MINUTES

MONTANA HOUSE OF REPRESENTATIVES
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON HUMAN SERVICES AND AGING

Call to Order: By Stella Jean Hansen, on March 8, 1989, at 3:00 p.m.

ROLL CALL

Members Present: All

Members Excused: None

Members Absent: None

Staff Present: Mary McCue, Legislative Council

Announcements/Discussion: None

HEARING ON SB 399

Presentation and Opening Statement by Sponsor:

Senator Pinsoneault stated that this bill was an act to revise the method for computing property costs for intermediate care facilities for the mentally retarded so they equal the lesser of historical costs or the rate used for all other intermediate care facilities and providing an immediate effective date.

Testifying Proponents and Who They Represent:

Judith Frane, Happy Acres
Phil Schweber

Proponent Testimony:

Judith Frane stated that she was an administrator of a home and her purpose was to de-institutionalize clients. There in an inequity in the current state law which disallows homes to be treated as other medicaid facilities throughout Montana.

Phil Schweber is a practicing CPA in Missoula and stated that this legislation is necessary because currently, nursing homes that provide services to the mentally retarded receive no reimbursement for their property costs when fully depreciated while nursing homes providing services to elderly individuals receive a rate that is based upon fair equity and cost to construct in 1982.

Testifying Opponents and Who They Represent:

None

Opponent Testimony:

None

Questions From Committee Members: None

Closing by Sponsor: Senator Pinsoneault closed on the bill.

HEARING ON SB 398

Presentation and Opening Statement by Sponsor:

Senator Pinsoneault stated that this bill was an act to authorize a funeral director or mortician to obtain a copy of a death certificate.

Testifying Proponents and Who They Represent:

Gene Becker, Montana Funeral Directors Association
Bonny Tippy, Montana Funeral Directors Association
Lloyd Linden, Montana Funeral Directors Association
Mike McCollum, Montana Funeral Directors Association

Proponent Testimony:

Gene Becker stated that in January of this year, funeral directors were prohibited from obtaining death certificates for client families by the Bureau of Records and Statistics. The association finds this action very offensive because as funeral services practitioners are the very persons who are responsible for gathering the information required on the death certificate, getting the certificate to the doctor for his signature and cause of death and filing the certificate with he local registrar and as practitioners have the right to know the cause of death of the body we are preparing for funeral and burial and the people we serve are often elderly, sometimes without transportation and always in an emotional state of grief, and securing their own death certificates becomes a burdening task for them and they look to the funeral directors as a confidential professional to secure this essential document. Exhibit 1.

Bonnie Tippy stated that rules had never been devised and said that funeral directors could no longer obtain death certificates for their clients and supplied testimony from the Bureau of Records and Statistics. Exhibit 2.

Lloyd Linden stated that death certificates are

prepared by the morticians and funeral directors, and they in turn take them to the doctors for completion and in turn pick them up and take them to the local registrar and in many cases take them to the clerk and recorder. Exhibit 3.

Mike McCollum stated that it was important to realize that the board and the profession has tried to work closely with the Bureau of Vital Statistics and have on numerous occasions offered to work and help and offer input in any of the Bureau's decisions.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members: Rep. Nelson asked Mr. McCollum why, since this was a public document, why it was so difficult to obtain this information and Mr. McCollum stated that he did not know. Rep. Nelson also asked about the fees charged for these certificates and Mr. McCollum said that they were willing to pay for the documents.

Rep. Stickney asked Ms. Tippy about the privacy act and Ms. Tippy said that the basis was from a 1947 statute and the Aids crisis.

Rep. Brown asked if the bill did in fact go far enough and Senator Pinsoneault stated that it would need to go through probate.

Closing by Sponsor: Senator Ponsoneault closed on the bill.

HEARING ON SB 163

Presentation and Opening Statement by Sponsor:

Senator Lynch stated that this bill was an act to provide non-ambulatory clients of developmental disabilities services, reimbursement of actual expenses for transportation needed to obtain necessary services if other transportation services are not made available and providing an effective date.

Testifying Proponents and Who They Represent:

JoAnn McLeod
Dennis Taylor, Montana Department of Social and Rehabilitation Services

Proponent Testimony:

JoAnn McLeod told of the hardship of transporting her daughter to sheltered workshops.

Dennis Taylor stated that he supports this bill.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members: Rep. Russell asked Senator Lynch if this bill was originally for DD clients who did not have transportation and the bill had been amended and Senator Lynch stated yes.

Rep. Boharski asked Senator Lynch if amending this bill to state that funds will not be given if this program is already being funded by another federal or state program and Senator Lynch stated that he did not object.

Rep. Simon asked Senator Lynch about bus modification and questioned if there were any provisions that would try to help put something together to modify another bus and Senator Lynch stated that he had checked into this situation and in turn spoke with different contractors who stated that they would do the service but at a very high price. Rep. Simon then questioned ambulance service as a means of transportation.

Rep. Good asked Senator Lynch if a family member is ever reimbursed for transporting and Senator Lynch stated that he could be.

Closing by Sponsor: Senator Lynch closed on the bill.

HEARING ON SB 272

Presentation and Opening Statement by Sponsor:

Senator Keating stated that this bill was an act to extend the sunset provision relating to the state mental health involuntary commitment laws and providing an immediate effective date.

Testifying Proponents and Who They Represent:

Steve Waldron, Montana Council of Mental Health Centers
Don Harr, Region 3 Mental Health Center

Proponent Testimony:

Steve Waldron submitted testimony which stated why there is a need for this type of involuntary commitment; what is the community commitment law; why hasn't the law been used more and what are the safeguards in the community commitment law. Exhibit 4.

Don Harr stated that he had both direct and indirect opportunity to recognize the value of this opportunity for a 30 day commitment with what can be used as a one extension of 30 days if necessary, all of which has to be approved by the court.

Testifying Opponents and Who They Represent:

Kelly Moorse, Montana Board of Visitors
Mary Gallagher, Montana Board of Visitors

Opponent Testimony:

Kelly Moorse submitted a copy of the temporary community commitment statute. Exhibit 5.

Mary Gallagher stated that the solution envisioned by new statutes is to prevent reinstitutionalization by forcing recalcitrant patients to accept treatment in the community. This was supposedly to be done before they deteriorate to the point that they meet the standards for involuntary inpatient commitment. Exhibit 6.

Questions From Committee Members: Rep. Gould asked Mr. Waldron if it were a true statement to say that it takes a considerable amount of time for people to understand them and realize that they are out there and Mr. Waldron stated that it was true.

