Wyoming Healthcare Commission minutes
Nov. 17, 2003
Casper, Wyoming

Attendance: T. Chris Muirhead, Chairman, Carol Jenkins, John Vandel, Paul Lang, Dixie Roberts, Dr. Robert Volz, Dr. Stacy Childs, Ford Bussart, George Bryce, Commissioners, Dr. Deborah Fleming, Ken Vines, Ex-Officio, Diane Harrop, Emily Genoff, Staff.

The meeting was called to order at 8 a.m. Introductions were made. Mr. Muirhead reviewed the purpose of the meeting: review of the recommendations of the Commission's two subcommittees to be forwarded to the Legislature's Joint Labor, Health and Social Services Committee.

Chairman Muirhead introduced Gov. Dave Freudenthal, present to discuss a constitutional amendment he's proposed to help address the issue of rising medical malpractice costs by making it possible to limit damages awarded to those suing medical providers and/or to allow for an alternative resolution process for dealing with claims of medical negligence.

> *Proposed language:*
> *New Article 10, Section 4A:*
> *Any section of this Constitution to the contrary notwithstanding, the Legislature shall, in any civil action where the act or omission of a healthcare provider has been alleged to have resulted in death or injury to any person have the right to:*
> *(a) Limit the amount to be recovered for non-economic loss arising from the death or injury;*
> *(b) Mandate an alternate dispute resolution process or other review of the matter by a medical review panel prior to the filing of a civil action against a health care provider.*

Gov. Freudenthal said the proposed constitutional amendment will only provide the Legislature with the opportunity to change the law; it doesn't affect the status of medical malpractice case law. There's a group that believes that the rights of individuals might be undermined and another believes it would solve the medical malpractice crisis. Neither is true. The amendment will only provide the Legislature with a tool to help amend law. In Governor Freudenthal's words: I believe this is a step that needs to be taken to give the Legislature all the tools it needs to address the questions of medical malpractice law. If the amendment is rejected by the Commission, Legislature or the voters you are essentially saying that nothing will change with regard to medical malpractice law in the this state until 2007 and that would be the earliest. You can only change the Constitution in general elections.

We have talked about this issue in this state for five or six years, or longer. The thing that has happened is we had intense discussion, committee hearings, deliberations about an issue the Legislature could do nothing about. The constitutional issue has to be addressed first. The way to open the door for this discussion is to pass the amendment. I don't know

how the voters will respond. The ability to change the Constitution is reserved specifically for the voters. I believe that it is appropriate to adopt this amendment or some form of it but you need to place something in front of the voters to effectively give the Legislature a set of tools. I don't know if they will use them but they can't use them if they don't have them. This is an opportunity for the voters to decide whether or not to allow the Legislature to change the existing law to affect medical malpractice.

Mr. Muirhead noted the constitutional amendment language refers to two issues of tort reform and not some others. Is this going to give the whole breadth intended? Gov. Freudenthal said the language in his proposed amendment does not give the ability to limit economic damages and that's intentional: a citizen ought to be allowed to be made whole. He did not address punitive damages because there hasn't been a punitive damage award in Wyoming for so long it doesn't matter. Ultimately tort reform is a small part of what the Commission has to do. If I have any advice, vote this recommendation up or down and move on. You couldn't have a conversation about the healthcare crisis that didn't hit a road block: the issue of tort reform. It's the lightning rod issue.

Mr. Bussart said he is concerned there hasn't been an analysis which indicates there is in fact a problem and that implementation of these proposals would solve the problem. Having served in the Legislature, I believe this thing has populace appeal but that doesn't mean it's right, or will solve the problem. It will open up a political maelstrom of indescribable dimensions. If we enshrine bad public policy in the Constitution, getting it back out of the Constitution will be nigh impossible. Gov. Freudenthal said he understands the sentiment but have we enshrined a limitation in the Constitution which precludes us from considering other public policy issues? The contentious nature of this will make sure the ideas are tested before the Legislature would act. I'm not as sure as you are that it has intense populace appeal.

