**MINUTES**

**MONTANA SENATE**
**56th LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON BUSINESS AND INDUSTRY**

**Call to Order:** By **CHAIRMAN JOHN HERTEL**, on March 22, 1999 at 10:00 A.M., in Room 410 Capitol.

**ROLL CALL**

**Members Present:**
Sen. John Hertel, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Dale Berry (R)
Sen. Vicki Cocchiarella (D)
Sen. Bea McCarthy (D)
Sen. Glenn Roush (D)
Sen. Fred Thomas (R)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Bart Campbell, Legislative Branch
Mary Gay Wells, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**
Hearing(s) & Date(s) Posted:
Executive Action: HB 153; SB 440

***{Tape : 1; Side : A; Approx. Time Counter : 0}***

**EXECUTIVE ACTION ON HB 607**

**Motion**: **SEN. MCCARTHY moved that HB 607 BE CONCURRED IN.**

**Discussion**: **Motion**: **SEN. MCCARTHY moved that HB 607 BE AMENDED by the amendments from Blue Cross-Blue Shield.**

**Discussion**: **SEN. MCCARTHY** offered the amendments because the liability issue is onerous while leaving the independent peer review in place which the sponsor said was an important aspect of his bill.

**SEN. HERTEL** said there is another set of amendments from **REP. SOFT**, the sponsor. **Mr. Bart Campbell** did not have any specific helpful explanations.

**SEN. ROUSH** said the amendments would take the liability off the insurers and HMO's. The other side of this issue is the cost of keeping the amendment on the bill. Litigation is expensive and certainly can raise the premiums. Also, why should state government be immune to what the insurance carriers are asking to be immune from. I would be in support of the amendment.

**SEN. HERTEL** felt that the sponsor's amendments **EXHIBIT(bus64a01)** should be introduced for the purpose of discussion. Look at number five and it states that this bill would not apply to medicaid programs, the children's health insurance program, or other state-funded health care-related programs, unless specifically provided otherwise, and does apply to a manage care entity that contracts with the state to provide these programs and that makes health care treatment decisions concerning the beneficiaries of the programs.

**SEN. ROUSH** mentioned that Workers' Compensation would come under the "other state-funded health care-related programs". Why should the state be exempted from liability and not the insurance carriers?

**SEN. THOMAS** said that, if **SEN. MCCARTHY'S** amendments were adopted, which he felt should be done, the sponsor's amendments would not be needed. These amendments should be acted upon before discussing the others.

**SEN. SPRAGUE** felt that he was in agreement with **SEN. MCCARTHY'S** amendments. Could Bart Campbell give an overview so one decision would not necessary affect another decision?

**Mr. Campbell** said the sponsor's amendments basically exempt certain state programs. All five are interrelated.

***{Tape : 1; Side : A; Approx. Time Counter : 10}***

**SEN. COCCHIARELLA** feels that **SEN. MCCARTHY'S** amendments gut the bill. The HMO's should be held accountable for any medical decisions that they might make. Doctors are held accountable. We are the managers of the care managers. The only thing left in the bill is the medical peer review. In Missoula, some doctors cannot get into the HMO and so their patients, who are mostly older and who are covered under the HMO, must start going to other doctors.

**SEN. BERRY** agreed with the previous statement. If the HMO's don't make medical decisions, then there is no liability and they should not be afraid of this bill. If the liability is already in law as has been previously stated, then the cost shouldn't go up. Everyone should be accountable for the decisions that are made either by the doctor or HMO.

**SEN. SPRAGUE** felt that opening the field for litigation is just not the way to go. Malpractice insurance has driven up the cost of visiting the doctor. The bill still is valid in that the independent review process is very important, it just keeps it mainly from going to court where the patient ends up getting very little and the lawyers take the lion's share and that is even when they don't actually go to court, i.e. settlement out of court. I don't understand the doctors who are encouraging more litigation.

**SEN. BERRY** said that if a patient is wronged, in some way they will sue, one way or the other. The review process is excellent but the liability is necessary.

**SEN. THOMAS** said the peer review is getting a bit of whitewash. This is an extremely significant part of the bill. It will require the managed health carrier to be part of this review; they have to comply; and also have to pay for it. The fact that a person can sue someone is not going to solve the problems of the HMO and make them better. The review process may do that and in a much better manner. We don't need to add attorneys to the mix. We should impact our business people any more than they are already and if the problems grow and are not taken care of by the independent review, then in two years the legislature can look at it again.