Rep. Stickney asked Dr. Harr if there tends to be more frustration for those who seek care for someone who is deteriorating, would you concur it to be too important to let go and Dr. Harr said that he did in fact agree.

Closing by Sponsor: Senator Keating closed on the bill.

HEARING ON SB 289

Presentation and Opening Statement by Sponsor:

Senator Hager stated that this bill was an act authorizing an increase in the term of a lease of a county nursing home to allow a sufficient term to finance mandated health and safety improvements and providing an immediate effective date.

Testifying Proponents and Who They Represent:

Scott Turner, Yellowstone County Commissioners

Proponent Testimony:

Scott Turner stated his support of this bill and supplied Exhibit 7.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members: Rep. Russell asked Senator Hager if this were the only situation that would require this legislation and Senator Hager stated that it was the only situation that he knew of.

Closing by Sponsor: Senator Hager closed on the bill.

DISPOSITION OF SB 289

Motion: Rep. Good made a Motion to BE CONCURRED IN.

Recommendation and Vote: A vote was taken and all voted in favor. Motion carries.

HEARING ON SB 352

Presentation and Opening Statement by Sponsor:

Senator Rasmussen stated that this bill was an act requiring the Department of Family Services to establish and administer an adoption program; authorizing the Department of adopt rules relating to fees charged prospective adoptive parents.

Testifying Proponents and Who They Represent:

Joan Wheeler
John Wheeler
Ann Abernathy
Janet Bahnsen
Lesley Taylor, Montana Department of Family Services

Proponent Testimony:

Joan Wheeler told of the outcome of her adopting her children through the Department of Family Services.

John Wheeler told of being an adoptive child.

Ann Abernathy told of the outcome of her adopting her children through the Department of Family Services.

Janet Bahnsen told of her attempt to adopt a child through the Department of Family Services and her inability to do so because of the age factor.

Lesley Taylor stated that the Department of Family Services supports this bill to the extent that it furthers or promotes the adoption of children. The Department currently has established and administers an adoption program for children between the ages of one and 18 years of age. Ms. Taylor also stated that the Department is prepared to reassume responsibility for administering an infant adoption program if this bill is enacted but it will require a total revamping of existing practices. Although difficult, the task the Department will face if this bill passes is not impossible and can be accomplished. Exhibit 8.

Testifying Opponents and Who They Represent:

Rep. Dorothy Coty

Opponent Testimony:

Rep. Dorothy Coty stated her opposition to this bill and said that the issue of the human rights ruling was a factor here. Rep. Coty said that in some cases where such things as age and religion are and should be a consideration. There are things in the ruling that are contradictory. The birth mother has absolutely no rights whatsoever.

Questions From Committee Members: Rep. Brown asked Ms. Taylor about the new concerns of the Department and Ms. Taylor stated they were concerned.

Rep. Squires asked Ms. Taylor why is was so different for the state versus the private adoptions versus agency adoptions. Ms. Taylor said it was because the state was primarily the agency that got sued.

Rep. Simon asked Ms. Taylor where, in the proposed law, does it authorize the Department to charge fees and Ms. Taylor said the state may adopt rule concerning fees but it does not specifically indicate the state may charge fees. Rep. Simon then asked where the fees were going to go and Ms. Taylor stated the fees would go to somewhere for adoption services. Rep. Simon then said that the bill did not however, say that. Rep. Simon then questioned a statement of intent and Ms. Taylor said she did agree. Rep. Simon asked Senator Rasmussen

about the statement of intent and he also agreed. Rep. Simon then suggested to Senator Rasmussen that this be considered.

Closing by Sponsor: Senator Rasmussen closed on the bill.

HEARING ON HB 749

Presentation and Opening Statement by Sponsor:

Rep. Hanson stated that this bill was an act for Montana birth related neurological injury compensation act; providing regulation of obstetrical medical malpractice insurance; providing a new remedy for birth related neurological injuries; appropriating money to the Department of Health and Environmental Sciences to provide for review and determination of claims submitted under this act and providing effective dates.

Testifying Proponents and Who They Represent:

Susan Witte, Montana State Auditor's Office

Proponent Testimony:

Susan Witte stated that the bill establishes a no-fault mechanism whereby lifetime care for infants with severe neurological injuries is assured. Exhibit 9.

Testifying Opponents and Who They Represent:

Gerald Neely, Montana Medical Association
Alan Chronister, Montana State Bar Association
Michael Sherwood, Montana Trial Lawyers Association
Jacqueline Terrell, American Insurance Association
Ron Ashenbrenner, State Farm Insurance

Opponent Testimony:

Gerald Neely stated that the bill will immediately increase the cost of coverage to physicians involved with obstetrics; the legislation originated in a state which was concerned with a lack of insurance coverage and not a loss of obstetrical services and obstetrical physicians pay more than before this type of law in the only other state with this type of legislation; there is no assurance this bill will ever reduce the cost of insurance coverage and to the extent the rational of the bill is that repeat offender physicians are a major problem in obstetrics in Montana, the bill is based on a faulty premise. Exhibit 10.

Alan Chronister stated his opposition to the bill in certain sections.

Michael Sherwood stated that he did support this legislation as amended. Exhibit 11.

Jacqueline Terrill stated the she was also testifying for the Alliance for American Insurers and the National Association of Independent Insurers. The primary opposition is based on the fact that this bill leaves open a number of legal questions and will not affect the problem it seeks to address. There are not enough births in Montana that would qualify for compensation under this plan to have any sort of appreciable effect on malpractice insurance premiums or the claims that drive those premiums.

Ron Ashenbrenner stated that his primary objective relates to the funding mechanism.

Questions From Committee Members: Rep. Whalen asked Mr. Ashenbrenner what the distinction you make between the guarantee pool and the mechanism in this bill which you think may be unconstitutional and Mr. Ashenbrenner stated that in order to do business in the state you have to participate in the guarantee pool.

Closing by Sponsor: Rep. Hanson closed on the bill.

ADJOURNMENT

Adjournment At: 6:15 p.m.

