

MINUTES

**MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY

Call to Order: By **CHAIRMAN BRENT R. CROMLEY**, on March 11, 2005
at 3:17 P.M., in Room 335 Capitol.

ROLL CALL

Members Present:

Sen. Brent R. Cromley, Chairman (D)
Sen. John Cobb (R)
Sen. John Esp (R)
Sen. Duane Grimes (R)
Sen. Lynda Moss (D)
Sen. Jerry O'Neil (R)
Sen. Trudi Schmidt (D)
Sen. Dan Weinberg (D)
Sen. Carol Williams (D)

Members Excused: None.

Members Absent: None.

Staff Present: David Niss, Legislative Branch
Jennifer Kirby, Committee Secretary

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

Committee Business Summary:

Hearing & Date Posted: HB 738, 3/7/2005; HB 457, 3/7/2005;
HB 737, 3/7/2005
Executive Action: HB 318

HEARING ON HB 738

Opening Statement by Sponsor:

REP. CHRISTINE KAUFMANN (D), HD 81, opened the hearing on **HB 738**, Advisory commission on provider rates and services.

REP. KAUFMANN told the Committee provider rates are not built into the budget. The bill provides a means for getting information to the legislature for the purpose of appropriating money and deciding rates.

Proponents' Testimony:

SEN. MIKE COONEY, SD 40, HELENA, rose in support. A Rate Commission would establish an open sensible process, create a methodology and protocol to establish rates, create rate equity among service levels, and be responsive in providing service based upon cost services.

Mignon Waterman, Helena said she served on the Human Services Committee and was frustrated with how to determine rates. Different providers had different rates and she wondered how these rates could be determined to be fair. Many times it depends on who the lobbyist is, how well they lobby and how passionate their story is before the committee. The bill would allow information to be gathered in a non partial way, allowing fact-finding for the comparable services recommended. The legislature will decide how much money to spend on services. Having an on-going commission, making recommendations to the legislature and the governor for equitable rates, is beneficial, she added.

Jani McCall, Montana Children's Initiative Provider Association, rose in strong support. The bill dovetails into the Medicaid Redesign Project, especially the reimbursement principles. She provided a graph of children's mental health out of home services.

EXHIBIT (phs54a01)

Gail Grey Zimer, Department of Health and Human Services (DPHHS), said the Department supports the bill and will assist the commission in any way possible. They realize inconsistencies in their reimbursement rates, based on history and how rate increases are funded, and welcomed the opportunity for input from the groups mentioned in the bill. Regarding the fiscal note,

there is no funding put in because it will depend upon the programs worked out when the process begins.

Rose Hughes, Montana Health Care Association, represents nursing homes and assisted living facilities in Montana. Nursing facility data is readily available. Assisted living facility data is not required and not available. Both facilities receive Medicaid money through the Medicaid waiver. She said there is a lack of data and more information is needed when making provider recommendations before the committees. This information will assist greatly and she strongly recommended the bill be passed.

Jeff Stern, Director, Developmental Disabilities Program for Montana, said they had problems when Medicaid found inconsistencies with their rates. Rate setting became a major problem and they would have appreciated some guidance in setting up the rates. The Rate Commission could have saved a lot of time, effort and money for his department. He recommended the bill highly and asked for Committee support.

Sami Butler, Intermountain Children's Home, supported the bill for statements made previously. She said it is good business practice to know what services are being provided, along with their cost, before funds are appropriated. She added that **Jeff Birdbaum**, from the Youth Home, was unable to attend the hearing and is in support of the bill.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. O'NEIL asked **REP. KAUFMANN** how many legislators would be on the committee. **REP. KAUFMANN** said the makeup of the committee is flexible at this time and a specific number of legislators was not identified. **SEN. O'NEIL** asked who would determine the members. **REP. KAUFMANN** told him **DPHHS** is charged with forming the commission and will be making the contacts. **SEN. O'NEIL** asked if a Democrat was appointed for the term and the Republicans became a majority, who would make that determination. **REP. KAUFMANN** said the department would continue to make that determination. She said it would be at the pleasure of the Senator or Representative serving on the committee. It would remain with their interest in whether to continue. **SEN. O'NEIL** asked if there was discretion or criteria for these appointments. **REP. KAUFMANN** said the bill is flexible in section 3. The department will have people with expertise making the determinations.