***{Tape : 1; Side : A; Approx. Time Counter : 21}***

**SEN. HERTEL** asked if there weren't more flexibility today for HMO's and would this tie them down more and create less flexibility. Don't they have the ability to extend a two day period to three if they felt there was a need? **SEN. COCCHIARELLA** said she agreed and asked the committee to look at the bottom of

page 2 starting on line 28. You can't have a cause of action unless you have done all three things at the top of page 3. After the review process, the next step is a final decision in court. She was concerned that people who are alone in this world with no advocate are steamrollered out of the hospital. Being liable will make the HMO's more responsive. It becomes a profit issue with the HMO's and they have gone too far and need some controlling.

**SEN. THOMAS** said that it is not a profit issue, it is a premium issue. This liability will drive up premiums which leads to more regulation and the litigation side of this bill leads to more and more litigation with very few benefits, particularly the patient. On page one, it talks about the medical services that are actually covered by the health carrier and the effects of the quality of the diagnosis and care treatment. The doctors make the actual treatment decisions and if the HMO does not cover it, then the independent review comes into play. This gets at the heart of HMO managed care. Why does litigation need to come into the picture? Why go beyond the independent review? That can be done later, but why not try a better method than the court if there is a problem.

**SEN. BERRY** said that this isn't an either/or: liability or independent review. The decisions should be made by the medical people. This is about the accountability of the decision process. Whoever is accountable is making the decisions. Litigation is not good, but accountability will minimize the liability more than it will compound it.

***{Tape : 1; Side : A; Approx. Time Counter : 30.7}***

**SEN. MCCARTHY** said that the hurdles in the process are positive. The psychological tests for the heart transplant were a good thing. **REP. SOFT** kept saying that it was wrong that the patient should have to go through prior testing of this kind before he could get the operation. There are horror stories out there about patients who feel they didn't get the right medical care and they want to sue everyone under the sun. We get pieces of legislation like this one. We have to pull the reins in on who can be sued.

**SEN. ROUSH** said the doctors are split on this issue. The people from his district, who had lobbied him, were concerned about the premium increases that would come about with the liability left in.

**SEN. COCCHIARELLA** said it sounds like the "fix" is in and she called for the question on the amendments that were moved.

**SEN. SPRAGUE** said he would like to clarify the statement of **SEN. COCCHIARELLA'S.** It is going on the record and he takes offense to the words, the "fix" is in. **SEN. COCCHIARELLA** said that she was sorry and withdrew the comment.

**Vote: Motion that HB 607 BE AMENDED carried 4-3 on Roll Call Vote #1 with SENATORS BERRY, COCCHIARELLA AND HERTEL voting no.**

***{Tape : 1; Side : A; Approx. Time Counter : 35.7}***

**Motion: SEN. COCCHIARELLA moved that HB 607 BE AMENDED with REP. SOFT'S amendments.**

**Discussion: SEN. COCCHIARELLA** said that for the sake of these programs that are listed under number five, it is important they be exempt from this peer review provision of the law.

**SEN. THOMAS** said that if he understood these amendments, the state entities would not be subject to the peer review. **SEN. COCCHIARELLA** said that was right. **SEN. THOMAS** said that in the beginning some felt the state should be held liable if the insurance carriers were held liable and now it is being stated that they should not even be held accountable through the peer review. This doesn't make sense. Blue Cross-Blue Shield administers the state's programs and if the state is being exempt and that would make Blue Cross-Blue Shield exempt, he strongly opposes that. If this amendment does that, he is in opposition to the amendment.

**SEN. COCCHIARELLA** said that at the hearing this bill without these amendments would put the CHIP's program at great risk. That program should be exempt so that it can get up and running.

**SEN. BERRY** said, for clarification, that the state would be exempt. Is there a situation where they would make some decisions but Blue Cross-Blue Shield would be accountable for that decision?

**Susan Witte, Blue Cross-Blue Shield.** If you look at the amendments, it doesn't look like peer review is exempted out. Peer review appears on page 4, line 11. If there is going to be any kind of a managed care product, peer review needs to be in there for everyone. It looks like it does stay in for everyone. What it does exempt out, on page 3, line 17, are the independent, internal review of adverse determinations. The programs to Titles 50, 52 and 53 would be medicaid and CHIP's. CHIP's could not be carved out alone. It is funded by a private insurance.

**Nancy Ellery, Department of Public Health and Human Services.** The medicaid programs are exempt from the independent review section because there is an elaborate process for any decision that is made be it managed care or fee for service. That is required by federal regulations. This would have been another layer. These programs would be exempt from the independent review part but the medicaid programs are not exempt from the peer review part.

**SEN. SPRAGUE** asked for **Mr. Campbell** about number three on the sponsors amendments. Does this create an exemption out from under Section 5 of the bill?

**Nancy Ellery** said this portion states the liability section does not apply to state health contracted services, but if they contract with an HMO like Blue Cross-Blue Shield, concerning the CHIP program, this would apply to them but it doesn't exempt the CHIP program completely if an HMO is used to administer it. A regular indemnity plan could be used to administer CHIP, and they would be exempt.

