

MINUTES OF THE MEETING
PUBLIC HEALTH, WELFARE AND SAFETY COMMITTEE
MONTANA STATE SENATE

March 4, 1987

The meeting of the Senate Public Health, Welfare and Safety Committee was called to order by Chairman Dorothy Eck on March 4, 1987 at 1 P.M. in room 410 of the State Capitol.

ROLL CALL: All members of the committee were present.

CONSIDERATION OF HOUSE BILL NO. 749: Rep. Carolyn Squires, District # 68, sponsor of H.B. 749, stated that the purpose of the bill is to make unannounced inspections of health care facilities and clarify in state law this practice, which is now happening because of federal requirements.

PROPOSERS: Helen McKnight, Montana Senior Citizens, testified that the senior citizens support this bill because they would like to have in law the practice that is now happening. They support the inspections of health care facilities because it protects the well-being of senior citizens and other residents of health-care facilities. Exhibit # 1.

Rose Skoog, Montana Health Care Association, testified that the bill clarifies the practice of inspections that is now going on, and it is a commitment by the state to do the inspections.

William Leary, Montana Hospital Association, stated that the practice of unannounced inspections now begun because of federal regulations should be supported by state law.

Doug Blakelee, Governor's Council on the Elderly, stated that they support the bill on behalf of consumers and that it addresses the concerns that senior citizens have of institutions.

Barbara Booher, Montana Nurses' Association, stated that they promote preventive measures and patient safety and support the previous testimony. Exhibit # 2.

In closing, Rep. Squires stated that all concerned groups have cooperated in the drafting of this bill, and she urged the bill's passage. Exhibit # 3.

ACTION ON H.B. 749: Sen. Rasmussen moved that H. B. 749 BE CONCURRED IN. The motion passed unanimously. Sen. Rasmussen will carry the bill.

CONSIDERATION OF HOUSE BILL NO. 752: Rep. Cal Winslow, District # 89, sponsor of H.B. 752, stated that there are several reasons for the drafting of this legislation. Most states are drafting similar legislation and this bill is similar to that drafted in other states. Because there is so much interstate movement in health care and because health care information on individuals is used by so many organizations, people need to have adequate access to their own health care information, they need to be able to correct it if necessary, relatives may have to have access to it under some circumstances, and people need to authorize who may have access to their health care information.

A number of organizations, the American Bar Association, the American Medical Association, the American Dental Association, the American Psychiatric Association and others, have been involved in the writing of Uniform Health Acts in Montana and other states. The bill offers many provisions protecting the health care information of Montana's citizens.

William Leary, Montana Hospital Association, stated that there is nothing in the bill which affects current law negatively. The bill still protects medical records, but gives a patient access to his/her records or authority over who does have access to those records. The peer committee review minutes will not be disturbed by this bill, and the MHA urges concurrence in the bill.

Steve Waldron, Montana Council of Mental Health Centers, stated that they had worked with the researcher on all sections of the bill together and they are in support of the bill.

Barbara Booher, Montana Nurses Association, stated that the Nurses' Association basically supports the bill, but that they were offering some amendments stemming from concerns they have with the bill. They offered amendments to Sec. V, Lines 18-20, eliminating the provision that a provider can disclose information without a patient's knowing, to Sec. 8, parts 2 and 3 on Pages 8-9 and Subsec. 5 on Page 9. The Nurses' Association is concerned about patient safety and privacy in each of these amendments.

OPPONENTS: Jerome Loendorf, Montana Medical Association, stated that they are basically opposed to this bill simply because of some concerns on certain sections. They have concerns about Sec. 9, Lines 8-9, that the section is not clear about what a researcher is going to do with information they are requesting and that they may consequently make prima facie disclosures. He also recommended penalties in Sec. 23, Subsec. 1 be deleted because people have better access to filing civil suits; and he proposed an additional amendment that would call for another person to witness someone's going through patient records.

DISCUSSION OF H.B 752: Sen. Rassmussen: What is the impetus of this bill?
Rep. Winslow: Most states are drafting legislation like this bill because there is so much patient movement around the nation and health information is used by so many organizations. These bills are designed to protect the patient, yet facilitate their access to their own medical records, and to enable researchers to have adequate access to health care information.

Sen. Eck: Most of the concerns with the bill seem to stem from concerns with confidentiality?

Mr. Loendorf: Yes, that is correct.

Sen. Eck: Are state laws uniform?

Mr. Leary: State laws do vary, but a reasonable attempt is being made to bring these laws together.

Sen. Himsel: This deals with what someone else can do with patient records. Can patients get their own records?

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Mr. Leary: In the hospital field, a patient can review his/her own records and request a copy of those records. The hospital always retains the original.

Mr. Loendorf: From the physician standpoint, that is not the case. The reason that the physician is not required to release all records is so that the provider can write down a complete record of the patient, and the physician does not want to ruin the doctor-patient relationship.

Sen. Himsl: What if the records are wanted for a malpractice case?

Mr. Loendorf: In cases of malpractice, the law allows the patient to get the full record.

Sen. Eck: Mr. Waldron, What special rules are there on confidentiality relating to mental health centers?

Mr. Waldron: There is a problem with the confidentiality law because you can only disclose records between professional persons. The confidentiality section doesn't work well in mental health treatment.

Sen. Eck: Does this section mean that records can be shared without a patient's approval?

Mr. Waldron: You really can't share records without a patient's approval. Within an agency, not all persons really have access to the records, although a nonprofessional does need to handle the records for various reasons.

Rep. Winslow closed his testimony by reiterating that a number of developments in recent years threaten confidentiality. These include third-party plans, involvement of more government agencies and access to computers. But many groups have worked on this bill to allow access to records for worthwhile purposes while yet protecting confidentiality. The government places importance on access to information, but yet people need to know that this information is being handled correctly and that they, too, have access to their own records.