Dr. Volz asked whether a time period could be included to sunset the provision. Gov. Freudenthal said he thought about it but didn't include it because the passage of Legislation is vested in the Legislature through that process, he's comfortable not mandating outcome. The process of changing the Constitution on the other hand is peculiarly vested in the people with limited opportunities. Gov. Freudenthal said the only time he's seen mandated time periods in the Constitution was in the U.S. Constitution with regard to the end of the slave trade. How would you determine that they had addressed the issue within the limited amount of time? By bills introduced but rejected? Passed? Ultimately this is a tricky issue and I would illustrate it with caps. You can have people who say I won't support caps "unless" and then cite a specific example. My fear is that if we try to answer all of that today that we defeat our ability to actually have that conversation in the state. I think it's a step at a time.

Rep. Jerry Iekel asked about medical errors review, and wanted to know whether a constitutional amendment is required. Gov. Freudenthal said it would require some constitutional change (referring to a proposal drafted by Sen. Charlie Scott). I don't know how many loads of rocks I want to carry. I'm confident about the two I have proposed. I do worry that we not make this very complicated.

Professor John Burman, a nationally-recognized legal expert from the University of Wyoming College of Law specializing in torts and legal ethics, was introduced. Mr. Burman was present to provide a short-course in tort law *(handout)*. He traced the history of the Constitution and definitions that should be iterated to make medical malpractice clearly understood. Historically, tort law is judge-made law. It has always been felt that common law reflects the will of the people as expressed through the members of the court. Tort is civil and applies when there is a non-contractual wrong given a remedy: damages. That's the hot button item with tort reform. Negligence means that a person has the obligation to act toward somebody else in a reasonable way and fails to do so. This is relevant to health care because doctors have a duty to act reasonably toward their patients. Medical malpractice is a claim that a doctor has acted negligently. In the old days if you were going to sue a doctor in Casper, you would have to prove the doctor acted unreasonably in Casper. Now the standard is nationwide – we don't have the locality rule anymore because doctors are licensed according to national standards. He talked about the compensation lawyers receive in medical malpractice cases. Typically they work on contingency. A contingency fee was designed to shift the risk to the lawyer; I'll represent you and you don't have to pay me unless we win and if we win, I get to keep a percentage we agree on.

The issue most discussed when it comes to tort reform is the issue of damages – the governor's amendment would allow for caps on damages. There are different categories of damages: compensatory, punitive, economic and non-economic. Economic damages are out of pocket losses—medical bills and lost wages past and future. Economic damages are not typically controversial. Non-economic damages refers to damages given to compensate a plaintiff because of what he or she can no longer do, usually in the categories of pain and suffering and loss of enjoyment of life. In a malpractice case, the non-economic damages are often much larger than economic damages. Damage caps are a very common thing; $250,000 and $500,000 are numbers often used. The non-economic damages are the damages they are talking about. Tort reform means we should change part of the existing system not by going to the courts as in the past but by going to state Legislature or Congress to change it. Caps are common in tort reform, along with medical review panels, and sometimes a requirement too that a plaintiff and defendant go to some type of mediation or alternative dispute resolution (ADR). He talked about the elements of a medical malpractice case – the burden of proof rests on the plaintiff who must rely on the testimony of expert witnesses regarding what the doctor's actions should have been.

He said one thing he finds troublesome in the tort reform debate is the lack of "evidence"; few insurance companies break out and report how much is paid in non-economic damages and economic damages. I think it's too bad we even talk about caps without knowing what the money is being paid for because we don't know. If it turns out that most jury awards are for economic damages, then you don't need a cap on non-economic damages.

Mr. Muirhead asked whether rural practitioners are treated the same as other doctors, despite the fact that they haven't got practice coverage and can be on call 24 hours a day for weeks on end. Mr. Burman said that issue is addressed in standard of care. What we expect from the doctor in Buffalo is, even if he doesn't have the right equipment, he knows to refer somewhere else. We don't allow for a doctor in a small town to have a lower level of training and expertise. We do allow for a doctor to have lesser equipment and other resources.

Mr. Burman continued: One area of tort reform not talked much about is the role of experts. If you bring in somebody from a very different practice setting, that doctor is going to be subject to cross examination. There are doctors who make their living being expert experts and all they do is go around and testify. I've asked this question of doctors: when was the last time you saw a patient. Sometimes it was a while ago. All they do is review medical records and say Dr. X messed up on that one. The Commission may want to look at the role of experts. Rule 35 allows the court to present a master in any profession. You ask the court to appoint a master whose job it is to make a recommendation to the court. It's much cheaper for the parties who split the cost. The court appoints someone in whom the court has some degree of confidence. It avoids this whole "battle of the experts" nonsense. The framework exists to allow this in most states, including Wyoming. Courts have tremendous discretion in this area. I say this having served often as an expert witness – although not in medical malpractice cases. The real problem in these cases is this problem of the battle of the experts. For me it would be much more comfortable to report to the court.

