SJR 22 Joint Subcommittee on Health Care and Health Insurance

57th Montana Legislature

SENATE MEMBERS
JON ELLINGSON, Vice Chairman
DOROTHY BERRY
ROYAL JOHNSON
JERRY O'NEIL
LINDA NELSON
GLENN ROUSH

HOUSE MEMBERS
JOE McKENNEY, Chairman
KATHLEEN GALVIN-HALCRO
BOB LAWSON
MICHELLE LEE
GARY MATTHEWS
BILL PRICE
TRUDI SCHMIDT

COMMITTEE STAFF
GORDY HIGGINS
RESEARCH ANALYST
BART CAMPBELL
STAFF ATTORNEY
LOIS O'CONNOR
SECRETARY

MINUTES

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Committee tapes are on file in the offices of the Legislative Services Division. **Exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of documents.**

Second Meeting of Interim
Room 137, State Capitol
October 29, 2001

SUBCOMMITTEE MEMBERS PRESENT

Rep. Joe McKenney, Chairman
Sen. Jon Ellingson, Vice Chairman
Rep. Kathleen Galvin-Halcro
Rep. Bob Lawson
Rep. Michelle Lee
Rep. Gary Matthews
Rep. Bill Price
Rep. Trudi Schmidt
Rep. Bill Thomas
Sen. Dorothy Berry
Sen. Royal Johnson
Sen. Jerry O'Neil
Sen. Linda Nelson
Sen. Glenn Roush

SUBCOMMITTEE MEMBERS EXCUSED

Sen. Jerry O'Neil

STAFF MEMBERS PRESENT

Gordy Higgins, Research Analyst
Lois O'Connor, Secretary

VISITORS LIST AND AGENDA

Visitors List (ATTACHMENT #1)

MONTANA LEGISLATIVE SERVICES DIVISION STAFF: LOIS MENZIES, EXECUTIVE DIRECTOR • DAVID D. BOHYER, DIRECTOR, OFFICE OF RESEARCH AND POLICY ANALYSIS • GREGORY J. PETESCH, DIRECTOR, LEGAL SERVICES OFFICE • HENRY TRENK, DIRECTOR, OFFICE OF LEGISLATIVE INFORMATION TECHNOLOGY • TODD EVERTS, DIRECTOR, LEGISLATIVE ENVIRONMENTAL POLICY OFFICE

Agenda (ATTACHMENT #2)

SUBCOMMITTEE ACTION

- Approved the minutes of the August 30, 2001, meeting
- Approved that Mr. Higgins use his own judgement as to what is posted to the website, have IT staff count the number of hits to the website, and report back to the Subcommittee

CALL TO ORDER AND ROLL CALL

The meeting was called to order by Rep. McKenney at 10:00 a.m. Roll call was noted, Sen. O'Neil was excused. (ATTACHMENT #3)

Sen. Johnson **moved** that the minutes from the August 30, 2001, meeting be approved. Motion passed unanimously.

FOCUS OF MEETING: WHAT TO EXPECT AT THE NOVEMBER MEETING

Gordy Higgins, Research Analyst, Legislative Services Division informed the Subcommittee of the topics that would be discussed at its November 29, 2001, meeting. (EXHIBIT #1)

PRESENTATIONS

Tax Policy and the Uninsured

David B. Kendall, Senior Fellow for Health Policy, Progressive Policy Institute, provided an overview of how federal tax policy affects the uninsured in Montana and he spoke of several choices the Legislature could take to reduce the uninsured population. (EXHIBIT #2)

Sen. Johnson asked how important the question of inequities for low-income people was when the objective was to insure that all people were insured and what is the correlation between a high-income worker's insurance premium and a low-income worker's insurance premium as they relate to taking care of people. Mr. Kendall said that insurance distribution was not as important as understanding the insurance structure and why Montana has the problem that it does. The fact that Montana has many low-income workers who are uninsured is predictable once the system is known. Conservatives on the side of the political equation want to eliminate the existing tax break for health insurance and redistribute it on a more aggressive basis. The goal should be to bring everyone to an even level. Sen. Johnson asked if Mr. Kendall was talking about uninsured people rather than low-income workers who are insured. Mr. Kendall said that one of the classic design problems with health care policy is that in order to insure some people, a choice about the people who already have coverage must be made. For example, two people have equal income levels. One person has insurance and the other does not. The uninsured person can be eligible for government assistance, but because the other person has insurance, the person is not eligible for government assistance. It is the problem of those people who are being hurt by policies that do not benefit them. To be fair, those who have insurance and are struggling to pay for it should be brought up to a higher level as well as bringing on board those who are uninsured. The children's health insurance program (CHIP) is opposed to doing this, although Massachusetts has found a way around it.

