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unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

(b) Employment pursuant to collective bargaining agreement; employment by independently owned and controlled local enterprise engaged in distribution of petroleum products

No employer shall be deemed to have violated subsection (a) of this section by employing any employee for a workweek in excess of that specified in such subsection without paying the compensation for overtime employment prescribed therein if such employee is so employed—

(1) in pursuance of an agreement, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board, which provides that no employee shall be employed more than one thousand and forty hours during any period of twenty-six consecutive weeks; or

(2) in pursuance of an agreement, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board, which provides that during a specified period of fifty-two consecutive weeks the employee shall be employed not more than two thousand two hundred and forty hours and shall be guaranteed not less than one thousand eight hundred and forty-hours (or not less than forty-six weeks at the normal number of hours worked per week, but not less than thirty hours per week) and not more than two thousand and eighty hours of employment for which he shall receive compensation for all hours guaranteed or worked at rates not less than those applicable under the agreement to the work performed and for all hours in excess of the guaranty which are also in excess of the maximum workweek applicable to such employee under subsection (a) of this section or two thousand and eighty in such period at rates not less than one and one-half times the regular rate at which he is employed; or

(3) by an independently owned and controlled local enterprise (including an enterprise with more than one bulk storage establishment) engaged in the wholesale or bulk distribution of petroleum products if—

(A) the annual gross volume of sales of such enterprise is less than \$1,000,000 exclusive of excise taxes,

(B) more than 75 per centum of such enterprise's annual dollar volume of sales is made within the State in which such enterprise is located, and

(C) not more than 25 per centum of the annual dollar volume of sales of such enterprise is to customers who are engaged in the bulk distribution of such products for resale, and such employee receives compensation for employment in excess of forty hours in any workweek at a rate not less than one and one-half times the minimum wage rate applicable to him under section 206 of this title,

and if such employee receives compensation for employment in excess of twelve hours in any workday, or for employment in excess of fifty-six hours in any workweek, as the case may be, at a rate not less than one and one-half times the regular rate at which he is employed.

(c), (d) Repealed. Pub. L. 93-259, § 19(e), Apr. 8, 1974, 88 Stat. 66

(e) Definition of "regular rate" of employment

As used in this section the "regular rate" at which an employee is employed shall be deemed to include all remuneration for employment paid to, or on behalf of, the employee but shall not be deemed to include—

(1) sums paid as gifts; payments in the nature of gifts made at Christmas time or on other special occasions, as a reward for service, the amounts of which are not measured by or dependent on hours worked, production, or efficiency;

(2) payments made for occasional periods when no work is performed due to vacation, holiday, illness, failure of the employer to provide sufficient work, or other similar cause; reasonable payments for traveling expenses, or other expenses, incurred by an employee in the furtherance of his employer's interests and properly reimbursable by the employer; and other similar payments to an employee which are not made as compensation for his hours of employment;

(3) Sums paid in recognition of services performed during a given period if either, (a) both the fact that payment is to be made and the amount of the payment are determined at the sole discretion of the employer at or near the end of the period and not pursuant to any prior contract, agreement, or promise causing the employee to expect such payments regularly; or (b) the payments are made pursuant to a bona fide profit-sharing plan or trust or bona fide thrift savings plan, meeting the requirements of the Administrator set forth in appropriate regulations which he shall issue, having due regard among other relevant factors, to the extent which the amounts paid to the employee are determined without regard to hours of

production, or efficiency; or (c) the payments are talent fees (as such talent fees are defined and limited by regulations of the Administrator) paid to performers, including announcers, on radio and television programs;

(4) contributions irrevocably made by an employer to a trustee or third person pursuant to a bona fide plan for providing old-age, retirement, life, accident, or health insurance or similar benefits for employees;

(5) extra compensation provided by a premium rate paid for certain hours worked by the employee in any day or workweek because such hours are hours worked in excess of eight in a day or in excess of the maximum workweek applicable to such employee under subsection (a) of this section or in excess of the employee's normal working hours or regular working hours, as the case may be;

(6) extra compensation provided by a premium rate paid for work by the employee on Saturdays, Sundays, holidays, or regular days of rest, or on the sixth or seventh day of the workweek, where such premium rate is not less than one and one-half times the rate established in good faith for like work performed in nonovertime hours on other days; or

(7) extra compensation provided by a premium rate paid to the employee, in pursuance of an applicable employment contract or collective-bargaining agreement, for work outside of the hours established in good faith by the contract or agreement as the basic, normal, or regular workday (not exceeding eight hours) or workweek (not exceeding the maximum workweek applicable to such employee under subsection (a) of this section,³ where such premium rate is not less than one and one-half times the rate established in good faith by the contract or agreement for like work performed during such workday or workweek.

(f) Employment necessitating irregular hours of work

No employer shall be deemed to have violated subsection (a) of this section by employing any employee for a workweek in excess of the maximum workweek applicable to such employee under subsection (a) of this section if such employee is employed pursuant to a bona fide individual contract, or pursuant to an agreement made as a result of collective bargaining by representatives of employees, if the duties of such employee necessitate irregular hours of work, and the contract or agreement (1) specifies a regular rate of pay of not less than the minimum hourly rate provided in subsection (a) or (b) of section 206 of this title (whichever may be applicable) and compensation at

not less than one and one-half times such rate for all hours worked in excess of such maximum workweek, and (2) provides a weekly guaranty of pay for not more than sixty hours based on the rates so specified.

(g) Employment at piece rates

No employer shall be deemed to have violated subsection (a) of this section by employing any employee for a workweek in excess of the maximum workweek applicable to such employee under such subsection if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, the amount paid to the employee for the number of hours worked by him in such workweek in excess of the maximum workweek applicable to such employee under such subsection—

(1) in the case of an employee employed at piece rates, is computed at piece rates not less than one and one-half times the bona fide piece rates applicable to the same work when performed during nonovertime hours; or

(2) in the case of an employee performing two or more kinds of work for which different hourly or piece rates have been established, is computed at rates not less than one and one-half times such bona fide rates applicable to the same work when performed during nonovertime hours; or

(3) is computed at a rate not less than one and one-half times the rate established by such agreement or understanding as the basic rate to be used in computing overtime compensation thereunder: *Provided*, That the rate so established shall be authorized by regulation by the Administrator as being substantially equivalent to the average hourly earnings of the employee, exclusive of overtime premiums, in the particular work over a representative period of time;

and if (i) the employee's average hourly earnings for the workweek exclusive of payments described in paragraphs (1) through (7) of subsection (e) of this section are not less than the minimum hourly rate required by applicable law, and (ii) extra overtime compensation is properly computed and paid on other forms of additional pay required to be included in computing the regular rate.

(h) Extra compensation creditable toward overtime compensation

Extra compensation paid as described in paragraphs (5), (6), and (7) of subsection (e) of this section shall be creditable toward overtime compensation payable pursuant to this section.

(i) Employment by retail or service establishment

No employer shall be deemed to have violated subsection (a) of this section by employing any

employee of a retail or service establishment for a workweek in excess of the applicable workweek specified therein, if (1) the regular rate of pay of such employee is in excess of one and one-half times the minimum hourly rate applicable to him under section 206 of this title, and (2) more than half his compensation for a representative period (not less than one month) represents commissions on goods or services. In determining the proportion of compensation representing commissions, all earnings resulting from the application of a bona fide commission rate shall be deemed commissions on goods or services without regard to whether the computed commissions exceed the draw or guarantee.

(j) Employment in hospital or establishment engaged in care of sick, aged or mentally ill

No employer engaged in the operation of a hospital or an establishment which is an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises shall be deemed to have violated subsection (a) of this section if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, a work period of fourteen consecutive days is accepted in lieu of the workweek of seven consecutive days for purposes of overtime computation and if, for his employment in excess of eight hours in any workday and in excess of eighty hours in such fourteen-day period, the employee receives compensation at a rate not less than one and one-half times the regular rate at which he is employed.

(k) Employment by public agency engaged in fire protection or law enforcement activities

No public agency shall be deemed to have violated subsection (a) of this section with respect to the employment of any employee in fire protection activities or any employee in law enforcement activities (including security personnel in correctional institutions) if—

- (1) in a work period of 28 consecutive days the employee receives for tours of duty which in the aggregate exceed the lesser of (A) 216 hours, or (B) the average number of hours (as determined by the Secretary pursuant to section 6(c)(3) of the Fair Labor Standards Amendments of 1974)⁴ in tours of duty of employees engaged in such activities in work periods of 28 consecutive days in calendar year 1975; or
- (2) in the case of such an employee to whom a work period of at least 7 but less than 28 days applies, in his work period the employee receives for tours of duty which in the aggregate exceed a number of hours which bears the same ratio to the number of consecutive days in his work peri-

od as 216 hours (or if lower, the number of hours referred to in clause (B) of paragraph (1)) but to 28 days,

compensation at a rate not less than one and half times the regular rate at which he is employed.

(l) Employment in domestic service in one or more households

No employer shall employ any employee in domestic service in one or more households for a workweek longer than forty hours unless the employee receives compensation for such employment in accordance with subsection (a) of this section.

(m) Employment in tobacco industry

For a period or periods of not more than four workweeks in the aggregate in any calendar year any employer may employ any employee for a workweek in excess of that specified in subsection (a) of this section without paying the compensation for overtime employment prescribed in such section, if such employee—

(1) is employed by such employer—

(A) to provide services (including stripping and grading) necessary and incidental to the sale at auction of green leaf tobacco of types 11, 12, 13, 14, 21, 22, 23, 24, 31, 35, 36, or 37 (such types are defined by the Secretary of Agriculture), or in auction sale, buying, handling, stemming, redrying, packing, and storing of such tobacco,

(B) in auction sale, buying, handling, sorting, grading, packing, or storing green leaf tobacco of type 32 (as such type is defined by the Secretary of Agriculture), or

(C) in auction sale, buying, handling, stemming, sorting, grading, sizing, packing, or stemming prior to packing, of perishable cigar tobacco of types 41, 42, 43, 44, 45, 46, 51, 52, 54, 55, 61, or 62 (as such types are defined by the Secretary of Agriculture); and

(2) receives for—

(A) such employment by such employer which is in excess of ten hours in any workweek and

(B) such employment by such employer which is in excess of forty-eight hours in any workweek,

compensation at a rate not less than one and half times the regular rate at which he is employed.

An employer who receives an exemption under subsection (a) shall not be eligible for any other exemption under this section.

employment by street, suburban or interurban electric railway, or local trolley or motorbus carrier in the case of an employee of an employer engaged in the business of operating a street, suburban, interurban electric railway, or local trolley or motorbus carrier (regardless of whether or not the railway or carrier is public or private or whether for profit or not for profit), in determining the hours of employment of such an employee to which the rate prescribed by subsection (a) of this section applies there shall be excluded the hours of employment of such an employee if (1) the employee was employed in charter activities of such employer if (1) the employee's employment in such activities was pursuant to an agreement or understanding with his employer arrived at before his employment in such employment, and (2) if employment in such activities is not part of such employer's regular employment.

Compensatory time

Employees of a public agency which is a political subdivision of a State, or an intergovernmental agency may receive, in accordance with this subsection and in lieu of overtime compensation, compensatory time off at a rate not more than one and one-half hours for each hour of employment for which overtime compensation is provided by this section.

A public agency may provide compensatory time off under paragraph (1) only—

(A) pursuant to—

(i) applicable provisions of a collective bargaining agreement, memorandum of understanding, or any other agreement between the public agency and representatives of such employees; or

(ii) in the case of employees not covered by subsection (i), an agreement or understanding arrived at between the employer and employee before the performance of the work; and

(B) if the employee has not accrued compensatory time in excess of the limit applicable to the employee prescribed by paragraph (3).

In the case of employees described in clause (A)(ii) prior to April 15, 1986, the regular practice in effect on April 15, 1986, with respect to compensatory time off for such employees in lieu of the provision of overtime compensation, shall constitute an agreement or understanding under such clause (i). Except as provided in the previous sentence, the provision of compensatory time off for employees for hours worked after April 14, 1986, shall be in accordance with this subsection.

(A) If the work of an employee for which compensatory time may be provided included work in a public safety activity, an emergency response

activity, or a seasonal activity, the employee engaged in such work may accrue not more than 480 hours of compensatory time for hours worked after April 15, 1986. If such work was any other work, the employee engaged in such work may accrue not more than 240 hours of compensatory time for hours worked after April 15, 1986. Any such employee who, after April 15, 1986, has accrued 480 or 240 hours, as the case may be, of compensatory time off shall, for additional overtime hours of work, be paid overtime compensation.

(P) If compensation is paid to an employee for accrued compensatory time off, such compensation shall be paid at the regular rate earned by the employee at the time the employee receives such payment.

(4) An employee who has accrued compensatory time off authorized to be provided under paragraph (1) shall, upon termination of employment, be paid for the unused compensatory time at a rate of compensation not less than—

(A) the average regular rate received by such employee during the last 3 years of the employee's employment, or

(B) the final regular rate received by such employee, whichever is higher⁶

(5) An employee of a public agency which is a State, political subdivision of a State, or an interstate governmental agency—

(A) who has accrued compensatory time off authorized to be provided under paragraph (1), and

(B) who has requested the use of such compensatory time, shall be permitted by the employee's employer to use such time within a reasonable period after making the request if the use of the compensatory time does not unduly disrupt the operations of the public agency.

(6) For purposes of this subsection—

(A) the term "overtime compensation" means the compensation required by subsection (a), and

(B) the terms "compensatory time" and "compensatory time off" mean hours during which an employee is not working, which are not counted as hours worked during the applicable workweek or other work period for purposes of overtime compensation, and for which the employee is compensated at the employee's regular rate.

(P) Special detail work for fire protection and law enforcement employees; occasional or sporadic employment; substitution

(1) If an individual who is employed by a State, political subdivision of a State, or an interstate

governmental agency in fire protection or law enforcement activities (including activities of security personnel in correctional institutions) and who, solely at such individual's option, agrees to be employed on a special detail by a separate or independent employer in fire protection, law enforcement, or related activities, the hours such individual was employed by such separate and independent employer shall be excluded by the public agency employing such individual in the calculation of the hours for which the employee is entitled to overtime compensation under this section if the public agency—

(A) requires that its employees engaged in fire protection, law enforcement, or security activities be hired by a separate and independent employer to perform the special detail,

(B) facilitates the employment of such employees by a separate and independent employer, or

(C) otherwise affects the condition of employment of such employees by a separate and independent employer.

(2) If an employee of a public agency which is a State, political subdivision of a State, or an interstate governmental agency undertakes, on an occasional or sporadic basis and solely at the employee's option, part-time employment for the public agency which is in a different capacity from any capacity in which the employee is regularly employed with the public agency, the hours such employee was employed in performing the different employment shall be excluded by the public agency in the calculation of the hours for which the employee is entitled to overtime compensation under this section.

(3) If an individual who is employed in any capacity by a public agency which is a State, political subdivision of a State, or an interstate governmental agency, agrees, with the approval of the public agency and solely at the option of such individual, to substitute during scheduled work hours for another individual who is employed by such agency in the same capacity, the hours such employee worked as a substitute shall be excluded by the public agency in the calculation of the hours for which the employee is entitled to overtime compensation under this section.

(June 25, 1938, c. 676, § 7, 52 Stat. 1063; Oct. 29, 1941, c. 461, 55 Stat. 756; July 20, 1949, c. 352, § 1, 63 Stat. 446; Oct. 26, 1949, c. 736, § 7, 63 Stat. 912; May 5, 1961, Pub.L. 87-30, § 6, 75 Stat. 69; Sept. 23, 1966, Pub.L. 89-601, Title II, §§ 204(c), (d), 212(b), Title IV, §§ 401-403, 80 Stat. 835, 837, 841, 842; Apr. 8, 1974, Pub.L. 93-259, §§ 6(c)(1), 7(b)(2), 9(a), 12(b), 19, 21(a), 88 Stat. 60, 62, 64, 66, 68; Nov. 11, 1985, Pub.L. 99-160, §§ 2(a), 3(a)-(c)(1), 99 Stat. 787, 789.)

¹ Pub.L. 89-601, Sept. 23, 1966, 80 Stat. 830.

² Pub.L. 89-601, § 602, Sept. 23, 1966, 80 Stat. 844.

³ So in original. Probably should have closed parenthesis.

⁴ Pub.L. 93-259, § 6(c)(3), Apr. 8, 1974, 88 Stat. 61.

⁵ So in original. Probably should be followed by a period.

Editorial Notes

Effective Date of 1985 Amendment. Amendment by Pub.L. 99-150 effective Apr. 15, 1986, pursuant to section 6 of Pub.L. 99-150.

Effect of Amendments by Public Law 99-150 on Public Agency Liability Respecting Any Employee Covered Under Special Enforcement Policy. Amendment by Pub.L. 99-150 not to effect liability of public agency under this section for violation occurring before Apr. 15, 1986, pursuant to section 7 of Pub.L. 99-150, see note under section 216 of this title.

Compensatory Time: Collective Bargaining Agreements in Effect on April 15, 1986. Section 2(b) of Pub.L. 99-150 provided that: "A collective bargaining agreement which is in effect on April 15, 1986, and which permits compensatory time off in lieu of overtime compensation shall remain in effect until its expiration date unless otherwise modified, except that compensatory time shall be provided after April 14, 1986, in accordance with section 7(o) of the Fair Labor Standards Act of 1938 (as added by subsection (a)) [subsec. (o) of this section]."

Federal Practice and Procedure

Attempt of Congress to withdraw jurisdiction from federal courts in action arising under this chapter, see Wright, Miller & Cooper: Jurisdiction 2d § 3526.

Pleading claim for relief, see Wright & Miller: Civil § 1239.

Power of court under rule pertaining to judgments to determine liability of employer to named plaintiffs prior to resolving issues involving other employees, see Wright, Miller & Kane: Civil 2d § 2653.

West's Federal Practice Manual

Federal wage and hour law, see § 1451 et seq.
Individual employees, see § 1451.8.

Overtime compensation, see § 1451.44 et seq.

Code of Federal Regulations

Area of production, see 29 CFR 536.1 et seq.

Basic rates for computing overtime pay, see 29 CFR 548.1 et seq.

Bona fide profit-sharing plan or trust, requirements, see 29 CFR 549.0 et seq.

Bona fide thrift or savings plan, requirements, see 29 CFR 547.0 et seq.

Employees engaged in commerce or in the production of goods for commerce, general policy statement, see 29 CFR 776.0 et seq.

Forestry or logging operations, standards applicable, see 29 CFR 788.1 et seq.

Hours worked, computation, see 29 CFR 785.1 et seq.

Industries of seasonal nature and industries with marked seasonal peaks of operation, coverage of employees, see 29 CFR 526.1 et seq.

(c) Oppressive child labor

No employer shall employ any oppressive child labor in commerce or in the production of goods for commerce or in any enterprise engaged in commerce or in the production of goods for commerce.

(d) Proof of age

In order to carry out the objectives of this section, the Secretary may by regulation require employers to obtain from any employee proof of age. (June 25, 1938, c. 676, § 12, 52 Stat. 1067; 1946 Reorg. Plan No. 2, § 1(b), eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Oct. 26, 1949, c. 736, § 10, 63 Stat. 917; May 5, 1961, Pub.L. 87-30, § 8, 75 Stat. 70; Apr. 8, 1974, Pub.L. 93-259, § 25(a), 88 Stat. 72.)

Federal Practice and Procedure

Attempt of Congress to withdraw jurisdiction from federal courts in action arising under this chapter, see Wright, Miller & Cooper: Jurisdiction 2d § 3526.

Pleading claim for relief, see Wright & Miller: Civil § 1239.

West's Federal Forms

Complaint to enjoin violations, see § 1680 and Comment thereunder.

West's Federal Practice Manual

Child labor, see § 1451.54.

Federal wage and hour law, see § 1451 et seq.

Code of Federal Regulations

Child labor employment orders, statement of interpretation, etc., see 29 CFR 570.1 et seq.

Retailers of goods or services, standards applicable, see 29 CFR 779.502 to 779.508.

Rules of practice for administrative proceedings, imposition of civil penalties, see 29 CFR 580.1 et seq.

Violations, civil money penalties, see 29 CFR 579.1 et seq.

Waiver, child labor in agriculture, see 29 CFR 575.1 et seq.

Written assurances, statement of policy, see 29 CFR 789.0 et seq.

Library References

Infants ¶14.

Labor Relations ¶1359, 1383.

C.J.S. Infants § 99.

C.J.S. Labor Relations §§ 1190, 1197.

§ 213. Exemptions**(a) Minimum wage and maximum hour requirements**

The provisions of sections 206 (except subsection (d) in the case of paragraph (1) of this subsection) and section 207 of this title shall not apply with respect to—

(1) any employee employed in a bona fide executive, administrative, or professional capacity (including any employee employed in the capacity of

academic administrative personnel or teacher in elementary or secondary schools), or in the capacity of outside salesman (as such terms are defined and delimited from time to time by regulations of the Secretary, subject to the provisions of subchapter II of chapter 5 of Title 5, except that an employee of a retail or service establishment shall not be excluded from the definition of employee employed in a bona fide executive or administrative capacity because of the number of hours in his workweek which he devotes to activities not directly or closely related to the performance of executive or administrative activities, if less than 40 per centum of his hours worked in the workweek are devoted to such activities); or

(2) any employee employed by any retail or service establishment (except an establishment or employee engaged in laundering, cleaning, or repairing clothing or fabrics or an establishment engaged in the operation of a hospital, institution, or school described in section 203(s)(5) of this title), if more than 50 per centum of such establishment's annual dollar volume of sales of goods or services is made within the State in which the establishment is located, and such establishment is not in an enterprise described in section 203(s) of this title. A "retail or service establishment" shall mean an establishment 75 per centum of whose annual dollar volume of sales of goods or services (or of both) is not for resale and is recognized as retail sales or services in the particular industry; or

(3) any employee employed by an establishment which is an amusement or recreational establishment organized camp, or religious or non-profit educational conference center, if (A) it does not operate for more than seven months in any calendar year, or (B) during the preceding calendar year its average receipts for any six months of such year were not more than 33 1/3 per centum of its average receipts for the other six months of such year, except that the exemption from sections 206 and 207 of this title provided by this paragraph does not apply with respect to any employee of a private entity engaged in providing services or facilities (other than, in the case of the exemption from section 206 of this title, a private entity engaged in providing services and facilities directly related to skiing) in a national park or a national forest, or on land in the National Wildlife Refuge System, under a contract with the Secretary of the Interior or the Secretary of Agriculture; or

(4) any employee employed by an establishment which qualifies as an exempt retail establishment under clause (2) of this subsection and is recognized as a retail establishment in the particular industry notwithstanding that such establishment

makes or processes at the retail establishment the goods that it sells: *Provided*, That more than 85 per centum of such establishment's annual dollar volume of sales of goods so made or processed is made within the State in which the establishment is located; or

(5) any employee employed in the catching, taking, propagating, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life, or in the first processing, canning or packing such marine products at sea as an incident to, or in conjunction with, such fishing operations, including the going to and returning from work and loading and unloading when performed by any such employee; or

(6) any employee employed in agriculture (A) if such employee is employed by an employer who did not, during any calendar quarter during the preceding calendar year, use more than five hundred man-days of agricultural labor, (B) if such employee is the parent, spouse, child, or other member of his employer's immediate family, (C) if such employee (i) is employed as a hand harvest laborer and is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (ii) commutes daily from his permanent residence to the farm on which he is so employed, and (iii) has been employed in agriculture less than thirteen weeks during the preceding calendar year, (D) if such employee (other than an employee described in clause (C) of this subsection) (i) is sixteen years of age or under and is employed as a hand harvest laborer, is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (ii) is employed on the same farm as his parent or person standing in the place of his parent, and (iii) is paid at the same piece rate as employees over age sixteen are paid on the same farm, or (E) if such employee is principally engaged in the range production of livestock; or

(7) any employee to the extent that such employee is exempted by regulations, order, or certificate of the Secretary issued under section 214 of this title; or

(8) any employee employed in connection with the publication of any weekly, semiweekly, or daily newspaper with a circulation of less than four thousand the major part of which circulation is within the county where published or counties contiguous thereto; or

(9) Repealed. Pub.L. 93-259, § 23(a)(1), Apr. 8, 1974, 88 Stat. 69.