He talked about multiple defendants, because often in medical malpractice cases there were many health care workers involved in a patient's care. Common law asks the jury: were these four defendants responsible and if so how much should damages be? Each of those defendants is jointly and severally liable, meaning each of them must pay up to the full amount of the judgment but the plaintiff may only recover once. In Wyoming now the state Legislature passed a law that said each defendant must pay only the percentage of fault. We have a comparative fault statute which means in a case involving more than one defendant the jury must allocate responsibility. We've already had one important tort reform in Wyoming and that was to abolish joint and several liability. There also is a determination made about whether the plaintiff was partially at fault. Wyoming has one of the most restrictive comparative liability laws in the nation.

After the plaintiff proves his or her case, the defendant brings evidence forward to show he or she was not responsible. Medical malpractice has a two-year statute of limitations, subject to the discovery rule (two years begin to run when the injury is discovered or technically when it should have been discovered). The statute may be extended for children who are minors. In Wyoming we have something that says if you are under some form of disability, the statute will not run through that period of disability. The idea is that children should not suffer because their parents slept on their rights. Discussion followed regarding frivolous lawsuits and whether tort reform should be further into the area of whether suits should not have been filed.

What happens when a person is sued: first, a person is injured and goes to a lawyer who does an investigation into the facts of the law to decide whether in fact a case should be brought. What should happen is, a lawyer contacts an appropriate expert who gives an opinion. An agreement is made and a contingency amount reached. Experts are paid thousands of dollars a day. A lawyer taking a contingency fee case fronts the money and agrees to take no payment until a judgment is made in favor of the plaintiff. The expenses of a trial are very high. Chances are you're not going to hire one expert – you'll need several, the cheapest of whom is probably $200 to $300 an hour. The great strength of the contingency fee agreement is that it opens the courthouse door to poor folks. The lawyer for the defendant will draft a complaint that is delivered to the doctor who calls his or her insurance company to report the suit has been filed. The insurance company will pay for a lawyer to represent the doctor. Then we have a long process called discovery. Each party gets to find out everything about the other party by taking depositions under oath.

In Wyoming we're quite lucky that the time between filing a lawsuit and going to trial is normally only about a year; in California I'm told it may be as long as five years. Most of the time is taken up with depositions which are very expensive. The theory is that the more that is known about your case, the greater likelihood that it will settle. What happens increasingly often is mediation. I'm told by good mediators that they settle about 95% of the cases they mediate. It's much faster and much less expensive. If that doesn't work, then you have a trial with a jury of six or 12 people who will be asked to decide if there was a breach of duty that caused harm to the patient and if so what amount of damages should be awarded. The trial ends when the jury returns a verdict. One of the great pieces of misinformation out there about tort reform is jury verdicts are too high; no one has ever collected on a jury verdict – you can't do it. The judge converts the verdict into a judgment and the judge does not have to award the same amount set by the jury. The issue is not whether jury verdicts are out of control, it's whether judgments are out of control. After the verdict comes back, the lawyers go to the judge and make their cases. It's common for the judge to cut down the amount of damages. There's an appeal from District Court that goes to the Supreme Court, which reviews issues of law and issues of fact. On issues of fact, the Supreme Court will defer to the jury. By contrast, if the Supreme Court is asked to rule on a point of law the court doesn't defer to anybody. The Supreme Court is the expert at applying the law. Ultimately the Supreme Court is not likely to change the amount of damages. If you're a lawyer you pretty much need to focus your energy on winning the trial because you're probably not going to win on questions of appeal.

I think the important thing to know about as you look at this area of tort reform is that this is the system that has been in place in this country for a long time. Is it broken? I don't know. We have a problem with malpractice insurance rates in this state and in this country. The tort system is probably a fairly small player in that. I haven't seen any evidence to say if we change the tort system a great deal it will help healthcare a great deal. What percentage of costs are we talking about here? I don't know if malpractice premiums are 10% of costs or 100% of costs. To me it seems it's far too easy for everybody, politicians, lawyers, doctors, to throw off on the court system. I'm like most

lawyers, I'm very conservative when it comes to making changes. I really have to be convinced it's broken before it's fixed.