Stella Jean Hansen

REP. STELLA JEAN HANSEN, Chairman

SJH/ajs
M0807.min

DAILY ROLL CALL

HUMAN SERVICES AND AGING COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date 3/8/89

NAME	PRESENT	ABSENT	EXCUSED
Stella Jean Hansen	✓		
Bill Strizich	✓		
Robert Blotkamp	✓		
Jan Brown	✓		
Lloyd McCormick	✓		
Angela Russell	✓		
Carolyn Squires	✓		
Jessica Stickney	✓		
Timothy Whalen	✓		
William Boharski	✓		
Susan Good	✓		
Budd Gould	✓		
Roger Knapp	✓		
Thomas Lee	✓		
Thomas Nelson	✓		
Bruce Simon	✓		

STANDING COMMITTEE REPORT

Mr. Speaker: We, the committee on Human Services and Aging report that SENATE BILL 289 (third reading copy -- blue) be concurred in.

Signed: _____
Stella Jean Hansen, Chairman

[REP. TOM NELSON WILL CARRY THIS BILL ON THE HOUSE FLOOR]

Mr. Chairman, Committee Members, I am Gene Becker, President of the Montana Funeral Directors Association and a licensed mortician practicing in Bozeman.

The objectives of this association is to promote and elevate professional character and education of morticians throughout the state. Also to foster and maintain among them high professional ideals of public service.

In January of this year, we were prohibited from obtaining death certificates for our client-families by the Bureau of Records and Statistics. We as an association find this action very offensive because (1) we as funeral services practioneers are the very persons who are responsible for gathering the information required on the death certificate, getting the certificate to the doctor for his signature and cause of death and filing the certificate with the local registrar; (2) we as practioneers have the right to know the cause of death of the body we are preparing for funeral and burial; and (3) the people we serve are often elderly, sometimes without transportation and always in an emotional state of grief, and securing their own death certificates becomes a burdening task for them and they look to us as a confidentual professional to secure this simple but essentual document to settle the affiars of the deceased. It is for this reason that we support Senate Bill #398. I will be happy to answer any question from the committee.

EXHIBIT 1
DATE 3-8-89
SB 398

TESTIMONY

SB398
Montana Funeral Directors Association
Submitted by: Bonnie Tippy, Executive Director
February 16, 1989

HISTORY OF THE BILL

On January 3 of this year, the Bureau of Vital Statistics issued instructions to the county clerks and recorders which substantially changed current practices regarding issuance of birth and death certificates. In short, the letter indicated that funeral directors could no longer obtain certified copies of death certificates for their clients. The department's instructions were questioned by funeral directors and clerks and recorders from all over the state, so a letter of clarification was sent on January 9th. That letter explicitly stated that funeral directors could no longer receive certified copies of death certificates. Our association contacted the department of Health, asking why the department had not gone through rulemaking procedures on this instruction. Under the Administrative Procedures Act, 2-4-102, rules are defined as: "any agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of an agency. The term includes the amendment or repeal of a prior rules..." It is clear to us that Mr. Sperry's instructions do indeed interpret statute, and thus the rulemaking procedure should have been followed. At this point, we had no assurance of relief from the Department, and asked Senator Pinsoneault if he would request legislation that will permanently clarify that funeral directors can receive copies of death certificates.

The Department reacted to our complaints by issuing still another letter on January 30. In that letter they say that they "may" go through the formal rulemaking process in these issues. In that letter, it states that funeral directors can get death certificates, but only if they go through still another form with the family. Signing another form may sound relatively easy, but what if the deceased has no immediate family, such as a veteran staying at Fort Harrison? Or what if the family leaves the state and then discovers that they need still more copies? The whole process is difficult for funeral directors and the families they serve.

Funeral directors in Montana have always, as a service to their clients, ordered and provided certified copies of death certificates. These certificates are needed for a variety of purposes, such as property interests, insurance, and the entire probate process. Under Montana law, the professional that is solely responsible for the filling out and filing of death certificates is the funeral director. They've already seen the certificate, what possible reason of confidentiality could possibly be used to prohibit them from obtaining the legal filed copy?

We respectfully ask this legislature to pass Senate Bill 398.

EXHIBIT 2
DATE 3/8/89
SB 398

DEPARTMENT OF
HEALTH AND ENVIRONMENTAL SCIENCES

STAN STEPHENS, GOVERNOR

COGSWELL BUILDING

STATE OF MONTANA

FAX # (406) 444-2606

HELENA, MONTANA 59620

January 3, 1989

TO : ALL MONTANA COUNTY CLERKS AND RECORDER

FROM : BUREAU OF RECORDS AND STATISTICS

Dear Clerk and Recorder:

For the past year, this department has been reviewing its statutory responsibility regarding the issuance of certified copies of birth, death and fetal death certificates. This review was necessary for several reasons, but was prompted, in particular, by the increasing legal use of birth certificates throughout the United States, the serious concerns of the federal government surrounding the fraudulent use of birth certificates, and by the increasing pressure of society to protect the cause of death certification on death certificates as well as the increasing legal use of the cause of death certification.

This review has forced the Bureau of Records and Statistics to develop written, detailed policy, guidelines and procedures regarding who may have copies of certificates, under what conditions this information can be released and what information is to be held confidential by government.

Development of policy in this regard has not been easy because this department is as concerned about public service to the people of Montana as, I am sure, all of you are also. It has become clear to me during this year that "public service" is a two-edged sword. You, as elected officials, and I, as a salaried public servant, know that the protection of an individual's privacy is as much a public service as is the providing of reasonable access to government information. On the surface, with respect to birth and death certificates in Montana, this seems to be an example of the classic difficulty of a democratic society: the right to privacy versus the right to know. However, I would remind us all that birth and death records in Montana are not public documents and are, therefore, not subject to the freedom of information act of the United States.

As the state registrar for birth and death registration in Montana and as the individual responsible for the legal operation of the vital statistics system of Montana, I have prepared a position paper on the issues discussed in

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DATE 3/8/89
SB 394

this letter. A copy of this paper is available to you, on request, should you feel it might be useful to you in implementing the directions of the department contained in the remainder of this letter.

50-15-112 MCA prohibits the department from permitting inspection of or issuing certified copies of certificates unless the department is satisfied that the requestor meets statutory requirements.

50-15-114 MCA states that it is unlawful for anyone to disclose data in the vital statistics records of county clerk and recorders unless the disclosure is authorized by law and approved by the department.

It is the intent of this letter to clarify these two statutes regarding the handling of the state's vital records that are in the physical possession of your offices. Should you have any questions concerning these directions, please contact me immediately so that we can together resolve any potential misunderstandings.

****

1. A county Clerk and Recorder may issue a certified copy of that part of the Montana death certificate labeled DECEDENT information only. This applies to deaths occurring after 1949. For deaths occurring prior to 1950, Clerks may issue certified copies of death certificates in the manner currently employed.