(10) any switchboard operator employed by an independently owned public telephone company which has not more than seven hundred and fifty stations; or

(11) Repealed. Pub.L. 93-259, § 10(a), Apr. 8, 1974, 88 Stat. 63.

(12) any employee employed as a seaman on a vessel other than an American vessel; or

(13), (14) Repealed. Pub.L. 93-259, §§ 9(b)(1), 23(b)(1), Apr. 8, 1974, 88 Stat. 63, 69.

(15) any employee employed on a casual basis in domestic service employment to provide babysitting services or any employee employed in domestic service employment to provide companionship services for individuals who (because of age or infirmity) are unable to care for themselves (as such terms are defined and delimited by regulations of the Secretary).

(b) Maximum hour requirements

The provisions of section 207 of this title shall not apply with respect to—

(1) any employee with respect to whom the Secretary of Transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of section 3102 of Title 49; or

(2) any employee of an employer engaged in the operation of a common carrier by rail and subject to the provisions of subchapter I of chapter 105 of Title 49; or

(3) any employee of a carrier by air subject to the provisions of title II of the Railway Labor Act [45 U.S.C.A. § 181 et seq.]; or

(4) Repealed. Pub. L. 93-259, § 11(c), Apr. 8, 1974, 88 Stat. 64.

(5) any individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or natural state; or

(6) any employee employed as a seaman; or

(7) Repealed. Pub. L. 93-259, § 21(b)(3), Apr. 8, 1974, 88 Stat. 68.

(8) Repealed. Pub. L. 95-151, § 14(b), Nov. 1, 1977, 91 Stat. 1252.

(9) any employee employed as an announcer, news editor, or chief engineer by a radio or television station the major studio of which is located (A) in a city or town of one hundred thousand population or less, according to the latest available decennial census figures as compiled by the Bureau of the Census, except where such city or town is

part of a standard metropolitan statistical area, as defined and designated by the Office of Management and Budget, which has a total population in excess of one hundred thousand, or (B) in a city or town of twenty-five thousand population or less, which is part of such an area but is at least 40 airline miles from the principal city in such area; or

(10)(A) any salesman, partsman, or mechanic primarily engaged in selling or servicing automobiles, trucks, or farm implements, if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling such vehicles or implements to ultimate purchasers; or

(B) any salesman primarily engaged in selling trailers, boats, or aircraft, if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats, or aircraft to ultimate purchasers; or

(11) any employee employed as a driver or driver's helper making local deliveries, who is compensated for such employment on the basis of trip rates, or other delivery payment plan, if the Secretary shall find that such plan has the general purpose and effect of reducing hours worked by such employees to, or below, the maximum workweek applicable to them under section 207(a) of this title; or

(12) any employee employed in agriculture or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, or operated on a sharecrop basis, and which are used exclusively for supply and storing of water for agricultural purposes; or

(13) any employee with respect to his employment in agriculture by a farmer, notwithstanding other employment of such employee in connection with livestock auction operations in which such farmer is engaged as an adjunct to the raising of livestock, either on his own account or in conjunction with other farmers, if such employee (A) is primarily employed during his workweek in agriculture by such farmer, and (B) is paid for his employment in connection with such livestock auction operations at a wage rate not less than that prescribed by section 206(a)(1) of this title; or

(14) any employee employed within the area of production (as defined by the Secretary) by an establishment commonly recognized as a country elevator, including such an establishment which sells products and services used in the operation of a farm, if no more than five employees are employed in the establishment in such operations; or

(15) any employee engaged in the processing of maple sap into sugar (other than refined sugar) or syrup; or

(16) any employee engaged (A) in the transportation and preparation for transportation of fruits or vegetables, whether or not performed by the farmer, from the farm to a place of first processing or first marketing within the same State, or (B) in transportation, whether or not performed by the farmer, between the farm and any point within the same State of persons employed or to be employed in the harvesting of fruits or vegetables; or

(17) any driver employed by an employer engaged in the business of operating taxicabs; or

(18), (19) Repealed. Pub.L. 93-259, §§ 15(c), 16(b), Apr. 8, 1974, 88 Stat. 65.

(20) any employee of a public agency who in any workweek is employed in fire protection activities or any employee of a public agency who in any workweek is employed in law enforcement activities (including security personnel in correctional institutions), if the public agency employs during the workweek less than 5 employees in fire protection or law enforcement activities, as the case may be; or

(21) any employee who is employed in domestic service in a household and who resides in such household; or

(22) Repealed. Pub.L. 95-151, § 5, Nov. 1, 1977, 91 Stat. 1249.

(23) Repealed. Pub.L. 93-259, § 10(b)(3), Apr. 8, 1974, 88 Stat. 64.

(24) any employee who is employed with his spouse by a nonprofit educational institution to serve as the parents of children—

(A) who are orphans or one of whose natural parents is deceased, or

(B) who are enrolled in such institution and reside in residential facilities of the institution, while such children are in residence at such institution, if such employee and his spouse reside in such facilities, receive, without cost, board and lodging from such institution, and are together compensated, on a cash basis, at an annual rate of not less than \$10,000; or

(25) Repealed. Pub.L. 95-151, § 6(a), Nov. 1, 1977, 91 Stat. 1249.

(26) Repealed. Pub.L. 95-151, § 7(a), Nov. 1, 1977, 91 Stat. 1250.

(27) any employee employed by an establishment which is a motion picture theater; or

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(28) any employee employed in planting or tending trees, cruising, surveying, or felling timber, or preparing or transporting logs or other forestry products to the mill, processing plant, railroad, or other transportation terminal, if the number of employees employed by his employer in such forestry or lumbering operations does not exceed eight; or

(29) any employee of an amusement or recreational establishment located in a national park or national forest or on land in the National Wildlife Refuge System if such employee (A) is an employee of a private entity engaged in providing services or facilities in a national park or national forest, or on land in the National Wildlife Refuge System, under contract with the Secretary of the Interior or the Secretary of Agriculture, and (B) receives compensation for employment in excess of fifty-six hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed.

(c) Child labor requirements

(1) Except as provided in paragraph (2) or (4), the provisions of section 212 of this title relating to child labor shall not apply to any employee employed in agriculture outside of school hours for the school district where such employee is living while he is so employed, if such employee—

(A) is less than twelve years of age and (i) is employed by his parent, or by a person standing in the place of his parent, on a farm owned or operated by such parent or person, or (ii) is employed, with the consent of his parent or person standing in the place of his parent, on a farm, none of the employees of which are (because of subsection (a)(6)(A) of this section) required to be paid at the wage rate prescribed by section 206(a)(5) of this title,

(B) is twelve years or thirteen years of age and (i) such employment is with the consent of his parent or person standing in the place of his parent, or (ii) his parent or such person is employed on the same farm as such employee, or

(C) is fourteen years of age or older.

(2) The provisions of section 212 of this title relating to child labor shall apply to an employee below the age of sixteen employed in agriculture in an occupation that the Secretary of Labor finds and declares to be particularly hazardous for the employment of children below the age of sixteen, except where such employee is employed by his parent or by a person standing in the place of his parent on a farm owned or operated by such parent or person.

(3) The provisions of section 212 of this title relating to child labor shall not apply to any child employed as an actor or performer in motion pictures or theatrical productions, or in radio or television productions.

(4)(A) An employer or group of employers may apply to the Secretary for a waiver of the application of section 212 of this title to the employment for not more than eight weeks in any calendar year of individuals who are less than twelve years of age, but not less than ten years of age, as hand harvest laborers in an agricultural operation which has been, and is customarily and generally recognized as being, paid on a piece rate basis in the region in which such individuals would be employed. The Secretary may not grant such a waiver unless he finds, based on objective data submitted by the applicant, that—

(i) the crop to be harvested is one with a particularly short harvesting season and the application of section 212 of this title would cause severe economic disruption in the industry of the employer or group of employers applying for the waiver;

(ii) the employment of the individuals to whom the waiver would apply would not be deleterious to their health or well-being;

(iii) the level and type of pesticides and other chemicals used would not have an adverse effect on the health or well-being of the individuals to whom the waiver would apply;

(iv) individuals age twelve and above are not available for such employment; and

(v) the industry of such employer or group of employers has traditionally and substantially employed individuals under twelve years of age without displacing substantial job opportunities for individuals over sixteen years of age.

(B) Any waiver granted by the Secretary under subparagraph (A) shall require that—

(i) the individuals employed under such waiver be employed outside of school hours for the school district where they are living while so employed;

(ii) such individuals while so employed commute daily from their permanent residence to the farm on which they are so employed; and

(iii) such individuals be employed under such waiver (I) for not more than eight weeks between June 1 and October 15 of any calendar year, and (II) in accordance with such other terms and conditions as the Secretary shall prescribe for such individuals' protection.

(d) Delivery of newspapers and wreathmaking

The provisions of sections 206, 207, and 217 of this title shall not apply with respect to any employee engaged in the delivery of newspapers to the consumer or to any homemaker engaged in the making of wreaths composed principally of natural holly, pine, cedar, or other evergreens (including the harvesting of the evergreens or other forest products used in making such wreaths).

(e) Maximum hour requirements and minimum wage employees

The provisions of section 207 of this title shall not apply with respect to employees for whom the Secretary of Labor is authorized to establish minimum wage rates as provided in section 206(a)(3) of this title except with respect to employees for whom such rates are in effect; and with respect to such employees the Secretary may make rules and regulations providing reasonable limitations and allowing reasonable variations, tolerances, and exemptions to and from any or all of the provisions of section 207 of this title if he shall find, after a public hearing on the matter, and taking into account the factors set forth in section 206(a)(3) of this title, that economic conditions warrant such action.

(f) Employment in foreign countries and certain United States territories

The provisions of sections 206, 207, 211, and 212 of this title shall not apply with respect to any employee whose services during the workweek are performed in a workplace within a foreign country or within territory under the jurisdiction of the United States other than the following: a State of the United States; the District of Columbia; Puerto Rico; the Virgin Islands; outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act (ch. 345, 67 Stat. 462) [43 U.S.C.A. § 1331 et seq.]; American Samoa; Guam; Wake Island; Eniwetok Atoll; Kwajalein Atoll; and Johnston Island.

(g) Certain employment in retail or service establishments, agriculture

The exemption from section 206 of this title provided by paragraphs (2) and (6) of subsection (a) of this section shall not apply with respect to any employee employed by an establishment (1) which controls, is controlled by, or is under common control with, another establishment the activities of which are not related for a common business purpose to, but materially support the activities of the establishment employing such employee; and (2) whose annual gross volume of sales made or business done, when combined with the annual gross volume of sales made or business done by each

establishment which controls, is controlled by, or is under common control with, the establishment employing such employee, exceeds \$10,000,000 (exclusive of excise taxes at the retail level which are separately stated), except that the exemption from section 206 of this title provided by paragraph (2) of subsection (a) of this section shall apply with respect to any establishment described in this subsection which has an annual dollar volume of sales which would permit it to qualify for the exemption provided in paragraph (2) of subsection (a) of this section if it were in an enterprise described in section 203(s) of this title.

(h) Maximum hour requirement: fourteen workweek limitation

The provisions of section 207 of this title shall not apply for a period or periods of not more than fourteen workweeks in the aggregate in any calendar year to any employee who—

(1) is employed by such employer—

(A) exclusively to provide services necessary and incidental to the ginning of cotton in an establishment primarily engaged in the ginning of cotton;

(B) exclusively to provide services necessary and incidental to the receiving, handling, and storing of raw cotton and the compressing of raw cotton when performed at a cotton warehouse or compress-warehouse facility, other than one operated in conjunction with a cotton mill, primarily engaged in storing and compressing;

(C) exclusively to provide services necessary and incidental to the receiving, handling, storing, and processing of cottonseed in an establishment primarily engaged in the receiving, handling, storing, and processing of cottonseed; or

(D) exclusively to provide services necessary and incidental to the processing of sugar cane or sugar beets in an establishment primarily engaged in the processing of sugar cane or sugar beets; and

(2) receives for—

(A) such employment by such employer which is in excess of ten hours in any workday, and

(B) such employment by such employer which is in excess of forty-eight hours in any workweek,

compensation at a rate not less than one and one-half times the regular rate at which he is employed. Any employer who receives an exemption under this subsection shall not be eligible for any other exemption under this section or section 207 of this title.

Cotton ginning

The provisions of section 207 of this title shall apply for a period or periods of not more than fourteen workweeks in the aggregate in any period of fifty-two consecutive weeks to any employee

(1) is engaged in the ginning of cotton for market in any place of employment located in a county where cotton is grown in commercial quantities;

(2) receives for any such employment during such workweeks—

- (A) in excess of ten hours in any workday, and
- (B) in excess of forty-eight hours in any workweek,

compensation at a rate not less than one and one-half times the regular rate at which he is employed. No week included in any fifty-two week period for purposes of the preceding sentence may be included for such purposes in any other fifty-two week period.

(1) Processing of sugar beets, sugar beet molasses, or sugar cane

The provisions of section 207 of this title shall not apply for a period or periods of not more than fourteen workweeks in the aggregate in any period of fifty-two consecutive weeks to any employee who—

(1) is engaged in the processing of sugar beets, sugar beet molasses, or sugar cane into sugar (other than refined sugar) or syrup; and

(2) receives for any such employment during such workweeks—

- (A) in excess of ten hours in any workday, and
- (B) in excess of forty-eight hours in any workweek,

compensation at a rate not less than one and one-half times the regular rate at which he is employed. No week included in any fifty-two week period for purposes of the preceding sentence may be included for such purposes in any other fifty-two week period.

(June 25, 1938, c. 676, § 13, 52 Stat. 1067; Aug. 9, 1939, c. 605, 53 Stat. 1266; Oct. 26, 1949, c. 736, § 11, 63 Stat. 917; Aug. 8, 1956, c. 1035, § 3, 70 Stat. 1118; Aug. 30, 1957, Pub.L. 85-231, § 1(1), 71 Stat. 514; July 12, 1960, Pub.L. 86-624, § 21(b), 74 Stat. 417; May 5, 1961, Pub.L. 87-30, §§ 9, 10, 75 Stat. 71, 74; Sept. 23, 1966, Pub.L. 89-601, Title II, §§ 201-204(a), (b), 205-212(a), 213-215(b), (c), 80 Stat. 833-838; Oct. 15, 1966, Pub.L. 89-670, § 8(e), 80 Stat. 943; 1970 Reorg. Plan No. 2, § 102, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085; June 23, 1972, Pub.L. 92-318, Title IX, § 906(b)(1), 86 Stat. 375; Apr. 8, 1974, Pub.L. 93-259, §§ 6(c)(2), 7(b)(3), (4), 8, 9(b), 10, 11, 12(a), 13(a)-(c), 14-18, 20(a)-(c), 21(b), 22, 23, 25(b), 88 Stat. 61-69, 72, Nov. 1, 1977, Pub.L. 95-151, §§ 4-8, 9(d), 11, 14, 91 Stat. 1249, 1250-1252; Sept. 27, 1979, Pub.L. 96-70, Title I, § 1225(a), 93 Stat. 468.)

Editorial Notes

Codification. In subsec. (a)(1), "subchapter II of chapter 5 of Title 5" was substituted for "the Administrative Procedure Act" on authority of Pub.L. 89-554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

In subsec. (b)(1), "section 3102 of Title 49" was substituted for "section 204 of the Motor Carrier Act, 1935 [49 U.S.C. 304]", on authority of Pub.L. 97-449, § 6(b), Jan. 12, 1983, 96 Stat. 2443, the first section of which enacted subtitle I (§ 101 et seq.) and chapter 31 (§ 3101 et seq.) of subtitle II of Title 49, Transportation.

In subsec. (b)(2), "subchapter I of chapter 105 of Title 49" was substituted for "part I of the Interstate Commerce Act [49 U.S.C. 1 et seq.]" on authority of section 3(b) of Pub.L. 95-473, Oct. 17, 1978, 92 Stat. 1466, the first section of which enacted subtitle IV (§ 10101 et seq.) of Title 49.

Federal Practice and Procedure

Attempt of Congress to withdraw jurisdiction from federal courts in action arising under this chapter, see Wright, Miller & Cooper: Jurisdiction 2d § 3526.

Error in admitting or excluding affidavit as basis for reversal of summary judgment, see Wright, Miller & Kane: Civil 2d § 2738.

Pleading claim for relief, see Wright & Miller: Civil § 1239.

West's Federal Forms

Affirmative defenses, exemption as retail or service establishment, see § 2079.

West's Federal Practice Manual

Coverage, see § 1451.5 et seq.

Federal wage and hour law, see § 1451 et seq.

Other federal wage and hour statutes, see § 1451.71 et seq.

Code of Federal Regulations

Agricultural and agricultural processing establishments, standards applicable, see 29 CFR 780.0 et seq.

Area of production, see 29 CFR 536.1 et seq.

Child labor employment orders, statement of interpretation, etc., see 29 CFR 570.1 et seq.

Domestic service, see 29 CFR 552.1 et seq.

Employee employed in a bona fide executive, etc., capacity, determination, see 29 CFR 541.0 et seq.

Fishing operations, standards applicable, see 29 CFR 784.0 et seq.

Forestry or logging operations, standards applicable, see 29 CFR 788.1 et seq.

Local delivery drivers and helpers, wage payment plans, see 29 CFR 551.1 et seq.

Miscellaneous operations and activities, see 29 CFR 786.1 et seq.

Motor carrier exemption, see 29 CFR 782.0 et seq.

Public employees engaged in fire protection or law enforcement activities, see 29 CFR 553.1 et seq.

Radio and television activities, see 29 CFR 793.0 et seq.

Recordkeeping requirements, see 29 CFR 516.1 et seq.

Retailers of goods or services, standards applicable, see 29 CFR 779.300 to 779.388, 779.400 to 779.421, 779.509 to 779.511.

Seamen, standards applicable, see 29 CFR 783.0 et seq.
Waiver, child labor in agriculture, see 29 CFR 575.1 et seq.

Wholesale or bulk petroleum distributor employees, partial overtime exemption, see 29 CFR 794.1 et seq.

Library References

Labor Relations ⇐ 1191, 1384.

C.J.S. Labor Relations §§ 1086, 1204.

Selected Court Decisions

Exemptions from Fair Labor Standards Act [this chapter] granted to retail or service establishments are to be narrowly construed against the employers seeking to assert them, and their application limited to those plainly and unmistakably within their terms and spirit. *Arnold v. Ben Kanowsky, Inc.*, Tex.1960, 80 S.Ct. 453, 361 U.S. 388, 4 L.Ed.2d 393, rehearing denied 80 S.Ct. 803, 362 U.S. 945, 4 L.Ed.2d 772.

The details with which exemptions from wage and hour provisions of Fair Labor Standards Act [this chapter] have been made by Congress preclude their enlargement by implication. *Addison v. Holly Hill Fruit Products*, 1944, 64 S.Ct. 1215, 322 U.S. 607, 88 L.Ed. 1488, 153 A.L.R. 1007, rehearing denied 65 S.Ct. 27, 323 U.S. 809, 89 L.Ed. 645.

The purpose of excluding retailers from the Fair Labor Standards Act [this chapter] was to eliminate those retailers located near State lines and making some interstate sales and to allay the fears of those who felt that a retailer purchasing goods from without the State might otherwise be included, and the express exclusion of retailers did not by implication include all phases of a wholesale business selling intrastate solely because wholesaler makes his purchases interstate. *Walling v. Jacksonville Paper Co.*, Fla.1943, 63 S.Ct. 332, 317 U.S. 564, 87 L.Ed. 460.

It was aim of Congress to exempt from wage and hour provisions of Fair Labor Standards Act [this chapter] those employed in agriculture and employees engaged in agricultural enterprises in the "area of production", and that meant that Administrator, who was assigned task of defining the quoted phrase, must draw line between agricultural enterprises operating under rural-agricultural conditions and those subject to urban-industrial conditions. *Mitchell v. Budd*, Fla.1956, 76 S.Ct. 527, 350 U.S. 473, 100 L.Ed. 565, rehearing denied 76 S.Ct. 786, 351 U.S. 934, 100 L.Ed. 1462.

To the extent that sales or services are necessary for the production of goods for interstate commerce, they generally are not "sales" or "services" to an ultimate consumer for his personal use and, accordingly, are neither retail sales nor services of a comparable character, within the meaning of Fair Labor Standards Act provision exempting employees of "retail or service establishment" [subsection (a)(2) of this section]. *Roland Elec. Co. v. Walling*, Md.1946, 66 S.Ct. 413, 326 U.S. 657, 90 L.Ed. 383.

§ 214. Employment under special certificates

(a) Learners, apprentices, messengers

The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by regulations or by orders provide for the employment of learners, of apprentices, and of messengers employed primarily in delivering letters and messages, under special certificates issued pursuant to regulations of the Secretary, at such wages lower than the minimum wage applicable under section 206 of this title and subject to such limitations as to time, number, proportion, and length of service as the Secretary shall prescribe.

(b) Students

(1)(A) The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by special certificate issued under a regulation or order provide, in accordance with subparagraph (B), for the employment, at a wage rate not less than 85 per centum of the otherwise applicable wage rate in effect under section 206 of this title or not less than \$1.60 an hour, whichever is the higher (or in the case of employment in Puerto Rico or the Virgin Islands not described in section 205(e) of this title, at a wage rate not less than 85 per centum of the otherwise applicable wage rate in effect under section 206(e) of this title), of full-time students (regardless of age but in compliance with applicable child labor laws) in retail or service establishments.

(B) Except as provided in paragraph (4)(B), during any month in which full-time students are to be employed in any retail or service establishment under certificates issued under this subsection the proportion of student hours of employment to the total hours of employment of all employees in such establishment may not exceed—

(i) in the case of a retail or service establishment whose employees (other than employees engaged in commerce or in the production of goods for commerce) were covered by this chapter before the effective date of the Fair Labor Standards Amendments of 1974—

(I) the proportion of student hours of employment to the total hours of employment of all employees in such establishment for the corresponding month of the immediately preceding twelve-month period,

(II) the maximum proportion for any corresponding month of student hours of employment to the total hours of employment of employees in such establishment applicable at the issuance of certificates under this section at any time before the effective date of

NOTES TO DECISIONS

Based on Fair Labor Standards Act. — See notes under same catchline under article analysis. *Webster v. Bechtel, Inc.*, Sup. Ct. Op. No. 2245 (File Nos. 3979, 4139), 621 P.2d 890 (1980), Notes to Decisions.