There are a lot of things that can be done that will have a greater effect on health care than reforming the tort system. If I were you the thing I would want to know the most is what is the effect of caps on malpractice rates. The rate of increase in Minnesota is slow – they don't have caps but they do allow for the pre-screening of cases. The first thing I would want is more information. If in fact the tort system is resulting in excessive non-economic damage awards, we need to know that. I'm very intrigued by the possibilities of medical review panels. Often lawyers will file a legal malpractice case and then call me up and ask me to be an expert. I tell them they have it backwards because I say you really shouldn't have filed this suit. I prefer not to limit the compensation for a good claim; I would just as soon keep the cases that don't involve fault of the doctor out of court. If a medical review panel were brought back in Wyoming, it would probably have to be broader than to encompass just medical malpractice cases – the Supreme Court doesn't like singling out of certain classes. Some doctors' offices are requiring patients to sign a statement that they will agree to mediation. Some courts have thrown those out and have said it is against public policy to make people give up important rights. It is important that the decision made by patient to give up the right to go to court is an informed one. Structured settlements can be set out in settlement agreements; does it make sense to allow that done under court order? It may. Some people, you give them $2 million in a year it's gone. I'm not sure about the economic sense.

Expert certification: a way to address this might be through court rules. At this point, we don't require typically the court to find that somebody is qualified to testify as an expert. An expert is allowed to give opinions. A non-expert can only testify about facts. The whole issue about experts is an area where I think there's a lot that can be done. Maybe a recommendation from this Commission would be, "the Supreme Court should look at this." You probably will get a better result if you leave it up to the court. Regarding arbitration, we have a rule in Wyoming upon request of either party or upon order of the court, we can go to mediation or arbitration. Typically an arbitrator is empowered to make a decision. An expert in contracts, maybe a lawyer, maybe not, will hold a truncated trial and make a decision. Mediation is nonbonding. The mediator is a neutral third party who tries to find common ground and encourage the parties to reach a settlement. This Commission could recommend that the bad faith claims statute be more rigorously applied.

John Masterson addressed the constitutionality of medical review panels. Discussion followed regarding medical review panels. The mere fact of treating people differently does not mean something is impermissible. If you can show a compelling state interest, you're going to survive any constitutional issue. If the proper showing is made I think the court is going to uphold that. A real key is whether you show why you're making this classification. We have a crisis in medical malpractice according to the AMA. To my knowledge we have not had the finding with any other class of plaintiffs. The worker's comp structure may provide a model. We have people injured because of poor medical care. Some get more compensation and some get less. That's what led to the worker's

comp idea – workers will give up some money in exchange for getting money if they are injured on the job. Employers pay a tax. Worker's comp represents a fundamental shift away from a tort system to a system that's based more on strict liability. The tradeoff is lower recovery for the workers. The key to that kind of system is whether you keep up with inflation. A common criticism of worker's comp is the amounts paid are too low. The problem with this debate is we haven't thought about should we revamp the whole system – there could be merit in doing that, to bring better predictable costs for doctors and recovery is assured.

Chairman Muirhead and Reform subcommittee chairman, John Vandel, led the discussion of consideration of the two recommendations being carried forward from the Reform sub-committee:

1. Governor's amendment to the Constitution.

Proposed language:
New Article 10, Section 4A:
Any section of this Constitution to the contrary notwithstanding, the Legislature shall, in any civil action where the act or omission of a healthcare provider has been alleged to have resulted in death or injury to any person have the right to:

(c) Limit the amount to be recovered for non-economic loss arising from the death or injury;
(d) Mandate an alternate dispute resolution process or other review of the matter by a medical review panel prior to the filing of a civil action against a health care provider.

The subcommittee's recommendation is to pass the amendment as drafted. The proposal is a motion presented with full support since there are two or more members of the Commission on the subcommittee. Discussion followed. Mr. John Masterson of the Governor's office said those two concepts were put together as a valuable starting point. Whether they are split up as different constitutional amendments is a good question and he said he doesn't know whether they stand a better chance of passing separately; the Legislature will have to decide whether to pass them out together or apart. Dr. Childs asked that the Commission suggest there be two constitutional amendments rather than one. Sen. Scott said all the remedies ought to be in the same constitutional amendment. The pre-trial screening concept is about weeding out suits without merit. That is a useful remedy but not sufficient to get the problem solved. If you pass one without the other, it presents the illusion that the problem is solved. A deeper crisis may evolve. For those political reasons, I think you need to keep them together. Your basic argument with the electorate: we aren't going to automatically adopt any of these remedies but we want these tools available so if we hit a crisis the Legislature can act. One of my nightmares has been that that happens and we don't have the tools available.

