

MINUTES OF THE MEETING
HUMAN SERVICES AND AGING COMMITTEE
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVES

The meeting of the Human Services and Aging Committee was called to order by Chairman Budd Gould on February 5, 1987 at 12:30 p.m. in room 312-D of the State Capitol Building.

ROLL CALL: All members were present.

EXECUTIVE SESSION - HOUSE BILL 521

REP SIMON made a motion to table HB 521.

A voice vote was taken and the motion PASSED.

CONSIDERATION OF HOUSE BILL 480

REP MILES introduced HB 480 which would revise the laws providing for aid to families with dependent children (AFDC) to clarify the eligibility of children of unemployed parents.

PROPONENTS

LEE TICKELL, administrator, Economic Assistance, SRS, stated this legislation was drafted by SRS at the request of the legislative council to seek clarification; and was a portion of the bill that was not updated in the 1985 session.

OPPONENTS

There were no opponents.

REP MILES then closed on House Bill 480.

In response to an inquiry from Rep Hansen, Mr Tickell stated the federal government determines the criteria the states can adopt for AFDC and the Unemployed Parent Program is one of those conditions for eligibility. Two parents, living in the same household who are unemployed could receive general assistance, which is 100% state funded; whereas if these individuals were included in AFDC the state would receive 67% federal dollars for 32% state matching funding.

CONSIDERATION OF HOUSE BILL 490

REP MILES then introduced HB 490. which would prohibit a restriction of trust funds or other resources in such a manner as to qualify the beneficiary for public assistance

programs. She stated several incidents have arisen where a trust fund has been set up on behalf of a beneficiary, and the trustee will not allow those monies to be released. She then described four (4) situations relative to this point.

PROPOSERS

LEE TICKELL, SRS, stated this is a "loophole closing" piece of legislation. He stated the department has seen some heavy abuses of utilizing a trust for escaping the department being able to count that resource as being available to the person applying for public assistance. He stated he could put his personal resources into an irrevocable trust with his mother as beneficiary, and become eligible for public assistance. One case involved a trust fund in the amount of \$157,000 that because it was set up and not available to the claimant, could not be considered a resource in the determination of public assistance benefits (exhibit 1).

OPPOSERS

SUE FIFIELD, Montana Low Income Coalition, agreed there are discrepancies in this program, but voiced concern with the children's trust funds, especially those for disabled children who use the funds when they are 18 for self support. She suggested an amendment to protect the children's interests.

REP MILES then closed testimony on House Bill 490.

REP CODY asked Mr Tickell if a trust fund was established by a relative who, at their demise left a small trust for education for a child, would be dissolved because of this legislation. Mr Tickell stated it would, as the legislation prohibits writing language in the trust fund that would prohibit the use of at least the amount necessary for minimal subsistence of that child in lieu of them going on public assistance. He noted this was taken into consideration when the legislation was written. He added the policy followed by the department is if there is money available, either income or resource, it should be used for the general support of food, clothing, and shelter prior to going on public assistance. He stated writing exclusions into the legislation opens the door into how much, for what purposes, etc.

In response to questions from Rep Sands, Russ Cater, chief legal counsel, SRS, stated it is true that lines 21 to 23 of page one do leave a loophole, but he believed that subsection three (3) actually closes that loophole for future benefits. Mr Cater stated it would also limit trusts that are drawn in other states. In relationship to subsection

two (2), Mr Cater stated this section is retroactive in the sense that it applies to existing trusts.

In response to a question from Rep Russell, Mr Cater stated per capita payments to tribal individuals would be affected if there was no federal law governing the prohibition of that action.

CONSIDERATION OF HOUSE BILL 543

REP MILES introduced HB 543 which would allow for the recovery of assistance paid by the department of SRS from the estate of an AFDC or general relief recipient.

PROPONENTS

LEE TICKELL, SRS, said this legislation was also drafted at the department's request. He stated the department currently recovers from the estate in the case of a medicaid recipient, and felt the same public policy should pertain to those who receive either AFDC or general assistance.

