

MINUTES OF THE MEETING

PUBLIC HEALTH, WELFARE & SAFETY COMMITTEE

February 28, 1979

The nineteenth meeting of the Senate Public Health, Welfare and Safety Committee met in Room 410 of the State Capitol Building at 1:00 p.m. on February 28, 1979.

CONSIDERATION OF HOUSE BILL 112: House Bill 112 is an act to improve the delivery of human services through the development and implementation of a plan to provide for one-stop service, multipurpose caseworker and team management, colocation of agencies, and information and referral systems.

Witnesses supporting House Bill 112:

Diane Williams, League of Women Voters
Judith Carlson, Department of SRS

Representative Ellis, sponsor of House Bill 112, explained that this bill is the outcome of the Human Services Interim Committee of the past session. It is a bill to improve the human services by giving one-stop service. Because of the success of this type of program in other states, the Committee developed this plan. One-stop service would mean that there is a common intake system for two or more services. Instead of implementing this process uniformly across the state, the Governor is being asked to develop a plan to provide the one-stop services in the different communities. Representative Ellis said there is a pilot project in Missoula County and there is a one-stop program in West Yellowstone. That program is financed by eight different agencies of the state, and it is very efficient.

Diane Williams, League of Women Voters, spoke in support of House Bill 112. However, the league does not support an oversight committee as described in Section 2. If this is deleted out of the bill, the league stands in support of House Bill 112.

Judith Carlson, Department of Social and Rehabilitative Services said that the department is very much in support of House Bill 112 and would be pleased to participate in the study. She stated that the kinds of innovative study called for in this bill deserve careful attention. It is a workable concept, and the department supports passage of this bill.

Representative Ellis closed testimony by stating that the motivation behind this is to get agencies to work efficiently and to eliminate duplication and to give the people of the state the most for their money and provide an efficient service.

Chairman Olson asked the Committee members if they have any questions. Senator Rasmussen asked Ms. Williams if she knew the status of the oversight committee bill in the House. Ms. Williams said she did not. Their group is opposed to the oversight committee because they are supporting annual sessions and are not supporting any interim committees. Senator Himsl asked about the need for a financial statement. Representative Ellis said the other departments are willing to cooperate in this without a fiscal impact. Senator Ryan asked about the feelings of the rest of the interim committee who did not sign the bill. Representative Ellis said the interim committee as a whole supported this concept. He just got the signatures of the ones he found on the House floor. Senator Lensink asked how this is going to be set up. Representative Ellis said the Governor is loaded with the responsibility of it with the cooperation of the six agencies that are named in the bill. They will come up with a plan to provide this service across the state in the smaller communities. Many of these agencies send people in once a week, and this could be done in cooperation and make it a one-stop service. It should work with the present agencies; not create a new one. The oversight committee bill is in the House Appropriations Committee. It is House Bill 117.

The hearing on House Bill 112 was closed at 1:10 p.m.

CONSIDERATION OF HOUSE BILL 238: House Bill 238 is an act to empower the Department of Social and Rehabilitation Services to impose sanctions on and recover payments from providers who engage in fraudulent, abusive, or improper activities.

Witnesses supporting House Bill 238:

Jimmy McCabe, Department of Social and Rehabilitation Services
Burt Annin, Department of Social and Rehabilitation Services

Representative Lund, sponsor of House Bill 238, was not present at the hearing. Therefore, Chairman Olson asked Jimmy McCabe, Department of SRS, to testify for the bill. See Attachment "A" for his testimony.

Burt Annin, attorney for the Department of SRS, referred the Committee to the statement of legislative intent. He does not think there is any concern for constitutional questions in Section 4 as indicated in paragraph 1 of the statement of intent.

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However, he believes there is a problem along this line in Section 5. He thinks that this section has the cart before the horse in that a sanction is imposed before the hearing. In all cases in which a penalty or sanction may be imposed a person is entitled to a hearing. He suggested that the Committee cross out "has been" and insert "may be" on page 2, lines 22 and 23.

Mr. McCabe closed testimony on House Bill 238 by stating that the department feels that this bill would lend legal justification to the department imposing a sanction and would make it very clear that a court challenge is inappropriate. This bill stems from a case in Illinois where a laboratory had been convicted of felony fraud. The lab took the state to court and the case was overturned because the state had no authority to sanction a person from the program. This bill would protect the department from this happening.