SEN. GRIMES wanted information on the methodology. **Mr. Stern** said they chose methodology based on percentile. They started with trying to find a salary for an employee in the 50th percentile, but may end up in the 25 or 35th percentile. Then they added the additional cost of administration, office rental and related items. An example right now, based on a direct care salary for working in a group home in most of rural Montana, with \$8.29 an hour, the rate ends up around \$15.00 an hour.

SEN. WILLIAMS asked **Ms. Zimer** for examples on how this bill would help her department. **Ms. Zimer** said right now it rests on who lobbies the best, based on history and disability services. A lot depends upon the success of the negotiator. There is a real "mishmash" out there. The commission will be very helpful because of the variety of people working on it. This will bring coordination in developing rates and providing better information for the legislature.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 28.3}

SEN. ESP questioned **Mr. Sturn** about the number of man hours and staff required to put the system in place within his division. **Mr. Stern** answered most of his department works with this as part of their job. There are about five staff who share different parts of the job and one contractor. One full time person manages most of the work. **SEN. ESP** asked how much they paid the contractor. **Mr. Stern** told him, when the work is finished, it will be around a million dollars to re-write the rate system. A large part is the Medicaid requirement and a lot is tied up in the technical system. **SEN. ESP** asked if other people would have to attend the rate council or would it only be his department. **Mr. Stern** said the advisory group has about 20 individuals. Four are from his staff. There is Rep. Clark, medicaid people, providers, and family members, as well.

SEN. SCHMIDT asked if there would be contract monitoring during the time of the contracts. **Mrs. Zimer** told her information would be built into the contract and there would be a continuing review process. Once the process is in place, this will help assure the rates are consistent.

SEN. CROMLEY inquired if the payment and per diem for the commission would come out of this fund. **Mrs. Zimer** told him that is correct. Depending where the individual lives will depend upon the per diem rate.

SEN. ESP asked why she thought there would be less lobbying with this legislation. **Mrs. Zimer** envisioned the commission, with their advantage of expertise from the people involved, will

approach this with a professional, instead of a political position. There will be a better understanding of the rates and legislators will not be approached by people, one at a time, over the course of the session.

Closing by Sponsor:

REP. KAUFMANN said it is important to be as fair and equitable as possible, when addressing provider rates. The information will be helpful. The purpose of the commission is to receive the information and provide better information to the future legislature.

SEN. MOSS will carry the bill on the Senate floor.

HEARING ON HB 457

{Tape: 1; Side: B; Approx. Time Counter: 0 - 23.5}

Opening Statement by Sponsor:

REP. MARK NOENNIG (R), HD 46, opened the hearing on **HB 457**, Revise law governing radiologic technologists.

The bill allows the Board to describe the level of supervision for radiologist assistants and the types of injections assistants may use, as well as the procedure for this. It allows the Board to adopt rules necessary for implementing the procedures described.

Proponents' Testimony:

Courtney Funk, Director of Radiology, Deaconess Billings Clinic, read her testimony in support of **HB 457**.

EXHIBIT (phs54a02)

Ronald Darby, Physician and Radiologist, Deaconess Billings Clinic, gave the committee a letter from the nine radiologists in his group, who provide services in rural Montana; a letter from Lee Rhodes, CEO, Roundup Memorial Healthcare; a letter from 10 members of Northwest Imaging P.C., Kalispell; a letter from Kristi Gatrell, Radiology Director, Big Horn County Memorial Hospital, Hardin; and a letter from Ronald L. Darby MD, Chairman, Department of Radiology, Deaconess Billings Clinic. He said it is difficult to attract radiologists to rural Montana. There are about 80 radiologists in Montana with an average age of over 50.