AS 23.10.050 — 23.10.150 are directed toward a situation distinct from that of

the Equal Pay for Women Act. *Brown v. Wood*, Sup. Ct. Op. No. 1551 (File Nos. 2564, 2565), 575 P.2d 760 (1978), modified on rehearing on other grounds, 592 P.2d 1250 (1979).

Applied in *Dresser Indus., Inc. v. Alaska Dep't of Labor*, Sup. Ct. Op. No. 2415 (File No. 5625), 633 P.2d 998 (1981).

Sec. 23.10.055. Exemptions. The provisions of AS 23.10.050 — 23.10.150 do not apply to

(1) an individual employed in agriculture, which includes farming in all its branches and, among other things, includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities, the raising of livestock, bees, fur-bearing animals, or poultry, and any practices, including forestry and lumbering operations, performed by a farmer or on a farm as an incident to or in conjunction with the farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market;

(2) an individual employed in the catching, trapping, cultivating or farming, netting or taking of any kind of fish, shellfish, or other aquatic forms of animal and vegetable life;

(3) an individual employed in the hand picking of shrimp;

(4) an individual employed in domestic service, including a baby-sitter, in or about a private home;

(5) an individual employed by the United States or by the state or political subdivision of the state including prisoners not on furlough detained or confined in prison facilities;

(6) an individual engaged in the activities of a nonprofit religious, charitable, cemetery or educational organization where the employer-employee relationship does not, in fact, exist, and where services rendered to the organization are on a voluntary basis;

(7) an employee engaged in the delivery of newspapers to the consumer;

(8) an individual employed solely as a watchman or caretaker of a plant or property that is not in productive use for a period of four months or more;

(9) an individual employed in a bona fide executive, administrative or professional capacity or in the capacity of an outside salesman or a salesman who is employed on a straight commission basis;

(10) an individual employed in the search for placer or hard rock minerals;

(11) an individual under 18 years of age employed on a part-time basis not more than 30 hours in a week; or

(12) employment by a nonprofit educational or child care facility to serve as a parent of children while the children are in residence at the facility if the employment requires residence at the facility and is compensated on a cash basis exclusive of room and board at an annual rate of not less than

(A) \$10,000 for an unmarried person; or

(B) \$15,000 for a married couple. (§ 2(1) ch 171 SLA 1959; am § 1 ch 2 SLA 1962; am § 1 ch 50 SLA 1972; am § 2 ch 124 SLA 1978; am § 1 ch 115 SLA 1982)

Cross references. — For wage rates for prisoners, see AS 33.30.227.

Effect of amendments. — The 1982 amendment added paragraph (12).

NOTES TO DECISIONS

Employees covered by and exempt from Fair Labor Standards Act. — AS 23.10.050 — 23.10.150 apply to both employees covered by the Fair Labor Standards Act, 29 U.S.C. §§ 201-219, and those who are, because of insufficient connections to interstate commerce, exempt from the Fair Labor Standards Act. *Webster v. Bechtel, Inc.*, Sup. Ct. Op. No. 2245 (File Nos. 3979, 4139), 621 P.2d 890 (1980).

Prisoners excluded from operation of chapter. — See *McGinnis v. Stevens*, Sup. Ct. Op. No. 1207 (File Nos. 2255, 2312), 543 P.2d 1221 (1975).

Applied in *Alaska Int'l Indus., Inc. v. Musarra*, Sup. Ct. Op. No. 1966 (File Nos. 3652, 3676), 602 P.2d 1240 (1979).

Cited in *Dresser Indus., Inc. v. Alaska Dep't of Labor*, Sup. Ct. Op. No. 2415 (File No. 5625), 633 P.2d 998 (1981).

Collateral references. — Who is employed in "executive or administrative capacity" within exemptions from mini-

mum wage and maximum hours provisions of Fair Labor Standards Act, 40 ALR2d 332.

Sec. 23.10.060. Payment for overtime. An employer who employs employees engaged in commerce, or other business, or in the production of goods or materials in Alaska may not employ an employee not acting in a supervisory capacity, either male or female, for a workweek longer than 40 hours or for more than eight hours a day, except that if the employer finds it necessary to employ an employee in excess of 40 hours a week or eight hours a day, compensation for the overtime at the rate of one and one-half times the regular rate of pay shall be paid, and this provision is considered included in all contracts of employment. This section does not apply with respect to

(1) an employee employed by an employer employing less than four employees in the regular course of business, as regular course of business is defined by regulations of the commissioner;

(2) [Repealed, § 33 ch 127 SLA 1974.]

(3) [Repealed, § 1 ch 243 SLA 1970.]

(4) an employee employed in handling, packing, storing, pasteurizing, drying, preparing in their raw or natural state, or

canning agricultural or horticultural commodities for market, or in making cheese or butter or other dairy products;

(5) an employee of an employer engaged in small mining operations where not more than 12 employees are employed, if the employee is employed not in excess of 12 hours a day or 56 hours a week during a period or periods of not more than 14 workweeks in the aggregate in a calendar year during the mining season, as the season is defined by the commissioner;

(6) [Repealed, § 1 ch 45 SLA 1972.]

(7) an employee engaged in agriculture;

(8) an employee employed in connection with the publication of a weekly, semiweekly, or daily newspaper with a circulation of less than 1,000;

(9) a switchboard operator employed in a public telephone exchange which has fewer than 750 stations;

(10) an employee of an employer engaged in the business of operating taxicabs;

(11) an employee in an otherwise exempted employment or proprietor in a retail or service establishment engaged in handling telegraphic, telephone, or radio messages for the public under an agency or contract arrangement with a telegraph or communications company where the telegraph message or communications revenue of the agency does not exceed \$500 a month;

(12) an employee employed as a seaman;

(13) an employee employed in planting or tending trees, cruising, or surveying, or bucking, or felling timber, or in preparing or transporting logs or other forestry products to the mill, processing plant, railroad, or other transportation terminal, if the number of employees employed by the employer in the forestry or lumbering operations does not exceed 12;

(14) an individual employed as an outside buyer of poultry, eggs, cream, or milk in their raw or natural state;

(15) casual employees as may be liberally defined by regulations of the commissioner;

(16) an employee of a hospital whose employment includes the provision of medical services;

(17) work performed by an employee under a flexible work hour plan if the plan is included as part of a collective bargaining agreement;

(18) work performed by an employee under a voluntary flexible work hour plan if

(A) the employee and the employer have signed a written agreement and the written agreement has been filed with the department; and

(B) the department has issued a certificate approving the plan which states the work is for 40 hours a week and not more than 10 hours a day; for work over 40 hours a week or 10 hours a day under a flexible work hour plan not included as part of a collective bargaining

agreement, compensation at the rate of one and one-half times the regular rate of pay shall be paid for the overtime. (§ 3 ch 171 SLA 1959; am § 1 ch 3 SLA 1962; am § 1 ch 243 SLA 1970; am § 1 ch 45 SLA 1972; am § 33 ch 127 SLA 1974; am § 1 ch 31 SLA 1980; am § 3 ch 47 SLA 1983)

Effect of amendments. — The 1980 amendment added paragraphs (17) and (18).

The 1983 amendment, substituted "hospital whose employment includes the provision of medical services" for "nonprofit hospital" in paragraph (16).

Opinions of attorney general. — The Fair Labor Standards Act, 29 U.S.C. §§ 201-219 does not expressly preempt the AS 23.10.050 — 23.10.150 on the question of whether airline employees are excluded from the mandatory overtime directive of this section. April 15, 1980, Op. Att'y Gen.

In the case of pilots, flight crews, and other interstate air carrier employees whose activities are directly and substantially related to the transportation activities of the carrier, and who are covered by a valid existing collective bargaining agreement or agreements with the carrier, the state is precluded from applying its overtime laws due to the preemptive nature of the Railway Labor

Act, 45 U.S.C. §§ 151-188. April 15, 1980, Op. Att'y Gen.

In instances where no collective bargaining agreements apply, crews of interstate air carriers are nonetheless beyond the jurisdiction of state overtime law because of certain commerce clause implications. April 15, 1980, Op. Att'y Gen.

Nonflight personnel of interstate carriers who are not covered by valid existing collective bargaining agreements are not exempt from state law, and as to those individuals the provisions of state overtime law apply. April 15, 1980, Op. Att'y Gen.

Air carriers operating solely intrastate would not seem to fall under the exclusionary scope of either the Railway Labor Act, 45 U.S.C. §§ 151-188, or of the commerce clause absent unusual fact situations. Accordingly, the protections of AS 23.10.050 — 23.10.150 dealing with overtime extend to those individuals. April 15, 1980, Op. Att'y Gen.

NOTES TO DECISIONS

Article not void. — The Alaska Wage and Hour Act merely requires higher minimum and overtime pay than the Fair Labor Standards Act, 29 U.S.C. §§ 201-219. Although compliance with both is more expensive than compliance with the federal act, it is not, in any sense, impossible so as to make the Alaska law void. Webster v. Bechtel, Inc., Sup. Ct. Op. No. 2245 (File Nos. 3979, 4139), 621 P.2d 890 (1980).

Or preempted. — Since, under the Alaska Wage and Hour Act, the number of hours required for the overtime rate is less than that under the Fair Labor Standards Act, the Alaska act provides for a lower maximum workweek within the meaning of 29 U.S.C. § 218(a) and consequently comes within the express saving clause so as not to be preempted by the federal law. Webster v. Bechtel, Inc., Sup. Ct. Op. No. 2245 (File Nos. 3979, 4139), 621 P.2d 890 (1980).

State not bound to federal regulatory definitions. — AS 23.10.050 — 23.10.150 do not evince an intent to bind the state wage and hour division to federal regulatory definitions. Dresser Indus., Inc. v. Alaska Dep't of Labor, Sup. Ct. Op. No. 2415 (File No. 5625), 633 P.2d 998 (1981).

Definition of "supervisory" in the Alaska Administrative Code, that the term as used in this section means a person who directs the activities of other employees and who does not perform duties which are regularly performed by the employees supervised, except for brief periods of time not to exceed more than eight hours in the supervisor's workweek, is reasonable and not arbitrary. Alaska Int'l Indus., Inc. v. Musarra, Sup. Ct. Op. No. 1966 (File Nos. 3652, 3676), 602 P.2d 1240 (1979).



Parker Drilling Company
P.O. Box 112070
Anchorage, Alaska 99511
907 / 349-1591

Gary McCarrell
Division Manager
Alaska Division

RECEIVED
MAR 2 1988

February 25, 1988

Representative Dave Donley
P. O. Box V
Juneau, AK 99811

Dear Representative:

We have received information regarding House Bill No. 436 concerning overtime wages. This bill concerns our industry tremendously and would make a negative impact on future work. We believe this bill would present a disincentive for the oil industry to escalate exploration. Also, the bill would increase the industry's present expenses to discourage further development as expenses are becoming higher than profit due to the current demand for Alaska oil and gas.

We do not support this bill and encourage you to veto the bill as proposed.

Sincerely,

Gary McCarrell
Division Manager - Alaska



RECEIVED
MAR 8 1987

March 4, 1988

Alaska State Legislature
House of Representatives
P. O. Box V
Juneau, Ak. 99811

Representative Dave Donley	Representative Johnny Ellis
Representative Adelheid Herrmann	Representative Walt Furnace
Representative Red Boucher	Representative Curt Menard
Representative Cliff Davidson	Representative Nilo Kopenon

The JOHN CABOT COMPANY is a seafood buyer/processor in the state of Alaska. We have plants in Anchorage and Seldovia. Due to the seasonal business of this fishery (mainly the summer months May through September) we have great concern with House Bill No. 436.

We urge you to vote "NO" for the following reason.

We need to operate on a 24 hour basis and due to our schedule of two 12 hour shifts this Bill would make our labor costs raise to the point that it would be prohibitive to continue operations. Since our primary product (fish) is very perishable we must work when the fish is available and cannot schedule shorter working hours.

We are a relatively small company, however we do employ over 200 people during the fish season. House Bill No. 436 would obviously devastate not only this fish company but many other processors leaving us no choice but to discontinue processing.

Again, we ask that you vote "NO" to "436" as not only would this company be out of business but so will the 200 employees that we hire during our season.

Very truly yours,

Hank Lind
Chief Executive Officer

cc: Senator Jan Faiks
Representative Pat Pourchot



ALASKA STATE CHAMBER OF COMMERCE

310 Second Street
Juneau, Alaska 99801
(907) 586-2323

March 4, 1988

RECEIVED
MAR 8 1988

The Honorable Dave Donley, Chairman
House Labor & Commerce Committee
P.O. Box V
Juneau, AK 99811

Dear Dave:

We appreciate your holding HB 436 pending clarification of the State Chamber's testimony February 25.

It is my understanding you have asked for names of the two companies referred to in Mr. Tangen's testimony. I have asked both to write you and I believe they will do so shortly.

We are seriously concerned about the potential impact passage of HB 436 would have on many Alaska firms and look forward to further discussion.

Cordially,

A handwritten signature in black ink, appearing to read 'George Krusz', written over the typed name.

George Krusz
President

HB

440

HOUSE COMMITTEE REPORT

(7)

Date referred: 2/8/88

FURTHER REFERRALS:

HESS
Judiciary

DATE: 2/25/88

The Labor & Commerce Committee has considered HB 440

"An Act relating to insurance coverage for treatment of infertility."

RECOMMENDS:

- replace with _____ the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

[Signature]

Wanda Dowley - NO REC

H. Ellis - NO REC

Cliff Davidson (NO REC)

W. H. Moore

Chas. Lamb No Rec

Alta Korman no rec

Wanda Dowley
Chairman's signature

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: HB 440
PUBLISH DATE: 02/08/88

FISCAL NOTE

REQUEST:

Revision Date: 02/25/88
Title: Relating to insurance coverage
for treatment of infertility
Sponsor: Menard
Requester: _____

Agency Affected: Commerce & Economic Dev.
BRU: Insurance
Components: Public Protection

EXPENDITURES / REVENUES : (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
---------	-----	-----	-----	-----	-----	-----

REVENUE	0.0	0.0	0.0	0.0	0.0	0.0
---------	-----	-----	-----	-----	-----	-----

FUNDING: (Thousands of dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: John L. George, Director *John L. George* Phone: 465-2515
Division: Division of Insurance Date: February 25, 1988

Approved by Commissioner: J. Anthony Smith *J. Anthony Smith* Date: February, 1988
Agency: Department of Commerce and Economic Development

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

ALASKA STATE LEGISLATURE

Curt Menard

351 W. Swanson Ave.
Wasilla, Alaska 99687

Or

P.O. Box V
Juneau, Alaska 99811

373-CURT
376-5315 Work
376-5855 Home
465-2679 Juneau



M E M O R A N D U M

February 23, 1988

TO: Members
House Labor and Commerce
Committee

FROM: Curt Menard
Representative

RE: HB440

HB440 is an Act relating to insurance coverage for treatment of infertility.

This bill would require that an insurer that provides coverage for pregnancy-related expenses shall also provide, to the same extent that benefits are provided for pregnancy-related expenses, coverage for medically necessary expenses of diagnosis and treatment of infertility.

"Infertility" means: the condition of a presumably healthy individual who is unable to conceive or produce conception for a period of at least one year before diagnosis and treatment for infertility.

This Act applies to disability insurance policies and to hospital or medical service subscriber contracts entered into or renewed on or after the effective date of this Act.

I have received more than 22 letters in favor of HB440.

I have contacted seven physicians who report that as many as 15% of America's reproductive age group have infertility problems.



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

P.O. Box Y, State Capitol
Juneau, Alaska 99811-3100
Mail Stop 3100
(907) 465-3991

January 20, 1988

MEMORANDUM

TO: Representative Curt Menard

FROM: Karla Hart 
Legislative Analyst

RE: Massachusetts Legislation Regarding Insurance Coverage of
Infertility

You asked this agency to obtain a copy of Massachusetts legislation regarding insurance coverage for the treatment of infertility. A copy of Massachusetts Chapter 394, 1987 Regular Session Laws is attached. Section 1 defines infertility as the condition of a presumably healthy individual who is unable to conceive or produce conception during a period of one year. The Massachusetts law provides that insurance which includes pregnancy-related benefits must provide, to the extent that benefits are provided for other pregnancy-related procedures, coverage for medically necessary expenses of diagnosis and treatment of infertility.

I spoke with Ms. Cottle regarding the Massachusetts law. She is interested in having similar legislation enacted in Alaska. Using STAIRS, I found that the only reference to infertility which currently exists in Alaska statutes relates to veterinary practices.

I hope this information is helpful. If you have additional questions, please call.

Attachment

**MASSACHUSETTS
LEGISLATIVE SERVICE**

1987

Acts of the General Court

**Chapters 346 to 394
1987 Regular Session
Convened January 7, 1987**

**ST. PAUL, MINN.
WEST PUBLISHING CO.**

**INFERTILITY—INSURANCE COVERAGE—DIAGNOSIS
AND TREATMENT**

CHAPTER 394

ACT providing a medical definition of infertility.

As it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1.

Chapter 175 of the General Laws is hereby amended by inserting after section 47G, created by section 1 of chapter 363 of the acts of 1987, the following section:—

Section 47H.

Any blanket or general policy of insurance, except a blanket or general policy of insurance which provides supplemental coverage to medicare or other governmental programs, described in subdivisions (A), (C) or (D) of section one hundred and ten which provides hospital expense or surgical expense insurance which includes pregnancy-related benefits and which is issued or subsequently renewed by agreement between the insurer and the policyholder, within or without the commonwealth, while this provision is effective, or any policy of accident and sickness insurance as described in section one hundred and eight which provides hospital expense or surgical expense insurance which includes pregnancy-related benefits and which is delivered or issued for delivery or subsequently renewed by agreement between the insurer and the policyholder in the commonwealth while this provision is effective, or any employees' health and welfare plan which provides hospital expense and surgical expense benefits which includes pregnancy-related benefits and which is promulgated or renewed to any person or group of persons in the commonwealth while this provision is effective shall provide, to the same extent that benefits are provided for other pregnancy-related procedures, coverage for medically necessary expenses of diagnosis and treatment of infertility. For purposes of this section, "infertility" shall mean the condition of a presumably healthy individual who is unable to conceive or produce conception during a period of one year.

SECTION 2.

Chapter 176A of the General Laws is hereby amended by inserting after section 8J, created by section 3 of said chapter 363, the following section:—

Section 8K.

Any contract, except contracts providing supplemental coverage to medicare or other governmental programs, between a subscriber and the corporation under an individual or group hospital service plan which is delivered, issued for delivery or renewed in the commonwealth while this provision is effective and which provides pregnancy-related benefits shall provide as a benefit for all individual subscribers or members within the commonwealth and all group members having a principal place of employment within the commonwealth, to the same extent that benefits are provided for other pregnancy-related procedures, coverage for medically necessary expenses of diagnosis and treatment of infertility. Said infertility benefits shall meet all other terms and conditions of the subscriber certificate. For purposes of this section, "infertility" shall mean the condition of a presumably healthy individual who is unable to conceive or produce conception during a period of one year.

SECTION 3.

Chapter 176B of the General Laws is hereby amended by striking out section 4G, created by section 4 of said chapter 363, and inserting in place thereof the following two sections:—

Section 4I.

Any subscription certificate under an individual or group medical service agreement, except certificates which provide supplemental coverage to medicare or other governmental programs, which shall be delivered or issued or renewed in the commonwealth shall provide as benefits to all individual subscribers and members within the commonwealth and to all group members having a principal place of employment within the commonwealth for expense of cytologic screening and mammographic examination. Said benefits shall be at least equal to the following minimum requirement: (a) in the case of benefits for cytologic screening, said benefits shall provide for an annual cytologic screening for women eighteen years of age and older; and (b), in the case of benefits for mammographic examination said benefits shall provide for a baseline mammogram for women between the ages of thirty-five and forty and for mammogram on an annual basis for women forty years of age and older.

Section 4J.

Any subscription certificate under an individual or group medical service agreement, except certificates which provide supplemental coverage to medicare or other governmental programs, which is delivered, issued for delivery or renewed in the commonwealth while this section is effective shall provide as a benefit for all individual subscribers or members within the commonwealth and all group members having a principal place of employment within the commonwealth, to the same extent that benefits are provided for other pregnancy-related procedures and subject to the other terms and conditions of the subscription certificate, coverage for medically necessary expenses of diagnosis and treatment of infertility. Said infertility benefits shall meet all other terms and conditions of the subscription certificate. For purposes of this section, "infertility" shall mean the condition of a presumably healthy individual who is unable to conceive or produce conception during a period of one year.

SECTION 4.

Section 4 of chapter 176G of the General Laws, as amended by section 5 of said chapter 363, is hereby further amended by adding the following sentence:— Such health maintenance contract shall also provide coverage for diagnosis and treatment of infertility as set forth in section forty-seven H of chapter one hundred and seventy-five.

Approved October 8, 1987.

Anchorage Obstetrics & Gynecology

Richard T. Nist, M.D.
 Diplomate of the American Board
 of Obstetrics and Gynecology
 Fellow American College
 of Obstetrics and Gynecology

Robert G. Thompson, M.D.
 Diplomate of the American Board
 of Obstetrics & Gynecology

ESTIMATED IVF CYCLE CHARGES

Charges up to and including Day 8, air fares, room and board

Anchorage OB/GYN screening appt.	\$ 250.00	
Stimulation cycle nursing consult	65.00	
Seven ¹⁴ (7) amp. Pergonal	238.00 476.00	
Ten (10) tabs Clomid (pharmacy charges)	40.00	
Estradiol x2	173.60 185.80	
Ultrasound x1	<u>50.00</u> 60.00	
TOTAL	\$ 816.60 1076.80	\$ 816.60

Air Fare	\$ 460.00	
(Reservations should be made 30 days in advance - \$250 round trip per person)		
		<i>whatever supervisor is</i>
Housing	280.00	
(Day 9 through 16 (7 days) estimated \$35/\$40 per day)		
Meals	<u>280.00</u>	
(Estimate \$20 per day/per person \$140 x2)		
TOTAL:	\$1,020.00	<u>\$1,020.00</u>
TOTAL		<u><u>\$1,836.60</u></u>

Anchorage Obstetrics & Gynecology

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 Diplomate of the American Board
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 of Obstetrics and Gynecology

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 of Obstetrics & Gynecology

UNIVERSITY OF WASHINGTON IN VITRO FERTILIZATION PROGRAM

IVF AVERAGE ACTIVE CYCLE CHARGES January 1986 Protocol

I. Hospital Costs		
A. Pharmacy		
	HCG 5,000/u	15.00
	2 tabs Valium	3.50
	Progesterone Inj.	20.99
	8 Tylenol #3	3.60
	10 Doxycycline	<u>6.35</u>
		49.44
B. Central Supply	3.50	3.50
(syringes)		
C. Radiology	99.00	99.00
(U/S x4)		
D. Women's Care Center		
	Clinic Visits	129.00
	Embryo transfer	87.00
	Therapeutic Inj.	<u>56.00</u>
		272.00
E. Emergency Room	61.50	61.50
(3 injections)		
F. Operating room		
	OR 1½ hr.	359.00 (1 3/4 - \$460)
	Anesthesia 1-1½ hrs.	106.50 (1½-2 - \$110)
	Recovery 4½ hrs.	304.25
	Resp. Therapy	17.00
	Disposable Supp.	<u>16.50</u>
		803.25
G. Laboratory Medicine		
	Estradiol x8	300.00
	LH x3	69.00
	Progesterone x7	203.00
	Serum Pregnancy x3	70.50
	Hct.	7.25
	Blood prep x13	<u>74.25</u>
		<u>724.00</u>
TOTAL HOSPITAL COSTS:		<u>\$2,012.60</u>

(Assumptions: 60" lap, monitoring on Day 8, Lap on Day 12)

Resolve

Expenses - Infertility

\$185⁰⁰ ↑ First Visit - not including blood work up.