2. A county Clerk and Recorder may NOT give out non-certified copies of any data from the Montana death certificate, regardless of the year of death.

3. A county Clerk and Recorder may NOT permit public inspection of indexes or filed certificates under any conditions.

4. A county Clerk and Recorder is under NO statutory obligation to provide copies of vital statistics data or inspection of vital statistics records to any agency of Montana State Government or the federal government. All inquiries from these various agencies should be referred to the department.

   Even in dealing with local government, please be reminded that the vital statistics records in your offices are the property of the State of Montana and are subject to the control of the Department of Health and Environmental Sciences.

5. Each county Clerk and Recorder should establish a system whereby they can gain some assurance that certified copies of birth certificates are issued only to those persons who can justify a personal interest in the certificate. The bureau has recently instituted a written application process whereby requestors for certified copies of birth certificates must provide us with enough information to determine whether they have personal

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knowledge of the data on the certificate. We have decided that relationship of the requestor to the person named on the certificate is also of importance.

We require that a person requesting a certified copy of a birth certificate KNOW:

1. Full name of the individual named on the certificate.
2. Date of birth.
3. Place of birth (city, town, county, etc.)
4. Full name of father.
5. Full maiden name of mother.

This information given must match the information as recorded on the certificate or we will not issue a certified copy.

Furthermore, we ask for the requestor's relationship to the individual named on the certificate. The requestor MUST be one of the following:

1. The individual named on the certificate (i.e. self.)
2. The mother of the individual named on the certificate, provided the named individual is less than 18 years old.
3. The father of the individual named on the certificate, provided the father's name is on the certificate AND the named individual is less than 18 years old.
4. A legal guardian (proof required) of the individual named on the certificate provided the named individual is less than 18 years old.
5. If, in items 2, 3, and 4, above, the named individual is 18 years old or older, we require some explanation as to why the individual named cannot apply for the certificate themselves.

6. The "short form" of a certified copy of a birth certificate is adequate for most legal needs a person has for a birth certificate, however, there are some instances in which some federal agencies require the "long form". Therefore, it is helpful to ask people the purpose they intend to use the certified copy for. There is nothing wrong in issuing "short forms" as a matter or course, should you choose to do so.

YOU ARE REMINDED THAT NONE OF US CAN DIVULGE ANY INFORMATION FROM THE BIRTH CERTIFICATE THAT WOULD PERMIT SOMEONE TO INFER THAT THE BIRTH WAS OUT-OF-WEDLOCK. THIS MEANS THAT WE CANNOT ISSUE A "LONG FORM" CERTIFIED COPY IF WE KNOW THAT THE BIRTH IS ILLEGITIMATE ... FLAGGED RECORD, FATHER'S NAME MISSING, ETC. ..... AND WE MAY NOT TELL ANYONE WHY WE CANNOT ISSUE THE "LONG FORM". HOWEVER, YOU CAN SUGGEST THE MOTHER OF AN ILLEGITIMATE CHILD WRITE FOR A COPY FROM US IF YOU CANNOT ACCOMMODATE LONG-FORM AFFIDAVITS.

7. Please keep in mind that the Local Registrar in each county is an agent of the department, regardless of where they are employed or of

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what other positions they may hold in local government. The files of the Local Registrar and any information in those files are for the Local Registrar's eyes only. No other individual may have access to these files under any conditions. Local Registrars are prohibited from divulging any information from their files and from using that information in any manner.

Furthermore, Local Registrars are, under 50-15-106 MCA, required to report any and all violations of vital statistics law to the department. This would include any illegal use or non-approved use of the vital records under Clerk and Recorder supervision.

I realize that the implementation of these directions may, in some instances, create a clerical burden on your offices regarding the "masking" of photocopies, the necessity of "cutting" photocopies, the screening of requestors, etc., but it must be done as long as Montana law requires us to protect these documents and as long as birth and death certificates continue to be the source of significant fraudulent use in the United States.

If the bureau can be of any assistance to you in either providing explanations for you to give to the public or in clarifying for you and your staff these directions, please contact either me or Beverly Roberts at 444-4228 in Helena or write to either of us.

Thank you for your prompt implementation of these guidelines and for your continued cooperation in the important tasks of keeping Montana's vital registration system operating smoothly and legally.

Sincerely yours,

Sam H. Sperry, Chief
Bureau of Records and Statistics

cc: Local Registrars

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DEPARTMENT OF
HEALTH AND ENVIRONMENTAL SCIENCES

STAN STEPHENS, GOVERNOR

COGSWELL BUILDING

STATE OF MONTANA

FAX # (406) 444-2606

HELENA, MONTANA 59620

January 9, 1989

Dear Clerk and Recorder:

I am writing in reference to my letter to you of January 3, 1989 regarding the issuance of certified copies of birth and death certificates.

I want to thank those of you who have called to bring to our attention the need, often immediate, of surviving family members for a complete copy of the death certificate for a recent death in the family. Provisions for this situation have been made in our policy here in Helena and omission of this in my letter to you was simply an oversight. Please consider this letter as an amendment to my January 3 letter.

THE OFFICE OF THE COUNTY CLERK AND RECORDER MAY ISSUE A CERTIFIED COPY OF THE COMPLETE DEATH CERTIFICATE TO A SURVIVING SPOUSE OR A SURVIVING NEXT-OF-KIN PROVIDED THE CLERK AND RECORDER IS SATISFIED THAT THE STATED RELATIONSHIP OF THE REQUESTOR TO THE DECEDENT IS FACTUAL.

Sometimes it is easier to state exclusions rather than inclusions. In that vein, the intent of this policy is to exclude funeral directors, attorneys, insurance companies, etc. from obtaining cause-of-death and other protected information from government files inappropriately. There are always extenuating circumstances and in these instances the requestors should make application, in writing, to this office.

Thank you once again for calling and keeping us on our toes and, again, thank you for your cooperation in these matters.

Sincerely yours,

Sam H. Sperry

Sam H. Sperry, Chief
Bureau of Records and Statistics

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APPLICATION FOR A CERTIFIED COPY OF A DEATH CERTIFICATE

Department of Health and Environmental Sciences
Bureau of Records and Statistics
Cogswell Building, Room C-118
Helena, Montana 59620

Date: _____

I am related to the decedent as: _____
(spouse, parent, other relative or interested party/specify)

The purpose for which this record is needed: _____

_____ _____
Signature of Applicant Applicant's name typed or printed

_____ ( ) _____
Street Address Applicant's phone number

_____
City or Town State Zip

The following information is necessary to verify a personal or property right to this certificate, to locate the proper record, and to verify the information on the record.

