MINUTES OF THE MEETING

PUBLIC HEALTH, WELFARE & SAFETY COMMITTEE

February 2, 1979

The tenth meeting of the Public Health, Welfare, and Safety Committee met in Room 410 of the State Capitol Building at 12:30 p.m.

ROLL CALL: All members were present.

CONSIDERATION OF SENATE BILL 61: Senate Bill 61 is an act requiring all insurance companies including health service corporations who issue health insurance policies in Montana to include provisions in the contracts for the coverage of the treatment of alcoholism, chemical dependency, and drug addiction. Senate Bill 61 was heard in Committee on January 15, 1979.

Senator Norman, sponsor of Senate Bill 61, recalled that there was a great amount of facts and figures thrown around about what the bill as introduced would do to insurance premiums. There was some other difficulties with the bill as to resident treatment and certainly limitations on the amount of liability the insurance companies would incur for treatment of alcoholism. Senator Norman proposed that except for the title the entire bill be substituted with what is basically a California law. See Attachment "A." It has many of the factors in it which were suggested by the people who opposed the original bill.

Senator Rasmussen stated that he felt we should rehear the bill. Senator Norman stated that the amendment has the same features in it basically. Senator Rasmussen moved that we conduct another public hearing on Senate Bill 61. The motion carried. Jo Driscoll from the Insurance Department stated that some people who were here today had traveled great distances and would like to testify. Senator Lensink moved that we reconsider our prior action and hear the bill today. A roll call vote was taken, and the motion passed.

Senator Norman said that the first section is merely the purpose, which is self-evident. The second section relates the definitions of the act. The third section of the bill relates to the availability of coverage. On page 3 there is a number under item 2 of $750. Senator Norman stated that he believes that amount is rather low and should be something like $1500. The effective date is open. It could be immediately or the regular July 1 effective date.

Mr. Larry Zanto, Department of Institutions, stated that after the last hearing on Senate Bill 61 the department felt there were some substantial problems with the bill, so they worked with the Insurance Department and came up with this substitute bill. He stated that this is basically an availability bill and section 3 on the second page makes it clear that it is that. Section 4 also answers some of the concerns expressed at an earlier hearing. This proposed law would not apply to short-term travel insurance policies and other kinds of special policies. He stated that he does not know what it will do to rates, but he does not anticipate that the rate should be substantially higher; and, since it is an availability bill, it will not be forced on anyone.

Joe Peel, Health Insurance Association of America, Chicago, spoke in support of the revised Senate Bill 61. He stated that they did have a great concern over the original bill. They do believe that alcoholism and drug benefits are good; many of their companies make it available now. He stated that the amended bill has definitely made the rating question less severe. Under this the parties to the contract can bargain as to the rates they wish to pay. This alleviates considerably the problem of rates under a mandatory approach. His company also supported the bill in California. The minimums are spelled out in the bill, although there has been a question about the $750 being too low. Mr. Peel stated that he also feels it is too low and would suggest $1000.

Jo Driscoll, Insurance Department, stated that Mr. Zanto came to them and discussed the substitute bill very carefully. On section 4 on page 3, 120 days as effective date was requested so that their people could file forms in their office, which takes a while.

Bill Leary, Montana Hospital Association, appeared in support of Senate Bill 61. They feel this bill will open the doors for many people who have stayed away from getting help.

Ed Sheehy, Montana Association of Life Underwriters, stated that this is the first time that he has seen the substitute bill. He stated that he does have a problem with Section 3 of the bill. He realizes that the way it is written that insurance companies would have to make this coverage available; however, he sees a problem with Montana law under section 33-153-01, subsection 4. He said that he could see a problem with this bill in saying that you have to make this type of coverage available when the law says that insurance companies are not liable in accidents where alcoholism or drugs are used. He feels that these problems should be looked at before the bill is passed.

Tom Harrison, MPS/Blue Shield, stated that he opposes the bill because his company just does not like mandated benefits. He stated that in this case the Legislature dictated the benefit and then says it is not necessary for an individual to take it. The insurance company still has to rate it. He stated that he has not had an opportunity to study the substitute bill and that if there is any concern for public notice the public hasn't even seen this bill. He also stated that he doesn't know what subsection 2 of section 3 means and suspects that Mr. Zanto does not know either. He feels that the bill deserves to be printed and deserves to be heard.

Senator Norman stated that if there is any concern the Committee can certainly print this bill, and the Committee has generously agreed to give everybody an opportunity to be heard. He also stated that he feels if there is a problem with the law it can be amended.

Chairman Olson ruled that the bill would be returned to Legislative Council for proper drafting and then we would rehear the bill.

Senator Himsl asked Mr. Peel what this type of legislation has cost in other states. Mr. Peel stated that under the bill such as originally introduced the insurance company had estimated that in those plans which had not covered alcoholism before in any way it would represent a five percent increase in claim costs. This does not include any administrative cost. In those plans that may have covered some alcoholism benefits before then the increases have been nothing or slight. Senator Ryan asked if the people who are incarcerated as a result of criminal action are under some kind of plan. Mr. Zanto replied that we have a crime control grant to put counselors at the particular institutions, and it has been very effective. Senator Himsl asked Mrs. Driscoll if she found this plan compatible with the state. She replied that the state has some of this coverage already. Senator Norman asked Mr. Harrison if Blue Shield offers alcohol coverage and if there are claims at Silver Bow. Mr. Harrison said Blue Shield has coverage but he doesn't know what programs. Senator Ryan asked Mr. Baumberger how this bill would affect his program. Mr. Baumberger said it would probably provide coverage for about seven to eight percent of their people. Senator Himsl asked if alcohol program centers would be eligible for reimbursement. Senator Norman replied that they would be if they are licensed and if the treatment were ordered by a physician. Senator Himsl then wanted to know if this would alleviate somewhat the huge outlay of monies to the programs by the state.