Chairman Olson asked the Committee members if they have any questions. Senator Rasmussen asked about the statement on page 4, line 5, which states that "sanctions imposed include but are not limited to." Mr. McCabe said it has been the department's experience that it cannot always spell out 100 percent what sanctions will be imposed. When the department develops the rules to implement this bill, it will spell out as close as possible the reasons for sanction; but it cannot always anticipate all of the needs. Sometimes a compromise sanction is needed. He cited an example where a sanction that would normally have been imposed would have left a community without a druggist. In that case, an alternate sanction was worked out. Senator Ryan said that he thinks that is sweeping the problem under the rug, and the state could still be taken to court. Mr. McCabe confirmed that the state could have been taken to court in that case. Senator Ryan said he thinks it sounds like the state is condoning fraud in certain situations. Senator Himsel asked Mr. Annin about the last sentence in Section 5. Mr. Annin said he thinks that sentence is redundant and could be taken out. Senator Himsel asked what seems to be the constitutional problem in Section 4. Mr. Annin said he doesn't know if that was a misprint. He wasn't able to find the person who wrote the statement of intent, and he doesn't know what the policy is for amending a statement.

The hearing on House Bill 238 was closed at 1:30 p.m.

CONSIDERATION OF HOUSE BILL 324: House Bill 324 is an act to eliminate the duplication of responsibilities for treatment of alcoholism; to redefine the Galen Alcoholism Program to include those activities relating to inpatient services; and amending Section 53-6-304, MCA.

Representative Menahan, sponsor of House Bill 324, said this bill came about basically from the Human Services Interim Committee. There were a couple of areas in the state that are having problems with the alcohol programs in their community. These people testified that in such areas as Missoula they had a program using the Galen Hospital. Instead of following this, the local alcohol program contracted with the hospital to provide services. The cost at the hospital was considerably more per patient than it would have been at Galen. These people wanted some fees set which have been stricken out of the bill. Basically, what is left in the bill is just some of Galen's duties. The people would like what is left of the bill to be passed.

Chairman Olson asked the Committee members if they have any questions. Senator Himsel stated that he doesn't see where the bill does anything that Galen is not doing now. Representative Menahan stated that they are doing a lot of this right now, but the direction is not in law. Senator Lensink asked for clarification of line 18 on page 1 of the bill. Senator Menahan said that Galen is trying to have some of the family members stay at Galen so they can work with the whole family. They try to make it so everyone in the family understands the problems of the alcoholic. Senator Lensink asked if the family members are admitted and discharged. Representative Menahan said that they are just invited to participate in the program. Chairman Olson asked if the family members pay for their own care. Representative Menahan said the lodging is provided, but the family members pay for their own meals. They just stay for a short time, such as a weekend.

The hearing on House Bill 324 was closed at 1:35 p.m.

ACTION ON HOUSE BILL 324: Senator Himsel asked about a fiscal note on the bill. Representative Menahan said they don't know of anything that would create an additional cost to the state. Senator Lensink asked about the additional wording inserted starting on line 22 on page 2. Representative Menahan said Galen is doing that now. They would like some direction for after-care. Most of it is volunteer help through the Alcoholics Anonymous group.

Senator Rasmussen moved that House Bill 324 BE CONCURRED IN. Senator Ryan said this alcohol program befuddles him. Three years ago they were just drunks. Now all this money has come in, and everyone has flocked to help the poor alcoholic. He thinks this bill was initially intended to talk about money allocations rather than an explanation of the alcohol programs in the state of Montana. Senator Hims1 expressed concern about the direction given to the program at Galen. Senator Ryan said some of these things are already being done, so he doesn't think the money part will change. Senator Rasmussen asked what is going to change if this bill passes. Representative Menahan said there has been a lot of money put into alcohol programs. They would like the institution's rules put in black and white. Because of the new monies, there are a lot of people that are clamoring for the money. They have hired a lot of contracted services, and the outlying areas don't want that. They feel the Galen program is successful. Senator Lensink stated that he feels there are some problems on page 3. He doesn't think that he is ready to vote on this. Representative Menahan said that Don Holmes could write a letter to the Committee on this bill. It was basically through these people that the bill was written.