\$25⁰⁰ ↑ Semen Analysis

\$1700.00 ⁽¹⁹⁷⁹⁾ Vericoceal

\$55⁰⁰ day Artificial Insemination

\$50⁰⁰ Sperm Washing

\$110.00 Follicular Study (per day)
\$50.00 (After first time)

\$75.90 Progesterone Level (once per cycle)

\$3000-3500 Laparoscope

\$250⁰⁰ Blood Workup Testosterone DHEA
Prolactine

\$70⁰⁰ Sperm Antibody Test

\$1000 Source -(per cycle)

\$30⁰⁰-60⁰⁰ Ovulation Predictor Test

\$400⁰⁰-500⁰⁰ Lupron Injections (per month)

\$25.⁰⁰ Clomid - 50 mil @ 5 pills per month

\$476.⁰⁰ Pergonol

\$300.⁰⁰ Hysterosalpingogram

\$165.⁰⁰ ↑ Pap Smear



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

P.O. Box Y, State Capitol
Juneau, Alaska 99811-3100
Mail Stop 3100
(907) 465-3991

December 24, 1987

MEMORANDUM

TO: Representative Curt Menard

FROM: Sandi Depue *Sandi*
Administrative Officer

RE: Proposed Massachusetts Health Coverage Law

You requested copies of the proposed health coverage law currently before the Massachusetts legislature. You also wanted pertinent back-up information.

Attached is a letter from Mr. Erik Canada, Research Intern, Massachusetts Legislative Service Bureau, forwarding the requested information.

If this agency can be of further service, please let me know.

Attachments



General Court of Massachusetts

LEGISLATIVE SERVICE BUREAU
STATE HOUSE, BOSTON 02133

December 4, 1987

DR. ANDREW ...

Sandy Depue
House Research Agency
State Capitol, P.O. Box Y
Juneau, Alaska 99811-3100

Dear Ms. Depue:

In response to your recent request concerning legislation relative to Universal Health in Massachusetts, please find enclosed the following:

(1) House Bill Number 6000: A Message from His Excellency, the Governor, Recommending Legislation Relative to Making Health Care Available to Citizens of the Commonwealth of Massachusetts, and to Make Certain Other Improvements in the Health Care Delivery System of the Commonwealth.

(2) House Bill Number 6068: A Bill to Make Health Care Available to Citizens of the Commonwealth and Make Certain Improvements in the Health Care Delivery System in the Commonwealth.

(3) A Bill Relative to Interim Hospital Charge.

Status of H6000, H6068, and H6096.

on Universal Health Care in Massachusetts
Boston Globe.

I hope that you find this information to be helpful. If I can be of any further assistance, please do not hesitate to contact me again at (617)-722-2520.

Sincerely,

Erik M. Canada
Erik M. Canada

Research Intern

Supervisor: John M. Horgan

Senior Research Analyst

HOUSE No. 6096

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, October 13, 1987.

The committee on Ways and Means to whom was recommitted the Bill to make health care available to citizens of the Commonwealth, and make certain other improvements in the health care delivery system of the Commonwealth (House, No. 6068, amended), reports (in part) recommending that the accompanying bill (House, No. 6096) ought to pass.

For the committee,

RICHARD A. VOKE.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-Seven.

AN ACT RELATIVE TO INTERIM HOSPITAL RATES OF PAYMENT AND CHARGES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Notwithstanding the provisions of any other
2 special or general law to the contrary, all rates and charges
3 established for acute care hospitals pursuant to Chapter 6A of the
4 Massachusetts General Laws and in effect on August 1, 1987 shall
5 remain in effect during the period between October 1, 1987 and
6 March 31, 1988, except as modified pursuant to paragraph 2 of
7 this act.

1 SECTION 2. Notwithstanding the provisions of any other
2 special or general law to the contrary, during the period between
3 October 1, 1987 and March 31, 1988, the rate setting commission
4 shall possess all powers, rights, obligations, and responsibilities
5 possessed by said commission on August 1, 1987 along with the
6 authority to issue and enforce regulations required to preserve the
7 system for providing acute care hospital reimbursement in
8 Massachusetts in a form identical to that existing on August 1,
9 1987.

1 SECTION 3. Notwithstanding the provisions of any other
2 special or general law to the contrary, each and every entity
3 charged with a responsibility under law on August 1, 1987 for
4 providing or financing otherwise uncompensated care as
5 described in the Massachusetts General Laws Chapter 6A, Section
6 75 shall bear that same responsibility during the period between
7 October 1, 1987 and March 31, 1988.

1 SECTION 4. Notwithstanding the provisions of any other
2 special or general law to the contrary, all parties bound on August
3 1, 1987 by the provisions of Hospital Agreement 30, the successor

4 agreement to Hospital Ag
5 Section 31, shall remain
6 agreement until March 31.

1 SECTION 5. The prov
2 October 1, 1987.

1 SECTION 6. The prov
2 operative on March 31, 19

[October

1987]

budgets

4 agreement to Hospital Agreement 29 as defined in Chapter 6A,
5 Section 31, shall remain bound by the provisions of that
6 agreement until March 31, 1988.

Eighty-Seven.

1 SECTION 5. The provisions of this act shall be effective as of
2 October 1, 1987.

ES OF PAYMENT AND

1 SECTION 6. The provisions of this act shall cease to be
2 operative on March 31, 1988.

representatives in General
Assembly, as follows:

provisions of any other
rates and charges
to Chapter 6A of the
August 1, 1987 shall
October 1, 1987 and
it to paragraph 2 of

provisions of any other
the period between
setting commission
and responsibilities
1987 along with the
required to preserve the
reimbursement in
existing on August 1,

provisions of any other
and every entity
August 1, 1987 for
compensated care as
Chapter 6A, Section
the period between

provisions of any other
bound on August
September 30, the successor

GOVERNOR'S SUMMARY
SECTION-BY-SECTION SUMMARY

- SECTION 1: Establishes new chapter that will require employers to enroll all employees and dependents in health benefit plans after an ERISA exemption is obtained. Mandatory benefits are defined in Section 5. Permissible exceptions to covering employees' dependents are defined in Section 6.
- SECTION 2: If by January 1, 1989, the Commonwealth has not obtained an ERISA exemption from the federal government, employers who do not offer a health plan equivalent to the Kennedy bill plus mandated Massachusetts benefits will be required to contribute to the Massachusetts Health Partnership Trust fund to finance the state's purchase of health coverage for their employees.
- SECTION 3: Amends Section 46 of Chapter 151A by adding words "Massachusetts Health Partnership."
- SECTION 4: Mandates a study by the rate review board to evaluate comparative merits of administration of health insurance contributions by the Department of Employment and Security and the Department of Revenue, to be submitted to the Governor by October 31, 1988.
- SECTION 5: Mandates a study by the commissioner of administration to establish guidelines for purposes of reimbursing cities and towns for reasonable costs incurred because of this Act.
- SECTION 6: Establishes effective dates of SECTION 2 through SECTION 5.
- SECTION 7: Amends Section 16 of Chapter 6A by adding "and the Massachusetts Health Partnership."
- SECTION 8: Establishes new chapter defining the provisions of the department entitled "Massachusetts Health Partnership", which shall make health benefit programs available to residents of the Commonwealth. The Partnership has the authority to purchase all state-managed health care (Medicaid, state employees, uninsured, etc.), manage the acute hospital free care/bad debt pool, manage Medicaid and Group Health Insurance contracting and assume health responsibilities

from the Rate Setting Commission. This chapter also authorizes the Partnership to: include certain mandated services in health benefit plans; establish a program of medical care and assistance for certain disabled individuals; and establish and administer a re-employment training incentive program to provide training in health care professions for those employees who are or might be affected by hospital layoff, closure or reduction in hours.

- SECTION 9: Establishes effective date of October 1, 1987 for start of the Massachusetts Health Partnership.
- SECTION 10A: Authorizes Health Partnership assumption of all unexpended funds appropriated in FY88 for state agencies that will become part of the Health Partnership.
- SECTION 10B: Amends Section 2(b) of Chapter 18 by adding words "financial assistance for health services and medical care."
- SECTION 10C: Substitutes "Massachusetts Health Partnership" for the "Department of Public Welfare" in Section 2(b) of Chapter 118E.
- SECTION 11A: Defines method of reimbursing acute hospitals for the four-year period beginning on October 1, 1987. In the first year, increased charges would be limited to inflation plus a 2% adjustment applied to the non-Medicare base. \$60 million in allowances for extraordinary labor cost increases are also included in the proposed legislation. As of October 1, 1988, a negotiated rate between the purchaser and provider of hospital services is the preferred method of setting hospital rates. The Commissioner of the Health Partnership will have the authority to promulgate regulations to govern hospital rates from October 1, 1988 to September 30, 1991.
- SECTION 11B: Grants authority to the Health Partnership to assume health insurance responsibility for Medex and nongroup populations if and when Blue Cross/Blue Shield ceases to serve those groups.
- SECTION 11C: Repeals Sections 37 through 47 of Chapter 6A, which, among other things, authorize the Rate Setting Commission to regulate rates charged by non-acute hospitals.

- SECTION 12: Eliminates Determination of Need (DoN) for acute care hospital projects under \$10 million as well as for conversions of acute care services to skilled nursing, acute psychiatric, rehabilitation, and substance abuse services costing less than \$600,000. New technology, innovative services, ambulatory surgery, and long-term care still require a DoN.
- SECTION 13: Amends DoN law to account for possible successor agencies to health system agencies.
- SECTION 14: Removes clinical laboratories from DoN.
- SECTION 15: Establishes a review board composed of the secretaries of Human Services, Administration and Finance and the Commissioner of the Massachusetts Health Partnership to permit review of Public Health Council DoN decisions that may have a significant impact on health care costs. The review board decision overrides the Public Health Council decision in instances where differences occur.
- SECTION 16
through
SECTION 20: Requires all publicly and privately owned and operated facilities and programs to notify the Department of Public Health of any acquisition of new medical technology or a health care facility. Failure to provide such a notice shall result in a fine.
- SECTION 21: Authorizes the establishment of rates of payment for Title XIX (Medicaid) services provided by acute and non-acute hospitals consistent where applicable with the principles of reimbursement under Title XVIII and Title XIX of the Social Security Act.
- SECTION 22: Delineates the conditions for provider participation in the Medicaid program.
- SECTION 23: Authorizes the Department of Public Health to permit the return of certain prescription drugs to a pharmacy for resale.
- SECTION 24
through
SECTION 27: Empowers the Department of Public Welfare to impose administrative fines against providers, to recover interest from providers for overpayments and to extend amnesty for such fines and interest to encourage voluntary payment.

- SECTION 28: Amends statutory language regarding standards to be applied on provider rate appeals.
- SECTION 29: Requires a nonprofit hospital service corporation to make available supplemental group coverage to Medicare to a group of Medicaid recipients designated by the Department of Public Welfare.
- SECTION 30: Requires insurers who offer policies of accident and sickness insurance to make available supplemental group coverage to Medicare to a group of Medicaid recipients designated by the Department of Public Welfare.
- SECTION 31: Requires health insurers and Health Maintenance Organizations (HMOs) to match their subscriber and beneficiary files with Medicaid eligibility files, in an effort to ensure that Medicaid is the payer of last resort.
- SECTION 32
and
SECTION 33: Requires attorneys to notify the Department of Public Welfare whenever filing a lawsuit or insurance claim on behalf of a recipient to recover monies due as a result of an accident, illness, or other loss, and simplifies procedures for perfecting the Welfare Department's liens in such cases.
- SECTION 34: Allows the Department of Public Welfare to require a nominal copayment or deductible for medical services.
- SECTION 35
through
SECTION 39: Tightens rules for transfer of assets in determining Medicaid eligibility.
- SECTION 40
and
SECTION 41: These sections make the Department of Public Welfare a party in interest in guardianship proceedings involving individuals entitled to benefits from the Department, and require guardians and conservators to notify the Department of their appointment or any proceedings affecting the estate of the ward.
- SECTION 42
and
SECTION 43: Decreases the rate of interest payable in civil actions.

- SECTION 61: Allows an employee or Division of Labor and Industries to complain and seek damages when an employer fails to notify the employee of the availability of extended group health and medical benefits.
- SECTION 62:
and
SECTION 63: Expands the definition of entities subject to the unfair and deceptive insurance practices statute to include HMOs and PPOs.
- SECTION 64: Subjects HMOs to the insurance laws applicable to mergers and acquisitions.
- SECTION 65: Subjects health care facility mergers and acquisitions to Department of Public Health approval. Such approval will require analysis of the proposed transaction on access to health care, quality, cost and competition.
- SECTION 66: Allows the Insurance Commissioner to consider local and regional competitive impact of proposed mergers and acquisitions.
- SECTION 67,
68, 70, 71: Permits Blue Shield to create a PPO comparable to commercial insurers and subject to Chapter 176I.
- SECTION 69: Gives Commissioner of Insurance power to disapprove Blue Shield rules and regulations.
- SECTION 72: Codifies provider rights to receive from Blue Shield full and fair explanation of payment decisions and establishes appeal mechanism. Also increases information on Blue Shield payment system available to providers.
- SECTION 73: Allows providers to file class action suits against Blue Shield for unresolved disputes that do not involve compensation.
- SECTION 74: Permits Blue Cross to create a PPO comparable to commercial insurers and subject to Chapter 176I.
- SECTION 75: Establishes a process for determining whether and on which terms and conditions Blue Cross/Blue Shield should be reorganized into a commercial insurer. This process includes: (1) a detailed study of Blue Cross/Blue Shield and the relevant market; (2) a public hearing on reorganization issues; (3) a final decision to be made and terms and conditions imposed by a 5-member governmental panel. A major factor in the reorganization decision will be the continued availability of affordable nongroup and Medicare supplemental insurance.

SECTION 76
through
SECTION 78:

Directs the Commissioner of Insurance to promulgate regulations governing the scheduling of rate filings and the standards governing the rates of nongroup insurance except Medex, and to promulgate cost containment regulations.

SECTION 79:

Creates a Bureau of Hospital and Medical Service Corporation Analysis within the Division of Insurance to advise the commissioner regarding requests for rates for nongroup contracts. Allows an assessment to be levied on Blue Cross/Blue Shield to pay for the Bureau, which is capped at \$350,000.

SECTION 80
through
SECTION 82:

Allows Blue Cross/Blue Shield to seek increases in Medex rates based on changes in Medicare deductibles and coverages. Allows persons enrolled in HMO Medicare plans to switch to Medex if the HMO cancels the plan.

SECTION 83:

Standardizes the open enrollment period for HMOs, and prohibits HMOs from imposing "preexisting condition" clauses on nongroup contracts.

SECTION 84:

Changes the hospital and clinic licensing law to allow the Department of Public Health to place prescribed quality and access conditions on licenses as well as conduct a public hearing on licensure applications upon request by fifty or more interested persons. The applicant must publish notice of the application.

SECTION 85:

Establishes a grievance procedure for a licensee who has had a license conditioned, denied or revoked.

SECTION 86:

Provides for a Department of Public Health unit to develop quality indicators and further provides for 90-day written notices of discontinued hospital services and operations and 30-day written notices of reduction in workforces or scheduled hours.

SECTION 87:

Strengthens the Department of Public Health's license by service authority.

- SECTION 86
through
SECTION 90: Extends authority of advocacy office to investigate complaints based on discrimination from all federal and state payment sources and extends to it general investigatory powers held by survey branch of the Department of Public Health.
- SECTION 91
and
SECTION 92: Mandates hospitals to post the patients' rights statute and preserves those rights in law for the patients.
- SECTION 93: Gives the Department of Public Health authority to issue orders to correct deficiencies, impose civil administrative fines for failure to correct deficiencies and to issue cease and desist orders to hospitals or clinics.
- SECTION 94: Extends the Department of Public Health's authority to enforce the patients' rights statute into Health Maintenance Organizations.
- SECTION 95: Authorizes a study on the nurses' shortage in acute care hospitals.
- SECTION 96: Requires colleges and universities to offer health insurance to full time students.
- SECTION 97
through
SECTION 108: Improves protection of children and custodial parents' access to health insurance by tightening notice and reimbursement practices in a divorce situation.
- SECTION 109
and
SECTION 110 : Establishes standard clauses of severability and limitations on expenditures based on appropriated funds.
- Section 111: Outlines budget request for the Massachusetts Health Partnership.

HIGHLIGHTS OF HOUSE WAYS AND MEANS HEALTH CARE BILL

I. HEALTH BENEFITS

Endorses and expands upon the Governor's proposal by:

- A. Mandating insurers to provide Preventive Health Care to children from birth to age 6
- B. Prohibits deductibles and co-insurance for low-income pregnant women
- C. Allows low-income elders opportunity to purchase coverage from the state
- D. Establishes a program of medical assistance (\$5.0m) for disabled children not eligible for Medicaid
- E. Makes new health agency the insurer of last resort for those with pre-existing conditions
- F. Proposes expansion of Medicaid benefits to elderly, disabled, pregnant women, and severely disabled children
- G. Makes Healthy Start part of the General Laws
- H. Mandates Pilot Program for severely disabled children

II. ESTABLISHES NEW DEPARTMENT OF MEDICAL SERVICES

- A. New Agency will administer Medicaid, GIC, and plan for uninsured
- B. Makes any transfer of employees consistent with existing Civil Service and Collective Bargaining laws and subject to budget cycle
- C. Rate Setting Commission will remain an Independent Agency thereby protecting against purchaser and provider conflicts
- D. HW&M's eliminates all administrative funding for New Agency. Agency can only use existing Medicaid and GIC administrative funds. Any additional funds will have to be directly requested by the Administration through budgetary process
- E. HW&M's allows DMS to contract through negotiation with providers
- F. HW&M's Deletes excessive powers of Commissioner

III. HOSPITAL PAYMENT

- A. Proposes inflation + 3% to be targeted to labor (\$22.5m over Governor)
- B. Removes CAP on BAD DEBT - ie. hospitals will continue to be reimbursed in full for BD-(\$40m over Governor)
- C. Removes Medicaid CAPS on outpatient and all AND days -(\$30m over Governor)
- D. Continues \$60m for labor for underfinanced hospitals
- E. Allows unlimited discounts through negotiated agreements
- F. Allows exemption from cap for out-of-country patients

*Thus HW&M's proposes an additional \$90m to hospitals over Governor's package now worth at least \$300m of new money to hospitals.

IV. DETERMINATION OF NEED

- A. HW&M's allows full pass-through of costs for any project that receives a D.O.N.
- B. HW&M's requires no DON review for any hospital bed conversions in an underbedded area as certified by DPH
- C. HW&M's maintains \$10m threshold and raises non-acute threshold to \$800,000 for equipment and raises threshold for change in service to \$350,000 .
- D. HW&M's allows Public Health Council rather than A&F to make final determinations of projects
- E. Allows Nursing Home builders in Urban-underbedded areas to be exempt from DON and RSC reimbursement CAPS
- F. HW&M's mandates study to study criteria for the relicensure, conversion, and consolidation of excess beds

V. MEDICAID

- A. HW&M's removes H.6000 proposals for deductibles and co-insurance; prohibitions against asset transfers, restrictions on chronic hospitals payments, and all provisions previously requested in REAP

VI. BLUE CROSS/BLUE SHIELD

- A. HW&M's mandates state auditor to undertake audit of BC/BS
- B. Mandates Secretary of Consumer Affairs and independent panel to study mutualization of BC/BS and to submit findings to legislature by 10/1/89 - Medex and BC/BS maintained as is until legislative changes

- C. HW&M's allows Blue Shield to establish PPO's but only if consistent with New C. 176I
- D. HW&M's continues protections against balance billing

VIII. DPH LICENSURE, QUALITY, AND LABOR

- A. HW&M's endorses Governor's Licensure, Quality, Suitability Reviews, and consumer protections
- B. HW&M's endorses labor protections and expands existing re-employment assistance program to hospital workers

VII. HMO'S AND PPO'S

- A. HW&M's endorses 2.28% tax on HMO's and PPO's, but does not allow this revenue to go to DMS, but rather to general fund
- B. HW&M's endorses the remainder of Governor's PPO provisions which will allow regulation of this new program
- C. HW&M's sunset HMO Tax in 1991 if no tax on Blue Cross/Blue Shield

VIII. BUDGET PROVISIONS

- A. HW&M's removes all budget provisions except \$1.0m for disabled adults and \$5.0m for disabled children
- B. Any additional administrative funds (other than those currently in Medicaid and GIC) will have to be re-tested in a Supplemental Budget or in FY'89 budget

H.6000

SECTION 1

Mandatory health coverage following ERISA exemption

SECTION 2

Unemployment Health Insurance contribution

SECTION 3

MHP added to Section 46 of Chapter 151A

SECTION 4

Study of health insurance contributions by employers

SECTION 5

Reimbursing cities and towns for mandated costs

SECTION 6

Effective dates

SECTION 7

EOHS amended to include MHP

SECTION 8

Creation of Massachusetts Health Partnership

HOUSE WAYS & MEANS CHANGES

SECTION 1

- prohibited copayments and deductibles for prenatal, delivery, and well baby care for low income women
- defined small employer and expanded definition of "coverage period" to 120 days relative to small employer
- changed coverage period to begin 60 days after hire for other than small employer
- changed civil penalty for failure to comply from 10% of payroll to 2%
- added preventive care for children up to age 6 to be included in all coverage
- changed definition of employee to require 25 hours per week

SECTION 2

- changed time frame for assessing a penalty if an employer fails to file appropriate reports or forms (H.6000 section 14I) from 15 to 21 days

SECTION 3

- named new agency Department of Medical Services

SECTION 4

- added the Legislature as a recipient of the report

SECTION 5

- no significant changes

SECTION 6

- no significant changes

SECTION 7

- EOHS amended to add Dept. of Medical Services

SECTION 8

- creation of Dept. of Medical Services
- changed composition of advisory boards to be established
- excluded transfer of Rate Setting Commission employees and duties
- included civil service protections and deleted management rights provisions consistent with other state agencies
- deleted excessive powers of the agency

- included a program for medical assistance for disabled children not otherwise eligible for Medicaid
- specified the establishment of a sliding fee program for the low-income elderly
- added provision regarding pre-existing conditions so that DMS will be insurer of last resort
- added provision that HMO's must accept Medicaid clients as a condition of contracting with the DMS
- provided free care and bad debt to 100% reimbursement but exempted certain populations. Raised cap to \$375M
- eliminated new funds, the administrative fund and provision enabling 9% of total revenue to be spent for administration, all administrative funding made subject to appropriation
- eliminated H.6000 Section 11 regarding access to financial records
- specified that copayments and deductibles be established only by the Legislature