Amendment number 3 corrects a typographical error. Senator Norman moved that amendment number 3 on Attachment "B" be adopted. The motion was seconded and passed unanimously.

Senator Norman stated that amendment number 4 on Attachment "B" was a concern of Dr. McMahon regarding confidentiality of patient records. Senator Norman made a motion that amendment number 4 be adopted. The motion was seconded and passed unanimously.

Senator Norman said that amendment number 5 on Attachment "B" deals with the appeal process in building or expanding a health facility. The present bill provides that the Department of Health can give approval on condition that certain things are done. The Montana Hospital Association wants a clear cut yes or no. Ken Rutledge, Montana Hospital Association, spoke to the Committee about their reasons for wanting "with or without conditions" removed. See item 1 in Attachment "C" and Attachment "E". The association feels that being able to approve plans with conditions would unnecessarily increase construction costs and, therefore, increase medical costs to the consumer. Mr. Fenner stated that the ability to attach conditions would strengthen the process. He feels that it would be a longer delay if the department were not allowed to put conditions on. The department does not feel that it would inflate the cost on projects with good planning. He stated that the Montana Health Systems Agency is opposed to the striking of "with or without conditions." Senator Rasmussen moved that we adopt amendment number 5 on Attachment "B." Roll call vote was taken. Motion failed.

Amendments number 6 and 7 in Attachment "B" deal with the appeals process. Senator Norman says the amendments deal with the problem of the department not acting on an application within 90 days. If they do not act within this time, is the application approved or denied. Mr. Leary stated that there is some confusion within the law. Congress should take action on this matter before July 1. Because of the inconsistency at the federal level, the department can refuse to act and give the application automatic disapproval. Mr. Leary feels this should be stricken out and allow the Department of Health to write the rules which will become effective by Congress. They can rewrite either approval or disapproval into the act when it is deemed on a federal level.

Mr. Zanto replied that these are non-profit centers where the state contracts for services. The state couldn't bill the individuals, but the programs could. The state gives the money on a grant basis. Senator Lensink asked Mr. Harrison how this differs from what they have now. Mr. Harrison replied that this is mandated. The common group is a small group, and they say right off the bat that they don't want alcohol coverage. Blue Shield will still have to rate it out and put it in the insurance and then it could be opted out if this bill passes. Senator Norman asked if their are other large insurance companies that oppose this bill. Mr. Harrison said he doesn't know if Blue Cross opposes the bill or if they are aware of it.

Chairman Olson closed the hearing on Senate Bill 61 at 1:25 p.m. He stated that the bill will be back in Committee on Monday, February 5, and further hearing and work session will be held on February 9, 1979.

CONSIDERATION OF SENATE BILL 100: Senate Bill 100 is an act to revise the laws relating to health care facilities. Senate Bill 100 was heard in Committee on January 19, 1979.

Senator Norman referred the Committee to a sheet of proposed amendments (see Attachment "B"). He stated that on page 8, line 21 (d) he cannot technically understand why that would be stricken.

William Leary, Montana Hospital Association, said that they are trying to simplify the process in the event the hospital wants to decrease their beds or in the event that the facility wants to decrease the service. See Attachment "C," page 4. The Montana Health Systems opposes this amendment. See Attachment "D," item 1.

Senator Norman moved that amendment 1 on Attachment "B" be adopted. Senator Himsl wanted to know what happens if the request comes in for 10 beds and then another 10 beds, etc. Mr. Fenner, Department of Health, replied that the law reads that this decrease is over a two-year period. Senator Rasmussen asked Mr. Gildroy if they feel that the 10 percent is substantial. Mr. Gildroy feels that the community should have the opportunity to say whether they want a full review even for 10 percent. Roll call vote was taken. Vote was three to three, so the motion failed.

Amendment number 2 on Attachment "B" would be necessary only if Amendment number 1 had passed.

If this is in the law as it now says and if Congress writes language that says it will be approved, the Legislature will have to amend it in two years. Mr. Fenner stated that the department has checked with HEW, and it has to be in the law or in the rules. The department has no objection in removing it from the law if the Committee understands that we have to put it in the rules. Senator Lensink moved that amendments 6 and 7 of Attachment "B" be approved. A roll call vote was taken, and the amendments were adopted.

Amendment number 8 of Attachment "B" calls for the insertion of the words "quality equivalent" following "costly." Senator Norman stated that this amendment is proposed to provide that a level of quality can be maintained instead of just looking at the cost factor. Senator Ryan moved the amendment be adopted. Motion was seconded and carried unanimously.

Amendment number 9 on Attachment "B" refers to hearings and appeals. Senator Norman stated that the bill requires that a person show the department there is good cause before the department will go back and reconsider a decision. This prevents frivolous costs. On the other hand, if you have to show good cause, you have a hearing before a hearing. Senator Norman moved that amendment number 9 be adopted. Chad Smith stated that since the hearing he has worked with the Board of Health to come up with an amendment which takes care of this problem. He presented copies of the proposed amendment to the Committee (see Attachment "F"). This language will allow for the individuals that are directly concerned with this to have a hearing, but any other affected individual would have to show good cause to have a hearing. Senator Norman withdrew his previous motion and moved that we adopt the amendment presented by Chad Smith. Roll call vote was taken, and the motion passed.

Chad Smith then referred the Committee to amendment number 16 of Attachment "B" and requested that the Committee take out "interested person" and put in "party." Senator Rasmussen moved that we adopt amendment number 16 as proposed by Chad Smith. A roll call vote was taken, and the motion carried.