Senator Hims1 made a substitute motion that the Committee delay action until it gets more information. He stated that he would like a fiscal note. The substitute motion passed.

ACTION ON HOUSE BILL 238: Senator Hims1 moved that the Committee amend the bill on page 2, line 22, by striking "has been" and replacing it with "may be" and further that the last sentence beginning on line 25 and continuing on line 25 on page 2 be deleted. He thinks this sentence is redundant. The motion carried.

Discussion followed on the statement of intent. Chairman Olson ruled that further action will be delayed until the statement of intent is rewritten. Senator Norman was appointed to work with the Department of Social and Rehabilitation Services and Dennis Taylor to draft a statement of intent.

ACTION ON HOUSE BILL 112: Senator Norman asked if the Committee should decide whether it wants to have an oversight committee in the bill. Senator Rasmussen said that Section 5 speaks to this point. House Bill 117 will take care of this problem. Senator Norman expressed a problem with that section in passing a bill when the Committee will not know if there will be an oversight committee or not. Senator Lensink stated that without hearing testimony on the oversight committee he can't make a decision on this. Senator Rasmussen doesn't think this is the heart of the bill. Senator Hims1 asked about line 16 on page 2. Mr. Taylor said that is a mistake in the bill and should read House Bill 117. Senator Norman said he thinks the

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Committee should try to put a bill together before it takes it to the Senate floor. The Committee needs to get answers on the other bills referred to and whether they appoint an interim committee. Senator Lensink said the whole last half of the bill deals with the oversight committee. We don't even know if that is going to be in existence.

Senator Ryan moved that House Bill 112 BE NOT CONCURRED IN. Senator Norman expressed doubt about the Committee wanting to do that, or whether it should try to clean up the bill. Senator Rasmussen said he would not support the motion because he sat in that interim committee, and this was one thing that everybody agreed was good. The bill is talking about one-stop service centers. Section 5 says if the oversight committee bill does not pass, then Section 5 takes care of the bill. A roll call vote was taken. The motion failed by a vote of four to two.

Senator Lensink moved that lines 14, 15, and 16 on page 2 and all of page 3 be deleted. This takes the oversight committee out of the bill, and leaves it up to the governor. Senator Rasmussen said it has been suggested that if the oversight committee bill does pass the Committee can write this language into that bill. Senator Rasmussen said he thinks there should be a date by which the governor reports. Senator Norman asked if the Finance Committee will take notice of the fact that the Public Health Committee doesn't want this committee. Senator Rasmussen said he doesn't see this as a signal that this Committee doesn't like the oversight committee; it is just a clean-up of the bill. Senator Ryan says he sees this as an insurmountable problem in this room, so we are going to mandate that the governor fix it. Senator Hims1 said he thinks we are getting the cart before the horse if we clean the committee out of this bill before even seeing the appropriations bill. Senator Norman suggested that maybe the Committee should delay action until it sees House Bill 117. Senator Rasmussen said he thinks that we should deal with the concept of one-stop service. A roll call vote was taken. The motion carried unanimously.

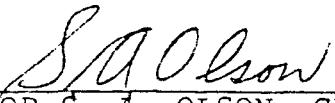
Senator Rasmussen said the bill needs another amendment that the governor develop this plan and report to the next session of the Legislature. This would be kind of bringing back Section 5. He moved that the portion of Section 5 starting on line 18 through line 21 on page 3 be added to page 2 starting with "The governor shall, etc." Senator Ryan asked Mr. Annin what this bill does as far as the governor is concerned. Mr. Annin said that he envisions the governor appointing a subcommittee to work

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on the edict of this bill. A discussion followed on the fiscal impact and whether this could be done with the governor's present staff. A roll call vote was taken on the amendment. The motion carried by a vote of five to one.

Senator Rasmussen moved that House Bill 112, as amended, BE CONCURRED IN. Roll call vote was taken. The motion tied with a vote of three to three. The bill will be left in Committee.

ADJOURNMENT: There being no further business discussed, the meeting was adjourned at 2:10 p.m.


SENATOR S. A. OLSON, CHAIRMAN

ROLL CALL
PUBLIC HEALTH COMMITTEE

46th LEGISLATIVE SESSION - - 1979

Date 2-28-79

TESTIMONY BEFORE THE SENATE PUBLIC HEALTH
WELFARE AND SAFETY COMMITTEE
WEDNESDAY, FEBRUARY 28, 1979 AT 12:30 P.M.

