



GENERAL SESSION

March 3, 2010

Program Topic: Healthcare Reform Task Force

Presented by: Health & Human Services/Retirement & Independent Entities

Co-Chairs: Dianne Yancey and Chris Bray

Director: Donna Murphy

Speakers: **Rep. Ronda Rudd Menlove (R) Dist. 1, Box Elder County
Utah Health System Reform Task Force**

**Sen. Gene Davis (D) Dist. 3, Salt Lake County
Utah Health System Reform Task Force**

Rep. Menlove, summarizing the background of the Utah Health System Reform Task Force, said House Speaker Clark established it three years ago. It was to have two areas of focus:

(1) Digital Health Records – They will expedite sharing of patient information between healthcare providers. E-Prescriptions will be a valuable part of this network.

(2) The Health Insurance Exchange – Speaker Clark has made it a priority to enroll more businesses into the Exchange. Zion's Bank, among others, has recently signed on.

Another area of reform is the upgrading of information available to the public with regard to hospital choices, competing costs for various procedures, etc. The Task Force has and will continue to hold the position that “the federal government should leave Utah alone to work out its own healthcare

solutions.” Getting a handle on statewide Medicaid costs is a huge issue. The Task Force is looking into the feasibility of using audits to assist in the process.

Sen. Davis, who believes Utah is taking the lead in Healthcare reform, said the uninsurable risk pool is of special concern to him. Most Americans get their health insurance from the workplace. What should be the individual, state, and federal roles in this process?

The state should be involved in healthcare because it licenses healthcare providers. This gives the state leverage in the debate. The senator does not think Medicare is, in essence, a bad program. However, reforms are critical if we are to sustain it as a viable part of our state's protection for its seniors.

The federal government needs at least some involvement so states can offer portable insurance (across state lines). The federal

government also substantially underwrites the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985.

COBRA requires most employers with group health plans to offer employees the opportunity to temporarily continue their group health care coverage under their employer's plan if the coverage would otherwise cease due to termination, layoff, or other change in employment status

Health insurance is based upon the principle of "shared risk." If most people are basically healthy, then they can afford to pay into a pool of money that is sufficiently large to pay for the big expenses incurred by the few people who are really ill.

One problem is that a person seeking health insurance coverage should be healthy at the time of purchase. How can universal healthcare ever be attained if pre-existing conditions render applicants uninsurable? How can insurance companies remain in business if they must accept every pre-existing condition into the risk pool? It is a difficult issue, but solutions can be found.

Both Rep. Menlove and Sen. Davis responded to questions. The Utah Health Exchange itself has no current mandate on pre-existing conditions, leaving the question to individual insurance companies. It is difficult to keep premiums low when people with pre-existing conditions are factored into the mix.

The Utah Health System Reform Task Force was originally created by an Initiative brought before former Gov. Huntsman. It is charged with making legislative appointments to the Committee and bringing together business, insurance, and

healthcare providers to find solutions. There is no time limit set on the ongoing work of the Task Force. Meaningful advances are hoped for by this summer.

Why health insurance has come to be provided in the workplace is a historical question. Many other countries do not necessarily follow this method. After World War II, American labor unions lobbied for, and won that benefit from business.

Today, small Utah businesses look for reform that will offer small businesses (under 25 employees) the chance to purchase health coverage from the Health Exchange. The ultimate goal is for the Exchange to also extend the opportunity for coverage to individuals not associated with any group or business.

Neither legislators nor public employees may participate in the Exchange at this time. If they were included, tax dollars would be supporting their healthcare. Employers enrolled with the Exchange agree to pay 50% of premiums, with employees paying the other half. Employers must offer this coverage to all their employees, who are not then required to accept it.

The debate on healthcare access at any level always centers on the delivery system. The "uninsurable risk pool" is made up of the sickest of the sick. One proposal is to put an additional, self-contained risk pool into the Exchange. On the federal level, the idea of using fifty separate, statewide risk pools offers an interesting healthcare reform option, as well. For more information, visit www.exchange.utah.gov.