ANNOUNCEMENTS: Chairman Olson stated that the hearing on Senate Bill 100 will reconvene on February 9, 1979.

ADJOURNMENT: There being no further business discussed, the meeting was adjourned at 2:25 p.m.

S. A. Olson

S. A. OLSON, CHAIRMAN

SENATE _____ COMMITTEE

BILL SB 100 VISITORS' REGISTER DATE Feb 2

NAME	REPRESENTING	BILL #	(check one) SUPPORT	OPPO
Ralph Mildrew	Montana Health Systems Agency	100		✓
Barbara Cubbage	Dept Health	100		

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

SENATE _____ COMMITTEE

BILL S 1361 VISITORS' REGISTER DATE _____

NAME	REPRESENTING	BILL #	(check one) SUPPORT	OPPOS
[illegible]	[illegible]	S1361		
[illegible]	[illegible]	S1361		
Lester H. Loble III	American Council of Life Insurers	S1361		V
[illegible]	[illegible]	S1361		[illegible]

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

ROLL CALL

PUBLIC HEALTH COMMITTEE

46th LEGISLATIVE SESSION - - 1979 Date 2-2-79

NAME	PRESENT	ABSENT	EXCUSED
Olson, S. A., Chairman	✓		
Rasmussen, A. T., V. Chr.	✓		
Himsl, Matt V.	✓		
Lensink, Everett R.	✓		
Norman, Bill	✓		
Palmer, Bob	✓		
Ryan, Patrick L.	✓		

Each day attach to minutes.

NAME: Joe W. Peel DATE: 2 Feb. 1979

ADDRESS: 332 South Michigan

PHONE: (312) 939-0801

REPRESENTING WHOM? Health Insurance Association of America

APPEARING ON WHICH PROPOSAL: SB 61

DO YOU: SUPPORT? _____ AMEND? X OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE COMMITTEE PUBLIC HEALTH

Date 2-02-79 Bill No. 61 Time 12:40 p

NAME	YES	NO
Senator Matt V. Himsl		✓
Senator Everett R. Lensink	✓	
Senator Bill Norman	✓	
Senator Bob Palmer	✓	
Senator Patrick Ryan	✓	
Senator A. T. Rasmussen, Vice-Chairman		✓
Senator S. A. Olson, Chairman		✓

Secretary

Chairman

Motion: Moved that we hear SB 61 Today

(include enough information on motion--put with yellow copy of committee report.)

SENATE COMMITTEE PUBLIC HEALTH

Date 2-2-79 Bill No. SB 140 Time 1:40 p.

NAME	YES	NO
Senator Matt V. Himsl	✓	
Senator Everett R. Lensink		✓
Senator Bill Norman	✓	
Senator Bob Palmer	Abstaining	
Senator Patrick Ryan		✓
Senator A. T. Rasmussen, Vice-Chairman		✓
Senator S. A. Olson, Chairman	✓	

Judy J. Olson
Secretary

S A Olson
Chairman

Motion: Amendment #1 - Attachment "B"

(include enough information on motion--put with yellow copy of committee report.)

SENATE COMMITTEE PUBLIC HEALTH

Date 2-2-79 Bill No. SB 100 Time 1:45 p.m.

NAME	YES	NO
Senator Matt V. Himsl	✓	
Senator Everett R. Lensink	✓	
Senator Bill Norman	✓	
Senator Bob Palmer	✓	
Senator Patrick Ryan	✓	
Senator A. T. Rasmussen, Vice-Chairman	✓	
Senator S. A. Olson, Chairman	✓	

Secretary

Chairman

Motion: Amend. # 1 on Attachment "B"

(include enough information on motion--put with yellow copy of committee report.)

SENATE COMMITTEE PUBLIC HEALTH

Date 2-2-99 Bill No. SB 100 Time 2:00

NAME	YES	NO
Senator Matt V. Himsl		✓
Senator Everett R. Lensink	✓	
Senator Bill Norman		✓
Senator Bob Palmer		✓
Senator Patrick Ryan		✓
Senator A. T. Rasmussen, Vice-Chairman	✓	
Senator S. A. Olson, Chairman		✓

D. Cyd Olson
Secretary

S. A. Olson
Chairman

Motion: Amendment #5 - Attachment "B" - Page 20, Line 13

SENATE COMMITTEE PUBLIC HEALTH

Date 2-2-79 Bill No. SB100 Time 2:15 p.m.

NAME	YES	NO
Senator Matt V. Himsl	✓	
Senator Everett R. Lensink	✓	
Senator Bill Norman	✓	
Senator Bob Palmer	✓	
Senator Patrick Ryan	✓	
Senator A. T. Rasmussen, Vice-Chairman	✓	
Senator S. A. Olson, Chairman	✓	

Secretary

Chairman

Motion: Amend to 6-2 - Attachment "B".

(include enough information on motion--put with yellow copy of committee report.)

SENATE COMMITTEE PUBLIC HEALTH

Date 2-2-79 Bill No. SB 169 Time 2:20 p.m.

NAME	YES	NO
Senator Matt V. Himsl	✓	
Senator Everett R. Lensink	✓	
Senator Bill Norman	✓	
Senator Bob Palmer	✓	
Senator Patrick Ryan		—
Senator A. T. Rasmussen, Vice-Chairman	—	
Senator S. A. Olson, Chairman	✓	

Secretary

Chairman

Motion: Adopt Amendments to Right to Review and Appeal Dated Attachment "F"

(include enough information on motion--put with yellow copy of committee report.)

SENATE COMMITTEE PUBLIC HEALTH

Date 2-2-79 Bill No. SB 102 Time 2:25 p.m.