HOUSE BILL 238--"AN ACT TO EMPOWER THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO IMPOSE SANCTIONS ON AND RECOVER PAYMENTS FROM PROVIDERS WHO ENGAGE IN FRAUDULENT, ABUSIVE OR IMPROPER ACTIVITIES; AMENDING SECTION 53-6-111, MCA."

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, HOUSE BILL 238 WOULD GRANT THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES (SRS) SPECIFIC AUTHORITY TO IMPOSE SANCTIONS AND PENALTIES ON MEDICAID PROVIDERS WHO ABUSE OR DEFRAUD THE MEDICAID PROGRAM. FEDERAL REGULATIONS GOVERNING THE MEDICAID PROGRAM REQUIRE THE STATE TO HAVE PROCEDURES FOR SUSPENDING AND/OR TERMINATING ABUSIVE PROVIDERS. PROVIDERS MAY TAKE ADVANTAGE OF THE MEDICAID PROGRAM AND ITS CLIENTS IN A NUMBER OF WAYS SUCH AS, OVERCHARGING FOR GOODS AND SERVICES OR CHARGING FOR UNNECESSARY TREATMENT, GOODS, OR SERVICES. ALTHOUGH ONLY A HANDFUL OF PROVIDERS IN THE STATE ENGAGE IN SUCH ACTIVITIES, WITHOUT SPECIFIC LEGISLATION TO SANCTION THESE ACTIVITIES, AND TO DETER SUCH BEHAVIOR IN THE FUTURE, PAYMENTS FOR FRAUDULENT OR ABUSIVE ACTIONS COULD BE COSTLY TO THE MEDICAID PROGRAM.

BECAUSE THE DEPARTMENT'S AUTHORITY TO SANCTION PROVIDERS HAS BEEN QUESTIONED IN THE PAST, SRS RECOMMENDS THE PASSAGE OF HB 238 IN ORDER TO ELIMINATE CONFUSION CONCERNING THE DEPARTMENT'S OBLIGATION IN REGARD TO PROVIDER FRAUD AND ABUSE AND ALSO TO COMPLY WITH FEDERAL REGULATIONS. WITHOUT THIS LEGISLATION, THE STATE'S AUTHORITY TO SANCTION PROVIDERS COULD BE CHALLENGED IN COURT. IF THE STATE LOST THE CHALLENGE,

MONTANA COULD STAND TO LOSE FEDERAL MATCHING FUNDS FOR THE OPERATION OF THE MEDICAID PROGRAM. LOSS OF THESE FUNDS COULD PROVE DISASTROUS TO THE MEDICAID PROGRAM IN THIS STATE--A PROGRAM THAT WAS DESIGNED TO HELP THE NEEDY OBTAIN HEALTH CARE.

THERE ARE SPECIFIC INSTANCES WHERE THE MEDICAID PROGRAM COULD RUN INTO DIFFICULTY WITHOUT THIS LEGISLATION. FOR EXAMPLE, FEDERAL REGULATIONS REQUIRE SRS TO SUSPEND OR TERMINATE FROM THE MEDICAID PROGRAM ANY PROVIDER WHO HAS ALSO BEEN TERMINATED FROM THE MEDICARE PROGRAM. IF THE STATE FAILS OR IS UNABLE TO DO SO, IT FACES THE LOSS OF FEDERAL FINANCIAL PARTICIPATION IN MEDICAID PAYMENTS TO PROVIDERS WHO HAVE BEEN SUSPENDED OR TERMINATED FROM THE MEDICARE PROGRAM. THAT FEDERAL PARTICIPATION AMOUNTS TO 63 PERCENT OF THE PAYMENTS. IF THE MEDICAID PROGRAM DOES NOT HAVE THE AUTHORITY TO SUSPEND OR TERMINATE THOSE PROVIDERS, THEN WE MUST CONTINUE PAYING THEM. WITHOUT FEDERAL FUNDS, WE WOULD HAVE TO REQUEST ADDITIONAL FUNDS FROM THE STATE'S GENERAL FUND TO PAY THOSE PROVIDERS.