SECTION 9

Date new agency assumes powers

SECTION 10

Interagency agreements with relevant agencies

SECTION 11

FY'88 control of Medicaid, RSC, and GIC funds

SECTION 11A & 11B

[no comparable sections]

SECTION 9

- established date for DMS to assume authorities and powers (July 1, 1989)

SECTION 10

- eliminated the Dept. of Public Health and the Rate Setting Commission from specified list of interagency agreements

SECTION 11

- eliminated reference to the Rate Setting Commission

SECTION 12 & 13

- no substantial change

SECTIONS 14 - 19

- established Healthy Start in General Laws
- established Medicaid eligibility for severely disabled children; presumptive Medicaid eligibility for pregnant women; expanded Medicaid eligibility for children, elderly, and disabled

SECTION 11C
Hospital Financing

[no comparable sections]

SECTIONS 12-20
Determination of Need

SECTION 20

- allowed unlimited discounts through negotiated agreements
- proposed inflation + 3% to be targeted to labor
- continued \$60M for underfinanced hospitals
- allowed full pass-through of costs for any hospital that receives a DoN
- allowed exemption from cap for out-of-country patients

SECTION 21

- exempted comprehensive cancer centers from hospital reimbursement system

SECTION 22

- Removed nursing homes in underbedded areas from reimbursement caps

SECTION 23

- required Rate Setting Commission to report to the Legislature on increased rates

SECTION 24

- established uncompensated care pool for community health centers

SECTION 25

- removed RSC oversight of Blue Cross contract if DMS takes over Medex and non-group

SECTIONS 26 - 36

- clarified the definitions of "new technology" and "innovative services"
- raised threshold for non-acute health care facilities from \$600,000 to \$800,000 for capital expenditures
- exempted DoN for hospital bed conversions in underbedded areas
- eliminated reconversion provision regarding non-acute facilities, raised bed capacity change in service from 4 beds to 12 and raised operating expenditure threshold (change in service or increase in staff) from \$250,000 to \$350,000
- eliminated A & F DoN oversight board of review, Public Health Council continues existing powers
- added provision for optional DoN for projects not at threshold

SECTIONS 21-43

Medicaid provisions for coinsurance, deductibles, restrictions against asset transfers, restrictions on chronic hospital payments, and miscellaneous REAP provisions

- deleted all Medicaid provisions

SECTION 44

2.28% HMO tax on premiums

SECTION 37

- clarified continuation of Chapter 6A

SECTION 38

- eliminated dedication to MHP Fund II
- all revenues received from the tax will be deposited into the general fund

SECTIONS 45-49

Tax on commercial insurers dedicated to new agency

- deleted entire sections, therefore commercial tax assessments will continue to go to the general fund

SECTIONS 50 & 51

BC/BS subject to HMO and PPO tax

SECTIONS 39 & 40

- no substantial changes

SECTION 52

effective dates of taxes on premiums

SECTION 41

- corrected to reflect renumbered sections

[no comparable sections]

SECTIONS 42 - 44

- mandated preventive health care coverage for children through age 6

SECTION 53

New PPO statute (C.176I)

SECTION 45

- clarified that benefit levels to nonpreferred providers must be at least 80% of the benefit level for preferred providers and can not be less than 60%
- in Section 11, eliminated dedication of taxes to MHP Fund II and clarified that assessment be based on premiums not gross revenues
- changed PPO tax to be deposited into the general fund (not dedicated to new agency)

SECTION 54

rehabilitation and liquidation of HMO's

SECTION 46

- no change

SECTION 55

Risk management program as a condition of licensure

SECTION 56 - 60

requires insurers or policy holders to give written notices if coverage is about to lapse

SECTION 61

employee notification of eligibility for extended benefits

SECTIONS 62-63

HMO's and PPO's in unfair practices act

SECTION 64

Subjects HMO's to insurance laws

SECTIONS 65 & 66

Mergers and acquisitions

SECTIONS 67 & 68

Blue Shield PPO

SECTION 69

disapproval of Blue Shield rules and regulations

SECTION 70

Blue Shield PPO

SECTION 71

Blue Shield PPO

SECTION 72

Blue Shield PPO

SECTION 73

Blue Shield provider rights

SECTION 47

- added DPH approval of risk management programs

SECTION 48 - 51

- continued notification requirements, but mandated employers or policy holders to notify insured

SECTION 52

- no significant changes

SECTIONS 53 & 54

- no substantial change

SECTION 55

- no change

SECTIONS 56 & 57

- clarified that long term care facilities are not included in the definition of health care facility
- corrected (c) to read public hearing

SECTIONS 58 & 59

- changed reference of nonpreferred to nonparticipating

SECTION 60

- changed filing date to read "30 days before their effective dates"

SECTION 61

- deleted second paragraph to be consistent with C.176I

SECTION 62

- no substantial change

SECTION 63

- included provision for termination of an agreement
- clarified that Blue Shield PR's physicians are subject to balanced billing laws

SECTION 64

- no changes

SECTION 74
Blue Cross PPO

SECTION 75
BC/BS audit and study of
mutualization

SECTION 76
Rate filings

SECTION 77
Blue Cross standards for
findings

SECTION 78
Blue Shield standards for
findings

SECTION 79
New bureau at the division
of insurance

SECTION 80
Medex rate adjustment

SECTIONS 81-83
Open enrollments

SECTION 84
Hospital Licensure

SECTION 85
Hearing for conditions on
licenses

SECTION 86
Quality indicators and
Hospital Closure

SECTIONS 87-89
Licensure by service,
expansion of Advocacy Office

SECTION 90
Access to records

SECTION 65
- eliminated mandate for separating
revenue sources

SECTIONS 66 & 67
- gave responsibilities for audit of
BC/BS to the state auditor;
mutualization report remains
responsibility of Exec. Office of
Consumer Affairs

- deleted entire section

SECTION 68
- no change

SECTION 69
- deleted specifications of regulations

- deleted entire section

- deleted entire section

SECTIONS 70 - 72
- changed open enrollment period to
January 1 through the last day in
February

SECTION 73
- no substantial change

SECTION 74
- changed from public hearing to
adjudicatory hearing

SECTION 75
- no substantial change

SECTIONS 76 - 78
- no changes

SECTION 79
- added "with the consent of the
patient or the patient's legal
guardian"

SECTIONS 91-92
DPH Advocacy Office

SECTION 93
fines against hospitals

SECTION 94
Patients' Rights

[no comparable section]

SECTION 95
Study of nursing shortage

[no comparable sections]

SECTION 96
Student benefits

SECTIONS 97 - 108
Access to health insurance
in divorce settlements

SECTION 109
limits expenditures to
appropriated funds

SECTION 110
Severability

SECTION 111
Budget request

SECTIONS 80 & 81
- no substantial changes

SECTION 82
- deleted (e) and (f)

SECTION 83
- no change

SECTIONS 84 & 85
- established pilot program for
handicapped children

SECTION 86
- no change

SECTION 87
- provided for identification of
medically underserved areas

SECTION 88
- added study on delicensure of excess
beds

SECTION 89
- no significant changes

SECTIONS 90 - 101
- no changes

SECTION 102
- no change

SECTION 103
- no change

SECTION 104
- eliminated administrative funding

By Robert Lenzner
and Peter G. Gosselin
Globe Staff

Boston's Fidelity Investments, one of the country's largest mutual fund operators, sold off \$850 million of stock during the stock crash Oct. 19, starting in London even before US markets opened and greeting the New York Stock Exchange with about a half a billion dollars of sell orders.

Sources (regulations of the said Fidelity whose selling market into a charge Fidelity).

The same Fidelity sell \$500 million sure on the pressing price

December 15, 1987

Agreement Non reported on health bill outline

By Richard A. Knox
Globe Staff

Major interest groups reached agreement yesterday evening on the outlines of a new Massachusetts hospital financing mechanism and a phased-in approach to insuring workers who now lack health coverage, according to the Senate Ways and Means Committee chairman, Patricia McGovern (D-Lawrence).

"I'm cautiously optimistic," she said in a telephone interview. "I believe we've reached agreement on a general approach. It's still very volatile. ... But once you've reached general agreement on overall concepts - and we indeed have - you can begin to move forward."

McGovern has labored for weeks to salvage a bill out of the wreckage of Gov. Dukakis' original "health care for all" proposal, which was nearly killed on the House floor Oct. 5.

"Whatever emerges [from the committee] will be brand new and quite different from anything put on the table before," she promised.

McGovern declined to divulge specifics, but the tentative agreement among various interest groups reportedly would provide Massachusetts hospitals with new 1988 revenues just shy of \$400 million and phase in a mechanism to provide affordable health

HEALTH, Page 40



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Pope John Paul II receives flowers from Mandy Lynn Wolff, 10, on his arrival in San Antonio yesterday.

UPI photo

"Come back to this source of grace...
the pontiff told them, in a message aimed at a nation
where use of the sacrament has fallen drastically since
the Second Vatican Council ended in 1965.

"Christ himself is waiting for you," he said. "He will
heal you and you will be at peace with God."

About 20 persons were taken to hospitals for heat-
related illness by the end of the Mass, and dozens more
were reported stricken in the long walk from the Mass
site to parking areas.

Choice of the Mass site was controversial, and the
medical director chosen for the event resigned in July to
protest the lack of public health precautions.

POPE, Page 5

Inside

Today: Sci-Tech

olph wins at PV
Randolph captured
ank of Boston
ic at Pleasant Valley
rday. Page 49.

er protest reported



Dan Rather re-
portedly stormed
off the set last
week, causing
CBS to go six min-
utes without
transmitting a
e. Page 22.

ker, lighter, faster

Wheelchair designs are bor-
g from spacecraft, bicycle
rplane technology. Sci-
Page 33.

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Dukakis health proposal to meet political reality

Quick action by Legislature, industry sought

By Richard A. Knox
Globe Staff

Gov. Dukakis' gamble that this is
the time and Massachusetts is the
place to show the nation how to re-
structure its jury-rigged health care sys-
tem now will be put to the test.

The governor's move is embodied in
legislation rushed into final form this
weekend. Its preamble simply states: It
shall be the policy of the common-
wealth to implement programs that
will make affordable health care avail-
able to every citizen of the common-
wealth.

Within the next few days, it should
be possible to get a reading on whether
the governor and his advisers are in
touch with reality in trying to enact
such an ambitious proposal by the end
of this month. That is the administra-
tion's deadline, dictated by the expira-
tion of the state's current hospital fi-
nancing law - and, with it, the state's
current \$315 million-a-year pool for
covering hospital costs of the unin-
sured.

The governor's proposal, which car-
ries a price tag of up to \$600 million a
year, would be funded mostly by busi-
nesses, with additional amounts from
state tax funds and consumers.

"The most shocking prospect is that
this might actually be passed by Oct.
1," one leading Massachusetts health
care analyst said yesterday after perus-
ing the 159-page proposal. "And I guess
that it's not that unlikely. The attitude
in this Democratically-controlled state
may well be, 'We've got to do it for the
governor and we'll fix it later.'"

Dukakis is proposing a major rede-
sign of both the financing and the in-
frastructure of Massachusetts health
care - a \$12.7 billion-a-year enterprise
- in order to insure the nearly 600,000
citizens who now lack health insur-
ance. Much of the task would be put in
the hands of a health care czar at the
top of a new agency called the Mass-
achusetts Health Partnership.

Within the administration and the
health care community, state Welfare

HEALTH INSURANCE, Page 16

TWILIGHT PASSAGE



UPI/Reuters photo

The US Navy warship Flatley steams through
the Persian Gulf as the sun goes down. The Flat-
ley was helping clear the way for two Kuwaiti
tankers. Page 6.

Diver orgar Bork

By Gregory W
Globe Staff

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Dukakis health insurance proposal to meet political reality

■ HEALTH INSURANCE
Continued from Page 1

Commissioner Charles A. Atkins is already widely rumored

to be in line for the job, though one of Dukakis' top aides denied last weekend that any decision has been made.

The partnership would have very broadly defined powers to control hospital costs and purchase \$2.5 billion in health care benefits on behalf of the poor, state employees, the unemployed, workers whose companies do not buy coverage, people who now buy individual health insurance policies from Blue Cross and, possibly, the elderly.

The proposal would also require:

- A major reorientation of the state's dominant health insurer, the nonprofit, financially troubled Massachusetts Blue Cross-Blue Shield, that would ultimately make it resemble any commercial insurance company.

- Incentives to nurture a host of new organizations to market, broker and manage health care, in the hope of sharpening competition among both insurers and care providers. New and existing "managed care" entities, such as health maintenance organizations, would be able to bargain for discounts from hospitals and doc-

tors - but the state would limit such discounts to 10 percent.

- Dismantling much of the state's regulatory authority over health care and putting up new and entirely untested mechanisms designed to protect citizens from the new incentives on providers to cut costs - and perhaps corners - in their effort to survive.

- Closure or conversion of nearly 40 percent of the commonwealth's hospital capacity, a step discussed for nearly two decades but - because of its extreme political sensitivity - never actually attempted.

Groups must act this week

Given the intense pressure to act, major interest groups must take a position and swing into action this week. This is no easy task, those in the health care world said yesterday, because the legislation is so complex, sweeping and open-ended.

Major insurers and the state's largest businesses are convening this morning to determine its im-

pact for them and decide whether they can support the governor's plan. At first reading of the bill yesterday, one source said it was not obvious whether businesses that now insure their employers - and subsidize firms that do not - would actually save much money.

Representatives of the poor and the elderly are nervous about some of the plan's features but are generally supportive.

Small businesspeople feel beleaguered and outgunned by the big-business support the governor appears to have in his attempt to make them buy insurance for the 480,000 Massachusetts workers who now cannot get coverage through their place of employment.

The governor would do this one of two ways: By securing congressional permission to require employers to purchase health insurance for their workers; or, if this fails by Jan. 1, 1989, by making all businesses pay a surcharge on the unemployment insurance they must buy. If they offered a basic health insurance plan and paid 80 percent of the premium, the surcharge would be essentially forgiven.

But perhaps the key question at this point is whether the state's \$5 billion-a-year hospital industry will play the pivotal role in the fate of the governor's proposal that it has in previous years when major health care legislation has been enacted.

Closely related to this is the extent to which hospital workers and their unions will support hospitals' argument that the gover-

nor's proposal, noting that a proportion of Massachusetts hospital budgets devoted to pay has declined in recent years.

The Massachusetts Nurses Association, while urging that state officials recognize the need for significant increases in hospital wages, does not want to be blamed for helping to scuttle the Dukakis proposal, an association lobbyist said yesterday.

Steven Hegarty, president of the Massachusetts Hospital Association, said last week he was confident that hospitals - the dominant employers in many communities - can get their message across to legislators. "I real decisionmakers have to list to their local constituency, and our people are speaking very clearly to every legislator in the commonwealth right now," Hegarty said.

Dukakis and his administration, who have the public support of legislative leaders of both houses, are painting the hospitals as unreasonable in their immediate financial demands.

Hospitals, for instance, are pressing for Massachusetts insurers, government and consumers make up for the fact that the federal Medicare funds will not go in 1988. Medicare provides about 40 percent of hospitals' revenue.

Dr. J. Robert Buchanan, general director of the Massachusetts General Hospital, said in an interview Friday his institution would suffer a \$15 million deficit in the coming year unless its revenue climbed by 9.1 percent. Because

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AIDS

IS SPREADING THROUGH

WUUGH

nor's bill does not provide enough money in the coming year to fund a pent-up demand for wage increases. This demand, fueled further by a severe shortage of nurses and other skilled hospital workers, is beginning to result in double-digit wage settlements.

The Massachusetts Hospital Association is orchestrating a major campaign to persuade legislators that the governor's bill is too stingy to permit needed wage increases. On Wednesday the trade group plans to bus several thousand hospital workers to the State House for a rally, followed by visits to local legislators.

However it appears that hospitals and unions are not speaking with one voice when it comes to how much additional hospital revenue is needed. Local 285 of Service Employees International Union, which represents about 6,000 hospital workers, will issue a report today that sharply challenges hospitals' record in using revenue surpluses to increase wages.

"While hospital costs continue to grow well beyond inflation, fewer of these dollars are going to health care workers' salaries,"

Medicare won't pay more, this would require nearly 18 percent more from Massachusetts payers.

"I have very serious questions whether several hundred million dollars more for insuring the uninsured is tolerable at a time when the system requires some serious readjustment after five years of tight control," Buchanan said.

Hegarty argued last week with Dukakis that hospitals need 17.7 percent more from Massachusetts payers next year — an additional \$544 million.

Dukakis officials have flatly said no to that kind of increase, offering only about \$200 million more. Privately they express exasperation with hospitals for making the demand. After meeting with Hegarty, Dukakis increased a special fund in his proposal earmarked for hospital wage increases from about \$45 million to \$60 million.

Under the governor's proposal, one administration official said yesterday, Massachusetts businesses and consumers would pay about 10 percent more to hospitals in the coming fiscal year. This would produce about 5 percent more in net hospital revenues, the official said.

Hurdles remain in bid for global ozone treaty

By Dianne Dumanoski
Globe Staff

MONTREAL — Several key

their consumption of chlorofluorocarbons, or CFCs — which are widely used in air conditioners, refrigerators, aerosol spray cans

collected no one else, including Mayor Flynn, the owner of the quarry and the town of Weston. Bulger said he hoped his suggestions would be considered on the merits, but he was not optimistic. "I'm hopeful that the mayor will look at it and say, 'I welcome a new idea,'" Bulger said in an interview in his office. "But once I make the suggestion I want to be away from it so the critics will no

Constitution Day, as it is being called here, is the culmination of years of planning and millions of dollars in government, corporate and individual spending that have drawn applause and criticism.

It is also the beginning of a yearlong series of special events celebrating the progress of the Constitution through the ratification process by a confederation of

al principles.

The celebration here is being viewed by Philadelphians as an opportunity to boost the image of the city as well as a historical obligation to commemorate the drafting and signing of the 200-year-old document.

"The hope I have is that the confidence of the city to do things, to get things done, will be en-



Pope John Paul II reaches reception School in Los Angeles.

Pope calls to work a

By James L. Franklin
Globe Staff

LOS ANGELES - In a most important address so far in his second American visit, Pope John Paul II yesterday urged Americans to hold the line on dissent. He called for a new campaign to win the hearts and minds of a weary and questioning church membership.

In a four-hour meeting with the National Conference of Catholic Bishops, the pontiff acknowledged that some church members believe that dissent from the church's teaching "is totally incompatible with being a 'good Catholic' and poses no obstacle to the reception of the sacraments

Inside

Today: Calendar, Money

House backs import limits

The House yesterday approved tighter limits on imports of textiles, apparel and shoes. Page 41.

O'Neill on '62 Senate fight



In the fifth of six excerpts from his memoirs, former House Speaker Thomas P. O'Neill Jr. discusses the maneuvering behind the 1962 Edward Kennedy-Edward McCormack Senate primary fight. Page 2.

ate primary fight. Page 2.

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Health plan cost seen as eroding support

By Richard A. Knox
Globe Staff

While Massachusetts hospitals were telling legislators yesterday that Gov. Dukakis' proposed health plan would underfund them to a dangerous degree, big-business and insurer representatives have concluded that the bill is too rich for a hospital system they consider already bloated.

New estimates of the sweeping plan's cost impact appear to be eroding support for the proposal among business and insurance interests. The governor is counting heavily on that support to push his plan through the Legislature in the next few weeks.

Groups representing the poor, elderly and parents of disabled children are also complaining about how the proposal addresses their concerns - or fails to.

Hale Champion, the governor's chief secretary, said last night that the balance of interests the administration tried to achieve is

Thousands of hospital workers gathered at Boston Common yesterday to protest the governor's universal health care proposal. Page 56.

not yet toppling under the mounting criticism. None of the objections he has heard, Champion said, "are frozen or fixed or seriously jeopardize the bill."

However, business and insurance leaders are taking a hard-line stance on further increases in revenues sought from the Legislature by the hospital industry, which says it needs \$544 million in additional funds next year.

The business community analysis, completed late yesterday, concludes that the Dukakis plan would increase payments to Massachusetts hospitals in the coming year by \$248 million. This figure is widely at odds with the hospital industry's estimate of \$115 million.

HEALTH INSURANCE. Page 14

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clusion runs counter to arguments by some scientists that acid-rain damage is widening in the United States and poses an increasing threat to the nation's lakes and forests. The report supports the Reagan administration's position that acid rain does not warrant new pollution controls. (Washington Post)

Vrdolyak aligns with Republicans

CHICAGO - Edward Vrdolyak, who once headed one of the nation's most powerful Democratic machines but lost his bid to unseat Chicago's black mayor, has become a Republican, pledging to make the GOP the city's dominant party. "There is no future in the

Agency urges rules for fishermen, boats

WASHINGTON - The National Transportation Safety Board broke sharply with Reagan administration policy yesterday in saying sweeping regulations should be imposed on fishermen and fishing vessels to cut down on accidents and deaths at sea. Joseph T. Nall, a member of the independent federal agency, told a Senate subcommittee that the Coast Guard should mandate training for captains and crews, require licenses for captains, establish vessel stability standards, order added lifesaving equipment, require periodic vessel certification and bar on-board alcohol and drug use. Nall said the recommen-

ding from treatment and medication to preventing bedsores and injuries. No state-by-state records were made available. (AP)

N.Y. woman killed in escalator mishap

NEW YORK - A woman was killed yesterday when an escalator opened up at a New York Telephone Co. building and she was pulled in, police said. Emma Niskala, 35, of Lynbrook, was riding the down escalator to the mezzanine of the building in Brooklyn when the accident occurred at 7:45 a.m., police said. Officials said she was on her way to her job as an accounting clerk when the escalator mechanism failed and the bottom step opened. (AP)

Health plan cost seen eroding support

HEALTH INSURANCE
 Continued from Page 1
 lion in additional 1988 revenue, and nearly \$60 million more than the governor's figure.

Under the Dukakis plan, health insurance premiums would go up about 17 percent for the hospital component alone, according to the analysis, which administration officials say is in line with their revised figures.

When nonhospital components of health insurance premiums are added in, the typical policy could jump more than 20 percent in cost, said Massachusetts Blue Cross-Blue Shield president John Larkin Thompson.

Thompson said he considers the proposal as it is written to be "generous" to hospitals. "The new numbers by themselves don't lead us to withdraw from continuing to work on the bill," he said. "It's got to be seen somewhat in the sense of where the hospital industry is coming from, which was a number substantially higher than that. But if a higher number comes out of the process, we'd have a very difficult time living with it."

"I can't see how anybody could think it is too generous for hospitals," responded J. Antony Lloyd of Beth Israel Hospital, who said major teaching hospitals are working on a rebuttal to the big-business and insurer critique.

Spokesmen for big business groups, who had been generally supportive of the governor's plan or at least open-minded about it, said last night they are balking at its short-term costs. They also are raising fundamental objections about other features, such as the

requirement that all employers would eventually have to pay 80 percent of their workers' health insurance premiums.

"Based upon our present reading, the bill fails to contain costs in a significant way, and the move to mandate universal health insurance is too much too fast," said John Croser of the Massachusetts Business Roundtable. "Yes, you can accuse us of being a little late with our criticism. We have tried to stay in discussion [with the administration] and understand how the numbers work. We come down concluding that it doesn't contain costs the way it was supposed to."