Rep. Schmidt asked if other states were trying to provide greater health insurance benefits for lower income workers while trying to prevent them from paying higher out-of-pocket costs. Mr. Kendall said that by design, Medicaid benefits are targeted by income levels so greater benefits

are seen at the lower income level. The rule is that people should not be liable for health care expenses if they exceed more than 5% of the family's income. There have been a few experiments with medical savings accounts for lower income workers. However, medical savings accounts for this purpose often end up taking money out of the insurance pool and putting it into the hands of healthy people rather than saving the money.

Rep. Galvin-Halcro asked for specific information on the way Massachusetts expanded its CHIP program. Mr. Kendall said that the Massachusetts program is essentially a payment from the employer to employees who already has coverage but who are also eligible for CHIP funds. He will conduct further research on the Massachusetts program and inform the Subcommittee of his findings at its December meeting.

Sen. Ellingson asked whether Mr. Kendall's proposal for a tax credit was for the individual who purchased it or if the tax credit was for the employer. Mr. Kendall said that he would remain neutral on whether the employee or the employer buys the coverage. The mechanics of the proposal are the following:

- Employers, even if they do not offer insurance, would offer a menu of choices to employees who would, in turn, check off which plan they wanted.
- If the employees qualify for a tax credit, employers would be able to reduce their payroll taxes for the amount of tax credit.
- Through reducing their payroll taxes, employers would be advancing the tax credit to their employees.
- The tax credit combined with employer premiums would go to the insurance company.

Sen. Ellingson asked if the proposal assumed that the deductibility feature of the employers' purchase of medical insurance is eliminated or does it assume that the exemption from income that is available to employees is eliminated. Mr. Kendall said that the proposal would not eliminate either but there must be assurances neither double dips.

Rep. McKenney said that there is a big difference between tax deduction and tax credit. Currently, employers receive a tax deduction on insurance as a business expense. He asked if individuals were able to take tax deductions on their insurance as they would interest on their home mortgages, for example. Mr. Kendall said that at the federal level, a tax deduction as an individual can be taken only if a person's total health care costs exceed 7.5% of income. Very few people reach this percentage unless there are catastrophic health care expenses. However, Montana allows individuals to take tax deductions for their individual purchases of health insurance.

Purchasing Pools: What Pools Are and How Pools Work

Joyce Brown, Employee Benefits Bureau Chief, Department of Administration, provided an overview of what purchasing pools were and why the Department had many problems establishing purchasing pools in Montana. (EXHIBIT #3)

Sen. Ellingson asked why Blue Cross and Blue Shield of Montana (BCBSM) and the New West Health Plan were not favorable to the concept of purchasing pools, and if the Department lacks their participation, was the concept of purchasing pools dead. It was Ms. Brown's assessment that without the participation of BCBSM and New West, the purchasing pool concept for smaller employers was dead and that the failure of establishing purchasing pools in Montana rested upon the concerns expressed by BCBSM and New West regarding a purchasing pool's

standardized rating procedures, purchasing pool agents being used to market the product, and doubts that savings could offset the administrative costs of purchasing pools.

Tanya Ask, BCBSM, agreed with Ms. Brown's statements but clarified that BCBSM was interested in the purchasing pool concept but was concerned about the method under which it had ask for a sharing of the risk. She said that as an insurance company, the only business that BCBSM has is its ability to rate and underwrite risk. Removing the ability to control the level of risk that it would accept within the pool and having that risk potentially shifted over to the individuals and small businesses it underwrote was a major concern. She added that being in a small group market and having one small-group market competing against the rest of a small-group market, BCBSM underwriters and actuaries felt that it was a business risk that it could not and should not accept for the people that it was underwriting, especially with respect to the existing reserves. An ancillary piece of the problem was having purchasing pool agents marketing BCBSM coverage when it did not have the final contracting control over what the agents were saying when they were selling BCBSM coverage.