Mr. Bussart said that his experience with the electorate is that if you amalgamate a bunch of proposals together, when you add up the 10% constituencies that don't like one of five proposals you guarantee defeat. My experience would tell me you'd fare better if they were separated. Regarding medical review panels, as somebody trying cases in the state for 34 years including medical malpractice cases I don't think any right thinking lawyer would be opposed to the introduction of an alternate dispute resolution or medical review

panel. Regarding giving the Legislature the prerogative to cap non-economic damages: the premise for this proposal appears to me to be that we have reached a level of outrageous premiums for medical providers in Wyoming because we have a history of excessive jury verdicts or some plethora of frivolous losses and I think history belies both of those. In the vast predominance of those cases, doctors prevail on the merit. We also don't know from the insurance companies what proportion of the payouts that they've made are non-economic damages vs. economic damages. That's data we have not been able to come by. We lack the evidentiary basis to go forward and make this kind of proposal that's going to be enshrined in the Constitution. We just do not have the evidence that would justify us in going forward with that proposal. Without that evidence the analytical construct offered as basis for doing this is just a sophistry. It just doesn't add up and I can't support that.

Dixie Roberts said that when we're talking about evidence in Wyoming and it appears to me than it's much broader than what's happening in Wyoming only. We have surrounding states that have reform and the insurance companies have told us that has had an impact. That makes sense to me from a logical standpoint. John Vandel said we have heard a lot of discussion from insurance companies and that was the prime thing that came out: without a limit they don't know what's going to happen. I think this amendment allows the Legislature to look at it, allows us to proceed in our discussions and prevents the Legislature from being bound by rules made many years ago. Mr. Bussart said there is no doubt the premiums being charged are exceedingly high. That may in fact constitute a crisis but the scenario may be this: the insurance companies charge the premium not based on Wyoming experience because there's a lack of sufficient data for them to do that. Insurance companies are predisposed to want tort reform and are using premiums to force a stratagem to force a political solution of tort reform. This is not the answer to that stratagem if in fact it is a stratagem on the part of the insurance companies.

Mr. Burman said he supports the medical review panel piece of the proposal.

Discussion followed regarding whether the amendment creates the potential for limiting people to arbitration or mediation rather than trial of medical malpractice cases. The original motion passed, 8 to 1, after the idea of separating the two pieces of the Governor's proposal was rejected.

2. The second recommendation supported a feasibility and affordability study of a new system for compensating patients injured as a result of medical negligence which is being drafted by Sen. Charles Scott. This new system would be based on the Worker's Comp model and be designed to improve patient safety and increase the quality of healthcare in Wyoming. The recommendation was put forth as a motion accepted with support as a recommendation from the Reform subcommittee. Mr. Volz asked Sen. Scott whether thought had been given to putting a sunset date on the proposal and who will sit on the study group. Sen. Scott said he thought the study should be put under the charge of the Healthcare Commission, joint Labor, Health and Social Services committee or some combination of the two. Outside experts would need to be hired to take a look at the

ramifications. The people at the Harvard School of Public Health would be an obvious group to look to. You go out with a formal RFP. You need to have it evaluated by a mixed group of professionals. I think in terms of timeline, frankly to implement it because of the exclusive remedy features, you would need as they did with worker's comp to have a constitutional amendment.

Mr. Bussart asked how it would work given the no-fault framework worker's comp works within. Sen. Scott said there would be a medical errors commission that would first have to determine whether an avoidable medical error had occurred. The state of Virginia has a no-fault obstetrics system. Dr. Volz made a motion to modify the proposal to set the end of the study in 2005. Motion was seconded by Ms. Roberts. Motion passed, 8-1. Discussion on the main motion followed, concerning the possibility of melding Sen. Scott's proposal into the Governor's. But the study could take a year and something needs to be on the ballot in 2004 and Sen. Scott's might not be completed. Mr. Muirhead said. this is one of the tools that needs to be considered and possibly be made available. Some of the others are potentially second best solutions. I think you can put it as part of the constitutional amendment before you do the study to validate the concept. Mr. Masterson said the Governor's office has no objection to melding Sen. Scott's proposal with the Governor's or forwarding them on separately. Motion to forward recommendation 2 as drafted with the amendment setting completion of the study in 2005 passed 8 to 1.