NAME	YES	NO
Senator Matt V. Himsl	✓	
Senator Everett R. Lensink	✓	
Senator Bill Norman	✓	
Senator Bob Palmer	✓	
Senator Patrick Ryan		✓
Senator A. T. Rasmussen, Vice-Chairman	✓	
Senator S. A. Olson, Chairman	✓	

Judy J. Olson
Secretary

S. A. Olson
Chairman

Motion: Move to adopt amendment on page 26 line 12 following "decision." Insert "The board upon request of any party shall hear oral argument and discuss with the parties."

(include enough information on motion--put with yellow copy of committee report.)

ATTACHMENT "A"

NORMAN

PROPOSED SUBSTITUTE FOR MONTANA SENATE BILL 61

Section 1. Purpose. The purpose of this Act is to encourage consumers to avail themselves of basic levels of benefits under health insurance policies and contracts for the care and treatment of alcoholism and drug addiction, and to preserve the rights of the consumer to select such coverage according to his medical-economic needs.

Section 2. Definitions. For purposes of this Act, the following terms shall have the meanings indicated below.

A. "Inpatient hospital benefits" means only those payable for charges made by a hospital, as defined in the policy or contract, for the necessary care and treatment of alcoholism or drug addiction furnished to a covered person while confined as a hospital inpatient; and with respect to major medical policies or contracts, also includes those payable for charges made by a physician, as defined in the policy or contract, for the necessary care and treatment of alcoholism or drug addiction furnished to a covered person while confined as a hospital inpatient.

B "Outpatient benefits" means only those payable for (1) charges made by a [illegible] for the necessary care and treatment of alcoholism or drug addiction furnished to a covered person while not confined as a hospital inpatient, (2) charges for services rendered or prescribed by a physician for the necessary care and treatment for alcoholism or drug addiction furnished to a covered person while while not confined as a hospital inpatient, and, (3) charges made by an alcoholism or drug addiction treatment center, as defined herein, for the necessary care and treatment of a covered person provided in such treatment center.

C. "Alcoholism or Drug Addiction Treatment Center" means a treatment facility which provides a program for the treatment of alcoholism or drug addiction pursuant to a written treatment plan approved and monitored by a physician, and which facility is also: (1) affiliated with a hospital under a contractual agreement with an established system for patient referral, or (2) licensed, certified or approved as an alcoholism or drug addiction treatment center by the State.

Section 3. Availability of Coverage for Alcoholism and Drug Addiction. Insurers ~~and nonprofit hospital and medical service plan corporations~~ AND HEALTH SERVICE ~~corporations~~ transacting health insurance in this State shall make available under hospital and medical expense incurred insurance policies and under hospital and medical service plan contracts the level of benefits specified herein for the necessary care and treatment of alcoholism and drug addiction subject to the right of the applicant for a group or individual policy or contract to reject the coverage or to select any alternative level of benefits as may be offered by the insurer or service plan corporation.

A. Under basic hospital expense policies or contracts, inpatient hospital benefits consisting of durational limits, dollar limits, deductibles and coinsurance factors are not less favorable than for physical illness generally, except that benefits may be limited to not less than 30 days per confinement as defined in the policy or contract.

B. Under major medical policies or contracts, inpatient hospital benefits and outpatient benefits consisting of durational limits, dollar limits, deductibles and coinsurance factors that are not less favorable than for physical illness generally, except that:

1. Inpatient hospital benefits may be limited to not less than 30 days per confinement as defined in the policy or contract. If inpatient hospital benefits are provided beyond 30 days of confinement, the durational limits, dollar limits, deductibles and coinsurance factors applicable thereto need not be the same as applicable to physical illness generally.

2. As to outpatient benefits, the coinsurance factor may not exceed 50% or the coinsurance factor applicable for physical illness generally, whichever is greater, and the maximum benefit for alcoholism and drug addiction in the aggregate during any applicable benefit period may be limited to not less than $750.

3. Maximum lifetime benefit limits may, as to alcoholism and drug addiction in the aggregate, be no less than an amount equal to the lesser of $10,000 or 25% of the lifetime policy limit.

Section 4. Applicability. This Act shall apply to policies or contracts delivered or issued for delivery in this State more than 120 days after the effective date of this Act; but shall not apply to blanket, short term travel, accident only, limited or specified disease, individual conversion policies or contracts, [illegible] policies or contracts designed for issuance to persons eligible for coverage [illegible] XVIII of the Social Security Act, known as Medicare, or any other [illegible] coverage under State or Federal governmental plans.

Section 5. Effective Date. This Act shall take effect on _____

_____.

ATTACHMENT "B"

SUGGESTED AMENDMENTS TO SB 100 "CERTIFICATE OF NEED" LEGISLATION SPONSORED BY SENATOR NORMAN AT THE REQUEST OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES.

1. Page 8, line 21. (Montana Hosital Assn. Bill Leary)
   Following: line 21
   Insert: "(d) requests for decreases in the number of beds by 10% of the facility's licensed capacity or 10 beds, whichever is less, or decreases in services will be subjected to a non-subtantive review by the state department of health and environmental sciences."

2. Page 9, line 7. (Bill Leary, MT Hospital Ass'n)
   Following: line 7
   Insert: "(20) Non-substantive review" means...(definition to be supplied by DH&ES)"
   Renumber: subsequent subsections.

3. Page 9, line 24. (Dennis Taylor, Staff)
   Following: "An"
   Strike: "out patient"
   Insert: "outpatient"

4. Page 13, line 15. (Sen. Norman; John McMahon, MT Medical Assn)
   Following: "patients."
   Insert: "A department employee who discloses information which would identify a patient shall be dismissed from employment and subject to the provision of 45-7-401, unless the disclosure was authorized in writing by the patient, his guardian, or his agent."