NAME OF DECEDENT: _____
First Middle Last

DATE OF DEATH: _____
Month Day Year

SPOUSE NAME: _____
First Middle Last.

AGE OF DECEDENT AT DEATH: (approximate) _____

DATE AND PLACE OF BIRTH OF DECEDENT: _____

DECEDENT'S OCCUPATION: _____

PARENT'S NAMES: _____
Father Mother

****

FOR STATE USE ONLY:

Application approved ____Yes____No By: _____

Date: _____

Amount enclosed or attached $_____ (Fee is $5.00 per copy)
(NOTE: The fee will be refunded in the event this application is not approved.)

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DHES BRS 2 (August 1988)

DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

STAN STEPHENS, GOVERNOR

COGSWELL BUILDING

STATE OF MONTANA

FAX # (406) 444-2606

HELENA, MONTANA 59620

January 30, 1989

TO : MONTANA COUNTY CLERKS AND RECORDER

FROM: BUREAU OF RECORDS AND STATISTICS

I am writing to you in reference to my letters of January 3 and January 9. Some of you have called to ask for additional clarification of some aspects of these letters and the guidelines that were presented in them. In addition to your questions, we have received questions from some attorneys and funeral directors as well. Given the increasing number of, and the sensitivity of, issues of common concern to both those of us who administer vital records and those of us who use vital records, we are considering the initiation of formal rule making to address such issues as standardization of terminology and justification for access to vital records.

In the interim, the vital statistics system must continue to function and the remainder of this letter is devoted to clarification and reiteration of the guidelines presented in the letters of January 3 and January 9.

Item 4 and Item 5 in my January 3 letter seem to be the major areas of confusion. The intent of the statement in Item 4 was to advise you that your offices are not under obligation to provide copies of birth and death certificates to federal or state agencies or to other offices of local government under conditions different from those we require of any other applicant. Governmental agencies are expected to pay established fees and are expected to provide signed releases or authorizations or other acceptable evidence that they have secured the permission of the individual on whose behalf they are acting.

The intent of Item 5 was to encourage Clerks to establish written procedures that will be used to delineate who may receive copies of birth certificates when making application on the basis of personal need. The list of five "acceptable" individuals and the list of five data items were presented as examples of operational policy in the department of health. You should establish criteria that works best for your county. The important point is to obtain reasonable assurance that people are who they say they are and that they have detailed, personal knowledge about the individual named on the certificate.

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Item 6 should not require clarification. The statement below is just another way of saying it:

UNDER MONTANA LAW, NEITHER THE DEPARTMENT NOR COUNTY CLERKS AND RECORDER CAN ISSUE FULL COPIES OF A BIRTH CERTIFICATE IF THE BIRTH IS OUT-OF-WEDLOCK NOR CAN YOU DIVULGE THE FACT OF AN ILLEGITIMATE BIRTH. IF YOU DO NOT KNOW HOW TO ASCERTAIN AN OUT-OF-WEDLOCK BIRTH FROM THE BIRTH CERTIFICATE FILED IN YOUR OFFICES, CONTACT THE DEPARTMENT.

The following statements are presented to summarize, and in some instances clarify, the remainder of the January 3 letter and all of the January 9 letter. I hope this clarification will be of help to you in implementing these guidelines. Should you still have questions, please do not hesitate to contact the department and give us the opportunity to talk with you individually.

1. If any information from a birth or death certificate is released, it should be as a certified copy only.

2. 50-15-110 MCA provides the authority to issue parts of certificates as certified copies.

3. Your attention is directed to 7-4-2631 (1)(m) MCA, which states that County Clerks must charge for each certified copy of a birth or death certificate.

4. For operational purposes, 50-15-112 MCA is interpreted to mean that copies of birth certificates can be issued to individuals who can demonstrate a "personal" need for the information. Refer to the discussion of Item 5 on the preceding page.

5. There are instances in which individuals choose to relinquish control of their birth certificate information to governmental agencies, attorneys and, possibly, others. You may issue certified copies of birth certificates to others provided their request is accompanied by a signed release from the individual named on the certificate or from a parent (whose name is on the certificate) or a legal guardian or legal custodian if the individual named on the certificate has not reached the age of majority. Guardianship or custodianship is to be verified to the certifying official. OUT-OF-WEDLOCK RESTRICTIONS STILL APPLY IN THESE SITUATIONS.

6. The words "cause of death" refer to the item on the Montana death certificate that is labeled MANNER OF DEATH. Appropriate responses to the question " What is the cause of death? " are: natural causes, suicide, homicide, accident, pending investigation, and undetermined.

7. The items labeled PART I and PART II, along with the block of items labeled (in the margin) CERTIFIER, on the Montana death certificate are refered to as the "medical certification of cause of death." As such, these items are primarily for statistical and research use and should not be thought of as "public information."

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8. The following parts of the Montana death certificate may be issued as certified copies ON DEMAND:

1. The part labeled DECEDENT (in the margin) plus the item labeled MANNER OF DEATH for deaths occurring from 1968 through the present.

2. All items through item 17 plus item 21a (1950-56) and all through 17 plus 20a (1957-67).

3. Full copies of death certificates for deaths occurring prior to 1950 can be issued on demand.

9. Full copies of death certificates can be issued on "personal" demand to the following applicants:

(a) a surviving spouse
(b) a surviving next-of-kin
(c) an individual holding written authorization to act on behalf of a surviving spouse or an immediate next-of-kin
(d) an individual holding written authorization to act on behalf of the estate of a decedent in matters of probate, estate settlement and other property right determinations.

10. Genealogical access to death certificates should not be accommodated unless the date of death precedes the date of request for access by at least twenty years. Certified copies issued to genealogists may display all information on the Montana death certificate except for the information described under Item 7 on the preceding page. Copies of birth certificates may be issued in response to genealogical requests only when the applicant can present verification that the person named on the birth certificate is deceased and that the death occurred at least thirty yeras prior to the date of application.

11. A county coroner may be issued a certified copy of the entire death certificate provided the coroner making the request is the one who signed the certification statement for the "certification of the cause of death" portion of the death certificate.

12. All persons making application for access to vital records based on the following purposes should refer their requests, in writing, to the address given below.

