIP eligibility.
- Review mandated benefits for all insurance types.
- Provide rate review authority to insurance commissioner.

05:48:29 Owen Voigt, Montana Association of Counties (MACo) Health Care Trust, responded to Ms. Murdo's question regarding the Health Care Trust. Ms. Murdo stated that she had spoken with Harold Blattie, MACo, on the overall cost that is paid to reinsurers. Mr. Voigt said MACo pays 11 cents per premium dollar. He explained the levels of reinsurance and the stop-loss level. Ms. Murdo asked what the comparison is with some of the other groups that reinsure. Mr. Voigt said he had done a study on other self-insurers in the state, e.g., Lewis and Clark County (L&C), which is self-insured through Allegiance Benefit Plan Management, Inc. He said that L&C re-insurance cost is at the $90,000 level, which is similar to the Health Care Trust. He said Stillwater County reinsures at $30,000, or about $148 per employee per month, so their cost is about 25% to 30% for their re-insurance. Mr. Voigt said his study consisted of the amount of the stop-loss recovery from the carriers vs. the total premium paid, and most of the carriers and the self-insured are running about 30% to 40% recovery on the stop-loss premium.

05:51:11 Ms. Murdo talked about:

- Re-insurance
- Stop-loss recovery
- Health Information - Technology expansion

- Billing simplification and transparency
- Creation of uncompensated care pool, incorporating changes in premium taxes, assessments for MCHA, and provisions for re-insurance

05:59:36 REP. THOMAS asked REP. MENDENHALL how he wanted to continue with this subcommittee. REP. MENDENHALL said we can continue as a subcommittee or work with the full committee. He talked about having another meeting, and will get with Ms. Murdo to see how they want to proceed. REP. MENDENHALL said he would like to poll the members to determine if they want to proceed, but he felt at this time that there is too much information to pull together to work on at this time.

06:05:32 Ms. Murdo informed the committee that the next part of this issue will be for the members to work on, and there will be no more presentations.

06:06:24 REP. MENDENHALL asked if there were any more issues to discuss. There was no response. He adjourned the committee at 4:07 p.m.