Radiology assistants are valuable in their work, and he strongly supports the bill.

[EXHIBIT \(phs54a03\)](#)

[EXHIBIT \(phs54a04\)](#)

[EXHIBIT \(phs54a05\)](#)

[EXHIBIT \(phs54a06\)](#)

[EXHIBIT \(phs54a07\)](#)

Opponents' Testimony: None.

Informational Testimony:

Jim Brown, Department of Labor and Industry, which includes the Board of Radiologists said the Board voted unanimously to support this bill. He was present to answer questions, if necessary.

Questions from Committee Members and Responses:

SEN. ESP asked what personnel trained in advanced cardiac life support meant. **Ms. Funk** told him advanced life support is training the radiologist assistant or specialized nurse might have to help them perform CPR, use a defibrillator, or assist in a code blue. A radiologist assistant (RA) must be certified in advanced cardiovascular. **SEN. ESP** asked if it made sense to say, or personnel certified in advanced life support. **Ms. Funk** answered, certainly. **SEN. ESP** asked, on page 3, line 15, where it says, immediately, and used to say, available within the department, meant now. **Ms. Funk** told him it is important these individuals be available within the rural health care facility or hospital.

SEN. ESP was concerned about how closely available they should be. **Mr. Darby** told him Deaconess Billings Hospital has 300 beds, and the hospital has multiple stories. When using contrast, it is required there is a tray, with appropriate drugs and equipment, in the room available for the patient. The RA is certified in advanced cardiac life support and would be in the room with the necessary equipment. There is also a cardiac response team in his hospital, located somewhere on those floors, with a response time of a few minutes. In a rural hospital, the physician on duty is closer than in a large hospital.

SEN. O'NEIL questioned how many people die from the injections. **Mr. Funk** told him, in his 40 years experience, that in world literature, there is about 1 in 40,000 who has a reaction. In the last few years, after going from an ionic-based contrast

agent to a non-ionic-based contrast agent, he has seen the percentage drop even more dramatically.

SEN. WEINBERG wanted to know if, by paying RA's less, this bill was more for cost savings or was it because of shortages of radiologists. **Ms. Funk** answered it would save money but, because of the great need for these services in rural hospitals, it was a huge benefit. In Deaconess Billings Clinic, they couldn't afford to hire another radiologist. Because of delays encountered in patient services, primarily, it was to improve access to patient care.

SEN. ESP, read the bill to mean either the practitioner, or the radiologist or the personnel trained in cardiac life support has to be immediately available. He asked if there were some cases when neither one of those three people will be in the room administering the procedure. **Mr. Stern** answered that was not what he said. The RA is trained in advanced cardiac life support and will be in the room during the procedure with the trainee. A physician will be somewhere in the institution and available for assistance, but not in the room at the same time. **SEN. ESP** thought clarification was needed because the bill said only one out of those three people would even need to be in the hospital at the time the procedure is done. **Mr. Stern** said that interpretation was not their intent. He would be glad to assist in having that sentence rewritten, making it very clear that the radiologist assistant, who is with the patient in the room, is trained in advanced cardiac life support and that a physician is available in the institution at the time of that procedure. The intent is to have all the RAs trained in advanced cardiac life support. The intent was also to make sure there is a physician immediately available for assistance, if there was a contact reaction. It was not their intent to have to have the radiologist available as well, because of the lack of radiologists in the State. **Ms. Funk** said this particular provision covers radiologic technologists, in their ability to administer contact media. The original statute specifies that the practitioner, that ordered the procedure, or the radiologist has to be available within the department. The law is being modified to say, the practitioner that ordered the procedure, or the radiologist, or someone trained in advanced cardiac life support, would be available.

Closing by Sponsor:

REP. NOENNIG said the bill is about the radiologic technologist. The paragraph we have been talking about refers to that person.

SEN. MOSS will carry the bill on the Senate floor.

HEARING ON HB 737

{Tape: 1; Side: A; Approx. Time Counter: 28.3 - 30.7}

Opening Statement by Sponsor:

REP. WALTER MCNUTT (R), HD 37, opened the hearing on **HB 737**,
Revise laws governing physician assistants.