THE AIM OF HB 238 IS TO ALLOW THE DEPARTMENT TO DEFINE BY RULE WHAT SPECIFIC ACTIVITIES IN RELATION TO THE MEDICAL ASSISTANCE PROGRAM ARE FRAUDULENT, ABUSIVE OR IMPROPER AND SUBJECT TO CERTAIN PENALTIES. THIS BILL DELINEATES SOME OF THOSE PENALTIES AND SANCTIONS AND GIVES SRS THE AUTHORITY TO RECOVER FROM A PROVIDER ALL AMOUNTS OF MONEY PAID BY THE MEDICAID PROGRAM AS A RESULT OF FRAUDULENT, ABUSIVE OR IMPROPER ACTIVITIES.

FIVE PENALTIES OR SANCTIONS ARE LISTED. PROPOSED SANCTIONS RANGE FROM:

--REQUIRING ATTENDANCE AT EDUCATIONAL COURSES CONCERNING THE RULES OF THE MEDICAID PROGRAM, TO
--WITHHOLDING FUTURE PAYMENTS TO OFFSET PREVIOUS IMPROPER PAYMENTS, TO
--SUSPENSION OF PAYMENTS TO A PROVIDER PENDING THE RESOLUTION OF A DISPUTE BETWEEN THE PROVIDER AND THE DEPARTMENT REGARDING FRAUDULENT OR ABUSIVE ACTIVITIES,
TC
--TEMPORARY SUSPENSION, OR
--PERMANENT TERMINATION FROM THE PROGRAM.

HB 238 ALSO ENTITLES ANY SANCTIONED PROVIDER TO A HEARING ON THE MATTER.

OTHER STATES HAVE MET WITH DIFFICULTIES CONCERNING THE IMPOSITION OF PENALTIES OR SANCTIONS UPON ABUSIVE PROVIDERS. IN RESPONSE, SOME OF THEM HAVE PASSED LEGISLATION SIMILAR TO THAT PROPOSED HERE TODAY. SRS BELIEVES HB 238 IS NECESSARY TO PREVENT THE WASTEFUL USE OF MEDICAID FUNDS, TO DETER POSSIBLE COURT CHALLENGES IN THE FUTURE, AND TO ENABLE THE STATE TO COMPLY WITH FEDERAL REGULATIONS IN ORDER TO ENSURE ESSENTIAL FEDERAL FUNDING FOR THE PROPER OPERATION OF THE MEDICAID PROGRAM.

SENATE Public Health COMMITTEE

BILLS 112 324 & 238 VISITORS' REGISTER

DATE 2-28-

NAME: Steve Williams DATE: 3/28/74

ADDRESS: 1407 Highland

PHONE: 417-2-5991

REPRESENTING WHOM? League of Women Voters of N.Y.

APPEARING ON WHICH PROPOSAL: 43 112

DO YOU: SUPPORT? AMEND? _____ OPPOSE? _____

COMMENTS: _____

NAME: Jimmy McCabe DATE: 2/28/29

ADDRESS: 3 Park Court

PHONE: 442-2916

REPRESENTING WHOM? SRS

APPEARING ON WHICH PROPOSAL: HB 238

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

COMMENTS: _____

SENATE COMMITTEE

PUBLIC HEALTH

Date 2-28-79

Bill No. 11-2

Time 7:30 p.m.

Quincy J. Olson
Secretary

S. Olson
Chairman

Motion: DO NOT PASS HOUSE BILL 112

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

SENATE COMMITTEE

PUBLIC HEALTH

Date 2-2-79

Bill No. 11.0

Time 2:00 p.m.

Dudley), (Dr.
Secretary

S. Olson
Chairman

Motion: Amend House Bill 112 by deleting lines 14, 15, and 16 on
page 2 and all of page 3.

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

SENATE COMMITTEE

PUBLIC HEALTH

Date 1-2-77

Bill No. 112

Time 12.5 p.m.

Secretary

S. Olson
Chairman

Motion: Amend House Bill 112 by inserting the portion from Section 5 starting on page 3, line 18 with "The governor shall" and continuing through the end of line 21.

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

SENATE COMMITTEE

PUBLIC HEALTH

Date 2-28-74

Bill No. 11.2

Time 2:10 p.m.

Dorothy A. Olson
Secretary

S. Olson
Chairman

Motion: Do Pass, as amended, House Bill 112

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