Sen. Ellingson asked if the concept of a purchasing pool, which could provide a way for small employers to offer insurance to their employees, was dead in Montana. Ms. Ask said that the current self-insured purchasing pool concept is one that BCBSM is comfortable with and it is participating in that offering. In order to have a small-employer purchasing pool, the state must review, first, current statutes regarding small pools because they are subject to a different set of regulations. Second, review the full measure of risk involved in any pool because the pool will need the participation of the healthy as well as the individuals who may need their health insurance in the current year. One of the conundrums faced over and over in the market place is how to keep individuals involved who may not be using their premium this year and may being paying full rate but they have the opportunity to drop out of the pool and buy insurance elsewhere in the market place at a lower cost to the employer. People must be committed to the pool on a long term basis even though they pay more by staying in the pool.

Rep. McKenney asked if an individual owned a business, such as a plumbing business, and was the sole proprietor, could the individual owner join the plumber association's purchasing pool, for example. **Steve Turkiewicz, Executive Vice President, MT Auto Dealers Association**, said that the Association is a fully insured program and it does not allow an individual to participate. It must have a minimum of three employees. Ms. Ask added that there are some association in the state that will allow individuals who are also business owners to participate if they continue to keep their association membership in good standing. Rep. McKenney if the same employer was unable to afford employee health insurance even through the association, could the employee, individually, be able to buy insurance through the association even if the coverage did not come directly through the employer. Ms. Ask said that in her knowledge of association plans, at least a portion of the funds must come from the employer and there must be a minimum participation within the employee group.

Rep. Schmidt asked what would be needed to establish a purchasing pool without any restrictions. Ms. Brown said that she would have to form a committee with BCBSM and New West and hammer out what was workable because no purchasing pool would be established without their buy in. Rep. Schmidt asked what other states were doing regarding purchasing pools. Ms. Brown was unsure, but said that if the Department had a commitment from the two big health plans, it would again attempt to establish a purchasing pool for small businesses.

Rep. Schmidt asked if BCBCM and New West were insurance provider monopolies. Both Ms. Ask and **Tom Clinch, New West Health Plan**, said that BCBSM and New West were not monopolistic plans and have tried to establish a purchasing pool package for small businesses in Montana and that the only employers who participate in purchasing pools were larger business. Neither were opposed to the purchasing pool concept as they relate to small employers but both felt that they must have the ability to underwrite. Mr. Clinch added when New West agreed to participate, it found that proposed plan design for large employers was too rich for Montana and much richer than what the self-funded options through employers were. The plan design drove New West's cost much higher than the premium it could charge to be competitive.

Sen. Johnson asked if the Department's consultants said that if the state would do such and such in Montana, it would have a program that may work. Ms. Brown said that the Department tried many things in the area of rating including end adjustments--adjust premiums if a health plan picks up higher-risk employees. It was her opinion that BCBSM and New West were unwilling to have the state equalize the selection process. If this is the case, the concept will not go anywhere. The BCBSM, New West, and state consultants could not reach a consensus.

Sen. Roush asked if figures were available on the cost to the state to consider the risk in taking the small employer groups into the high risk group. Ms. Ask said that if everyone agreed to be included in the pool, a cost to the state would be available. However, the caveats would be that everyone would have to participate and everyone would have to stay in even if they could purchase insurance cheaper elsewhere. The problem is the choice of opting out. Sen. Roush suggested reviewing the possibility of a universal health care plan for Montana.

Jerry Driscoll, AFLCIO, was concerned with Ms. Brown's reference to multiple employer welfare arrangements (MEWA) as being "out-law" plans by clarifying that there were 90,000 employees in Montana currently insured by MEWAs at a premium cost of $435 a month for a single family. The state cannot regulate MEWAs even though it thinks it can. As a result, they are leaving the state because of administrative purposes. MEWAs are regulated by the federal government under ERISA and they provide a health plan, which is not insurance. MEWAs state what they will pay if someone gets sick. The money is put into a trust fund and used to pay benefits.