3. State Planning Grant (SPG) Chairman Tom Stroock presented the findings of his task force, funded by the federal government to study the problem of the uninsured in Wyoming *(handout).* The final report will go to the federal government in March and will include items directed to the federal funding of health care. The group is three months ahead of its deadline and will make reports to the Legislature this session. Costs came in $150,000 below the $1 million budgeted. The task force voted not to return the money to the federal government but to transfer it to the Healthcare Commission for a specific purpose.

There are 70,000 uninsured, 14% of the total population, or 14.5% of the adults and 13.1% of the children in the state. Trying to cover the healthcare needs of the uninsured in the state is an economic, emotional and physical burden. Households whose income is less than $5,000 are 50% uninsured. The best-insured are the group that are in the income category of $20,000 to $30,000. The larger the firm, the better the coverage to its employees. There's a definite correlation between salary and availability of insurance. The cost is a major factor in the selection of insurance by the people who can get it. Mr. Stroock detailed the amounts employers pay for coverage of their employees. He said the SPG has firm recommendations to the Healthcare Commission.

Linda O'Grady, SPG executive director, said the first recommendation was to maintain access for 9,000 children eligible for Equality Care (SCHIP – state children's health insurance program) planned in the next two years. This proposal is in the governor's budget.

The second was to provide access to coverage for low-income parents by developing an SCHIP demonstration waiver that would allow the state to offer a private insurance package similar to Equality Care. The absence of coverage can have consequences to the entire family if parents' physical health needs are not met; estimated cost: 5,600 parents, $11 million (state/federal mix). The third recommendation is to provide access to a limited benefit package for up to 8,000 uninsured low-income adults by developing a Medicaid 1115 waiver.

Fourth SPG recommendation: establish a Wyoming purchasing cooperative designed to make health insurance coverage more available and affordable which would provide the convenience of multiple premium payers for a single, streamlined claims administration; and a provider agreement to manage claims cost. The responsibility for conducting a study to determine how best to create these insurance mechanisms will be assumed by the Healthcare Commission with the funds transferred. Recommendations based on the results of this study will be available for the 2005 Legislature.

The fifth recommendation is development of a Wyoming approach to address the urgent crisis of uncompensated catastrophic care which is provided by hospitals who treat uninsured individuals, especially in small communities where even a small number of high cost cases can threaten the solvency of the community hospital. A study is recommended to be done by the Commission of a state-funded secondary catastrophic insurance policy for all Wyoming citizens which might be funded with a tax and perhaps administered under a system similar to worker's comp. Another option might be taxing driver's licenses or vehicle licensure. Mr. Stroock said this affects at least 1,000 people who don't have the means to pay for critical care provided for them resulting in large "bad debt" loads at small hospitals. The exact cost of these "outliers" to every single hospital in the state will be determined and up to $10 million will be distributed to hospitals to help cover costs on a one-time basis.

Recommendations on direct care included expanding the UW Family Practice residency program's capacity through cash incentives for residents, study of expansion of the residency sites, and enhancing funding available to residency centers so they can provide more care (supplementing patient co-payments).

Provision of specialized technical assistance needed by communities trying to develop applications for community health centers also is included in the SPG's recommendations in the form of additional funding for state Office of Rural Health staff. Total cost of the recommendations is $16 million in state general funds. Discussion followed regarding the Commission's use of the SPG's leftover funds. The Legislature allowed the Commission to take over the SPG grant but the WHC opted to have the SPG taskforce to go forward on its own. Commissioners Bryce, Fleming, Vandel, Muirhead and Vines sit on the SPG task force.

Sen. Scott asked whether people will drop insurance if catastrophic coverage is supplied by the state. Commissioner Muirhead said that needs to be addressed in the Commission's studies. Hugh Sloan, a consultant to the Wyoming Department of Health,

asked whether the task force addressed the issues of homelessness that confront several communities in the state. Mr. Stroock said the task force was funded and focused on providing insurance to as many Wyoming residents as possible. No attempt was make to distinguish between those and without homes, only between income, age and health needs. Chairman Muirhead asked for a motion to accept the report of the SPG taskforce and approve all recommendations from the SPG grant as the Wyoming Healthcare Commission's recommendation No. 3 to be forwarded to the Legislature. Paul Lang moved and Mr. Bussart seconded, motion passed unanimously.