REP. MCNUTT told the committee the bill was requested by the Board of Medical Examiners. The statute was developed in the 1980's and the bill brings it up to date. The physicians assistant (PA) will have to work under the direct supervision of a licensed physician. They have PAs in rural hospitals because they can't get doctors. A Supreme Court decision says they cannot perform abortions. He gave the Committee a copy of the supreme court decision regarding the abortion law. Page 7, line 3 and page 28, line 7 reads as the law is today.

EXHIBIT (phs54a08)

EXHIBIT (phs54a09)

Proponents' Testimony:

Jeannie Worsch, Executive Director, Montana Board of Medical Examiners, in full support of **HB 737**. She told the Committee PAs are educated, with at least a bachelors level, and a minimum of two additional years in an accredited physician assistant program. They are moving toward a masters level with two additional years in an accredited physician assistant program. They have been licensed in the State of Montana since 1989 and are supervised by a licensed Montana physician and they do not practice medicine independently. Physicians hold, under current law, the legal and professional responsibility and liability for the PA's care to all his or her patients.

{Tape: 2; Side: B; Approx. Time Counter: 0 - 16.2}

Ronald Hambrose, President Elect, Montana Physician Assistants, has been a PA for 34 years, practicing in Montana all those years, rose in support of the bill. They work closely with physicians. Upon graduation, PAs take national certification exams developed by the National Commission of Certification of Physician Assistants (NCCPA), in conjunction with the National Board of Medical Examiners. To maintain national certification, PAs must log 100 hours continuing medical education every two years and sit for re certification every six years. Graduation from an accredited PA program, and passage of the national certifying exam, are required for State licensure.

{Tape: 2; Side: B; Approx. Time Counter: 16.2 - 18.8}

Jani McCall, Deaconess Billings Clinic, supported the bill. They have numerous PAs in their clinic, hospital and their rural clinics.

John Flink, Montana Hospital Association (MHA), rose in support. They helped in drafting and reviewing the bill and underscore the importance of PAs in rural areas around the State.

Kaybill Losmee, has been a PA for 21 years, and she urged support of the bill. She gave the Committee a letter from **Ann Davis, Director, State Government Affairs, American Academy of PAs**.

EXHIBIT(phs54a10)

{Tape: 2; Side: B; Approx. Time Counter: 18.8 - 21.7}

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. SCHMIDT asked **Mrs. Worsech** what the PA's bachelor's degree had to be in. She answered in the past it could be in anything.

SEN. SCHMIDT thought if she had a bachelor's degree in Forestry, she could go to a school and become a certified PA. **Mr. Hambrose** told the Committee, in the past, he was an ex-military corman, a Vietnam veteran. At that time, programs were two year programs, a medics program. He attended the University of Utah. Since then, they started with bachelor's programs. The program was a two year medical program, the national certification followed this. There is change, at this time, to require master's programs, but they are not at that point yet. **SEN. SCHMIDT** reiterated that one can get a bachelor's in Forestry and then go two years to get the PA. **Mr. Hambrose** answered, yes.

SEN. SCHMIDT, referring to page 13, lines 18 and 19. The change in the language is "the provisional system is authorized to prescribe controlled substances". **Mr. Hambrose** said they have been authorized, but have always been able to do this.

{Tape: 2; Side: B; Approx. Time Counter: 21.7 - 28.3}

SEN. WEINBERG inquired whether the bill broadened the scope of practice. **Mr. Worsech** told him it doesn't change anything, it only defines it. Amendments haven't been made since the

inception of the statute in 1989, so there is a lot of clean up in this bill.

SEN. GRIMES asked if practitioners or midwives had the same exclusions or immunities. **Kevin Braun, Department of Labor and Industry**, told him this was not unique to PAs. Other areas have certain exemptions for emergency purposes as well.