Rep. Schmidt requested more information about MEWAs and asked if they could be an option for providing health care coverage. Mr. Driscoll said that federal ERISA laws say that states can establish MEWAs but they cannot be organized simply for the purpose of health insurance--there needs to be another reason for the organization to exist. He added that MEWAs were not an option for the general populous and were more association driven. MEWAs provide better health care, they must have reserves, and people under the plans must buy reinsurance in case of catastrophes.

Mr. Higgins provided an overview of combining tax credits and purchasing pools (EXHIBIT #4) and added that nationally, purchasing pools have been relatively unsuccessful because of their voluntary participation design. He suggested that the Subcommittee receive background information and expert testimony on purchasing pools as they relate to tax credits.

Other State Efforts to Address Uninsured Populations and Health Insurance Affordability
Mr. Higgins discussed leveraging federal dollars through section 1115 waivers contained under the federal Social Security Act. (EXHIBIT #5)

Sen. Ellingson was skeptical of section 1115 waiver concept because he felt that the cost saving was achieved by a decrease in the quality of health care and because of the waiver's revenue neutrality. Mr. Higgins said that in order to provide coverage to an expanded population, states can spend more than they normally would have. Much of it depends on whether there is a way to constrict costs in the existing system. He was unsure whether the Department of Public Health and Human Services or the Legislative Fiscal Division could provide existing options to deal with containing costs.

Rep. Lee asked if the 1115 waivers could be used in conjunction with Medicaid. **Lois Steinbeck, Legislative Fiscal Division** said that a 1115 waiver is not only for CHIP members. They are demonstration waivers under Medicaid, they are time limited, not renewed, and they are only allowed one state, one demonstration. Some standard things could be done within the Medicaid plan without needing a waiver. For example, localities can disregard income which requires more state match. DPHHS will hold a meeting in November to decide what the state must do with its Medicaid budget. Service cuts are proposed in the Medicaid, mental health children's services arena because of cost overruns, largely at the Montana State Hospital. There are two basic Medicaid eligibilities--SSI (disabled or aged) and low-income children and adults. DPHHS is seeing an increase in the number of SSI eligibles, and one SSI adult will cost the state as much as five to eight children. Ms. Steinbeck suggested that the Subcommittee receive a budget update from DPHHS because it may be considering expansions in eligibility at a time when DPHHS is reducing services. Rep. Lee asked how much money was returned in the CHIP. Ms. Steinbeck will provide the information to the Subcommittee but added that approximately 50% of the states did not use their full CHIP allotment in their first federal grant year. Montana reverted approximately $5.3 million and received 60% back. Montana also expanded the use of CHIP funds by covering all children's mental health services that were previously 100% state general fund by moving them into the CHIP.

Sen. Johnson asked if a person was available who could identify the available funds before the February meeting. Mr. Higgins said that DPHHS, LFD, and OBPP could provide information on the available funds and the Subcommittee should discuss what exactly it needs to know about where Montana stands today. If the Subcommittee begins to think about policy implications of expanding coverage while simultaneously the state is deciding to reduce costs without an expansion, it will need to refocus it attention. Sen. Johnson asked where the Subcommittee would be if it did not receive the information. Ms. Higgins said that without the information, the Subcommittee could generate recommendations to the next legislative session without a full understanding of the fiscal implications associated with them. He felt that if the Subcommittee did not adress both sides of the issue, it may be providing only one-half of the picture to the Legislature.

Uncovering Factors Causing Increases in Health Care Costs and Health Insurance Premiums
Mr. Higgins provided background information on what drives health insurance and health care costs. (EXHIBIT #6)

Rep. Lawson asked if Montana-specific date was available that would indicate where its per capita increase falls. Mr. Higgins said that he could provide the information to the Subcommittee but it may take a significant amount of time to get it. However, in the aggregate, Montana is moving in the same trend that the nation is moving.