(a) research
(b) heir location
(c) mineral rights determination
(d) medical or genetic tracking

Bureau of Records and Statistics
Montana Department of Health and Environmental Sciences
Cogswell Building C-118
Helena, Montana 59620

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On a final note, please be advised that copies of my letters, such as this one, providing instructions to Clerks and Recorders are not themselves confidential merely because they pertain to confidential records. Any request for copies of such letters should be honored.

Sincerely yours,

Sam H. Sperry

Sam H. Sperry, Chief
Bureau of Records and Statistics

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HERRMANN AND COMPANY
Funeral Home

314 N. RODNEY HELENA, MONTANA 59601 PHONE (406) 442-1234

MARCH 8th, 1989

REP. STELLA JEAN HANSEN CHAIRMAN.
HUMAN SERVICES COMMITTEE.

SENATE BILL 398.

MY NAME IS LLOYD LINDEN, I AM A LICENSED MORTICIAN IN HELENA. I AM HERE TODAY REPRESENTING MYSELF AND ALSO AT THE REQUEST OF THE MONTANA FUNERAL DIRECTORS ASSOCIATION.

DEATH CERTIFICATES ARE PREPARED BY MORTICIANS AND FUNERAL DIRECTORS, WE TAKE THEM TO THE DOCTORS FOR COMPLETION WE PICK THEM UP AND TAKE THEM TO THE LOCAL REGISTER, AND IN MANY CASES TAKE THEM TO THE CLERK AND RECORDER. AT THIS POINT WE MUST TELL THE FAMILYS WE SERVE "WE CAN NOT GET THEM A CERTIFIED COPY!" THIS IS NOT RIGHT, WE DO THIS AS A SERVICE FOR THE FAMILY!
PLEASE GIVE A DO PASS TO S.B. 398.

THANK YOU!

EXHIBIT 3
DATE 3-8-89
HB SB398

MONTANA COUNCIL OF
MENTAL HEALTH CENTERS
512 LOGAN
HELENA, MT 59601
(406) 442-7808

EXHIBIT 4B
DATE 3-10-89
HB 272

FACT SHEET
SB 272 - REPEAL SUNSET
COMMUNITY COMMITMENT LAW

I. WHY IS THERE A NEED FOR THIS TYPE OF INVOLUNTARY COMMITMENT?

Under the current law a mentally ill person must be a clear and imminent danger to himself or others in order to be involuntarily committed for treatment as "seriously mentally ill." The law requires that the "seriously mentally ill" individual must have committed a recent and overt action to be classed as "seriously mentally ill" and to be committed for treatment.

A mentally ill person, who needs treatment and is very sick and deteriorating, often does not meet the current legal definition of "seriously mentally ill". For instance, a client in a day treatment program who suddenly stops taking care of himself including eating, may not meet the definition of "seriously mentally ill." The client may even be hearing voices telling him (her) to do violent acts. Even though the person is obviously deteriorating and requires treatment, there is nothing that can be done until the individual commits some overt act to be declared "seriously mentally ill." However, intervention may be possible under the Community Commitment Law.

II. WHAT IS THE COMMUNITY COMMITMENT LAW?

An additional definition, "mentally ill," was added to the current commitment law by the 1987 legislature. The court could commit a "mentally ill" person only to a community facility for a very limited time with the intention of getting the person quickly stabilized and able to function in the community.

In order to be committed to a community facility under this additional definition, the "mentally ill" person has to meet all the following criteria - The person has to be suffering from a mental disorder which:

(1) has resulted in behavior that creates serious difficulty in protecting the person's life or health even with available assistance from family, friends, or others;

(2) is treatable, with a reasonable prospect of success and consistent with the least restrictive course of treatment, at or through the community facility to which the person is to be committed;

REGION I
EASTERN MONTANA COMMUNITY
MENTAL HEALTH CENTER
1819 MAIN STREET
MILES CITY, MONTANA 59301
(232-0334)

REGION II
GOLDEN TRIANGLE COMMUNITY
MENTAL HEALTH CENTER
HOLIDAY VILLAGE SHOPPING CENTER
PO BOX 1068
GREAT FALLS, MONTANA 59403

REGION III
MENTAL HEALTH CENTER
1245 NORTH 29TH STREET
BILLINGS, MONTANA 59101
(252-5865)

REGION IV
MENTAL HEALTH
SERVICES, INC
512 LOGAN
HELENA, MONTANA 59601
(442-0310)

REGION V
WESTERN MONTANA COMMUNITY
MENTAL HEALTH CENTER
FORT MISSOULA T-12
MISSOULA, MONTANA 59801
(728-6870)

(3) has deprived the person of the capacity to make an informed decision concerning treatment;

(4) has resulted in the person's refusing or being unable to consent to voluntary admission for treatment; and

(5) will, if untreated, predictably result in further serious deterioration in the mental condition of the person or poses significant risk of the person's becoming seriously mentally ill. Predictability may be established by the patient's medical history.

III. WHY HASN'T THE LAW BEEN USED MORE?

The Community Commitment Law was never intended to be used as an extensive or exclusive method of dealing with those mentally ill persons who are beginning to deteriorate. The Community Commitment process should only be utilized for those mentally ill persons who meet the above criteria and are likely to benefit from a short term intervention to be maintained in the community.

The law has only been in effect since October 1, 1987 and therapist's have been cautious in attempting to use this law. There has not been sufficient education of many therapists on this new law. In addition, self education is difficult because the Community Commitment Law is poorly codified in Title 53, Chapter 21. It is extremely difficult to read and interpret because it is scattered throughout chapter 21. A recodification has been requested.

IV. WHAT ARE THE SAFEGUARDS IN THE COMMUNITY COMMITMENT LAW?

1. The commitment procedure requires a court hearing in which the person will be represented by an attorney.

2. The court must hold an initial hearing on the petition for commitment within 5 days.

3. The court must appoint a professional to evaluate the person who is alleged to be "mentally ill".

4. The person alleged to be "mentally ill" can also receive an additional evaluation by a professional person of his (her) choice.

5. The person may not be detained until after a hearing is held, a determination is made, and a court order is issued committing the person for treatment.

6. The person who is alleged to be "mentally ill" can demand a jury be impaneled to hear the case.

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7. The person has the right to know in advance of the hearing the names of the witnesses who will testify.

8. To be committed the person must meet all of the criteria to be adjudicated as being "mentally ill." (See item II above for a list of the criteria.)