OPPONENTS

SUE FIFIELD, Montana Low Income Coalition, spoke in opposition to the legislation. She stated those on general assistance work for their checks through workfare programs, selling their estates would result in double taxation, and individuals have no control over the job market. She asked the committee to consider how this would affect the children of these families.

MIGNON WATERMAN, Montana Association of Churches, read her prepared text (exhibit 1) in opposition to the legislation.

REP MILES then closed the testimony on HB 543. She stated that in reference to all three (3) of the previous bills, she stated there are important policy decisions that need to be made as to the degree we going to support individuals who do have some assets. In some instances, she stated, it is a situation of whether we will support people now or later when dealing with the case of minor children. She alluded to the budget situation of the current SRS budget and the need to ensure that there are funds for those individuals who need the assistance. She requested an amendment that would exclude money that was earned as a result of a workfare program.

In response to an inquiry from Rep Cody, Mr Tickell stated that cases of fraud are not prosecuted by the department of SRS, but are referred to the department of Revenue. Mr Cater further responded that he did not have the number

of cases of fraud and the results of those cases, but gave "ballpark" figures of 5% for fraud, and for overpayments 10% to 15%

In reply to questions from Rep Brown, Mr Cater stated the language is broad enough to affect individuals involved in cases of AFDC and lack of child support payments.

CONSIDERATION OF HOUSE BILL 489

REP MILES then introduced HB 489, which would create a statutory appropriation for public and private funds donated to the department of SRS for medical assistance.

PROponents

LEE TICKELL, SRS, spoke in support of this legislation.

REP CAL WINSLOW, Billings, noted the acceleration of uncontrolled expenditures in the medical area due to the growth in the elderly population and the AFDC caseload. He noted the legislation was a voluntary approach to a necessary action.

BOB FRAZIER, Priorities for People (PFP), explained that this idea has originated in the PFP process. He said the reason for the high priority of this revenue initiative was the concept of contributions that could be used for federal match during a time of fiscal constraint.

SUE FIFIELD, Montana Low Income Coalition, expressed the organization's support for the legislation.

OPponents

There were no opponents to the legislation.

REP MILES then closed testimony on HB 489 and reiterated on Rep Winslow's testimony.

EXECUTIVE SESSION - HOUSE BILL 480

REP CODY made a motion to pass House Bill 480.

A voice vote was taken and the motion PASSED unanimously.

EXECUTIVE SESSION - HOUSE BILL 489

REP SIMON made a motion to pass House Bill 489.

A voice vote was taken and the motion PASSED unanimously.

EXECUTIVE SESSION - HOUSE BILL 327

REP CODY made a motion to adopt the technical amendments in exhibit 3 for HB 327.

A voice vote was taken and the motion PASSED unanimously.

The committee discussed the ramifications of the proposed legislation, expressed personal concerns on issues involved with this legislation, and discussed the individuals involved and the decisions to be made relative to this bill.

REP NELSON made a motion to amend page two (2) line 17, following: "coroner", insert: ",after consultation with the parents as defined in subsection D, shall order that within 24 hours".

A voice vote was taken and the motion PASSED, with Rep Kitselman and Rep Patterson voting no.

REP KITSELMAN made a motion to table HB 327.

A roll call vote was taken and the motion FAILED, 8 votes for and 10 votes against.

REP CODY moved House Bill 327 DO PASS AS AMENDED.

A roll call vote was taken and the motion FAILED on a tie vote.

REP KITSELMAN made a motion to indefinitely postpone HB 327.

REP STRIZICH made a substitute motion that HB 327 DO NOT PASS.

A roll call vote was taken and the motion PASSED, ten (10) votes for and eight (8) votes against.

The meeting was adjourned at 2:45 p.m.