5. Page 20, line 13. (Bill Leary, MT Hospital Assn)
   Strike: ", with or without conditions,"

6. Page 20, line 14. (Bill Leary, MT Hospital Assn; Glen Drake, MT Nursing Home Assn)
   Following: "Application"
   Strike: "If the department fails to act within the"

7. Page 20, line 15. (Bill Leary, Montana Hospital Assn; Glen Drake, Montana Nursing Home Assn)
   Following: Line 15
   Strike: Lines 15 and 16 in their entirety

8. Page 22, line 9. (John McMahon, Montana Medical Assn)
   Following: "costly"
   Insert: "quality equivalent"

9. Page 25, line 11. (Chad Smith, Montana Hospital Assn)
   Following: "may"
   Strike: ",for"

10. Page 25, line 12. (Chad Smith, Montana Hospital Assn)
Following: line 11
Strike: "good cause,"

11. Page 25, line 15. (Chad Smith, Montana Hospital Assn)
Following: "writing"
Strike: remainder of line 15

12. Page 25, line 16. (Chad Smith, Montana Hospital Assn)
Following: line 15
Strike: "the department"

13. Page 25, line 18. (Chad Smith, Montana Hospital Assn)
Strike: ","

14. Page 25, line 19. (Chad Smith, Montana Hospital Assn)
Strike: "if warranted,"

15. Page 25, line 23. (Chad Smith, Montana Hospital Assn)
Following: "hearing."
Insert: "The hearing shall be conducted in accordance with 2-4-601 through 2-4-623."

16. Page 26, line 12. (Chad Smith, Montana Hospital Assn)
Following: "decision."
Insert: "The board, upon request of any interested person, shall hear oral argument and receive written briefs."

17. Page 26, line 25. (Chad Smith, Montana Hospital Assn)
Strike: line 25 in its entirety

18. Page 27, line 1. (Chad Smith, Montana Hospital Assn)
Strike: Line 1 in its entirety

19. Page 27, line 19. (Dennis Taylor, Staff)
Following: line 18
Strike: "59-5-301"
Insert: "50-5-301"

ATTACHMENT "C"

Montana Hospital Association

(406) 442-1911 · P. O. BOX 5119 · HELENA, MONTANA 59601

EXPLANATION OF MHA AMENDMENTS TO S.B. 100

Amendment to remove the provision for approval with conditions.

1. Under the current process for C.O.N. decisions the Montana Health Systems Agency makes recommendations for approval or disapproval of C.O.N. proposals. Such recommendations are based on an MHSA review at the local level by an MHSA sub-area council. This recommendation then goes to the MHSA executive committee which after considering the record of the sub-area review makes a final recommendation to the State Department of Health and Environmental Sciences (SDH&ES). The SDH&ES makes the final decision for approval or disapproval of a project after taking into consideration the MHSA recommendation. The MHSA has made clear its intent to make recommendations with conditions if the SDH&ES is allowed to do so. This is documented in the MHSA's new Program Review Manual as approved by its governing board. We feel that the provision for such conditions would greatly increase the potential for conflicts between MHSA recommendations and SDH&ES decisions.

a. With new provision for reconsideration hearings for "good cause," such conflicts can result in 55 days additional time being tacked onto the current 90 day review period. This will have a definite inflationary effect on capital expenditures. It should be noted that the definition of affected parties is quite broad and a single member of an HSA sub-area or statewide committee could request a reconsideration hearing if the state failed to set the same conditions as the HSA committee.

The fewer possibilities there are for inconsistencies between HSA sub-area, HSA statewide and SDH&ES decisions, the fewer reconsideration hearings there are liable to be.

b. This increased probability of conflict between the HSA and SDH&ES could also result in an increased number of appeals to the Board of Health by the HSA of State Agency decisions.

2. The power to make conditions and approve only parts of a project may very well have a negative impact on the financial feasibility or desirability of individual projects. Major capital expenditures by health care facilities are normally proposed only after in-depth studies, which often consider two or more possible courses of action. Such studies are then reviewed by the facility's board of trustees, often over a long period of time, before a final course of action is chosen. In short, major capital expenditure decisions are only made after the feasibility, impact, etc. of the project has been thoroughly studied by the facility. Without the benefit of such detailed and expert analysis, the HSA and SDH&ES are not in a position to fully understand the consequences of a partial approval. We support the concept of requiring C.O.N. approval for major capital expenditures but are worried about the advisability of allowing planning agencies to perform surgery on hospital proposals.

3. Under the current Montana C.O.N. law, which only addresses complete approval or disapproval of a proposed project, health care facilities are encouraged to develop reasonable proposals for capital expenditures, excluding those items which are unnecessary, duplicative or unjustifiably expensive. Because of the total approval or disapproval process that is now in effect, proposals which could be considered unnecessary are rejected by the facility because of the risk of having the entire project disapproved. There is, in other words, a built-in disincentive factor which prevents health care

facilities from proposing unneeded capital expenditures and services, which are not in accordance with the adopted State Health Plan. It is our contention that the "approval with conditions" provision could very likely result in inflated requests from health care facilities. As in any other situation involving bargaining, there is a tendency to request more than is actually needed or expected.

4. There is no doubt that the "approval with conditions" provision would give the SDH&ES more control over the expenditures and new services of hospitals. The question is, however, "Is this desirable?" Increased government control and intervention into the health care field does not necessarily result in lower health care costs. Massachusetts and New York are recognized as having among the most government regulated health care industries in the nation, yet these states also have the highest hospital costs in the nation. In addition, their rates of increase in hospital expenditures have consistently exceeded those of Montana. Montana hospitals have had an exemplary record of containing costs over the past ten years and an overly ambitious C.O.N. program may end up costing much more than it saves.

