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Children, Families, Health, and Human Services Interim Committee

60th Montana Legislature

March 7, 2008

Memo: CFHHS Committee Members
From: Pat Murdo, lead staff for SJR 15
RE: Bill drafts on economic credentialing (LC 38- OLD) and LC8888, specialty hospitals

The following notes are from the email sent to stakeholders and subcommittee members for the bill drafts. The responses in this packet relate to these bill drafts. Another bill draft will be posted on line that takes into account some of the recommendations in the comments. Subcommittee members will have that new bill draft before the 8 a.m. start of the subcommittee meeting March 17. If you have questions, please call.

NOTES ON LC0038(g)
Section 1 - Sub(1) Recognizes that conflicts of interest may occur -- either based on investment or employment and requires notification of the conflict along with information to the patient. States that the primary concern is the welfare of the patient. Also states that a health care provider may not engage in a conflict of interest that is detrimental to a patient's health.
Sub (2) Specifies that a conflict of interest may develop but recognizes that health care providers are free to enter lawful contractual relationships. Says a contract may not require referrals or be based on an expected volume of referrals.
Sub (3) Says a hospital my not use scheduling of its facilities as a punishment unless a conflict of interest is proved.
Sub (4) Outlines what the health care provider is to provide a patient -- written notification of the investment or employment interest, list of aternatives, and information about choice and equal treatment regardless of choice.
Sub (5) Says a conflict of interest may be detrimental to the patient if a health care provider has an investment interest of more than 5% in a health care facility licensed under Title 50 and a referral pattern that demonstrates consistent referrals based on health insurance coverage or ability to pay. I removed reference to the patient mix and revenues being weighted toward the investor-owned facility.
Sub (6) Says a hospital may refuse to appoint a health care provider as a voting member of the governing body of the hospital if the hospital determines that a conflict of interest exists
Sub (7) Requires arbitration to prove a conflict of interest (as provided under Sub (5), and if proved a hospital may revoke or deny privileges. Requires due process of law in addition to arbitration to deny privileges based on a conflict of interest.
Sub (8) defines health care provider as one licensed under Title 37 (except not a veterinarian licensed under Chapter 18).

Section 2 - Discrimination. Changes to existing statute:
Subsection (4) split into (a) -- for applications for privileges -- denial can be based only on education, training, or competency as determined by the hospital's medical staff.
Subsection (4)(b) would clarify what a hospital can do in employing medical staff. (i) The hospital can't

discriminate (based on creed, race, marital status -- all outlined in existing subsection (1). Also says the hospital can set criteria in addition to education, training, or competency. (e.g. they could say no ownership elsewhere.)
(ii) says that employment contracts may not require kickbacks, rebates, transfers, referrals or refunds of fees. Part of the language is from the South Carolina statute referred to by Patti Jo Lane. There is more in that statute, which says a license may be suspended or revoked if a therapist "requests, receives, participates, or engages directly or indirectly in the dividing, transferring, assigning, rebating, or refunding of fees received for professional services or profits by means of a credit or other valuable consideration including, but not limited to, wages, an unearned commission, discount, or gratuity with a person who referred a patient, or with a relative or business associate of the referring person." The federal antikickback statute, 42 U.S.C. 1320a(7b), covers physicians but not all health care providers.
(iii) Says a health care facility or health care provider may bill only at the employee's level of licensure.

Section 3 - The major change is in subsection (3), which takes out the earlier draft's reference to COPA and prohibits the use of an exclusive contract between a hospital and a physician or group of physicians to punish a health care provider that has established a competing health care facility.

Section 4 - no changes. just removes the "temporary" language.

Section 5 (repealer) is the same.
Section 6 - would put the conflict of interest language in Section 1 into the same section of code as the economic credentialing/conflict of interest statute.
Section 7 - still an immediate effective date.

FYI -

27-5-211. Appointment of arbitrators. If the arbitration agreement provides a method of appointment of arbitrators, this method shall be followed. If no method is provided, the agreed method fails or for any reason cannot be followed, or an appointed arbitrator fails or is unable to act and his successor has not been duly appointed, the district court on application of a party shall appoint one or more arbitrators. An arbitrator so appointed has all the powers of one specifically named in the agreement.

Due process: due process of law requires a hospital to provide notice and an opportunity for a hearing.

RE: Specialty Hospital bill draft -- LC8888
I also have included a rough copy of what a specialty hospital bill might look like. This still allows for-profit specialty hospitals but mentions that they either need to be a joint venture with a hospital or owned by physicians with no more than 5% ownership each. The licensing criteria calls for a written statement acknowledging from each nonprofit community hospital in a 15-mile radius of the proposed site that they were asked to participate in a joint venture. (That is an arbitrary distance, but one that seems suitable for Montana.) The applicant also must provide a charity policy. There is no requirement that they provide charity (because for-profits don't have the incentive from property tax exemptions that nonprofits have), but it says they have to provide a policy. (Even if the policy is not to give charity care.) Perhaps the department could set the rules for when the nonprofit hospitals have to respond.