Reported by Pam Grange

GENERAL SESSION II

Program Topic: **SB145 Medical Malpractice Amendments**

Presented by: **Health & Human Services/Retirement & Independent Entities**

Co-Chairs: **Dianne Yancey and Chris Bray**

Director: **Donna Murphy**

Speakers: **Sen. Stuart Adams (R) Dist. 22, Davis County**
Sponsor, SB145 Medical Malpractice Amendments

Charlie Thronson – Attorney; Parsons, Behle & Latimer

Sen. Adams, although pressed for time due to a budget meeting, commended Charlie Thronson for being extremely helpful throughout the process of crafting **SB145 Medical Malpractice Amendments** and its substitutes. Fortunately, it has become a true consensus bill.

A central feature of the bill is its “hard” (not adjustable for inflation) cap of \$450,000 for “non-economic” (pain & suffering) damages that can be awarded to plaintiffs in a medical malpractice suit. It amends the previous cap, which was significantly lower.

The bill also requires an “Affidavit of Merit” from an outside health care professional in order to proceed with an action if the pre-litigation panel makes a finding against the merit of a case. It also specifies that certain individuals who work in hospitals may not be held liable; for example, agency, rather than hospital, employees.

Before his early departure Sen. Adams quickly responded to questions. The impetus for this bill came from Utah Medical Association lobbyists, who brought the issue to his attention. The pre-litigation panel is composed of (1) one member who is a resident lawyer, (2) one member who is a licensed health care provider, (3) a lay

panelist who is neither a lawyer, doctor, or hospital employee.

Charlie Thronson, to illustrate the extent of the medical malpractice problem, asserted there are 98,000-150,000 deaths in the U.S. each year due to medical errors. That amounts to more than the annual death toll of auto accidents and the Vietnam War, combined. In addition, over 100,000 people are injured annually by medical mistakes.

In Utah, Intermountain Health Care (IHC) was plaintiff for the majority of the 96,00 civil lawsuits that have been filed. IHC’s suits were all against debtors. By contrast, only 20 suits were brought for medical malpractice. Utah currently has 27 statutes protecting medical personnel from such litigation.

Mr. Thronson argued that the facts belie a widely-held public perception that malpractice lawsuits congest the courts, unduly contribute to healthcare costs, and unfairly benefit claimants with huge “jackpot justice” settlements. In the 2009 Annual Report to the Community, the Utah Judicial Council (www.utcourts.gov) reported of 96,584 civil cases filed, only 229 were for medical malpractice. Medical

malpractice claims represent only \$.01 of every Utah healthcare dollar spent.

Agreeing with Sen. Adams that **SB145** is a consensus bill, Mr. Thronson noted that the negotiating committee was able to remove its most onerous elements. For example, as it was originally drafted, the bill imposed a sliding scale on plaintiffs' attorney's fees, whereas no such fees were set on the defense. That, along with raising the \$250,000 general cap on damages, has been amended.

A hospital will now be required to disclose whether an employee is an agency, rather than a hospital, employee. A hospital must also carry the same level of insurance coverage for agency-employed physicians as for those who are hospital-employed. Also removed from **SB145** was a deadline for filing malpractice lawsuits on behalf of children. Since children are not considered to be legally competent, any type of lawsuit can be brought until he/she is 18 years old.

Mr. Thronson is still somewhat skeptical of the pre-litigation panels. He feels they are often "stacked" with hospital-friendly panelists. The Utah Division of Occupational and Professional Licensing most often provides panel members.

Responding to questions, Mr. Thronson said he judges about 50% of malpractice cases to

be completely legitimate. Approximately half the states in the country use pre-litigation panels and Affidavits of Merit. Elements of a verdict to claimants contain past & future medical expenses, past & future lost wages, and pain & suffering damages. The hard cap set in **HB145** applies only to pain & suffering damages.

There is no requirement in the bill for how long medical personnel must keep patients' records. The Statute of Limitations mandates that an adult must bring a case within two years of "when you knew or should have known" an injury was caused. If a medical instrument was left inside a patient after a procedure, suit must be brought within one year after knowledge of it is determined.

SB145 was passed by the Senate yesterday (March 2, 2010). There will be a 4-year "stand down" by all parties on the medical malpractice issue. This will be a welcome change for Mr. Thronson, who regularly meets with legislators at the Capitol on the issue of medical malpractice. He represents The Utah Association for Justice, also known As The Utah Trial Lawyers Association.

Reported by Pam Grange

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