Richard Mastrangelo of Associated Industries of Massachusetts said his organization has decided that Dukakis should abandon his attempt to enact a broad health care reform bill - with the centerpiece of insuring the 600,000 residents now without coverage. He said the Legislature should merely "roll forward" the current hospital reimbursement law with some sort of cap on reimbursement for hospital free care and bad debt.

Not on board

"We're not getting on board because it's a different ship than we thought it would be, and it's not taking us to the same place we planned to go," said Mastrangelo.

The revised computation was done by a group that calls itself the purchasers of health care. It includes the Roundtable, Associated Industries, Blue Cross-Blue Shield and the Life Insurance Association of Massachusetts, representing commercial health insurance companies.

The analysis suggests that hospitals could count on at least 6 percent in total additional revenues next year. Those who pay premiums to Blue Cross and commercial insurers, the analysis concludes, would pay nearly 12 percent more in hospital costs to make up for shortfalls in Medicare and Medicaid payments.

The Massachusetts Hospital Association insists, on the other hand, that hospitals can count on only 2.3 percent more.

The hospitals' assumptions about their 1988 Medicaid and Medicare revenues also are strongly disputed. An industry fact sheet projects a \$40 million drop in Medicaid in the fiscal year beginning Oct. 1, and no increases in their Medicare payments, which account for about 40 percent of the total.

Dukakis administration officials, say, however, that Medicaid efforts to reduce hospital reimbursement for outpatient care and for patients awaiting nursing home placement will save, at most, \$20 million in 1988. They added that other increases in Medicaid payments to hospitals may offset those reductions.

The Medicare picture is less clear, since Congress has not yet acted on fiscal 1988 payment levels. However, Stuart Altman of Brandeis University, chairman of a national Medicare task force on hospital payments, said in an interview that Medicare payments to Massachusetts hospitals are likely to increase in the coming year.

"I don't understand why they're saying they'll get a zero increase," Altman said.

the contenders in the Democratic presidential campaign looked like characters out of Walt Disney's "Snow White and the Seven Dwarfs."

Now they look as if they're trapped in a reissue of the classic Agatha Christie novel "And Then There Were None" - with the press playing the role of killer.

With the withdrawal of Gary Hart amid reports of his relationship with Donna Rice and the controversy over Sen. Joseph Biden's unattributed use of the political speeches of others and his plagia-

happened 22 years ago, when Biden was in law school, rather than on "important issues," such as relations with the Soviet Union, jobs and literacy?

The answer, according to a number of political observers, reporters and press critics, is no.

What is happening instead, several suggest, is that the role of the press in a presidential campaign is changing.

"In the old politics, before 1968, the candidates were picked
PRESS, Page 4

tal - \$3,149 - than in Massachusetts General Hospital - \$2,821, while Winthrop Hospital's price matched MGH.

The inconsistent hospital pricing is exhaustively documented in the first Massachusetts hospital price guide, published today by the Massachusetts Business Roundtable and the Massachusetts Health Data Consortium.

The document, nearly two inches thick, provides an unprecedented glimpse of what individual hospitals charge for 19 common surgical procedures as well as charges for vaginal childbirth. These charges often vary by thousands of dollars from one institution to another. They have heretofore been an industry secret so carefully kept that even hospitals did not know their competitors' prices - and sometimes their own - for a particular procedure.

The price guide "opens up the black box of hospital prices," said Debra Lerner, research director of the Data Consortium, which intends to update the survey annually.

One of the most "intriguing" findings, Lerner said on Friday, is that "the smallest of the community hospitals are frequently the most expensive."

For example, 183-bed Southwood Community Hospital in Norfolk charged \$2,895 for an un-

complicated hernia repair, while the median charge for the same procedure was only \$1,260 in 221-bed Emerson Hospital in Concord.

A dozen Massachusetts hospitals with fewer than 200 beds charged more than the statewide median of \$3,930 for uncomplicated abdominal hysterectomy, compared with higher prices in nine hospitals with more than 200 beds.

The guide is based on analysis of nearly 90,000 cases of hospitalization in the state's 109 acute-care hospitals. All involved people under age 65 who were insured at the time by Blue Cross and commercial carriers.

The purpose of the massive guide, which sells for \$275, is not to enable individual consumers to look up the cheapest place to deliver a baby or undergo cardiac surgery. In fact, its authors say they are concerned consumers would use such data to choose the most expensive hospital in the mistaken belief that high price stands for high quality.

HOSPITALS, Page 22

The price guide 'opens up the black box of hospital prices.'

- Debra Lerner, research director, Data Consortium

Inside

Today: Sci-Tech

Red Sox take two

Roger Clemens picked up his 17th victory as the Red Sox beat the Orioles twice yesterday, 5-1 and 6-3. Page 45.

'Promise' wins 5 Emmys



"Promise," a drama about mental illness, won five Emmys last night, while "L.A. Law" won four awards for dominant NBC. Page 11.

The throwaway society

Combustion of waste, a method almost abandoned in the 1970s after federal Clean Air Act standards forced many older incinerators to shut down, has come back in demand in recent years. Sci-Tech, Page 33.

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Compromises reached on health plan

By Richard A. Knox
Globe Staff

The Dukakis administration agreed yesterday to make significant changes in the governor's proposed health plan in an effort to placate elderly, disabled and low-income constituents as well as organized labor.

However, one leading administration figure said last night that Dukakis will hold firm against hospitals' demands to increase their revenues next year, despite heavy industry pressure on legislators.

The compromises reached this weekend may signal that the administration has virtually abandoned its strategy of trying to hold together a diverse coalition of interest groups. One state official said the politics of the governor's plan "appear to be lining up in the traditional way" - consumers and labor unions in favor and business and hospitals against.

The proposal will have its first legislative hearing today before the House Ways and Means Committee.

HEALTH PLAN, Page 22

ary widely in state

community hospitals

ison among hospital charges for uncomplicated cases of gallbladder procedures. Other guides have lumped together routine cases and son more difficult, since some hospitals can claim their caseload those other institutions. While the new guide does not eliminate the isetts Health Data Consortium. Even in comparing only Median charges for a coronary artery bypass operation involving one pital to \$25,361 at St. Elizabeth's Hospital. The Massachusetts ic surgery programs, charged on the low end of the scale - \$14,607.

PER REMOVAL (Statewide: \$3,800)

	No. of Cases	Median charges
(200-plus beds)		
Regional	24	\$4,781
	17	4,517
	34	4,313
tal	41	4,270
	47	4,249
	65	4,200
	21	4,130
	23	3,599
th Serv.	30	3,508
	28	3,505
	59	3,418
	42	3,397
	36	3,363
	37	2,262
	32	3,256
	59	3,219
	36	3,181
	46	3,073
	23	3,035
	38	2,884
d	65	2,823
	40	2,820
	41	2,710
	32	2,696
		2,531
		2,404
		1,893
less than 200 beds)		
	13	\$6,569
	9	5,113
	9	4,483
y	17	4,411

ABDOMINAL HYSTERECTOMY (Statewide: \$3,930)

Hospital	No. of Cases	Median charges
Nonteaching (200-plus beds)		
Union (Lynn)	19	\$4,989
New England Memorial	54	4,676
Choate-Symmes Health Serv.	25	4,645
Charlton	114	4,379
Morton	36	4,236
Quincy City	36	4,187
Millford-Whittinsville Reg.	33	4,181
Leonard Morse	33	3,990
St. Joseph's	10	3,863
St. Luke's-New Bedford	115	3,794
St. John's	35	3,661
Norwood	67	3,651
Melrose-Wakefield	51	3,646
Winchester	92	3,470
South Shore	108	3,465
Goddard Memorial	93	3,441
Lowell General	77	3,430
Emerson	60	3,312
Cape Cod	83	3,167
Holyoke	28	3,099
Beverly	43	2,830
Lawrence General	58	2,803
Bon Secours	72	2,797
Sturdy Memorial	66	2,739
Mercy	61	2,716
Providence	61	2,527
Cooley Dickinson	72	2,418
Nonteaching (less than 200 beds)		
Martha's Vineyard	17	\$7,379
Somerville	10	5,039
Anna Jaques	34	4,954
Farren Memorial	9	4,929

Compromises reached on health plan

HEALTH PLAN Continued from Page 1

The compromises have apparently won over consumer advocates who were unsure Friday whether they would continue to support the governor's proposal, even though they strongly favor its primary goal - extending health insurance to 600,000 Massachusetts residents who now lack it.

The administration has backed away, for instance, from its attempt to begin the commercialization of Massachusetts Blue Cross-Blue Shield, a nonprofit company that is currently required to offer coverage to the elderly and to people who cannot buy group health insurance.

Advocates for the elderly were upset about the administration's perceived haste to change Blue Cross-Blue Shield's special social function, so that issue has been deleted from the proposal. Attorney General James Shannon had also expressed reservations about proposals relating to Blue Cross-Blue Shield.

It appeared last night that the compromises have had the intended effect on consumer advocates.

"The significant thing is that the parameters of the debate are now set, and the administration has decided that access to care for the elderly, the poor and the disabled will drive its policy decisions," said Susan Sherry of Massachusetts Health Action Alliance. "They have decided to stop trying to satisfy all the interest groups."

In fact, one new provision decided upon yesterday is certain to antagonize the insurance industry lobby. It would bar insurers from refusing coverage to anyone based on preexisting medical conditions.

This is apparently in response

Ludlow Hospital Society	17	4,411	Farren Memorial	9	4,929
Addison Gilbert	22	4,327	St. Luke's-Middleboro	14	4,912
Fairview	9	4,275	Ludlow Hospital Society	9	4,881
Whidden Memorial	21	4,235	Fairview	8	4,786
Anna Jaques	26	4,056	Marlborough	18	4,659
Marlborough	17	4,030	Addison Gilbert	28	4,498
Fairlawn	6	3,877	Whidden Memorial	20	4,448
Franklin Medical Center	14	3,595	Glover Memorial	6	4,104
Brookline	10	3,498	Sancta Maria	19	4,034
Harrington Memorial	23	3,477	Brookline	16	3,897
Hubbard Regional	10	3,434	St. Anne's	29	3,621
Milton	30	3,420	Franklin Medical Center	29	3,611
Haverhill Munc. (Hale)	34	3,356	Amesbury	10	3,602
Sancta Maria	6	3,351	Hubbard Regional	8	3,601
Glover Memorial	11	3,284	Milton	25	3,557
Parkwood	7	3,281	Falmouth	20	3,521
St. Anne's	24	3,174	Haverhill Munc. (Hale)	83	3,481
Noble	24	3,084	North Adams Regional	30	3,427
North Adams Regional	17	3,061	Tobey	19	3,294
Leominster	23	2,979	Clinton	8	3,282
Henry Heywood Memorial	21	2,942	Henry Heywood Memorial	14	3,281
Amesbury	6	2,922	Hunt Memorial	49	3,257
Jordan	32	2,891	Wing Memorial	12	3,212
Falmouth	9	2,850	Leominster	44	3,090
Hunt Memorial	31	2,850	Harrington Memorial	20	3,022
Mary Lane	12	2,839	Noble	6	2,947
Tobey	12	2,793	Nashoba Community	17	2,672
Nashoba Community	12	2,151	Jordan	44	2,591
			Mary Lane	14	2,392

ages in fiscal year 1965
were insured by Blue Cross and commercial insurers

Boston teaching hospitals

GALLBLADDER REMOVAL (Statewide: \$3,800)

Hospital	No. of Cases	Median charges
Cambridge	7	\$6,770
Carney	17	6,295
St. Elizabeth's	21	5,757
Beth Israel	37	5,745
Framingham Union	49	5,640
Brigham & Women's	35	5,621
New England Deaconess	17	5,606
Children's	7	5,398
University	8	5,357
Faulkner	26	5,319
New England Medical	15	5,020
Massachusetts General	71	4,874
New England Baptist	24	4,649
Waltham Weston	29	4,304
Mount Auburn	36	4,159
Lahay Clinic	56	3,871
Newton-Wellesley	48	3,571

ABDOMINAL HYSTERECTOMY (Statewide: \$3,930)

Hospital	No. of Cases	Median charges
Boston City	11	\$20,763
University	25	7,896
Cambridge	12	6,849
New England Medical	24	6,686
Beth Israel	65	6,217
Brigham & Women's	303	5,934
St. Elizabeth's	62	5,822
Massachusetts General	103	5,535
Faulkner	25	5,443
St. Margaret's for Women	57	5,395
Carney	11	5,350
Framingham Union	101	5,246
New England Deaconess	50	5,096
New England Baptist	65	4,351
Mount Auburn	74	3,919
Waltham Weston	45	3,917
Newton-Wellesley	73	3,839
Lahay Clinic	93	3,834

ages in fiscal year 1965
were insured by Blue Cross and commercial insurers

Globe staff chart

This is apparently in response to concerns voiced by the parents of handicapped children that they were left out of the governor's plan, although it would also benefit many others who are currently uninsured or underinsured.

Secretary of Human Services Phillip W. Johnston acknowledged in an interview last night that the insurance industry will not be happy with the ban on preexisting condition clauses, a provision modeled after a proposal by Sen. Edward M. Kennedy that is currently before congress.

"I doubt that [insurers] will like it," Johnston said, "but many of the consumer groups and the disabled groups will." "It has been a major issue for many of them, particularly the disabled. We think it makes sense at the state as well as the national level."

Johnston listed some of the changes that the administration will present to the Legislature today and said that others are still being discussed. Still under negotiation, he indicated, is language to "clarify our intent" about the broad powers that would be given to a new Massachusetts Health Partnership.

The administration has abandoned its attempt to make the partnership exempt from civil service requirements, a proposal that outraged labor groups. Johnston said other questions about the partnership's structure and authority are still being discussed.

"We have no monopoly on wisdom on these questions," Johnston said. "We're very interested in continuing to talk with advocates and legislators regarding these concerns."

Among the other compromises already reached, the administration has agreed to delete parts of the plan that would have required out-of-pocket payments from Medicaid patients and permitted the state to seize the property of nursing home residents, Johnston and consumer advocates said.

The administration has also agreed to an amendment that would entitle low-income elderly people, those whose incomes are under 200 percent of the federal poverty level, access to the state-mandated fund to finance hospital free care. Advocates for the elderly were especially anxious to get such guarantees because of a recently announced increase of 38 percent in federal Medicare premiums plus existing Medicare coinsurance and deductibles.

Johnston said the administration is still interested in addressing the status of Blue Cross-Blue Shield, the state's dominant health insurer, in the interest of a more competitive insurance market. He said this will be addressed in separate legislation "after this bill is passed."

The human services secretary said he believes the governor's health proposal will pass, with further changes, despite growing opposition to it among major business leaders, insurers and hospitals.

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For the record

Correction: Because of an editing error, a news analysis in Sunday's Metro/Region section about objections to Gov. Dukakis' proposed health plan incorrectly stated that the insurance industry favors granting the state authority to inspect individuals' bank and insurance records. The industry does not think the authority should have the power to inspect those records.

Comedian **Soupy Sales** says his infamous television ploy of the 1960s, when he jokingly told children watching his show to send him the "green pieces of paper" from their parents' pockets, has had lasting influence. "**Jim and Tammy Bakker** probably saw that show, and that's where they got the idea" for the PTL television ministry they founded, he said in a speech over the weekend at his alma mater, Marshall University in Huntington, W. Va. After Sales, whose nickname Soupy is from a play on his real name, Milton Supman, told station officials that he received \$80,000 from the ploy, they suspended him for a week, he said. "If I'd have received all the money people said they sent me, I wouldn't be here talking to you," he said.

Kooped up

US Surgeon General **C. Everett Koop** and his wife, **Betty**, dropped in on "The Golden Girls" and sat around a table with the stars of the popular NBC-TV show after the taping of a new episode. Koop posed for pictures with **Bea Arthur**, **Betty White**, **Rue McClanahan** and **Estelle Getty**, who appear in the series as two widows, a divorcee and one of the women's mother. Koop remarked that he can't get his wife to go out on Saturday nights because she likes to watch the show, but he doesn't mind because he also likes it.

Symphonic pitch

Actor **John Hillerman**, who plays the cultured Higgins on the popular television series "Magnum P.I.," is pitching in to help the Houston Symphony in his home

to raise money for the symphony, according to a public relations firm handling the campaign. Hillerman, who has agreed to act as principal spokesman for the fundraising campaign, also will record radio spots urging Texans to send money to the orchestra, says publicist **Jim Schell**.



AP Photo

Wheels - Millionaire publisher Malcolm Forbes watches Liz Taylor try out the 1988 Harley Davidson motorcycle he gave her yesterday at his Bedminister, N.J., estate.

RO/REGION

Comics 28,29
TV & Radio 31

rally around magistrate

town bigotry; charge unfair treatment

growing up Japanese in blue-collar Charlestown during World War II.

He says he is the last member of a controversy over his sensitivity toward.

They say members of his family were once held in California internment camps during the war. And, they say, a generation later, Hamano's children endured taunts and racial slurs.

Magistrate at Charles- town bigotry firsthand,

But Hamano, friends and acquaintances say, is liv- ing with bigotry firsthand. HAMANO, Page 32



Health bill advances

House panel adds \$192m for hospitals; sends it to floor

By Richard A. Knox
Globe Staff

Gov. Dukakis' universal health care plan whisked through the House Ways and Means Committee yesterday after the panel made significant changes and threw in an extra \$192 million in new 1988 revenues for the hospital industry.

The panel's action clears the way for floor debate on the measure beginning next Monday. But Democratic legislators warned that Dukakis had better start to lobby by House members personally on the controversial proposal if he wants to avoid its getting mired in weeks or months of delay.

Legislators said the political stakes for the governor's health legislation — which were already high — increased sharply yesterday after the resignation of John Sasso as Dukakis' presidential campaign manager. Sasso confessed to leaking material that caused Sen. Joseph Biden to withdraw from the race for the Democratic nomination.

"Now more than anything else [Dukakis] has to show a win on this to avoid the appearance that everything is unraveling," said one House Democratic leader. "If a motion to postpone this for 90 days prevails, his whole thrust and timing are off."

Dukakis hopes to make his proposal to guarantee health coverage for all Massachusetts residents a cornerstone of his campaign for the Democratic presidential nomination.

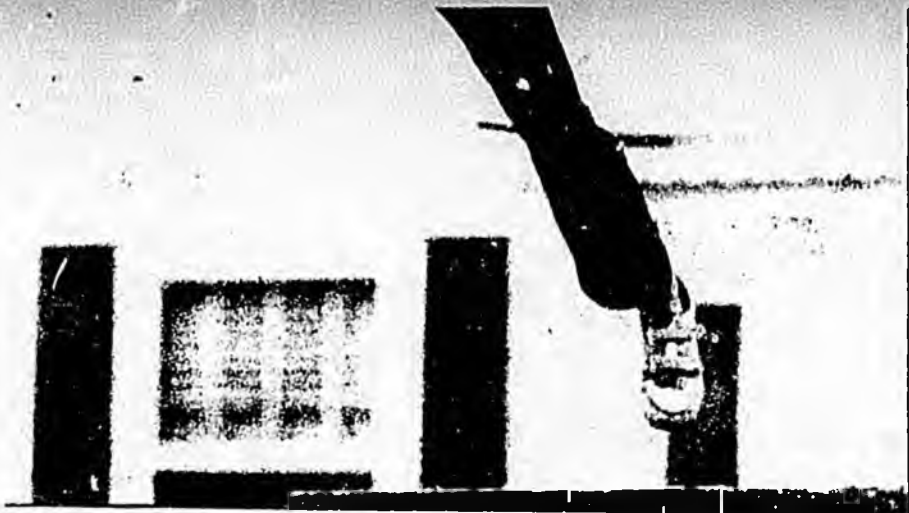
Rep. Richard Voke (D-Chelsea), chairman of the House Ways and Means committee, said in an interview yesterday that the proposal would not be a drag on the state's economy, as business leaders have argued.

"This is a good time to address these issues," he said. "I think we can provide these benefits to people and do it realistically. Other states probably couldn't. Here it's difficult but it's doable."

Voke had previously refrained from endorsing the governor's proposal, which is supported by House Speaker George Keverian (D-Everett).

The chairman added that he has "never seen as many constituencies involved in a bill — never."

The proposal, as reworked by the Ways and Means Committee chairman and staff in the last 10 days, maintains the main elements of the massive Dukakis



Dorchester takes a short leap off a fence post on his way home from school.

The proposal, as reworked by the Ways and Means Committee chairman and staff in the last 10 days, maintains the main elements of the massive Dukakis bill. The central idea is to push Massachusetts businesses to provide health insurance for 433,800 workers and dependents who can't buy it through the workplace.

The House version also considerably enriches the proposal for hospitals, tries to meet some objections from the business community and trims the powers of a new state agency that would purchase or provide health coverage for 1.5 million or more people left uninsured by their employers.

In one provision that has caused some confusion, the committee's version would permit Massachusetts businesses and municipalities that already provide health insurance to pay 50 percent of the premium, instead of the 25 percent required by the Dukakis bill, as long as the cost difference were offset by higher benefits.

HEALTH INSURANCE, Page 30

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ort

City Council fires two Scondras aides

By Peggy Hernandez
Globe Staff

Two aides to a Boston city councillor were fired by the City Council yesterday because of their participation in a group that advocates the rights of people accused of, or victims of, homosexual activity between adults and minors.

The two men, Gary Dotterman and Junis French Wall, said yesterday that they are consulting attorneys and they vowed to continue working for Councilor David M. Scondras (Back Bay-Beacon Hill-Fenway-Mission Hill).

Because each councillor has retained hiring and firing controls over his or her staff by longstanding practice, yesterday's action was considered rare.

The dismissals were called for 11 days ago by Councilor at Large Albert L. O'Neill, who said that if Dotterman and Wall were retained, the council would appear to be indicating to the public that it tolerates child molestation.

Scondras labeled the 9-2 council vote "a witch hunt" and said he believes the two men were slandered and their civil rights violated. Scondras also accused his staff of being involved in the firing.

CITY COUNCIL, Page 48

Plaza in Bridgeport, where construction workers in April, a concrete floor tore loose and fell to wrench up a section. Sources investigating the

investigation into the collapse said, that numerous workers used the building's construction two hydraulic jacks to lift the floor - set off a chain reaction in less than

minutes to go. The structure was damaged to a person close to the

collapse is the worst in the city's history. The damage was about 60 percent on the seventh floor with seven floors completely destroyed. The rest of the floors were damaged. An adjoining wing

was being shifted into place above the seventh floor,

was constructed using a controlled "lift-slab" method in which concrete was poured on columns by jacks and



Globe photo/John Mc

A worker at the Fenway Community Health Center.

Fenway center in forefront of AIDS fight

By Joanne Ball
Globe Staff

A once-filthy basement of a former Fenway antiques store that a handful of neighborhood volunteers cleaned and renovated has emerged 16 weeks later as

the center of the AIDS epidemic has tripled patient needs at the constantly busy neighborhood agency.

Last year the center, at the corner of Haviland Street and Edgerly Road, had 12,000 medical visits. About 20 percent of those were from AIDS patients. That percentage

Committee advances health care bill

■ HEALTH INSURANCE
Continued from Page 25

"This will allow a lot of existing insurance plans to keep what they have," said committee budget director David Lord.