CONSIDERATION OF HOUSE BILL NO. 402: Rep. Wm. Strizich, District # 41, sponsor of H.B. 402, stated that the purpose of H.B. 402 is to solve the management of records in mental health facilities over long periods of time. The holding of records is creating some severe storage problems. The bill allows the DHES to specify the length of time that records must be kept.

PROPOSERS: Steve Waldron, Montana Council of Mental Health Centers, testified that the current law requires that a number of records be kept, but that nowhere in the law is it clear as to how long the records need to be retained. Consequently, centers have up to thirty years of records and they are running out of storage space. It would be an expensive process to purchase microfilm equipment and to microfilm thirty years worth of records. It is questionable, anyway, as to how long records need to be kept; and the DHES would be the appropriate authority to decide a proper length of time.

Sen. Himsl: Does this confidentiality section conflict with the section in Title 53?

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Mr. Waldron: The two sections don't fit together and some major work needs to be done in mental health law.

Sen. Himsel: Did you say that the Board of Visitors is going to approve of disclosure of patient records to a patient?

Mr. Waldron: Yes, that's what it means under current law and the bill does not change that.

Sen. Eck: The previous bill has a section on retention of records. What does that mean?

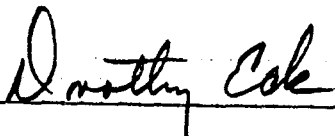
Mr. Waldron: In H.B. 752, you have to keep a record of authorization to disclose records. This current law does not conflict with 752. H.B. 752 doesn't deal with retention of records.

Sen. Eck: How long are hospitals required to keep records?

Mr. Leary: The Sept., 1986, edition states ten years. If the records are photostated, we keep the card index for twenty-five years. The previous bill also refers to retaining a list of who the records are provided to, also.

Sen. Strizich closed on H.B. 402 by thanking the committee for the hearing.

The meeting adjourned at 2:30 P.M.



CHAIRMAN

ROLL CALL

Public Health, Welfare and Safety COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date 3-4-87

NAME	PRESENT	ABSENT	EXCUSED
Dorothy Eck	X		
Bill Norman	X		
Bob Williams	X		
Darryl Meyer	X		
Eleanor Vaughn	X		
Tom Rasmussen	X		
Judy Jacobson	X		
Harry H. "Doc" McLane	X		
Matt Himsl	X		
Tom Hager	X		

Each day attach to minutes.

Montana Senior Citizens Assn., Inc

WITH AFFILIATED CHAPTERS THROUGHOUT THE STATE

P.O. BOX 423 - HELENA, MONTANA 59624



SENATE HEALTH & WELFARE

EXHIBIT 1

DATE 3-4-87

BILL NO. 749

(406) 443-5341

Testimony Presented Before the Senate Public Health Committee, March 4, 1987

Madame Chairman and Members of the Committee:

For the record I'm Elsie Latham Lee, President of the Montana Senior Citizens Association. Our organization of over 7000 members across the state support HB 749 that calls for unannounced inspections of all licensed health care facilities on an annual basis.

We're aware that these inspections are being done now as the Health Care Financing Administration dictates but we feel it is vital for the state law to require that the inspections be done on an unannounced basis.

We feel that this law will serve as a safeguard for the citizens of Montana who need to use these facilities and that their care will be assured. So we urge you to give this bill a "do pass" recommendation.

Elsie Latham Lee



Montana Nurses' Association

2001 ELEVENTH AVENUE

(406) 442-6710

P.O. BOX 5718 • HELENA, MONTANA 59604

Senator Eck, members of the committee.

I'm Barbara Booher, executive director of the Montana Nurses' Association. The Association represents over 1400 registered nurses from across the state of Montana.

As well as health care, our association promotes wellness and preventative measures in regard to patient safety and has historically taken a strong stand for patient advocacy. We support the previous testimony and urge your support for H B 749.

Testimony by Rep. A. Squires

RMS
4/12

SENATE HEALTH & WELFARE

EXHIBIT NO. 3

DATE 3-4-87

BILL NO. 749

Mr. Chairman and fellow members of the Committee:

HB 749 calls for ~~the~~ annual inspections of licensed health care facilities to be performed without prior notice to the operator or staff.

This issue has been before the Legislature for the past two sessions and, as many of you will recall, has generated heated discussion between consumers and health care providers. Following the 1985 session, the Health Care Financing Administration (HCFA -- pronounced HicFa) instructed the state health departments in the region to do all inspections on an unannounced basis.

The consuming public, particularly senior citizens, have requested that this federal policy be put into state law as a protection of the quality of care in Montana's health care facilities. This bill presents the opportunity for agreement between the consumers and health care providers as they now present a united front in support of HB 749.

This bill carries no fiscal note as the Health Department has included the necessary operating expenses in its current budget to fulfill the federal directive.

I ask that you support this bill.

Support:

M HCA

Dept of Health & Env. Science

M H A

Senior groups

AARP -

Montana Senior Citizens

Westmont Nursing Home -

STANDING COMMITTEE REPORT

MARCH 4

19 87

MR. PRESIDENT

We, your committee on.....SENATE PUBLIC HEALTH, WELFARE AND SAFETY.....

having had under consideration.....HOUSE BILL..... No. 749.....

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**REQUIRING ANNOUNCED INSPECTIONS OF LICENSED HEALTH CARE FACILITIES
SQUIRES (BENGSTON)**

Respectfully report as follows: That.....HOUSE BILL..... No. 749.....

BE CONCURRED IN

DO PASS

DO NOT PASS

.....
DOROTHY ECK

Chairman.