Provision for Automatic Disapproval if the Department Fails to Act Within 90 Days

I refer you to page 20, Section 13 (4) lines 14 through 18. The wording "If the department fails to act within the designated period and an extension has not been granted, the failure to act constitutes disapproval of the application" is strongly objected to by our members. This sentence is currently in conflict with Section 1122 of the Social Security Act which ironically requires that failure to act by the state agency within 90 days will mandate approval of the application. There is a conflict in this area between the language of Section 1122 of the Social Security Act and the HEW rules and guidelines for Certificate of Need programs. This conflict must

be resolved on the national level before it is mandated in a state law. Hopefully, within the next session of Congress this conflict will be resolved.

The State Department argues that without this provision, Montana might not have a complying Certificate of Need law and could risk loss of federal health funds. It is the contention of the Montana Hospital Association that despite the HEW regulations this disapproval approach is totally unfair as it provides a "pocket veto" provision for an application. The provision is also illogical since after a proposal has been disapproved by the department's failure to act, the applicant can request a fair hearing for "reconsideration." This, in effect, gives the department an additional 55 days within which to act on the application. Because there is currently a conflict with two federal laws or regulations, we request that the sentence "If the department fails to act within the designated period and an extension has not been granted, the failure to act constitutes disapproval of the application" be amended out of Senate Bill 100 so as to provide flexibility in our law, by remaining silent to address this concern in proposed Montana rules to implement the act beginning next July. By July we should have sufficient knowledge of the intention of Congress in this area and should be able to encompass a reasonable rule at that time.

Coverage of Decreases in Bed Capacity or Services Offered

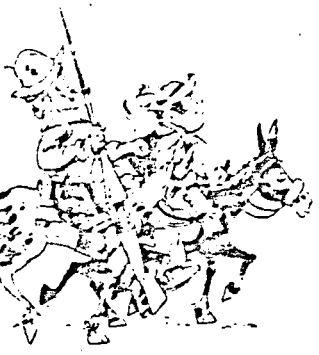
I refer you to page 8, (18)(c) beginning line 16 through line 21 as reference for our next suggested amendment. In proposing this amendment we are seeking a more simplified approach for health care facilities to utilize when they wish to decrease their bed capacity or decrease a service. We recognize the department should have the authority to authorize decreasing of services and/or beds just as they have the authority to recommend increased

bed capacities and addition of health services. We point out, however, that federal regulations do not require coverage in a C.O.N. law of reductions in bed capacity or services although there is no major objection to allowing the department to review such requests. It is our contention that it makes little sense to require a health care facility to submit to the full Certificate of Need process for a reduction in beds or services as long as there are safeguards which allow the department prior review of such a request. Such reductions in services or bed capacities are normally needed to accomplish cost savings and a full Certificate of Need review with its associated costs would act to reduce any cost savings. We suggest, therefore, that this provision be amended to allow for approval from the department through a non-substantive desk review by the department. We recommend that Section 1 (18) on page 8 be amended by adding a paragraph between lines 21 and 22 to state

"(d) Requests for decreases in the number of beds by 10% of the facility's licensed capacity or 10 beds, whichever is less, or decreases in services will be subjected to a non-substantive review by the State Department of Health and Environmental Sciences."

Acceptance of this amendment would necessitate amending the bill further in the definitions on page 2 so as to define non-substantive review. We would accept a definition of "non-substantive review" as proposed by the department.

ATTACHMENT "D"



Montana Health Systems Agency, Inc.
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Helena, Montana 59601
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Ralph Gildroy
Executive Director

February 2, 1979

TESTIMONY CONCERNING PROPOSED AMENDMENTS TO
SENATE BILL 100, CERTIFICATE OF NEED LAW

The following are the positions of Montana Health Systems Agency relative to the proposed amendments:

1. Page 8, line 21. (Montana Hospital Assoc., Bill Leary)
   Following: line 21
   Insert: "(d) requests for decreases in the number of beds by 10 percent of the facility's licensed capacity or 10 beds, whichever is less, or decreases in services will be subjected to a non-substantive review by the state department of health and environmental sciences."

Montana Health Systems Agency is opposed to this amendment. Non-substantive review would mean automatic approval with no local citizen involvement. This automatic approval is demonstrated in Section II, page 5 (copy attached), of the Program Review Manual, a Manual produced conjointly by the Montana Health Systems Agency and Department of Health and Environmental Sciences to insure citizen participation. A non-substantive review for decreases in number of beds or services would provide the citizens of the affected service area no opportunity for inputs to decision-making which impacts the availability and accessibility of their health care services and facilities. A decrease may well not be in the best interests of the patient population. For example, acute psychiatric services could be eliminated, a CAT scanner removed with no scrutiny by those affected citizens. It is extremely important that both the Health Systems Agency and the Department of Health and Environmental Sciences monitor long-term care, acute care bed needs, and services in Montana. We must be aware and have the opportunity to recommend approval or disapproval of changes concerning decreases in licensure and provisions of service. Without this awareness and opportunity, recommendations concerning appropriateness of services will be inhibited. Page 10 of the Program Review Manual states, "#2, substantial change in service, B, the termination of a clinically related service or department which had been previously provided. #3, change in licensed bed capacity, means either an increase or decrease in the licensed capacity under applicable Montana law." The proposed amendment is not in conformance with the Manual. Also, the addition or deletion of services offered and addition or deletion of beds in a health care facility without review is not in conformance with Section 1122 of the Social Security Act. The Montana Health Systems Agency endorses the conformance of Montana law with the 1122 regulations.