R. Budd Gould, Chairman

DAILY ROLL CALL

HUMAN SERVICES AND AGING COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date FEBRUARY 5, 1987

NAME	PRESENT	ABSENT	EXCUSED
REP. BUDD GOULD, CHAIRMAN	X		
REP. BOB GILBERT, VICE CHAIRMAN	X		
REP. JAN BROWN	X		
REP DUANE COMPTON	X		
REP. DOROTHY CODY	X		
REP. DICK CORNE'	X		
REP. LARRY GRINDE	X		
REP. STELLA JEAN HANSEN	X		
REP. LES KITSELMAN	X		
REP. LLOYD MC CORMICK	X		
REP. RICHARD NELSON	X		
REP. JOHN PATTERSON	X		
REP. ANGELA RUSSELL	X		
REP. JACK SANDS	X		
REP. BRUCE SIMON	X		
REP. CAROLYN SQUIRES	X		
REP. TONIA STRATFORD	X		
REP. BILL STRIZICH	X		

STANDING COMMITTEE REPORT

FEBRUARY 5, 19 87

Mr. Speaker: We, the committee on HUMAN SERVICES AND AGING

report HOUSE BILL NO. 327

- do pass
 do not pass
- be concurred in
 be not concurred in
- as amended
 statement of intent attached

REP. R. BUDD GOULD,

Chairman

1. Title, line 5.

Strike: "PERFORM"

Insert: "ORDER"

2. Page 2, line 16.

Following: "(2)"

Insert: "(a)"

3. Page 2, line 17.

Following: "shall"

Insert: ", after consultation with the parents, order that"

4. Page 2, line 18.

Strike: "perform"

Following: "autopsy"

Insert: "be performed"

5. Page 2, line 19.

Strike: "a parent"

Insert: "the parents"

Strike: "objects"

Insert: "object"

6. Page 2.

Following: line 21

Insert: "(b) For the purposes of consultation about and objecting to an autopsy in subsection (a), the parents are:

(i) both parents if the parents are married to each other, or are divorced with joint custody of the deceased infant and both are within the state;

(ii) the custodial parent if the parents never married, one parent is deceased, the parents are divorced with custody awarded to one parent, or the parents are divorced with joint custody but one parent is not within the state;

(iii) the person or persons who were legal guardians of the living infant."

FIRST

B

WHITE

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STANDING COMMITTEE REPORT

FEBRUARY 5, 19 87

Mr. Speaker: We, the committee on HUMAN SERVICES AND AGING

report HOUSE BILL NO. 480

- | | | |
|---|--|---|
| <input checked="" type="checkbox"/> do pass | <input type="checkbox"/> be concurred in | <input type="checkbox"/> as amended |
| <input type="checkbox"/> do not pass | <input type="checkbox"/> be not concurred in | <input type="checkbox"/> statement of intent attached |

REP. R. BUDD GOULD, Chairman

CLARIFYING THE ELIGIBILITY OF CHILDREN OF UNEMPLOYED PARENTS

MS
FIRST

reading copy (WHITE)
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STANDING COMMITTEE REPORT

FEBRUARY 5, 19 57

Mr. Speaker: We, the committee on HUMAN SERVICES AND AGING
report HOUSE BILL NO. 489

- | | | |
|---|--|---|
| <input checked="" type="checkbox"/> do pass | <input type="checkbox"/> be concurred in | <input type="checkbox"/> as amended |
| <input type="checkbox"/> do not pass | <input type="checkbox"/> be not concurred in | <input type="checkbox"/> statement of intent attached |

REP. R. BUDD GOULD, Chairman

STATCTORY APPROPRIATION OF DONATED FUNDS FOR MEDICAL ASSISTANCE

FIRST reading copy (WHITE)