Sen. Ellingson asked if the U.S. Bureau of Labor Statistics broke out information by state. Mr. Higgins said that the Bureau breaks out the information by urban unit and it can provide on a fairly close basis to Montana-only inflation rates. Sen. Ellingson asked if for every dollar spent on health care, do Montanans get more or less services. Mr. Higgins said that he would enlist the assistance of the stakeholders and generate dollar-per-dollar where Montana is in relation to other states.

Rep. Schmidt asked why have there been increased tensions between providers and hospitals and why have employers largely absorbed premium increases. Mr. Higgins said that efforts by states to hold down provider reimbursement rates have caused the increased tension between providers and hospitals. For example, the relationship between health plans and physicians where deep discounts were given for insurance if certain providers were used. Providers felt like they were the "proverbial turnip" because as the states, insurers, and businesses were trying to compress their costs, to try and do any more was like getting 'blood out of the turnip".They felt like cost savings may have been gotten in the past from holding provider reimbursement rates down, but they could not take anymore. In addition, employers felt it in their best interest to absorb the cost of premium increases because it was in their best interest to attract and retain workers. The question of at what point will employers begin to pass on more of the burden onto employees is an unknown, but he suspected that more cost sharing among employer sponsored plans would be seen.

Rep. McKenney asked why legislative-mandated health coverage was left out of the overview. Mr. Higgins said that although legislative mandates were studied in the past, good information on mandated benefits was unavailable and he was uncertain about the effects of state and federal mandates.

Rep. Schmidt asked about the number of Montana's legislative mandates. Ms. Ask listed both Montana's and the federal government's mandated coverages. Rep. Schmidt asked if Montana's mandates were an average number. Ms. Ask said that Montana has slightly more mandates than most states but not the most mandates.

Sen. Nelson asked if cost-saving statistics were available on legislative mandates that were enacted as preventative measures. Ms. Ask said that cost-saving statistics were not available because costs are incurred up-front and benefits or savings may not be realized until years later.

Rep. Lawson asked what percentage of the average insurance premium goes to cover mandated benefits. Ms. Ask said that approximately $12 a month per person in a household goes toward mandated benefits.

In response to a previous question from Rep. Schmidt, Ms. Ask said that the Legislature had to consider the dynamics of Montana versus a large urban center. In the past, Montana has not had a large penetration of a managed care market. However, it has suffered the same backlash

to managed care. Most people would recognize that there is some waste in the overall health care system and managed care has helped to bring out some of those wastes. In order to have managed care cost controls, Montana will be looking at a very competitive health care delivery market place. Montana does not have a competitive market place for health care.

Dr. Joseph Knapp, Cardiologist, Missoula, said that most of the benefits reaped from managed care have been in the discounting of services (managed costs), and the possibility of squeezing providers and hospitals much further is probably reached its crux, particularly in Montana where the per capita income is low. However, the cost of providing health services in Montana is not low. The tension between providers and hospitals is very real and a direct result of the squeezes in reimbursement levels. Hospital consolidation is not a problem in Montana because it has the absence of competition which has stymied the state in being able to achieve some of the things that are occurring elsewhere in the country. Dr. Knapp requested that the Subcommittee begin to review the significant shifting of the burden of health care from employers to employees. He said that the problem is only going to get worse because the marginal business dollars to allow for employee benefits are no longer. He added that technology is driving the increase in health care costs and it is not going to go away. A question for the medical profession is what is the marginal benefit gained by the technology being applied, such as an x-ray versus a MRI which is much more expensive. The Legislature has control over issues of taxation in health care if its goal is to provide more affordable health care to Montanans.

Rep. Lawson asked for clarification on the employee and employer contributions. **Tom Bilodeau, Research Director, MEA/MFT** provided an account of premiums and costs experienced by Montana school districts over the last decade. (EXHIBIT #7) He said that the costs have shifted dramatically from employer to employee is fiscal year 1997. The wage structure in Montana schools is 20% to 25% behind the national average, their employee contribution for retirement is 7%, and their insurance costs are rising rapidly which makes schools uncompetitive. Montana teachers are moving to Arizona where full health insurance benefits are provided. He suggested that the Subcommittee consider the establishment of a statewide pool for K-12 public employees insurance.