9. In order to require treatment which includes medication the court must make a separate finding and make a separate order for medication. However, the court may not order the use of physical force to administer medication.

11. The person can only be committed to a community facility for a 30 day period. There can be only one extension of the 30 day period for an additional 30 days.

12. The person declared to be "mentally ill" retains other safeguards such as the right to appeal the court decision.

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MENTAL DISABILITIES BOARD OF VISITORS

REPORT TO 1989 LEGISLATURE

(TEMPORARY) INVOLUNTARY COMMUNITY (OUT-PATIENT) COMMITMENT

SECTIONS 53-21-101 ET. SEQ.

The 1987 Legislature requested the Mental Disabilities Board of Visitors to provide a report on the community commitment bill (also called out-patient commitment) which was enacted as a temporary statute (House Bill 316) during the 1987 session.

TEMPORARY COMMUNITY COMMITMENT STATUTE

The temporary statute allows for involuntary community commitment of a person who is found to be "mentally ill" as defined by §53-21-102(8)(temp)MCA. The law is an attempt to address concerns regarding persons in the community who have a mental disorder which had not resulted in the person being a danger to himself or herself, or to others, but who's actions fit other criteria pointing to a serious deterioration in the person's condition and their disorder posed a significant risk that might eventually lead to the person becoming seriously mentally ill thus requiring hospitalization. The law mandates treatment in the community for persons who meet the definition of "mentally ill". It did not replace, but is in addition to, the regular 90-day involuntary mental health commitment provided for in Chapter 53. (The 90-day commitment statutes permit a person who is found to be "seriously mentally ill" and a danger to himself or others to be committed to the state hospital, a community mental health facility, an outpatient day program or any other treatment arrangement the court deems necessary.)

Because a person under the 30-day temporary statutes is not a danger to himself or others, the statutes permit the mentally ill person to be committed to a community mental health facility or program for inpatient or out-patient treatment but do not permit commitment to Montana State Hospital. Also, because the person is not an imminent danger and since detention is not considered beneficial for a person who's condition is deteriorating, the statutes do not permit detention prior to a hearing. Generally,if detention is needed because the person is a danger, the appropriate petition is a 90-day involuntary petition. The statutes provide that a community placement may last up to 30 days and may be extended one time during the commitment if the person continues to be "mentally ill".

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SURVEY

The Board of Visitors staff have followed the use of this statute by talking with various mental health professionals, county attorneys, public defenders and agencies who are involved with mental health commitment issues. In December 1988, we conducted a survey of all mental health centers and county attorney offices and spoke to public defenders of various counties to see how effective they thought the temporary statutes were. From the survey we learned that:

(1) 41% of those responding reported that the statutes were "ineffective" or "totally ineffective" for various reasons including:

* No funds available for community placement.
* No community facilities available in many rural counties.
* No resident judges, mental health professionals, doctors, etc., available in many rural counties.
* For the amount of time and effort involved, they thought it was more efficient and clinically appropriate to seek a 90-day involuntary commitment petition.
* Difficult criteria to meet and, if met, respondent is "usually bad enough to commit under a 90-day involuntary commitment".
* If a facility is actually available in the community, it is often unwilling to "assume the risk".
* There are no consequences to non-compliance.
* The process is "too laborious given the questionable benefit".

(2) 39% of those responding either had no comment as to the effectiveness of the statutes or had not used it-either because use was not appropriate or beneficial or no situation had arisen which called for its' use. Typical comments included:

* Never used. We have no facility for such community commitment.
* Considered but decided not appropriate alternative to commitment or ...the evidence did not support a finding of "mentally ill".
* Never had opportunity arise to use this.
* Not used but looks as good as regular commitment although both are difficult in rural Montana because only one judge for several counties. Proper facilities often are not available or affordable.

(3) 20% of those responding thought that is was effective or somewhat effective in preventing serious deterioration. Typical comments included:

* Effective if can be paid for privately. Useful if entire family cooperates.
* Effective but in small rural counties access to judge, mental health professionals and services, including mental health centers, is limited. We have no local mental health center.
* Definition is too restrictive - easier to prove "seriously mentally ill". Lots of hoops to jump through. May need detention.
* Have not used but want to keep law "as a back-up" for when person is decompensating. Looks workable.
* Good tool to attempt to prevent further deterioration. Need to become more familiar with it.

LEGISLATIVE ALTERNATIVES

The Board of Visitors sees two basic alternatives for this Legislature to consider regarding the temporary statutes.

Option 1 is to do nothing, in which case the temporary statute would sunset.

Option 2 is repeal the current sunset provision and either extend or delete any sunset provision.

We would note that a possible third alternative exists, revising the bill. However, if that revision involved a lessening of the standards, it would likely run afoul of constitutional standards which must be considered.

Recommendation:

Given the accumulated information on the temporary statutes, the Mental Disabilities Board of Visitors' recommendation would be to allow these statutes to sunset.

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HB_____

OFFICE OF THE GOVERNOR
MENTAL DISABILITIES BOARD OF VISITORS
LEGAL SERVICES PROGRAM

TED SCHWINDEN, GOVERNOR

P.O. BOX 177

STATE OF MONTANA

(406) 693-7035

WARM SPRINGS, MONTANA 59756

**TESTIMONY ON SENATE BILL 272
BY MARY GALLAGHER BEFORE THE HOUSE HUMAN SERVICES
AND AGING COMMITTEE
ON MARCH 8, 1989**

Mr. Chairman, Members of the Committee, my name is Mary Gallagher and I am a staff attorney for the Mental Disabilities Board of Visitors Program. As Kelly Moorse mentioned, the Board of Visitors staff was requested to report back to the Legislature regarding the 1987 House Bill 316 which created these outpatient commitment statutes. You have all been provided with a copy of our report. I would like to briefly go over our survey and mention a few reasons why I do not think this bill should pass.

We sent the survey to all the mental health centers and county attorneys in the State. As the report notes, approxiamtely 41% of those responding indicated that these statutes were ineffective or totally ineffective for various reasons including lack of community facilities, lack of funds for placement in the community, stringent commitment criteria, etc.

39% of those responding either had no comment as to its effectiveness or had not used it-because use was not appropriate or no situation had arisen which called for its' use.

20% of those responding to the survey thought that the statutes were effective or somewhat effective. This group mentioned that payment, lack of facilities, and the commitment criteria were problems but thought the law was a good back-up and could be used to prevent deterioration.