ROLL CALL VOTE

HUMAN SERVICES AND AGING

COMMITTEE

DATE February 5, 87 BILL NO. 327

NUMBER 1

NAME	AYE	NAY
REP. BUDD GOULD, CHAIRMAN	X	
REP. BOB GILBERT, VICE CHAIRMAN	/	
REP. JAN BROWN	X	
REP. DUANE COMPTON		/
REP. DOROTHY CODY		/
REP. DICK CORNE'		/
REP. LARRY GRINDE	/	
REP. STELLA JEAN HANSEN	/	
REP. LES KITSELMAN	X	
REP. LLOYD MC CORMICK		/
REP. RICHARD NELSON		/
REP. JOHN PATTERSON	/	
REP. ANGELA RUSSELL		/
REP. JACK SANDS		/
REP. BRUCE SIMON	/	
REP. CAROLYN SQUIRES		/
REP. TONIA STRATFORD		/
REP. BILL STRIZICH		/

TALLY

8

10

Secretary

Chairman

MOTION: Rep Kitselman made a motion to table HB 327.

ROLL CALL VOTE

HUMAN SERVICES AND AGING

COMMITTEE

DATE 2/5/87 BILL NO. 327 NUMBER 2

NAME	AYE	NAY
REP. BUDD GOULD, CHAIRMAN		/
REP. BOB GILBERT, VICE CHAIRMAN		/
REP. JAN BROWN		/
REP. DUANE COMPTON	/	
REP. DOROTHY CODY	/	
REP. DICK CORNE'	/	
REP. LARRY GRINDE		/
REP. STELLA JEAN HANSEN		/
REP. LES KITSELMAN		/
REP. LLOYD MC CORMICK	X	
REP. RICHARD NELSON	X	
REP. JOHN PATTERSON		X
REP. ANGELA RUSSELL	X	
REP. JACK SANDS	X	
REP. BRUCE SIMON		X
REP. CAROLYN SQUIRES	X	
REP. TONIA STRATFORD		X
REP. BILL STRIZICH	/	

TALLY

9

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[Signature]
Secretary

[Signature]
Chairman

MOTION: Rep Cody made a motion that HB 327 do pass as amended.

ROLL CALL VOTE

HUMAN SERVICES AND AGING

COMMITTEE

DATE 2/5/87 BILL NO. 327 NUMBER 3

NAME	AYE	NAY
REP. BUDD GOULD, CHAIRMAN	X	
REP. BOB GILBERT, VICE CHAIRMAN	X	
REP. JAN BROWN	X	
REP. DUANE COMPTON		X
REP. DOROTHY CODY		X
REP. DICK CORNE'		X
REP. LARRY GRINDE	X	
REP. STELLA JEAN HANSEN	X	
REP. LES KITSELMAN	X	
REP. LLOYD MC CORMICK		X
REP. RICHARD NELSON		X
REP. JOHN PATTERSON	X	
REP. ANGELA RUSSELL		X
REP. JACK SANDS		X
REP. BRUCE SIMON	X	
REP. CAROLYN SQUIRES		X
REP. TONIA STRATFORD	X	
REP. BILL STRIZICH	X	

TALLY

10

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Secretary

Chairman

MOTION: Rep Strizich made a motion to indefinitely postpone

HB 327.

EXHIBIT # 1
DATE 2-5-87
MS-1-I # 490
HB

Date: Passed - 7/16/86

Priorities for People

Revenue Initiative # 4

June Special Session

- Unmet Need
- More Cost Effective
- Program Operation
- SRS Program or Policy Change
- Maintain Current Level of Funding

Initiative Title: Volunteer Medicaid Trust Fund

Budget Building Team: Medicaid Services

Contact Person(s): Lee Tickell

Description of Revenue Measure:

New federal regulations now allow the State to use voluntary contributions for matching federal funds for Medicaid services. The contributions may come from any part of the private sector, including from nursing home clients. The following four major factors should be considered:

1. Personal Needs Allowance and Accounts

SSI clients receive a monthly personal needs allowance of \$25 while in a nursing home. Clients who have income other than SSI receive a personal needs allowance of \$40. All other income must apply to the cost of their care for FFP. 42 CFR 435.725(c) for the Categorically Related and 42 CFR 435.332 for the Medically Needy are very specific and mandate the state in the proper application of client income to cost a care.