Mr. Vines, the Wyoming Insurance Commissioner, reviewed Wyoming-specific information from OHIC's Melissa Denison. Unfortunately, he said, there is actually very little information provided in this particular report. Mr. Vines said he has talked to Ms. Denison and information requested but not yet provided is being researched and will come from OHIC at a later date – including separation of economic and non-economic damages. It's my opinion that until we get that information there is not a lot of conclusions to be reached from the information provided so far. Discussion followed regarding insurance companies' data and what numbers they use when writing policies. Should the state obtain and compile close-claims reports? Mr. Vines said that if insurance companies know ahead of time what they are expected to produce in the way of manually-collected data, that might not be too much to ask. He said he would like to investigate what other states are requiring and then choose what kind of information would be most valuable in Wyoming and then make suggestions to the Legislature regarding the requirements of the insurance company reporting to the state.

4. Carol Jenkins and George Bryce reported on two Healthcare Access Subcommittee recommendations. Mr. Bryce discussed the IT recommendation to study the use of electronic personal health records (EPHRs), a means of reducing medical errors, increasing electronic record utilization, standardization of health care records, thereby reducing healthcare costs. The recommendations evolved from a number of different directions. The Joint Labor, Health and Social Services Committee met on IT this fall and some of the information from that gathering is included, in addition to details of the VA's IT system, and telemedicine in Wyoming. Ms. Jenkins said the request for comment on the Legislature's IT study generated about 20 responses that had some themes: identify stakeholders, get continual feedback, build consensus, value what we currently have, analyze national trends and look at other regions that have done similar projects, put together an organizational structure and business plan. Those are being incorporated into the IT study proposal. The recommendation was unanimously accepted as a motion.

Fran Cadez, Wyoming tele-health manager, reported the state may get $1.5 million in tele-health funding. Sen. Scott said he would like to emphasize the importance of the stakeholder involvement all the way through the development. If it were done as "state government is going to impose this on you" it would be an absolute waste because they'd get their hackles up and refuse to participate. Discussion followed on how the IT would be applied. Motion for passage of recommendation No. 4 passed unanimously.

5. Ms. Jenkins put forth a recommendation supporting Wyoming Department of Health disease management programs and expansion into new disease areas using Medicaid claims data. Dr. Fleming said the type of activity contained in the recommendation is in keeping with her Department's commitment for cost containment measures within Medicaid. Sen. Scott said the information technology and disease management recommendations interplay primarily through electronic records management. Mr. Vandel said advanced community practice sites will be developed around the state in pharmacies as part of his work as Dean of the UW College of Health Sciences' School of Pharmacy. His students will be working with patients taking specific medications for diseases. Motion carried unanimously. This will be WHC recommendation No. 5.

Ms. Roberts presented four recommendations regarding healthcare workforce issues and Dr. Volz prepared two recommendations on pharmacy issues.

Ms. Roberts said one of the areas we found when talking about access is that we need people to provide care. The lack of providers in rural communities is a large barrier to access to care. Most areas of Wyoming have been declared shortage areas for practitioners. Her first recommendation (a) is to increase the funding to the Wyoming Office of Rural Health to fund Wyoming Health Resources Network for an additional staff person to expand recruiting to include more health professional categories. Recommendation (b) is to fund the physician and allied health professional loan repayment programs that are on the books but have never been funded. This would provide two additional tools in recruiting physicians and allied health providers. Recommendation (c) is to continue funding for the Wyoming nursing loan program and calls for allocation of additional funds for the Wyoming Commission on Nursing to continue studying the nursing shortage in the state. In the loan program created last year, all of the funding was quickly spent. A frustration expressed to the healthcare access subcommittee is that while a lot of associate degree students received assistance, many baccalaureate nurses did not get assistance. The fourth recommendation (d) is review of state licensing statutes to ensure reciprocity to allow dentists and doctors to come from other states and for nurses to return to the workforce.

