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PUBLIC HEALTH, WELFARE AND SAFETY COMMITTEE PROCEEDINGS:

A meeting of the House Public Health, Welfare and Safety Committee was held on Thursday, April 7, 1977 at 10:30 a.m., in Room 431 of the State Capitol. All members were present with the exception of Reps. Holmes, Colburn, Cox, Lynch and Kimble, who were excused.

HOUSE JOINT RESOLUTION 101, sponsored by the Problems of the Elderly Subcommittee, was heard. Rep. Palmer as Chairman of that subcommittee stood and explained that the measure had been submitted at the request of the Montana Nursing Home Association. He then turned the testimony over to Mr. Rod Gudgel, who represented that association. Mr. Gudgel began his testimony by pointing out one amendment which was needed. On page 1, line 11, the date should be October 14, not October 15. He then submitted a memo from the Dept. of HEW to the State Dept. of SRS which put forth their interpretation of skilled nursing facility participation in Medicare as a condition of participation in Medicaid and the states' authority to mandate this. He questioned whether the Dept. of SRS actually has the authority to adopt this requirement. He submitted copies of the administrative rules of the Dept. of SRS and the sections of state law dealing with the Department's statutory powers in this area. He also presented a letter and material reporting to the Administrative Code Committee regarding the Department's amendment to the rules, and a copy of the "Notice of Public Hearing for Amendment of Rules Pertaining to the Medical Assistance Program", before the State Dept. of SRS. In his opinion, the Dept. of SRS doesn't have the authority to make rules such as what the resolution speaks to, and that the Dept. did not make a concise statement of their authority to adopt the rule, as requested to do. He recommended that the bill be amended to correct the error on page 1, and that rules be suspended and a committee bill be drawn up which would statutorily impose the requirements set forth in the rules. The proposed bill and this resolution should then be reported out of committee together. He left a copy of the rule as adopted for the committee's use in drafting the proposed bill.

Rod Wilson, Billings Chamber of Commerce, then spoke in support of HJR 101. He expressed the support of all nursing homes in Billings for this measure.

A representative from the Cooney Convalescent Home then spoke. She stressed that it is very important not to impose Medicare on the nursing homes. The Cooney home cannot be adapted to include a wing for Medicare patients.

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The opponents to HJR 101 then spoke. The first was Mr. Pat Melby, Director of the Department of SRS. He feels his department clearly has the authority to adopt rules for the administration of medical assistance. A district court complaint should be filed if the nursing homes do not agree with this opinion. He added that there was no official request from the nursing home people concerning statutory authority, to his knowledge. He then explained why the rule had been adopted. Certification requirements for Medicaid and Medicare are exactly the same, he pointed out. The only possible additional cost to nursing homes would be that of submitting cost reports to the Social Security Administration, for reimbursement purposes. With this rule which his department has adopted, \$1 million will be saved on the Medicaid program, which is 40% state funded as opposed to the 100% federally funded Medicare program. Medicare and Medicaid have been consolidated on the federal level, and several changes are being made, which are in keeping with the intent of this rule which was adopted. He said that if this resolution had been introduced earlier in the session, his department would have had a bill drafted which would make the rule into law.

Bill Ikard, Chief of the Medical Assistance Bureau, Dept. of SRS, then spoke. If the Dept. of SRS does not in fact have the authority to adopt this rule, then it would not have the authority to say that an individual's insurance company would have to pay first, in which case added costs to the state would be in excess of \$10 million. He submitted the written testimony from the hearing concerning the "application of all third party resources to medical care and services which are payable by medical assistance".

Questions were then asked concerning HJR 101. Mr. Melby said that the nursing home people may have made a request for information about the Department's statutory authority in mandating this rule to a staff attorney in the Dept. of SRS, but that they should have approached him and it should have been done in an official manner. He believes this question is moot, however, because when his department announced its intent to adopt the rule, it stated that they believed they had the authority to adopt it. Rep. Harper then asked questions concerning the changes that the Cooney Convalescent Home representative said would have to be made to that home. She explained that a Medicare bed cannot be used by Medicaid patients, but referred the question to Mr. Ikard. He said that the Medicare patients have to have certified Medicare beds. The Cooney Convalescent Home representative then stated that her nursing home would have to increase their staff, because in order for the patients to come back from the hospital and go back to the same room, all beds would have to be Medicare beds initially. Mr. Ikard expressed the hope that all of

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the nursing homes would be suitable for Medicare, at present.

Mr. Gudgel then spoke up and said that passage of this resolution and the corresponding proposed committee bill would help put a stop to "this arbitrary rule-making". Mr. Melby replied that he would not be in opposition to this being done, but expressed the feeling that the adoption of the rule is not the true issue at all; that this is just an attempt to get the rule repealed, and then get the proposed committee bill killed when it reached the Senate. The hearing was then closed.

The meeting was adjourned.

Wm 'Red' Menahan
Chairman - Rep. Wm. "Red" Menahan

Debbie Gahovec
Secretary