SEN. SCHMIDT had a question regarding the prescribing of controlled substances. **Mrs. Worsech** told her the supervising physician sets the limitations of the PA, depending upon qualifications and ability. The supervising physician may limit the prescribing authority of the PA. **SEN. SCHMIDT** asked about the education requirements referred to in **Mrs. Worsech's** testimony. **Mrs. Worsech** said she mentioned it was to make sure the Committee understood she wasn't talking about unlicensed medical assistants who work in physician's offices. The Board requires the PA be certified through the NCCPA organization who establishes the educational requirements. The additional 100 hours, every two years, is to be re-certified with NCCPA, the national organization.

Closing by Sponsor:

REP. MCNUTT, said the Board thought it was time to update the old statute. The physician will not authorize the PA to do things they are not qualified to do. The physician remains responsible. PAs are necessary medical providers in rural communities.

SEN. ESP will carry the bill on the Senate floor.

EXECUTIVE ACTION ON HB 318

{Tape: 3; Side: A; Approx. Time Counter: 0 - 27}

SEN. CROMLEY said the amendment to **HB 318** passed on a 5-4 vote, then the bill passed out of Committee, but was not reported out. Question was raised to have the bill reconsidered.

Motion: **SEN. GRIMES** moved to RECONSIDER THE MOTION on HB 318.

{Tape: 3; Side: A; Approx. Time Counter: 27 - 32.8}

Discussion: **SEN. GRIMES** proposed to pull out the description which is causing problems. Referring to the diabetes mandate, it says "as provided" in that section of code, rather than listing medical information, equipment and supplies. Basically all of

this is already covered in the bill. He said the amendments the Committee put on the bill reinstated mandates, which could provide some real liability in the future, if more expensive diabetes technology came along. This made the demonstration project null and void. He said New West is offering insurance to people for \$56 a month per person to get preventive care in preventing catastrophic medical conditions.

Mr. Niss explained the amendment took out equipment and supplies and substituted insulin pumps, which is in the Committee report, and that is not acceptable.

SEN. WEINBERG asked **SEN. GRIMES** what the reference to the statute included or excluded. **SEN. GRIMES** told him the statute is all of the things described in 33-22-129, line 15. He was taking out the language. That mandate will be excluded, but on page 1, line 19, this demonstration project plan must include significant outpatient services. The problem is, when you start to piecemeal the mandate, that can be construed as requiring them to be on the line for any new technology which comes up, or any other additional costs.

SEN. CROMLEY asked **Ms. Senterfitt, New West Insurance**, about his understanding that, if diabetic care is not removed in its entirety, the program would be shut down. **Ms. Senterfitt** said, because of their concerns of what the mandate presents in terms of unknown exposure, that being the ability to limit or exempt what's covered under that section, they are at too much risk to continue the bridge plan. New West is not willing to provide the bridge plan with the mandates in place.

SEN. GRIMES said that was important and asked **Ms. Senterfitt** to restate her answer. She said the premise of the plan was on a mandate free basis and to having the freedom to take the risk. With that part of the mandate left in the statute, New West is not willing to continue the bridge plan for the many years it would be an option to do so. **SEN. GRIMES** said that was because they can choose to limit portions of it depending upon cost factors. **Ms. Senterfitt** answered, yes, because without the mandate, they have the freedom when new and unexpected things come up, to set limits and restrictions.

SEN. O'NEIL asked, other than insulin pumps, what other exceptional costs did she foresee regarding the mandate for diabetes treatment. **Mrs. Senterfitt** told him, in addition to the pumps, there are the pump supplies which costs \$1000 or more per year. What they don't know right now is what is coming down the road in the future, and what will be valuable and important for treatment.

SEN. MOSS reminded the Committee this is a demonstration project.

SEN. SCHMIDT did not want to rush a decision on the bill and asked to defer it until Monday.

SEN. GRIMES withdrew his motion.

ADJOURNMENT

Adjournment: 6:02 P.M.

SEN. BRENT R. CROMLEY, Chairman

JEN KIRBY, Secretary

BC/jk

Additional Exhibits:

EXHIBIT ([phs54aad0.PDF](#))