Hospital lobby

Hospitals, which have lobbied House members intensely in recent days, convinced the committee to grant them about \$315 million in additional 1988 revenues, according to committee analysts. By comparison, administration officials have said their bill offered

hospitals about \$256 million more.

The committee also voted for a separate, six-month-old bill that would ensure an additional \$100 million in revenues for 39 hospitals deemed underfunded by the previous state hospital reimbursement law, which expired today.

The committee earmarked \$127.5 million of the increased revenues for wage increases of patient-care workers.

The \$415 million in new hospital revenues approved by the committee translates into about 18.5 percent more on the hospital bills

paid by Blue Cross-Blue Shield and commercial insurers, according to a committee analyst.

However, Massachusetts Hospital Association president Steven Hegarty said yesterday that his organization was still unsatisfied with the \$415 million in new hospital revenues approved by the committee. He said the \$5 billion-a-year industry must have an additional \$488 million in 1988.

Dukakis said yesterday referring to the Ways and Means package: "I certainly hope the line can now be held at these levels."

Delay attempts

Republican members of Ways and Means yesterday led several unsuccessful attempts to delay committee action on the governor's bill by 90, 30 and five days. "It's pretty clear that the Republicans will vote as a bloc next week to postpone action," said one majority member, adding that it was unclear how many Democrats might go along.

However, Rep. Iris K. Holland (R-Longmeadow), who voted for delay, predicted after the session that the House "will pass a bill that provides for universal access to health care, without question. The leadership has spoken.

"No one," Holland added in an interview, "wants to vote against universal access."

Judging from yesterday's committee session, numerous amendments will be proposed next week from both sides of the House chamber. Voke predicted that House debate on the bill will consume "a minimum of two and probably three to four days."

Both Dukakis and business spokesmen expressed concern that floor amendments would further inflate the proposal's cost, which the committee has already increased by hundreds of millions of dollars.

Dukakis said in a press statement that the cost of insuring the uninsured in the House panel's version "seemed to be close to those in our legislation." The administration says that provision would cost between \$588 million and \$636 million.

Voke called the administration's cost estimate "conservative" but said "we don't have a number" for the committee version's cost.

Welcom

By Ed Siegel
Globe Staff



NEW SEASON
9 p.m. Thursdays, Ch

Lord Peter Wimsey's "Mystery's" got him. We saw the Roaring criminological cutup, it and he was played by Michael in a "Masterpiece series so popular it produced the impetus for WGBH to create "Mystery" as series.

Carmichael has given Edward Petherbridge, typically noble Newman "Nicholas Nickleby." Timiliar with both Dickensers, it may seem like a ble leap from Noggs to but Petherbridge, like n British cohorts, has th make the jump comfort.

Petherbridge brings but more substance to tter than Carmichael. It understated performan seems in danger of dis in the role, which was of his predecessor. On hand, there's more whir Wimsey, an everyman wardness that grants hi mythic aura and there his pursuit of Harriet \ believable and affecting

WEATHER Cloudy,

National Weather Service
Boston area: Considerable cloudiness, north west winds 15-25 m.p.h. highs 60-65 (16-18 C). To night, clear, lows 40-45 (4-7 C). Tomorrow, partly sunny, highs in mid-60s (18-19 C).



Starring Edward Petherbridge and Harriet Walter
9 PM Channel 2 PBS
Host: Vincent Price

A ten-part series in three stories
Tonight's story: Strong Poison
He was wild about Harriet. She was beautiful, intelligent and wanted for murder.

Mobil

♻ Closed-captioned for hearing-impaired viewers. Read Parental Library novels, available at local bookstores.
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Globe photo/Vyto Starinskas

Leo Dennis, ski director at the Killington Ski Area in Vermont, last night was considering opening temporarily one lift and one trail this morning for free skiing.

reached over 50 miles per hour and where more than 1½ inches of rain fell. The winds, said police at Boston Harbor, tore a handful of boats loose from their moorings in the harbor and the Charles River.

The weather service replaced forecasts of

rain and light snow with winter advisories yesterday morning for areas between the Hudson Valley and western New England.

"We weren't expecting the storm to be as strong as it was," said Wyllie. Cold air from SNOW, Page 8

le as court convenes

to be heard in new term

erin Hatch said yesterday President Reagan withdrew Robert H. Minion. Page 4.

That is an unsatisfactory outcome to an important case and the justice such cases a second front of a full court. President Reagan nominated S. F. Powell Jr., Bork's moderate, often provided fifth vote especially in upholding affirmative action.

pivotal role and the presented by an eight-

member court were illustrated when Powell fell ill in early 1985 and missed nearly three months of the court's term. Of the cases heard during his absence, the justices issued five 4-4 decisions and ordered new arguments in three others.

Bork's potential impact on the court is significant. He has criticized scores of decisions expanding constitutional rights for women and minorities, reserving some of his most scathing commentary for rulings - including the one upholding the right to an abortion - that have been based on a constitutional right to privacy. Before the Senate Judiciary Committee, Bork said he would respect precedent.

He has also stated that capital SUPREME COURT, Page 4

Reagan salutes accord on trade with Canadians

From Wire Services

WASHINGTON - President Reagan yesterday hailed a new US-Canadian free trade agreement designed to eliminate tariffs over 10 years and cut restrictions on commerce between the North American neighbors. The accord was reached Saturday just before midnight under pressure of a congressional deadline.

"Now, in addition to sharing the world's largest undefended border, we will share membership in the world's largest free trade area," Reagan said in a statement released at the White House.

A Canadian official, however, warned that the pact could "easily unravel" in the next six months. CANADA, Page 7

the union would file an unfair labor practice charge with the National Labor Relations Board, and that if Wilson makes the drivers public employees, the union would sue to annul that move.

"What kind of education does Laval Wilson present to the world," Barrett asked. "Should workers no longer have the rights to bargain?"

DRIVERS, Page 31

A dilemma for state's hospitals

By Richard A. Knox
Globe Staff

The Massachusetts hospital industry, which has led the fight against Gov. Dukakis' proposal

NEWS ANALYSIS

for universal health insurance, now finds itself in a political

quandary.

Hospitals have been so successful in getting the Legislature to enrich the governor's proposal that it appears they cannot afford for it to lose.

The calculus works this way.

The House of Representatives, which begins debate on the proposal today, has several choices: Accept the current version, which Dukakis supports; prolong consideration for weeks or months, which could result in a stalemate like one that occurred last spring; or merely "roll over" the state's current hospital payment system, which expired last Wednesday.

If the House passes the plan and the Senate leaves its hospital payment provisions intact, the \$5 billion-a-year industry will be richer by \$252 million to \$348 million in the coming year, depending on whose estimate one believes.

But if the House kills the bill and merely extends the current hospital payment system - as many in the business community strongly advocate - hospitals will be poorer in 1988 by anywhere from \$60 million-\$75 million (an industry analyst's estimate) to \$124 million (the administration's estimate).

There are indications that the Massachusetts Hospital Association understands this. "We say HOSPITALS, Page 9

A political dilemma for the state's hospital industry

■ HOSPITALS
Continued from Page 1

that House 6068 [the current bill] would produce \$65-\$70 million more than if the current law were extended," said Larry Seck, an analyst on the association staff.

Many hospital administrators say privately the industry must begin to make hard choices about which institutions should survive rather than pursue the old strategy of raising the tide for everybody. But many add there is strong pressure not to break ranks at this critical juncture.

Publicly the industry group has stuck to its claim that it needs an additional \$544 million in revenue in 1988. This would require an additional \$200 million to \$300 million in the payment formulas within H6068.

"We do not feel the cost figures we've put forward are in any way unreasonable," hospital association president Steven Hegarty said last week. "Those are our legitimate needs."

"I'm perplexed by the hospitals' strategy," one Rate Setting Commission analyst said Saturday. "They are risking scuttling the bill, whereas they'd get more money from it than from the current system."

Nelson Gifford, chairman of the Massachusetts Business Roundtable's health care committee, agrees that hospitals would be considerably better off under the governor's proposal.

That is why Gifford, as a representative of employers who would pay increases in hospital bills through insurance premiums, called for a one-year rollover of the current system in an interview Friday. "We've got to hold the hos-

pital efficiency. That has led many - inside and outside the industry - to question whether the public and business community ought to continue subsidizing inefficient and failing institutions.

There is broad agreement among industry analysts that previous and current hospital payment systems have protected such hospitals. New statistics from the state Rate Setting Commission, and other sources, obtained by the Globe, reveal some of these wide disparities publicly for the first time.

They show, for instance, that the cost per inpatient hospital case, adjusted for severity of illness, is higher at many community hospitals than it is at the big-league Boston teaching hospitals. In nearly every case, these high-cost community institutions have very low occupancy rates but they have been able to jack up their charges to compensate for the loss of business.

Thus, the 1986 average cost per case at Norwood Hospital (\$5,134), Union Hospital of Lynn (\$5,341) and New England Memorial Hospital in Stoneham (\$5,528) is considerably higher than at Massachusetts General Hospital (\$4,985).

This is especially striking when one considers that MGH's sicker patients require care that is about 50 percent more intense, on average, than those community hospitals. MGH also has considerable teaching, technology and standby costs that the community hospitals do not have.

Similarly, 26 nonteaching hospitals had higher costs per case in 1986 than Harvard-affiliated Beth Israel Hospital.

Massachusetts hospital profile

The fewer patients, the more expensive occupancy and cost per case* in 1986

	Occupancy rate avg.	Cost per case*
All major teaching hospitals	72.3%	\$5,227
All minor teaching hospitals	65.6%	\$4,782
All community hospitals	58.4%	\$4,716
High-cost community hospitals	53.0%	\$5,657

*Cost per case is adjusted for severity of illness to make up for the fact that some hospitals admit more complex cases than others

Source: Massachusetts Rate Setting Commission, 1987

Globe staff chart

The real problem, Roper said, is that "there are a lot of hospitals in Massachusetts - more than necessary. We need to wring out the excess capacity."

Some hospitals will gain

A closer examination of the Medicare payment shift, however, also reveals that many institutions would actually gain from the new Medicare rates if their previous costs were below the national average.

Medicare gains for many of these low-cost hospitals range from 2 to 12 percent, with an average gain of 3 percent, according to state Rate Setting Commission estimates. Combined with a 17-percent jump in private payers' payments under H6068, these 39 low-cost hospitals should enjoy a 10 percent increase in 1988 revenues.

Teaching hospitals, on the other

hand, will probably lose from 4 to 7 percent in direct Medicare payments during the coming year, though this loss may be offset by slight increases in indirect costs, such as teaching and capital allowances.

Because teaching hospitals will suffer in the Medicare payment shift, the hospital association or a group of hospitals is expected to offer an amendment to H6068 this week that would redistribute some of the Medicare funds to teaching hospitals.

Since community hospitals are not expected to appreciate this, the hospital association is also pushing for enactment of a separate proposal before the House, H4692, that would funnel an extra \$83 million to \$100 million to low-cost hospitals.

The administration's main worry now is that the hospitals'

Mass. hospital costs

Inpatient expenses per admission in 1985 made Massachusetts hospital costs the most expensive among 12 industrial states of which the average cost per admission was \$3,025.64.

	Per admission
1. Massachusetts	\$4,193.71
2. California	\$4,049.96
3. New York	\$3,929.88
4. Michigan	\$3,666.40
5. Illinois	\$3,607.22
6. Ohio	\$3,427.50
7. Pennsylvania	\$3,412.17
8. Florida	\$3,381.46
9. Maryland	\$3,237.37
10. Indiana	\$2,941.64
11. New Jersey	\$2,914.07
12. Texas	\$2,798.88

Source: American Hospital Association and Health Planning Council of Greater Boston

Globe staff chart

money demands will sink the bill, and with it the opportunity to enact "health care for all." They argue this would not be in hospitals' interest.

As one analyst said this weekend: "I think hospitals should remember what Medicare and Medicaid has done for them and think twice about killing this bill."

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The Boston Globe

S U P E R S H U T T L E

pitals back from the gorging they've been doing," he said. "It's an orgy."

The House Ways and Means chairman, Richard A. Voke (D-Chelsea), and his staff also believe hospitals would do better under his committee's version of the bill than under the status quo.

Dukakis and his top officials argue that the extra 1988 money for hospitals is the short-term price the state must pay in order to pass universal entitlement to health care. But the governor is expected to plead with legislators this morning to "hold the line" on further hospital cost increases.

If the hospital association's strategy appears perplexing, the explanation may lie in the internal dynamics of the hospital industry, according to many observers.

Disparities revealed

Though hospitals have successfully presented a united public front in the past weeks and months, the debate over the governor's proposal has deepened schisms within the industry.

The debate has highlighted, for instance, the wide disparities in

Systemwide problems

These are major systemwide problems in the Massachusetts hospital industry, not isolated examples. Seven out of every 10 Massachusetts hospitals had occupancy rates below 70 percent in 1986, the most recent data. Lower occupancy tends to be associated with high costs per case.

Another major point of confusion in the recent debate concerns the failure of the federal Medicare program to increase payments to Massachusetts hospitals in 1988 despite rising costs for personnel, equipment, supplies and new burdens such as the costs of treating patients with acquired immune deficiency syndrome.

The hospital association argues that Massachusetts payers should make up for Medicare "shortfalls."

Medicare's chief administrator at the federal level, William Roper, said in an interview Friday that Massachusetts hospitals will lose about \$100 per Medicare inpatient case in the coming year as the program begins to pay them on national rather than regional rates.

Most expensive community hospitals in Mass.

	1986 figures	
	Occupancy rate avg.	Cost per case*
Marlborough Hospital	55.1%	\$4,834
J.B. Thomas Hospital	66.9%	\$4,853
Leonard Morse Hospital	63.8%	\$4,870
Fairview Hospital	9.0%	\$4,877
Hahnemann of Boston	67.2%	\$4,925
Somerville Hospital	51.1%	\$4,965
Parkwood Hospital	49.1%	\$5,021
Norwood Hospital	59.7%	\$5,134
Hale-Haverhill Hospital	69.2%	\$5,143
Lawrence Memorial Hospital	55.1%	\$5,164
Union of Lynn Hospital	55.0%	\$5,341
** Mary A. Alley Hospital	50.6%	\$5,392
Central Hospital	67.9%	\$5,525
New England Memorial	56.4%	\$5,528
Brookline Hospital	15.5%	\$7,355
Huntington General	26.0%	\$7,500
Southwood Hospital	53.7%	\$9,753
Average	53.0%	\$5,657

*Cost per case is adjusted for severity of illness to make up for the fact that some hospitals admit more complex cases than others

** Has since ceased inpatient services

Source: Massachusetts Rate Setting Commission, 1987

Globe staff chart



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cutting off US oil purchases from that country, depriving it of currency that could be used to buy arms to fuel the Iran-Iraq war and attacks on shipping in the Persian Gulf, where a US task force is on duty escorting oil tankers.

It was the second time in a week that the Senate voted such a

embargo in the gulf. The action is considered somewhat symbolic because Iranian oil not purchased by the United States could easily be sold elsewhere.

The House measure, which differs slightly from the Senate version, also urges the United States to persuade Japan and US allies

EMBARGO, Page 4

Bus drivers, Wilson agree to arbitration

By Patricia Wen
Globe Staff

Superintendent of Schools La-val S. Wilson and striking bus drivers agreed last night to enter binding arbitration to end the 28-day walkout, leading both sides to predict buses may roll as early as tomorrow.

This proposed solution to the strike - which came as Wilson was starting the arduous task of hiring replacements - must be approved by the Boston School Committee to become effective. Committee President John A. Nucci

has scheduled an emergency meeting for 5 p.m. today.

The proposal unfolded when union members emerged from a three-hour membership meeting in Dorchester last night to say they would return to work as soon as school officials agreed to enter binding arbitration.

"There will be a return to work as soon as the document is signed," said Warren Pyle, an attorney representing the United Steelworkers of America, Local

DRIVERS, Page 12

Judge refuses to free mother

By Steve Curwood
and Diego Ribadeneira
Globe Staff

Essex County Probate Judge Haskell Freedman yesterday gave custody of Nicole LaLonde to his court's probation department and rescinded an order that granted temporary custody to her father after her mother, Virginia LaLonde, fled the state with her in June 1986.

Freedman made the ruling at a hearing at which Virginia LaLonde's lawyers asked the judge to give custody of the child to the Archdiocese of Boston and to free Mrs. LaLonde from prison, where she has been held for contempt since March 31.

Freedman did not explain why he chose to award custody of the child to the probation department of the Essex County Family and Probate Court. He said a written order will be released later.

Freedman added, "The child will be held at a hospital and evaluated by three court-appointed experts" to determine whether she has been sexually abused.

Judge: Hasl

At the same time, the probate court refused a request by Virginia LaLonde's attorney for temporary custody of the child from the archdiocese.

Mrs. LaLonde's attorney, Robert Herr, said yesterday that he will appeal the ruling to the Massachusetts Supreme Court. A hearing before Justice John Warner. Another

Inside

Today: Food

Cardinals beat Giants, 5-3

The Cardinals topped the Giants last night, 5-3, in the National League playoff opener. Page 79.

Development outlook



Officials said yesterday that private development in the center city in the early 1990s will have to take a back seat to public construction. Page 21.

Reagan shift on Latin plan

President Reagan, in a strategy shift, will voice support today for the Central American peace plan, aides said yesterday. Page 3.

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Classified 37-50, 89-100

Health bill faces overhaul

By Richard A. Knox
and Frank Phillips
Globe Staff

Gov. Dukakis' beleaguered health care bill faces a major overhaul after House leaders yesterday assessed the political damage from the first floor debate on the proposal Monday. State House sources said last night.

The governor got the bad news last night from a delegation of House leaders headed by House Speaker George Keverian (D-Everett). Emerging from a half-hour meeting, Dukakis acknowledged that more time will be needed to overcome strong opposition to the proposal.

Keverian and other leaders reportedly told Dukakis that the bill is in such trouble that fundamental changes may be needed. The governor and his chief secretary, Hale Champion, reportedly suggested some alterations in the proposal, "but nothing was resolved," one source said.

"It may not be something we'll be able to do overnight," Dukakis told a group of reporters as he left his office for a presidential campaign trip to Baltimore and Washington. "It may take time. But everybody knows that we've got to act on these issues."

At stake is Dukakis' high-visibility push to HEALTH, Page 37

The mirror



Robert Lewis (left) and Stuart Ker at the site of a century-old Ja

Dukakis' health bill faces overhaul

■ HEALTH
Continued from Page 1

make Massachusetts the first state to guarantee health insurance to all its citizens. The 155-page bill also attempts to control hospital costs.

The bill's fate is also wrapped up with Dukakis' presidential ambitions, not only as a bold initiative but also as demonstration of his managerial and political abilities. Before Monday, the administration, House leaders and even the Massachusetts Hospital Association were predicting that the health care bill would pass the lower chamber this week.

Last night, however, Dukakis left open the possibility that House consideration of the bill would be delayed beyond next Tuesday. The bill was postponed until then by a vote of 126-29 after it became evident that it would fail on a direct vote.

House leaders will be polling members today to determine how much support exists for Dukakis' "health care for all" proposal. Although Keever declined comment, sources close to the leadership said last night that "something will be done tomorrow. There will certainly be some news about the bill tomorrow."

Others speculated this means the complicated proposal would be returned to the House Ways and Means Committee for a major re-drafting. The chairman of that committee, Rep. Richard A. Voke (D-Chelsea), made substantial changes in the original bill in an unsuccessful attempt to placate opposition from the hospital industry and business community.

"Strongly committed"

The governor said he needed to "get a better sense of what concerns legislators have and some of the

ways we can respond to that. If it takes a little longer than we thought, then we'll spend the time at it. We're all strongly committed to getting a good health care bill."

Some House leaders were critical of the administration's political strategy on the bill, saying the governor and his staff failed to counter the barrage of opposition from the hospital industry and small businesses to major features. The impact of small-business opposition in particular was underestimated, several said.

"Every one of us has been to the dry cleaners and barber shops and harangued about this. Our local people are crying survival," said one House leader. The administration "didn't give us the answers. We didn't have the ammunition to answer it."

One feature of the proposal would have required all businesses to provide health insurance for their employees or pay a 12 percent surcharge on the unemployment insurance premiums. This provision would hit small businesses especially hard, critics argued, since they often do not provide health insurance benefits now.

Critics in both parties yesterday placed the blame for the bill's troubles on Dukakis and his staff. They charged that the governor relied on House leaders to round up the votes he needed to pass the proposal and failed to lobby legislators personally to overcome stiff opposition from local hospitals and businessmen.

"There was a tremendous void in reacting to what was obviously going on on the House floor," said Rep. John Flood (D-Canton), chairman of the Joint Taxation Committee.

Sasso's absence

Flood and others said the bill's difficulties show that Dukakis is

suffering from the absence of long-time aide John Sasso, who had served as his chief secretary until resigning to become chief of his presidential campaign earlier this year.

"Sasso was always valuable in sensing the pitfalls," said Flood, whose relationship with Sasso was stormy. "The guy was very tuned in and anticipated the resistance and tensions. They didn't do it in this instance and they fell on a big one."

Sasso resigned from the campaign post last week after he admitted leaking a videotape that helped sink Sen. Joseph Eiden's presidential bid.

Flood said he has had no contact at all with Champion, Sasso's successor as chief secretary and the main architect of the complex health care bill. "I've never met the man nor talked to him," Flood said.

Republican leader Steven D. Pierce (R-Westfield) charged that Dukakis' failure to move the health bill, which the governor identified as his highest legislative priority, reflects "how out of touch he really is."

"This really clashes with the overall campaign theme of managerial and political competence," Pierce said. "He talks over and over again of his great relationship with the Democratic Legislature. This really pulls the plug on that."

Champion last night brushed aside criticism that he failed to lay the political groundwork for the health care bill in the Legislature.

"Nobody is somebody else, and I have no aspirations to be somebody else," Champion said, referring to criticism that he had not been as politically skillful in moving the bill as Sasso might have been. "People have different styles, and I'd be the last to say that criticism of me is unwarranted."

However, one top legislative staffer argued that Sasso - and Dukakis - had never had to push such a complicated and controversial issue through the Legislature. "John Sasso never had to do anything like this," the staffer said.

Mental health said to 1 of 5

NEWTON: Mental illness, although often ignored as a taboo, is the nation's health problem of 5 adults a day. The \$180 billion health industry...

John Hinckley, Jr., a mental health patient, is the subject of a new book. He spent six years in a mental hospital and is now a free man. He is the author of a book on mental illness...

"I hate the stigma, which is the worst in the world," said Hinckley. He is the author of a book on mental illness. He is the author of a book on mental illness...

The book is the first by a mental health patient. It is a book on mental illness. It is a book on mental illness...

Hinckley's company is the first to be founded by a mental health patient. It is a company on mental illness. It is a company on mental illness...

He found after his hospitalization that he was not alone. He is a book on mental illness. He is a book on mental illness...

Hinckley's cause is the cause of many others. He is a book on mental illness. He is a book on mental illness...

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House turns down GOP measure to shorten hospital fund extension

By Richard A. Knox
Globe Staff

Democratic leaders of the Massachusetts House won the first vote yesterday in their attempt to break the current legislative deadlock over Gov. Dukakis' massive health care reform proposal.

House Speaker George Keeverian (D-Everett) and other majority leaders are trying to extend the state's current hospital financing system until April. The move would put pressure on hospitals to compromise on their demands for up to \$544 million in additional revenue during the fiscal year that began Oct. 1.