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**SEN. THOMAS** said this amendment would need to come out.

**Ms. Ellery** said that the amendments of the sponsor would have applied the liability to the CHIP program if an HMO was used. But with the previous amendments voted on and passed, that has been stricken.

**Mr. Campbell** asked for clarification. **Ms. Ellery** said they she wasn't sure if she could answer that.

**Jerry Lendorf** said that in regard to the sponsor's amendment in connection with the amendment that has been adopted, without amendment number 5, would be meaningless. The amendment number 3 really doesn't have anything to do liability in the first place. It only applied to the section to which it refers. It says, "in contracts with the state". This particular section doesn't apply.

**Mr. Campbell** said he needed more clarification if he were to put these two amendments together.

**Jerry Lendorf** said the liability provisions in section 5, subsection 2 says it does not create any liability on the part of an employer or an employer purchasing organization. Section 5 does not create liability.

**Mr. Campbell** said that subsection 6 does not apply to state contracts.

More was stated but it was decided to wait and let **Mr. Campbell** take it and put everything together and meet again another day.

***{Tape : 1; Side : B; Approx. Time Counter : 6.3}***

## EXECUTIVE ACTION ON HB 153

**Motion: SEN. THOMAS moved that 153 BE CONCURRED IN.**

**Discussion: Motion: SEN. BERRY moved that HB 153 BE AMENDED EXHIBIT(bus64a02).**

**Discussion: Mr. Bart Campbell** explained the amendments. After the subcommittee met, they decided to put some of the definitions back into the bill. He deleted the first two sections of the bill and he put section one back in. That took out a great deal of language that was confusing to the bill. He spoke to **SEN. BERRY** and **SEN. COCCHIARELLA** about the first definition which is in the bill and talks about arrangements. Arrangements means contact with a mortician has been deleted. Left the laundry list below of what arrangements are.

**SEN. COCCHIARELLA** said she felt that what was put together was the intent of the subcommittee.

**Mr. Campbell** said that definitions of at need, authorization agent, branch establishment, embalming, intern, mortuary were put in. A new definition was put in on preneed arrangements, clarifying they could only be negotiated or sold by a licensed individual. All the things the county clerks and recorders wanted was left in. On page 5, number 9, it states that "prearranged funeral or related services may be presented, negotiated, and sold to the public only by a licensed funeral director or licensed mortician." The language on trust monies was left intact.

**SEN. BERRY** said that Mr. Campbell had covered the amendments well. One thing that popped up was on the arrangement and the authorizing agent. But they covered the concerns of most of those interested. They covered the three basic issues: (1)

financial ramifications, (2) preneed sales, (3) and clarified definitions.

***{Tape : 1; Side : B; Approx. Time Counter : 13.2}***

**SEN. SPRAGUE** asked about licensed funeral directors. **Mr. Steve Yeakel** said that the morticians' license is the operative, active license now which combines the old aspects of both embalming and funeral directing. The funeral directors of old are grandfathered in and there is no license now for that position.

**Vote: Motion that HB 153 BE AMENDED carried unanimously. 7-0**

**Motion/Vote: SEN. COCCHIARELLA moved that HB 153 BE CONCURRED IN AS AMENDED. Motion carried unanimously. 7-0**

**SEN. BERRY** will carry the bill on the Senate Floor.

***{Tape : 1; Side : B; Approx. Time Counter : 18}***

## EXECUTIVE ACTION ON SB 440

**SEN. HERTEL** made comments to bring the committee up to date on the bill. This bill did not have to meet transmittal deadline. That is why the bill is going to be addressed at this time. There were amendments that were handed out.

**Motion: SEN. COCCHIARELLA moved that SB 440 DO PASS.**

**Discussion: Motion: SEN. MCCARTHY moved that SB 440 BE AMENDED EXHIBIT(bus64a03).**

**Discussion: SEN. SUE BARTLETT, SPONSOR,** explained the amendments. She characterized the amendments as clarifying amendments. Amendment one adds a subsection. Amendment two pertains to the definition of public financial assistance. The Department of Commerce was concerned that the existing wording might automatically capture lending institutions that are authorized to participate in economic development programs of the state. Amendment three is the second subsection that is being added. It specifies that loans, mortgages or other investments that are purchased by the Board of Investments on the secondary market are not considered public financial assistance. The purpose of those purchases is as exclusively an investment and not an effort to aid businesses in their economic development in the state. Amendments four and five simplify what has to be sent

to the Department of Labor and Industry. Applications for various kinds of assistance can be fairly sizeable documents and this states that all the information the Department needs could be put on a single piece of paper. Amendment six simplifies what employers are required to report. This clarifies that they need to report the date the employee was hired one time only.