Continued Page 2

It is not reasonable to not allow for local decision-making on these proposals. Some of those types of services that may be reviewed for appropriateness are:

Tertiary Services

Clinical Cardiovascular Labs and Cardiac Surgery Facilities
Radiation Therapy
CAT Scanners
ESRD Facilities
Neonatal Intensive Care Units
Poison Control Services
Burn Care
Blood Banks

Secondary Services

General Hospital Acute Services
Critical Care (ICU/CCU) Beds
Psychiatric Beds
Clinical Labs
Diagnostic Imaging
Long-Term Care Facilities
Home Health Services
Alcohol and Drug Services
Mental Health Services

2. Page 9, line 7. (Montana Hospital Assoc., Bill Leary)
Following: line 7
Insert: "(20) Non-substantive review" means...(definition to be supplied by DH&ES).
Renumber: subsequent subsections.

The Montana Health Systems Agency feels that non-substantive review should be defined in rules, using Montana Administrative Procedures Act, and not be defined in the Montana Certificate of Need Law. The Program Review Manual developed conjointly by the Department of Health and Environmental Sciences and the Montana Health Systems Agency and approved by the MHSA Governing Board, contains a definition of non-substantive review.

3. Page 9, line 24. (Dennis Taylor, Staff)
Following: "An"
Strike: "out patient"
Insert: "outpatient"

Acceptable to Montana Health Systems Agency.

Continued Page 3

4. Page 13, line 15. (Sen. Norman; John McMahon, Montana Medical Assoc.)
Following: "patients."
Insert: "A department employee who discloses information which would identify a patient shall be dismissed from employment and subject to the provision of 45-7-401, unless the disclosure was authorized in writing by the patient, his guardian, or his agent."

Acceptable to Montana Health Systems Agency.

5. Page 20, line 13. (Montana Hospital Assoc., Bill Leary)
Strike: ", with or without conditions,"

Montana Health Systems Agency is opposed to the striking of "with or without conditions." It is unreasonable to recommend disapproval of an application when some conditions applied to the application may result in approval of a then acceptable, amended application. The above referenced Program Review Manual makes provision for approval, disapproval, or approval with conditions.

6. Page 20, line 14. (Bill Leary, Montana Hospital Assoc.; Glen Drake, Montana Nursing Home Assoc.)
Following: "Application"
Strike: "If the department fails to act within the"

and

7. Page 20, line 15. (Bill Leary, Montana Hospital Assoc.; Glen Drake, Montana Nursing Home Assoc.)
Following: Line 15
Strike: Lines 15 and 16 in their entirety.

Montana Health Systems Agency is opposed to the above proposed amendments #6 and #7. Number 6 and #7 are not in conformance with current minimum requirements issued in the Federal regulations.

8. Page 22, line 9. (John McMahon, Montana Medical Assoc.).
Following: "costly"
Insert: "quality equivalent"

Acceptable to Montana Health Systems Agency.

9. Page 25, line 11. (Chad Smith, Montana Hospital Assoc.)
Following: "may"
Strike: ",for"

and

10. Page 25, line 12. (Chad Smith, Montana Hospital Assoc.)
Following: line 11.
Strike: "good cause,"

and

11. Page 25, line 15. (Chad Smith, Montana Hospital Assoc.)
Following: "writing"
Strike: remainder of line 15

Continued Page 4

and

12. Page 25, line 16. (Chad Smith, Montana Hospital Assoc.)
Following: line 15
Strike: "the department"

and

13. Page 25, line 18. (Chad Smith, Montana Hospital Assoc.)
Strike: ","

and

14. Page 25, line 19. (Chad Smith, Montana Hospital Assoc.)
Strike: "if warranted,"

Montana Health Systems Agency, in reference to proposed amendments #9, 10, 11, 12; 13, and 14, feels that these proposals are contrary to the regulations for New Institutional Health Services, Section 123.407, (8), "Provision that any person may, for good cause shown; request in writing." This is also included in the above referenced Program Review Manual.

15. Page 25, line 23. (Chad Smith, Montana Hospital Assoc.)
Following: "hearing."
Insert: "The hearing shall be conducted in accordance with 2-4-601 through 2-4-623."

Acceptable.

16. Page 26, line 12. (Chad Smith, Montana Hospital Assoc.)
Following: "decision."
Insert: "The board, upon request of any interested person, shall hear oral argument and receive written briefs."

The Montana Health Systems Agency feels that this proposed amendment is contrary to the regulations for New Institutional Health Services, Section 123.407, (10), "provision that any decision of the State Agency under this subpart (and the record upon which it was made) shall, upon request of the person proposing the new institutional health service, be reviewed, under an appeals mechanism.. ..." This provision is also addressed in the above referenced Program Review Manual.

17. Page 26, line 25. (Chad Smith, Montana Hospital Assoc.)
Strike: line 25 in its entirety.

and

18. Page 27, line 1. (Chad Smith, Montana Hospital Assoc.)
Strike: line 1 in its entirety.

Montana Health Systems Agency is opposed to the deletion indicated in #17 and 18. If this sentence is deleted there is no opportunity for Department of Health and Environmental Sciences to initiate rules for hearing and appellate procedures.

Continued Page 5

19. Page 27, line 19. (Dennis Taylor, Staff)
Following: line 18
Strike: "59-5-301"
Insert: "50-5-301"

Acceptable.