The recommendations were renumbered 6, 7, 8 and 9 and were accepted with motion and support. Motion 6 carried unanimously. Motion 7 was discussed regarding how it fits with funding for WWAMI and its potential as a recruiting tool. Motion passed unanimously. Recommendation 8 was discussed. Concerns were raised regarding payment of faculty from the previous allocations from the legislation and the number of students being served. More information may be needed regarding how past funds were spent and whether the program is operating as intended by the Legislature. Motion passed unanimously. Number 9 was brought to the floor. Medical licensure reciprocation was then discussed. Dr. Volz wanted to know how many states reciprocate with Wyoming. Sen. Scott said he thinks the subcommittee is on to something, although each of the professions is different. One practice act has good re-entry provisions while others do not. The reciprocity situation is different for dentists, medical doctors, physical therapists. Any time you mess with a practice act, you are in danger of generating huge controversy. You have to be very well prepared before you approach it. I'm going to ask

you to at least think about whether this is an appropriate recommendation for this Legislature or does this commission need to go practice act by practice act and address each. Dr. Volz recommended tabling recommendation 9 and look at it by January. Chairman Muirhead pulled this recommendation off the table.

Dr. Volz said that the next recommendation, No. 10 calls for additional manpower to scrutinize how the Prescription Drug Assistance Program is being utilized. This individual would manage the budget, establish procedural and monetary requirements for PDAP, assure that policies are current, coordinate eligibility, provide review for prescription claims and patient monitoring, respond to entities requesting information about PDAP, call healthcare providers offering advice regarding specific prescriptions and provide backup to the pharmacy case manager and pharmacy program. This recommendation is submitted as a motion with support from Healthcare Access Subcommittee chair Carol Jenkins. Ms. Jenkins said the type of person would be left up to the pharmacy unit. Motion passes unanimously, renumbered as No. 9.

Dr. Volz suggested the title of the next recommendation, number 10, be "pharmaceutical consultation program." The term academic detailing came from the pharmacy program. The recommendation is that a program be implemented to study pharmaceutical intervention for patients utilizing numerous prescription medications. Motion accepted from Dr. Volz, seconded by Ms. Roberts. Ms. Jenkins proposed the addition of a section to include evaluation of a personal digital assistance (PDA) that has the preferred drug list in the data base as part of the education process for the physicians. Dr. Volz objected saying he would prefer that as a subcommittee they work on the proposal for PDAs for consideration in January but No. 10 should stand alone. Chairman Muirhead also pulled number 10 for consideration by the subcommittee. Ms. Jenkins said she thinks it's vital that physicians be made aware of the preferred drug list, saying: I can give up my PDA requirement. I think that would, in the long run, cut down on the cost of the program. Sen. Scott said there are three programs under discussion. One is the preferred drug list being developed for the Medicaid and Equality Care programs to take advantage of the differences in the marketplace in drugs with similar functions. The pharmaceutical consultation programs are designed to educate patients and doctors to counter some of the detailing of the pharmaceutical companies. To get a complete package you may need all three. There's been some experience in other states. It is a different approach. You need a coordinated mixture of all three. Having said that, this strikes me not as something that requires a separate bill but as something that requires a modification of the budget bill.

Dr. Volz said he was working hand and glove with Roxanne Homar, the state pharmacist, in assessing what is needed in trying to make expenditures for prescription drugs more efficient. These are the two highest priorities that she shared with me. The recommendation was left on the table. There was further discussion and then the motion was pulled from the table again for consideration in January. Sen. Scott cautioned that the money might not be there for all the needs in the state, despite a surplus – schools, a prison, and the threat that gas prices will collapse necessitating a rainy-day account – and prioritization will be required.

Director's report: The JUA study has been sent out to the Joint Labor Health and Social Services Committee, the media and other legislators and members of the public following the work of the healthcare commission. Generally the responses have been very complimentary. Public communication has been frequent and varied, through public television and radio stations, and a Wyoming Medical Society meeting. Draft hospital studies were made available. 74 physicians are being actively sought, 135 nurses and 15 radiology technicians. Medical malpractice costs are among the type five reasons cited for not coming here. Other reasons are rural nature of the state, low income, lack of amenities in communities, no good jobs for spouses. Some hospitals say they are impacted by medical malpractice while some say they are not. Hospitals indicated they are employing more physicians and covering their malpractice insurance as part of their employment (handout).

Meeting adjourned at 5 p.m.