**Vote: Motion that SB 440 BE AMENDED carried unanimously. 7-0**

**Motion: SEN. MCCARTHY moved that SB 440 DO PASS AS AMENDED.**

**Discussion: SEN. THOMAS** said that a bill of the same nature was in the Labor Committee last year. It didn't survive then and he hoped it didn't survive now. In discussing it then as now, the bill is probably the number one job-killer piece of legislation. The legislature talks about trying to get people to start businesses in Montana by giving them incentives. This bill turns it completely around by making the businesses pay a "living wage". A liveable wage is certainly a worthy idea but this is not the way to do this. It takes more than every incentive that has been offered. As a small business person, it took a lot more than six months to be able to pay a good wage. It takes time and sometimes years for a business to get some stability and be able to pay the employees a good wage. This bill would eliminate wages from being developed and happening in Montana. He would vote to table the bill.

**SEN. COCCHIARELLA** asked the committee to remember Sun Mountain Sport in Missoula. That businessman lied about using the incentives that were offered. He was to add jobs or bring in some new jobs which was a requirement for the incentive. He paid people minimum wage, had several carpal tunnel claims, then he shut down and went to Mexico with their jobs. It is hard to start a business, but those businesses that take advantage of the incentives and provide nothing to our citizens and walk out at the end of the tax advantage should have some obligation to Montanans. This bill is important and she would vote for it.

**SEN. ROUSH** asked what the livable wage is. The answer was $7.98.

**SEN. MCCARTHY** said the bill is a commendable idea that needs to be brought forward. If incentives are to be continued to be given to new companies, there needs to be an accountability by those companies. Paying a livable wage is a good step in the right direction. A new business is a struggle but this needs to be put into the formula for better responsibility all around.

**SEN. SPRAGUE** asked **SEN. BARTLETT** how the livable wage is calculated. **SEN. BARTLETT** said the poverty guidelines is

calculated every calendar year. For example, $7.98 per hour is 16 cents higher than the amount two years ago. **SEN. SPRAGUE** said that the bill address companies that hired 25 or more employees. **SEN. BARTLETT** said "no", the company would have to receive at least $25,000 before they would come under the provisions of this act. There was no specification on number of employees. **SEN. SPRAGUE** asked if it was defined that if the Department of Labor given a loan at a low interest rate, would that type of thing fall under this bill. **SEN. BARTLETT** said "yes", as long as a single business received at least $25,000 in the loan no matter what kind of interest was set up. **SEN. SPRAGUE** asked about the six month phase in period. **SEN. BARTLETT** said that if the company got the $25,000, they would be obligated to pay the liveable wage to their employees six months after hiring them. The six months starts at the date of the hiring. **SEN. SPRAGUE** set up a scenario. He hires a person and knows that in six months he must pay them the liveable wage. He likes the person and knows that in time the person will make a good employee, but it is going to take longer than six months to make this person a valuable employee--one worth his salt. This bill would either force him to fire the person or if the person was kept on, the employee would not be earning his keep, so to speak.

***{Tape : 1; Side : B; Approx. Time Counter : 37.6}***

**SEN. ROUSH** asked if the six month stipulation was from another statute or if it was solely pertaining to this bill. **SEN. BARTLETT** replied that it is specific to this bill. After the 1997 Session, in a similar bill, one of the concerns of the Department of Commerce was the liveable wage had to be paid immediately. They felt there needed to be a cushion of time. It was agreed that six months was a logical period of time.

**SEN. ROUSH** asked if the sponsor felt six months was long enough. **SEN. BARTLETT** said the six month period was merely a reflection of a typical probationary period in both the public and private sectors. If someone hasn't worked out in six months, they should be let go. **SEN. ROUSH** said that it could be a real concern if employers kept the employees for six months and then let them go just because they would have to pay them more at that time. He did feel that most small employers would not get the $25,000 incentive and would not be participating in the program.

***{Tape : 1; Side : B; Approx. Time Counter : 43}***

**SEN. THOMAS** said that first a person must have a job to get anywhere. Second, you have to have a solid business that can provide better wages and better than $8.00 per hour. In this state, Montana is 51st in earnings per capita. This $8.00 is

just a new minimum wage, but is a new maximum wage being created? If you think this bill will help Montana out of the hole, vote against my motion to table it. If you think this bill will set us back, vote to table the bill.

**Motion/Vote**: **SEN. THOMAS moved that SB 440 BE TABLED. In a roll call vote the Motion carried 4-3 with SENATORS COCCHIARELLA, MCCARTHY AND ROUSH voting no.**

**ADJOURNMENT**

Adjournment: 12:00 P.M.

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SEN. JOHN HERTEL, Chairman

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MARY GAY WELLS, Secretary

JH/MGW

**EXHIBIT(bus64aad)**