At one point during yesterday's debate, Keeverian was on the floor lobbying individual House members — an unusual step for the speaker, observers said.

The House voted 103 to 41 against a Republican-sponsored motion to shorten the extension period to 60 days.

Although the issue seems procedural, State House observers said its outcome may decide the scope and the future chances of the Dukakis health plan, which includes a proposal to guarantee health insurance for all citizens as well as provisions to control hospital costs.

Time factor said crucial

The length of an extension is considered crucial by both sides, since a longer-term extension puts greater financial pressure on hospitals to compromise. Thus, if hospitals succeed in shortening the extension, their position in fur-

'I don't understand why we think we'll solve the problem by extending the current system six months. We're just going to exacerbate it.'

— Rep. Marjorie Clapprood

ther negotiations over cost control and other issues would be strengthened.

The House is scheduled to take up the extension bill again today, when legislators sympathetic to hospitals are again expected to offer amendments that would shorten the 6-month extension.

Hospital industry representatives said they were alarmed yesterday morning when they saw the language of the House leadership extension proposal, which they interpreted as a six-month freeze on hospital charges at the rates in effect on Aug. 1.

Confusion over this point led to heated exchanges on the House floor between Rep. Marjorie Clapprood (D-Sharon) and other hospital supporters and Richard A. Voke (D-Chelsea), chairman of the House Ways and Means Committee, author of the extension proposal.

"It's not a freeze and does not say that it is a freeze," Voke insisted.

"A freeze is a freeze is a freeze," responded Clapprood, saying she had been informed by Voke's own staff and members of the Ways and Means Committee that the proposal had that effect.

"I don't understand why we,

they would like to avoid the need for substantive amendments, which they fear could lead to protracted procedural wrangling.

By extending the current financing system that expired Oct. 1, House leaders said, the measure would allow hospitals to raise their charges only about 4 percent. An increase of about 16 percent was contained in a Dukakis-House proposal that the hospital industry helped stave off last week. Hospital representatives said that proposal was not generous enough to cover their 1988 fiscal needs.

Rep. Peter Forman (R-Plymouth) argued that a six-month extension would put many hospitals "in serious financial difficulties."

"I understand that some have to send a message to the hospital community," Forman said. However, he added, "we have got to keep hospitals financially sound. We do that by a short-term extension" of the financing mechanism that expired Oct. 1.

Voke countered that a six-month extension, by applying pressure for a negotiated solution, would "save this system from chaos and, frankly, keep this legislative body from chaos with so many [legislators] running around with little pieces of a bill."

Could be shortened

Voke noted that a six-month extension of the current system could be considerably foreshortened if the involved parties could agree on a compromise before then.

Meanwhile, the governor's staff vowed to keep fighting for the administration's proposal to guarantee health insurance coverage for all Massachusetts citizens.

"We're still for health care for all," said Hale Champion, the governor's chief secretary. Dukakis will meet today with representatives of small business, a sector whose opposition was instrumental last week in persuading House leaders to withdraw the proposal from the floor before it was amended to death.

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responded Clapprood, saying she had been informed by Voke's own staff and members of the Ways and Means Committee that the proposal had that effect.

"I don't understand why we think we'll solve the problem by extending" the current system six months, Clapprood said. "We're just going to exacerbate it." Clapprood also said she favored splitting the universal health insurance part of the Dukakis plan from its hospital cost-control provisions - a step that most agree would kill the governor's health-care-for-all proposal.

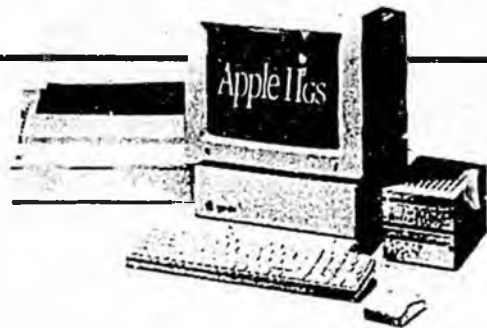
Want to avoid wrangling

Voke said in a subsequent interview he will attempt today to allay House members' concern about the freeze issue. "We don't think the bill is flawed," Voke said. If the proposal needs clarifying language, he said, it might be added today on the House floor. Voke and other House leaders said

will meet today with representatives of small business, a sector whose opposition was instrumental last week in persuading House leaders to withdraw the proposal from the floor before it was amended to death.

Sen. Patricia McGovern (D-Lawrence), chairman of the Senate Ways and Means Committee, also said she remains committed to the universal health insurance part of the legislation, though she is "not wedded to any particular way of doing it in terms of the strategy or the tactics." The Senate must await House action on the proposal, since it includes new state revenue-raising authority, and all tax matters must originate in the House.

"People need to keep speaking out that universal access to care is an achievable goal in this legislative session," said McGovern, who will speak about the subject this noon before statewide Community Action Program representatives.



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Dukakis health proposal may hitch a ride

McGovern exploring whether to use House bill as vehicle for universal health insurance

By Richard A. Knox
Globe Staff

The Massachusetts House yesterday passed and sent to the Senate a measure that might become a vehicle for Gov. Dukakis' universal health insurance proposal.

The House bill, passed on a voice vote, merely extended the state's six-year-old hospital financing system for another six months.

Sen. Patricia McGovern, chairman of the Senate Ways and Means Committee, said she is exploring whether some version of the governor's proposal could be loaded onto the limited House measure.

McGovern (D-Lawrence) said in an interview that she hopes the hospital financing extension bill could legally become the vehicle for universal health care access as well as hospital cost-containment reform, "but it has to be looked into." It might take a few days to decide, she added.

"Basically I think we should proceed right now to see what we can accomplish," McGovern said. "I think we should try to go as ag-

gressively at this as we can. ... If we don't seize this moment, we'll deeply regret it, we'll lose the moment."

There was widespread speculation at the State House yesterday that McGovern would grab the initiative on the universal health insurance issue.

During House floor debate on the extension bill, Rep. Iris K. Holland (R-Longmeadow) asked the House Ways and Means chairman, Richard A. Voke (D-Chelsea), if the bill could be remodelled into a full-scale universal health insurance proposal in the Senate. "I have no idea what, if anything, would return from that chamber," Voke said.

"I believe this is what is going to happen: When this bill comes back to us, it will have attached to it Pat McGovern's version of a universal health insurance bill," Holland said in an interview. "What I anticipate is that we will have a universal health care bill this year and that it will be revised by Sen. McGovern."

Told about Holland's statement, McGovern laughed. "Let's see if Iris Holland is indeed cor-

rect," she said. "I wish Pat McGovern knew the answers."

The House also gave preliminary approval, also without a roll-call vote, to another bill that would provide an estimated \$100 million in additional 1988 revenue to 39 "underfunded" hospitals.

The second bill was reported out of the House Ways and Means Committee on Oct. 13 but had been held in the clerk's office until yesterday. The Massachusetts Hospital Association has pressed House Speaker George Keeverian for the bill's release. One hospital association leader said last week that Keeverian had pledged his support for the bill.

Catherine Dunham, the governor's director of human resources, speculated yesterday evening that the second bill, House 4692, "might become a vehicle too" for the universal health insurance package if the extension bill is deemed procedurally inappropriate.

"We're not that far away" from legislative approval of "the whole thing," Dunham said, referring to a proposal that would be-

gin the process of insuring the 600,000 Massachusetts residents without health insurance.

One important issue concerns the flow of money to about 30 hospitals that provide the bulk of the state's "free care." These funds, totalling more than \$315 million a year, are raised through a 13.25 percent surcharge on all hospital bills; the money is transferred from hospitals with low volumes of "uncompensated care" to hospitals with high volumes, such as Boston City Hospital, Carney Hospital and Brigham and Women's Hospital.

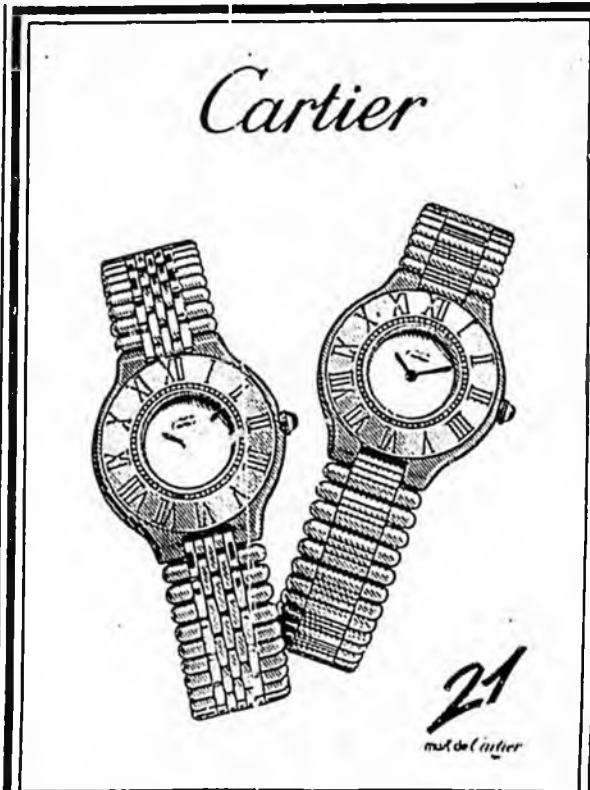
The state hospital financing law that expired Oct. 1 provided for the transfer of these funds. Until the extension bill is passed by the Senate and signed into law by the governor, there is no legal mechanism for the transfer.

Today - the 15th of the month - is when the accumulated funds are ordinarily paid to the hospitals with a high amount of free care. Thus, those institutions will begin to suffer financially from the current legal hiatus.

Dunham said the administration has been trying to persuade the hospital association to organize a voluntary transfer of the funds, but is not sure whether the hospitals will go along. "Since hospitals strongly oppose a six-month extension of the old system, she said, the administrator has argued that they "should not give the Senate any excuse to pass the

extension bill."

Ten days ago, the House leadership abruptly withdrew the measure from floor debate in the face of overwhelming opposition from small-business representatives concerned that the Dukakis plan was too expensive and the hospital industry, which argued that it did not provide them enough money.



HB

454

HOUSE COMMITTEE REPORT

(7)

Date referred: 2/10/88

FURTHER REFERRALS:

Resources

DATE: 2/23/88

The Labor & Commerce Committee has considered HB 454

"An Act relating to the operation of state hatcheries; and providing for an effective date."

RECOMMENDS:

- replace with 3 HB 454 (L&C) the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis same as previous zero fiscal note published _____

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

Cliff Davidson

~~_____~~

Alto Kosman

J. Ellis

W. F. Moore no rec

Bob L. ... no rec

David ... no rec

David ...

Chairman's signature

FISCAL NOTE

REQUEST:

Revision Date: 2/22/88
Title: An Act relating to the operation of state hatcheries
Sponsor: Eliason
Requestor: Eliason

Agency Affected: Fish and Game
BRU: FRED
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE						
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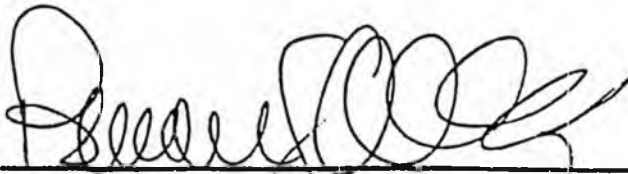
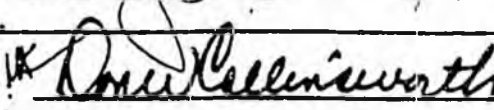
FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by:  Phone: 465-4160
Division: F.R.E.D. Date: 2/22/88
Approved by Commissioner:  Date: 2/27/88
Agency: Fish and Game

Distribution (by preparer):
Legislative Finance
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Requestor
Office of Management and Budget
Impacted Agency(ies)

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BEN GRUSSENDORF

P. O. Box 928
SITKA, ALASKA 99835
(907) 747-8458

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Alaska State Legislature



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JUNEAU, ALASKA 99811

(907) 485-3824
(907) 465-3720

House of Representatives

SPEAKER OF THE HOUSE

MEMORANDUM

To: Rep. Dave Donley
Chairman
House Labor & Commerce Committee

From: Rep. Ben Grussendorf
Speaker of the House

Date: February 22, 1988

Subject: Proposed committee substitute for House Bill 454
"An Act relating to the operation of state hatcheries."

Attached to this memorandum is a proposed substitute for House Bill 454, a measure authorizing the Commissioner of Fish & Game to contract for the operation of state-owned hatcheries that the department has determined it can no longer operate. The bill provides that the aquaculture association located in the same region as an affected hatchery will be given a preference right in the operator selection process. Should a regional aquaculture association be unable to meet the criteria established by Fish & Game, the department would then select an operator through the procurement process provided for in AS 36.30.

The proposed substitute for House Bill 454 differs only slightly from the original. The substitute allows the Commissioner of Fish & Game to waive the submission of an application for a permit to operate a hatchery. This lengthy permit process is normally required prior to the opening of a new hatchery, a situation not contemplated by this legislation. The substitute bill also deleted the word "transfer" from section one, and instead uses the phrase "provide for" the operation of the hatchery. This change clarifies the fact that the State of Alaska

retains all ownership rights in the hatchery, as well as the right to manage the resource.

House Bill 454 and Senate Bill 410 are an appropriate response by the Department of Fish & Game to intent language placed in the FY 1988 budget that required the department to develop ways to relieve the burden on the general fund caused by state hatchery operation. If the Legislature enacts either bill in short order, the Department of Fish & Game will have enough time to contract for the operation of some hatcheries prior to the start of Fiscal Year 1989, and more importantly before the Spring salmon runs. With the provisions in the legislation which allow operating cost recovery through the limited harvest of excess salmon, at least some of the new operators will be able to begin operation with no impact on the general fund in FY 89.

I hope the House Labor & Commerce Committee will consider this proposed substitute for adoption and will act on the legislation in an expeditious manner.

5-1885B
Bannister
2/22/88

Original sponsors: Grussendorf and Sund

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 454 ()

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the operation of state hatcher-
7 ies; and providing for an effective date."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 16.10 is amended by adding a new section to article 8
10 to read:

11 Sec. 16.10.480. CONTRACTS FOR THE OPERATION OF STATE HATCHERIES.

12 (a) If the department determines that it is unable to continue op-
13 erating a state-owned hatchery or that it is in the best interest of
14 the state to provide for the operation of the hatchery by another
15 person or by another person in cooperation with the state, the depart-
16 ment may enter into a contract for the operation or cooperative opera-
17 tion of the hatchery.

18 (b) Notwithstanding AS 36.30, when selecting a contractor under
19 (a) of this section, the department shall give a preference to the
20 regional association organized under AS 16.10.380 that is located in
21 the region in which the hatchery is located. If the department deter-
22 mines that the preferred regional association does not meet the crite-
23 ria established by the department for the contract, the department may
24 not award the contract to the preferred regional association and shall
25 procure the contract under AS 36.30 after considering the recommenda-
26 tions of the preferred regional association.

27 (c) A contract entered into under this section must provide that
28 the hatchery will be operated under AS 16.10.400 - 16.10.445 and
29 16.10.460 - 16.10.470 and the regulations adopted under those

1 sections.

2 (d) The department may issue to a contractor who operates a
3 hatchery under this section a permit to harvest adult salmon during
4 the term of the contract in a quantity sufficient to allow the con-
5 tractor to recover all or part of the contractor's costs of operating
6 the hatchery.

7 (e) A contract under this section for the operation of a
8 hatchery may not affect the state's ownership of the hatchery and does
9 not affect the state's responsibility to manage the resource.

10 * Sec. 2. AS 16.10.400(a) is amended to read:

11 (a) The commissioner or a designee may issue a permit, subject
12 to the restrictions imposed by statute or regulation under AS 16.-
13 10.400 - 16.10.470, to a nonprofit corporation organized under
14 AS 10.20, after the permit application has been reviewed by the re-
15 gional planning team, for

- 16 (1) the construction and operation of a salmon hatchery;
17 (2) the operation of a hatchery under AS 16.10.480.

18 * Sec. 3. AS 16.10.400(b) is amended to read:

19 (b) The application for a permit under this section shall be on
20 a form prescribed by the department and be accompanied by an applica-
21 tion fee of \$100. The commissioner may waive the submission of an
22 application for a permit to operate a hatchery under AS 16.10.480.

23 * Sec. 4. AS 16.10.400(e) is amended to read:

24 (e) A qualified regional association formed under AS 16.10.380,
25 if it has become a nonprofit corporation under AS 10.20, has a prefer-
26 ence right to a permit under (a)(1) of this section if its proposed
27 hatchery is provided for in the comprehensive plan for that region
28 developed under AS 16.10.375 and the fresh water source exceeds one
29 cubic foot per second minimum flow. Another [ANY OTHER] local

1 nonprofit hatchery corporation approved by a qualified regional asso-
2 ciation has an identical preference right.

3 * Sec. 5. AS 16.10.410(c) is repealed and reenacted to read:

4 (c) The hearing shall be conducted by the department. At a
5 hearing for a permit under AS 16.10.400(a)(1), the applicant shall
6 present a plan for the proposed hatchery, describing the capacity of
7 the hatchery and other relevant facts that may be of interest to the
8 department or the public. Interested members of the public shall be
9 afforded an opportunity to be heard.

10 * Sec. 6. AS 16.10.450 is amended to read:

11 Sec. 16.10.450. SALE OF SALMON AND SALMON EGGS BY HATCHERY.

12 (a) Except as otherwise provided in a contract for the operation of a
13 hatchery under AS 16.10.480, a [A] hatchery operator who sells salmon
14 returning from the natural waters of the state, or sells salmon eggs
15 to another hatchery operating under AS 16.10.400 - 16.10.470, after
16 utilizing the funds for reasonable operating costs, including debt
17 retirement, expanding its facilities, salmon rehabilitation projects,
18 fisheries research, or [FOR] costs of operating the qualified regional
19 association for the area in which the hatchery is located, shall
20 expend the remaining funds on other fisheries activities of the qual-
21 ified regional association.

22 (b) Fish returning to hatcheries and sold for human consumption
23 shall be of comparable quality to fish harvested by commercial fisher-
24 ies in the area [,] and shall be sold at prices commensurate with the
25 current market.

26 * Sec. 7. This Act takes effect immediately under AS 01.10.070(c).
27
28
29

HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE

P.O. BOX Y, JUNEAU 99811


(907) 465-3892



February 25, 1988

M E M O R A N D U M

To: Representative Sam Cotten, Co-Chair
Representative Adelheid Herrmann, Co-Chair
House Resources Committee

From: Representative Dave Donley, Chair
House Labor and Commerce Committee 

Re: HB 454 - Operation of state hatcheries

On Tuesday, February 23, the House Labor and Commerce passed out a committee substitute for HB 454, relating to the operation of state hatcheries. The measure is now before the House Resources Committee.

HB 454 authorizes the state to contract out the operation of state owned hatcheries to regional non-profit associations. As explained to our Committee, there are currently four hatcheries whose operating costs are not included in the FY 89 budget. Without passage of HB 454 and the opportunity for contracting with private non-profits, we were told that these hatcheries would be closed, resulting in the loss of the facility to the state and loss of jobs currently held by state employees who work for the hatcheries.

The House Labor and Commerce Committee responded to the urgency of the issue by passing out HB 454 so that it could be considered by the Resources Committee in a timely manner. However, we did so with extreme reservations about the question of "privatization" of state facilities and the effect on current state employees.

A representative from the APEA offered an amendment to HB 454 that would have required private non-profits to give a hiring preference to state employees displaced by the transfer of the operation of a state-operated facility to the private sector. Our Committee chose not to adopt the proposed amendment because of significant legal questions over imposition of a hiring preference on private non-profits and the sense of urgency described above.

Therefore, I am submitting this letter at the request of the Committee so that the record is clear that we do not endorse the wholesale "privatization" of state facilities without clear statutory guidelines that include protection for current public employees.

To further complicate matters, the Senate version of HB 454 (SB 410) was before the Senate today, held over from the February 24 calendar because

of debate over the question of requiring a hiring preference for displaced workers. SB 410 passed unanimously without amendment but with a Letter of Intent offered by Senators Eliason and Duncan that addresses the issue of displaced workers. We understand that the APEA representative has withdrawn their request for the hiring preference amendment in lieu of the Senate Letter of Intent.

SB 410 should come to the House early next week and will be referred directly to the House Resources Committee. The House Labor and Commerce Committee urges the House Resources Committee to adopt the Senate Letter of Intent with the additional language (as per attached) directing the Department to retain displaced workers for deployment in other hatcheries.

LETTER OF INTENT FOR CS SB 410 (Resources)
Offered by Senator Eliason and Duncan

It is the intent of the Legislature to encourage any entity which enters into a contract with the state to operate a state hatchery, to hire the employees who were laid off from the hatchery as a result of assumption of operation by the contractor. Those state employees not hired by the new operator should be retained by the Department and redeployed to provide better management of our renewable fisheries resources.



**STATE OF ALASKA
OFFICE OF THE GOVERNOR
BILL ANALYSIS**

DEPARTMENT Fish and Game	DIVISION FRED	BILL NUMBER SB 410/HB 454	SPONSOR Eliason, Jones, Kerttula, Grussendorf
-----------------------------	------------------	------------------------------	---

SHORT TITLE OF BILL

DEPARTMENT POSITION
The department supports this bill as is.

PREPARED BY Brian J. Allee	DATE 2/22/88	COMMISSIONER'S SIGNATURE <i>Brian J. Allee</i>	DATE 2-22-88
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SUMMARY

OTHER AGENCIES AFFECTED BY BILL Department of Commerce and Economic Development	CONSTITUENT GROUP(S) AFFECTED BY BILL Regional aquaculture associations, commercial fishermen, sport fishermen
---	--

ORGANIZATIONAL SUPPORT FOR BILL Regional aquaculture associations, sport fishermen, commercial fishermen	ORGANIZATIONAL OPPOSITION TO BILL
--	-----------------------------------

FISCAL IMPACT: NONE FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT The 1987 Legislature placed intent language in the FY 88 FRED Division budget that directed the division to develop innovative programs for hatchery operation through cooperation with the regional aquaculture associations (RAA). Contracting operations of state-owned hatcheries to RAAs was recommended by a government/public work group formed to address the intent. Building on the private nonprofit laws that have proved effective, this amendment allows FRED to cooperate with the RAAs in developing innovative

Continued on page 2.

ANALYSIS OF BILL/PROGRAM EFFECTS This bill amends existing statutes to extend a preference right to operate under contract existing state hatcheries in the same manner that qualified RAAs have for the development of undeveloped hatchery locations. This preference right for qualified RAAs to operate existing state hatcheries will allow sole source contracting for the operation of state hatcheries if the state is unable to continue due to insufficient operating funds. These contracts will stipulate that the state remain in control of the total program through a permit, a public hearing, and completion of an annual operational plan, all of which are subject to the approval of the Commissioner of the Department of Fish and Game. Additionally, the RAAs, in order to recover the cost of hatchery operations, will be able to sell salmon returning to the facility which are surplus to the common property fishery.

AMENDMENTS PROPOSED

Amend to allow the Commissioner to waive the submission of an application for a permit to operate a hatchery due to the fact that the application process is designed for new hatcheries only, and is unnecessarily time-consuming in this situation.

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.