Ralph Gildroy

RALPH GILDROY
Executive Director
Montana Health Systems Agency

RG/gr

ATTACHMENT "E"

Montana Hospital Association

(406) 442-1911 · P. O. BOX 5119 · HELENA, MONTANA 59601

To Members of the Senate Public Health and Welfare Committee:

One of the most often repeated statements heard about hospital care nowadays is that its cost has gotten out of control. In fact, the increase in the cost of health care and, in particular, the cost of hospital care was the primary motivation behind the enactment of the Health Planning and Resource Development Act of 1974 (P.L. 93-641), which, among other things, mandated that all states must enact Certificate of Need legislation.

The cause of this high rate of increase in hospital costs is not fully understood, though it has been attributed by various groups to excessive duplication of hospital equipment and services, excess hospital capacity, increased hospital demand caused by the implementation of Medicare and Medicaid in 1966 and 1967 and to large increases in government regulation of hospitals. General economy-wide inflation and advances in the quality of hospital care are also mentioned as factors contributing to the rate of increases in hospital costs.

It has been assumed by many groups in this state that the extremely high rates of inflation in hospital care that have been observed in other states have also been experienced in Montana. This is, however, not the case. By whatever indicator of hospital expenses one chooses to examine Montana, hospitals have had an exemplary record of containing costs. The Montana Hospital Association has prepared the attached hospital expense data to illustrate the achievements of Montana hospitals in restraining the increase in health care expenses.

Montana Hospital Associ

(406) 442-1911 · P. O. BOX 5119 · HELENA, MONTAI

U.S. HOSPITAL EXPENDITURES 1967 - 1976

The attached tables and graphs, which have been developed by the M Hospital Association, are based on a report published in February by ICF Incorporated. In conducting its analysis of hospital expen ICF Incorporated employed data from The American Hospital Associat annual surveys as reported in Hospital Statistics (1967-77 edition

The first year of the study, 1967, is significant because it refle the beginning of The Medicare/Medicaid Era. (Medicare was implem in 1966, Medicaid in 1967) With Medicare and Medicaid came increas demand for hospital services, a new reimbursement system based on rather than charges and new concern by the Federal Government abou cost of health care.

The last year of the study, 1976, represents the most recent year f which hospital expenditure data was available at the time ICF Incor ated undertook its study. It should be noted that in 1977 Montana' hospital expenditures continued to rise at a slower rate than the national average.

What can be seen from the attached tables and graphs is that Montan rate of increase in hospital expenses for the period 1967 - 1976 is among the lowest in the nation. This period, it should be pointed was prior to the implementation of Montana's current CON law.

Included in the tables and graphs are the following:

Graph #1 - Shows the total percentage increase in hospital exp tures over the nine year period. Montana's 186% inc was the smallest in the nation and the only increase which did not exceed 200%. Included on the graph fo reasons of comparison are representations of the ave U.S. increase, the median increase for The American Hospital Association's Region 8 (excluding Montana) the increases of Florida and Alaska, the second high and highest increases nationwide respectively.

Graph #2 - This graph depicts the level of hospital expenditure per case for the nine year period. Montana moved fr a ranking of 43rd in the nation in terms of this ind in 1967 (out of 51 since Washington, D.C. is include to 47th in 1976. In terms of the percentage increas hospital expenditures per case between 1967 and 1976 Montana ranked 50th out of 51. Also included on the graph are New York which had the highest level of ho expenditures per case in 1976, Arkansas which had the lowest level, and the average level for the U.S.

Graph #3 - This graph illustrates the level of hospital expenditures per capita over the nine year period. Montana ranked 26th in the nation in this category in 1967, moving to 40th position in 1976. In terms of the percentage increase in this indicator over the nine year period, Montana ranked 50th in the nation. Also depicted on the graph are Washington, D.C. and Massachusetts which ranked first and second highest respectively in 1976 in terms of per-capita hospital expenditures, Wyoming which had the lowest level in 1976 and the U.S. average for this indicator.

Table #1 - This table shows the average yearly and cumulative percentage increases in hospital expenditures for the fifty states and Washington, D.C. with the highest level of increase being ranked #1. Also included are the U.S. averages for both indicators.

Table #2 - This table depicts the 1967 and 1976 levels of hospital expenditures per case as well as the dollar increase from 1967 to 1976. Each part of the table has ranked the states according to the dollar level from highest to lowest.

Table #3 - This table ranks each state according to its average yearly increase in hospital expenditures per case and in terms of its cumulative increase over the nine year period.

Table #4 - This table ranks states according to the dollar level of hospital expenditures per capita in 1967 and 1976 as well as in terms of the dollar increase in the indicator over the nine year period.

Table #5 - This table ranks states according to the average yearly and cumulative percentage increases in hospital expenditures over the nine year period.

ATTACHMENT "F"

"50-5-306. Right to hearing and appeal....
(1) THE APPLICANT OR A HEALTH SYSTEMS AGENCY DESIGNATED PURSUANT TO TITLE XV OF THE PUBLIC HEALTH SERVICE ACT MAY REQUEST AND SHALL BE GRANTED A PUBLIC HEARING BEFORE THE DEPARTMENT TO RECONSIDER ITS DECISION , IF THE REQUEST IS RECEIVED BY THE DEPARTMENT WITHIN 30 CALENDAR DAYS AFTER THE DECISION IS ANNOUNCED. Any OTHER affected person may, for good cause, request the department to reconsider its decision at SUCH a ~~public~~ hearing. The department shall grant the request if the affected person submits the request in writing showing good cause as defined in rules adopted by the department and if the request is received by the department within 30 calendar days after the decision is announced. The public hearing to reconsider shall be held, if warranted OR REQUIRED, within 30 calendar days after its request. The department shall make its final decision and written findings of fact and conclusions of law in support thereof within 45 days after the conclusion of the reconsideration hearing. THE HEARING SHALL BE CONDUCTED IN ACCORDANCE WITH 2-4-601 THROUGH 2-4-623.