Many times the client does not use his personal need money each month and the balance is retained for him in the nursing home patient trust account. As the money accumulates, the client's Medicaid eligibility is jeopardized due to excessive resources. The current resource limitation is \$1,700. In order to keep eligibility from being interrupted, the client could donate his personal needs allowance and all or part of his nursing home trust account to the agency to be used in the future for FFP matching purposes.

Regional Office, Denver, agrees with this, but advises a form be signed by the donor stating that the gift is voluntary. Legal also has some problems with the concept, but agrees that a statement could be designed that would protect the agency from accusations of manipulation of clients.

2. Transfer of Property

Section 0110.075A of the SSI Manual allows "The valid. . . transfer, as by sale or gift of a resource prior to filing. . . (for benefits). . . , does not preclude eligibility for payment, even though retention of the resource would have placed the individual or couple resources over the applicable limits. This is true. . . though the resource may have been given as a gift. . .".

Paragraph B of the section states, "In order for the resources not to be attributed to the individual following the transfer, the transfer must be legally binding on that individual. . . and in the case of cash, it must be shown that the individual no longer has access to or the use of the funds".

In summary, the federal policy will allow the individual to give excess income to the state Medicaid trust to be used as match for FFP. The local office makes the determination of a valid transfer based on the fact the transfer is no longer available and the client has no remaining interest in it. Montana took a very conservative stand in ARM 46.12.3207; however, 46.12.3207(2)(B)(iif) allows the individual to make payment of medical expenses equal to the value of other non excluded resources less the general resource limitation. Possibly this could be changed to future medical bills. An amendment to the rule allowing for gifts to a Medicaid trust fund is recommended.

The Regional Office has requested that we put our proposed plan in writing for their formal consent and advice.

3. Windfall Resources

During a period of eligibility, section 01110.080(B) of the SSI Manual allows the client to dispose of a resource the month of receipt without jeopardizing his eligibility. The same procedure would be used as stated in #2. If the client cannot dispose of the resource during the month of receipt, he will be closed at the end of the receipt month, unless he is allowed to make a legally funding transfer, as described in #2 above. It is recommended that a gift to a Medicaid trust fund be allowed so such a transfer.

4. Spending Authority and Appropriations

If the above proposal is pursued, it will not be necessary to create a Medicaid Trust Fund to accept donations. The Agency can accept gifts and account for the contributions as a special budgetary line item. New legislation will be required to allow the Agency to retain the gifts and not submit them to the State General Fund.

If the Legislature allows for Agency retention of donations for Medicaid FFP purposes, they must also pass legislation giving the Agency the spending authority for both the donations and the FFP. The fly in the ointment is the realistic estimation of the amount of future donations.

The donations will be used to enhance Medicaid appropriations not reduce them. The legislation will include a "maintenance of effort" clause to ensure that Medicaid services would not have to be reduced if donations were overestimated.

Donations may be earmarked for a specific optional service, such as transplantations. Generally, the community raises funds in these cases to help defer the cost of the procedure and care. Such donations have caused some problems in the past. If the gifts are considered as a resource to the client, he loses eligibility; if the funds are considered to be third party liability, they are used to pay cost of care on a dollar for dollar basis; but, if they are donated to the State, they may be used for FFP and triple in value towards the cost of care.

The new federal regulations do not allow the gift to be earmarked for a specific case. Thus, if money was donated for the purpose of transplantation, it must be used for the next eligible candidate and not necessarily in behalf of the client in who's name the funds were given.

Donations would have to be given freely and without any strings attached. Once a gift has been given, the law supports the fact that the donor can no longer exercise control over it. The donor, however, can give money be spent for a specific purpose only such as transplantation. The purpose of the gift always follows the money and prevents the funds from being spent for AFDC grants or administrative costs.

Impact on General Fund:

Federal funds are available for Medicaid at approximately 66%; 51.99% of our nursing home clients have \$431,649 in their patient trust accounts. It is estimated that the total amount available in patient trust accounts is \$957,513.78. (See attached). If we assume that only 20% (\$191,502.76) of the accounts are donated during any fiscal year, the Agency would realize another \$383,005.52 from FFP, generating \$575,508.28 for Medicaid services.