Rep. Lee asked if teacher retirees would be included in the proposal. Mr. Bilodeau said that the K-12 pool proposal would mandate that all retirees currently covered by their local school district policies be allowed enrollment into the pool.

Claudia Clifford, State Auditors Office, provided a map showing Montana's uninsured percentage as compared to the other states. (EXHIBIT #8) The Hospital Association estimated that between bad debt and charity care, they wrote off $59 million in 1999, $80 million in 2000, and are projecting a $100 million write off in 2001. These figures do not include the bad debt and charity that may be written off by providers. She suggested that the Subcommittee review what other states have done to address cost shifting. Small group individual rates that have seen significant increases in the last year and carriers are increasing their deductibles in order to provide coverage.

Background Information on the Uninsured

Mr. Higgins provided background and demographic information related to health insurance and the health care industry in Montana. (EXHIBIT #9)

MEMBER ISSUES
Earned Income Tax Credit and CHIP Buy-ins: An Initial Proposal
Rep. Michelle Lee, House District 26, Livingston, said that during the 2001 Session she carried legislation for the CHIP expansion that would allow the DPHHS to seek a section 1115 Medicaid waiver for the purpose of a demonstration project. There are 174,000 uninsured people in Montana of which 149,000 are working at jobs that do not offer insurance. The questions are how does the state connect employment with the fact that the people are low income and how does it fit into the overall tax structure. Option A--most people making up to $31,000 would be eligible for an earned income tax credit (EITC) at the federal level if they have children. If there are no children, the limit is $10,380. People are only eligible for EITCs if they are working and it allows them to receive the EITC payment in advance to buy into a state program. If a person makes $15,000 a year, they are eligible for $95 a month. The proposal should also be written so that the employer could match the $95. This option could be used to expand the CHIP program or to start targeting the population of people who are working but cannot afford health insurance. Option B--the employees takes a deduction equal to the amount of their advanced EITC and let employers have to option of matching it at the state level. It would cost Montana approximately $98 per family for a state-level EITC.

Mr. Higgins provided a Legisbrief from the National Conference of State Legislatures explaining a state earned income tax credit. (EXHIBIT #10)

Sen. Ellingson asked if the concept of Rep. Lee's proposal was to give more money to the people who need the help and let them purchase insurance if they want. Rep. Lee said that the idea is that if the state could not use the federal structure, they could use their own wages and take a salary deduction. Both sources of money would be private which allows the state to pull down more federal dollars. Because the state reaps a benefit from it, the employer could also be rewarded.

INSTRUCTIONS TO STAFF
Mr. Higgins requested direction from the Subcommittee on posting information that is not generated by the Subcommittee to the Subcommittee's website.

Following a brief discussion, Rep. Lawson **moved** a that Mr. Higgins use his own judgement as to what is posted to the website, have IT staff count the number of hits to the website, and report back to the Subcommittee. Motion passed unanimously.

The Subcommittee also decided that it should have a final report that covers all of the issues discussed, the Subcommittee's conclusions and proposed legislation, if any. The final report should also include the financial commitment and fiscal impact of the Subcommittee's conclusions.

Sen. Ellingson encouraged the Subcommittee to come to grips as soon as possible with the issue of whether money would be available in the next biennium for any legislative reforms related to health care and health insurance to come to frutation. He requested a report of the fiscal implications of some policy choices and a report of the fiscal condition of state to put any new money into programs.

Sen. Johnson said that the Office of Budget and Program Planning (OBPP) should begin the information process in November and the Legislative Fiscal Division could argue the points. He added that if the Legislature is going to look at a budget that is going to be less than what it hoped it would be when the budget was put together, the revenue shortfall needs to be considered very seriously before any changes are made. He added that it will not do any good for the Subcommittee to propose a group of programs that cannot be fulfilled in way that is acceptable to the current programs.

Mr. Higgins provided a memorandum from Rep. Joan Hurdle regarding health care and health insurance and information on the Montana Dental Summit II. (EXHIBITS #11 and #12 respectively)

An update on the roundtable discussions from the State Auditor's Office will be added to the November agenda.

There being no further business, the Subcommittee adjourned at 3:30 p.m.

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