PPF/122

Montana
Association of
Churches



EXHIBIT 2

DATE _____

HB _____

MONTANA RELIGIOUS LEGISLATIVE COALITION • P.O. Box 745 • Helena, MT 59624

February 5, 1987

MISTER CHAIRMAN AND MEMBERS OF THE HOUSE HUMAN SERVICES COMMITTEE:

My name is Mignon Waterman and I represent the Montana Association of Churches.

We certainly do not condone the abuse of general assistance and we understand the need to impose reasonable cost saving measures so as to insure the availability of general assistance funds for the most needy.

However we do have some concerns about House Bill 543 as presented. If a person has received AFDC or GA, has gone on to become gainfully employed, can the state recover the AFDC or GA costs at the time of death, even though that person is no longer on AFDC or GA? If other claimants institute proceedings for a portion of a deceased recipient's estate while there are dependents or a surviving spouse occupying the residence, will the state file a claim to recover benefits? If there is a surviving spouse or minor dependents who are not occupying the residence but are dependent upon the deceased recipient, will the state still exercise its claim?

We would hope that a surviving spouse or minor children would not be denied the opportunity to use the proceeds from a deceased recipient's estate to seek education or training that might help them avoid the need for AFDC or GA and that they would not be denied the opportunity to provide for the basic needs of life.

If, as the state seeks to recover the costs of AFDC and GA, it inadvertently forces the surviving spouse or minor children to remain on AFDC or GA longer than might otherwise be necessary, it would be unfortunate.

The Montana Association of Churches hopes these issues can be clarified before action is taken on this bill.

WORKING TOGETHER:

American Baptist Churches of the Northwest

American Lutheran Church Rocky Mountain District

Christian Church (Disciples of Christ) in Montana

Episcopal Church Diocese of Montana

Lutheran Church in America Pacific Northwest Synod

Roman Catholic Diocese of Great Falls-Billings

Roman Catholic Diocese of Helena

United Church of Christ MT-N.W.Y. Conference

United Methodist Church Yellowstone Conference

Presbyterian Church (U.S.A.) Glacier Presbytery

Presbyterian Church (U.S.A.) Yellowstone Presbytery

Amend House Bill 327 -- Introduced Copy (white)

Sponsor's Technical
(Coroner's order, don't perform, autopsies)

1. Title, line 5.
Strike: "PERFORM"
Insert: "ORDER"
2. Page 2, line 17.
Following: "shall"
Insert: "order that"
3. Page 2, line 18.
Strike: "perform"
Following: "autopsy"
Insert: "be performed"

Authority to Consent

1. Page 2, line 16.
Following: "(2)"
Insert: "(a)"
2. Page 2, line 19.
Strike: "a parent"
Insert: "the parents"
Strike: "objects"
Insert: "object"
3. Page 2.
Following: line 21
Insert: "(b) For the purposes of objecting to an autopsy in subsection (a), the parents are:
 (i) both parents if the parents are married to each other, or are divorced with joint custody of the deceased infant and both are within the state;
 (ii) the custodial parent if the parents never married, one parent is deceased, the parents are divorced with custody awarded to one parent, or the parents are divorced with joint custody but one parent is not within the state;
 (iii) the person or persons who were legal guardians of the living infant."

VISITORS' REGISTER

HUMAN SERVICES AND AGING COMMITTEE

BILL NO. _____ HOUSE BILL NO. 490 DATE FEBRUARY 5, 1987

SPONSOR _____ REP. MILES

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
<i>[Handwritten Name]</i>	<i>[Handwritten Residence]</i>	✓	
<i>[Handwritten Name]</i>	<i>[Handwritten Residence]</i>		✓
<i>[Handwritten Name]</i>	<i>[Handwritten Residence]</i>		✓

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