The solution envisioned by these and other "preventative commitment" statutes is to prevent reinstitutionalization by forcing "recalcitrant" patients to accept treatment in the community. This was supposedly to be done before they deteriorate to the point that they meet the standards for involuntary inpatient commitment. In Montana that means this occurs before they become a danger to themselves or to others.

There are all kinds of potential problems with a commitment standard which would deprive a person of liberty when that person is not a danger to anyone. But beyond this, proponents of this bill and of the community commitment statutes are mistaken as to the source of the underlying "revolving door" problem and so their proposed solution is also inappropriate and ineffective. Forced community commitment places blame on the so-called

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"recalcitrant" patient instead of on the system which does not provide the programs and community alternatives necessary to maintain the person in the community. As one expert on the subject states, the revolving door phenomenon involves a "system of interlocking deficiencies that make it possible for all parties to shift the blame to each other. Legislation forcing community treatment presents no lasting solution." Stefan, Preventative Commitment: Misconceptions and Pitfalls in Creating a Coercive Community.

In addition to this, there are also a number of problems specific to our Statutes. For example, there is difficulty monitoring a patient in the community; there are enforcement difficulties when someone does not comply; there is potential liability of community professionals for those people committed to the community; there is a problem with the constitutional questionability of the "deterioration" standard. And finally, the preventative commitment legislation is useless without the existence of community facilities and the money to pay for them. More than any tinkering with civil commitment statutes, the actual availability of community programs would have the most dramatic impact on the problem the proponents are trying to address.

The underlying bills do not work. The survey we did bares this out. For all of the above reasons, we recommend that you vote against this bill and let those statutes sunset.

Thank you.

EXHIBIT_____
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HB_____

County of Yellowstone

COMMISSIONERS

(406) 256-2701

Box 35000
Billings, MT 59107

March 6, 1989

Representative Stella Jean Hansen
Chairperson
House Human Services and Aging Committee
51st Legislature
Capital Station
Helena, MT 59620

Purpose: Proponent SB-289

Representative Hansen and Honorable Members of the House Human Services and Aging Committee:

Recent medicaid audits have cited Yellowstone County's Nursing Home for not meeting building code requirements. An architecture estimate to bring the building up to today's codes was estimated at about $448,000.

Yellowstone County has entered into a 5 year lease agreement about a year ago whereby the lessee was committed for $150,000 of building improvements. However, at the time of the lease the mandated improvements were not near the costly level required to meet today's standards.

In order to recover the escalated costs of meeting state and federal facility codes, the terms of the lease must be extended to allow the lessee a chance to recover those costs.

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HB 289

Under these circumstances it is critical you pass this legislation.

Thank you for your support.

Sincerely,

BOARD OF COMMISSIONERS
YELLOWSTONE COUNTY, MONTANA

Absent

Dwight Mackay, Chair

Grace M. Edwards

Grace M. Edwards, Member

Mike Mathew

Mike Mathew, Member

JST/ck

EXHIBIT_____
DATE_____
HB_____

DEPARTMENT OF FAMILY SERVICES

STAN STEPHENS, GOVERNOR

(406) 444-5900

STATE OF MONTANA

P.O. BOX 8005
HELENA, MONTANA 59604

Testimony on SB 352

Presented by Leslie Taylor,
Attorney for the Department of Family Services

The Department of Family Services supports SB 352 to the extent that it furthers or promotes the adoption of children. The Department currently has established and administers an adoption program for children between the ages of one and 18 years of age. See, Section 52-1-103 (1) (e), MCA.

In November 1988, the Department discontinued its adoption program for children under the age of one. Birth parents wishing to voluntarily place their infants for adoption are now referred to one of Montana's five private, licensed adoption agencies. The Department adopted this policy for two major reasons. First, the Department had contemplated discontinuing its infant adoption program for a number of years because of the limited numbers of infants placed by the Department. Over the last several years, the Department has placed an average of only 10 infants per year. Nearly all of these placements were voluntary placements made at the request of birth parents wishing to place their child for adoption.

The second reason the Department discontinued its infant adoption program was because of the practical difficulties imposed on the program as a result of the decision of the Montana Human Rights Commission in the Wheeler v. Department of Family Services case. That decision prohibited the Department from allowing birth parents to specify criteria related to age, religion or marital status in selecting adoptive parents for their child. Because the Department could no longer allow the use of such criteria in selecting an adoptive family, the Department's ability to work with birth parents was severely restricted. It seemed likely that inability to consider these criteria, which are often very important to birth parents, would result in even fewer birth parents seeking the assistance of the Department in planning for the voluntary placement of their children for adoption. The Department's existing policies and procedures could not be continued under the Wheeler decision and the Department could not devise a practical and efficient mechanism to allow the birth parents to participate fully in the selection process. For example, the Department could no longer show pictures or arrange pre-adoptive meetings between the birth parent and the prospective adoptive parents. Given the limited numbers of infant adoptions and the practical problems in revising the existing policies and

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SB 352

procedures, the Department chose to discontinue its infant adoption program and rely on the private sector to provide this service.

The Department continues to place children over the age of one for adoption. These children usually are placed after being permanently removed from their parents because of abuse or neglect. Because the parents' involvement in the selection of the adoptive families in such cases is more limited, it is easier for the Department to conduct its adoption program within the guidelines established by the Human Rights Commission. In these cases it is the Department, not the parents, that makes the selection of the adoptive home. The Department is in the process of revising its policies and procedures to assure that the adoption program meets the requirements of the Human Rights Commission decision.

The Department is prepared to reassume responsibility for administering an infant adoption program if SB 352 is enacted, but it will require a total revamping of existing practices. This revamping will take some time and some creative thinking to devise a system for selecting adoptive families which will meet the needs of the child, the birth parents and the prospective adoptive parents while adhering to the mandates of the Human Rights Commission. Although difficult, the task the Department will face if SB 352 passes is not impossible and can be accomplished if it is the wish of the Legislature.

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HB_____

TESTIMONY
House Bill 749
Susan C. Witte - State Auditor's Office

The bill before you today was developed to address the problem of rising medical malpractice insurance rates and the declining supply of obstetrical care in rural Montana while maintaining the rights of patients to fair access to the judicial system. Research was undertaken to determine what other states had done or not done to address these problems. The state of Virginia had recently enacted legislation, effective in January of 1988, which was designed to alleviate a crisis in the availability of liability insurance for Virginia obstetricians. That legislation, the Virginia Birth-Related Neurological Injury Compensation Act (or the "Infant Compensation Act"), became a workable solution for Virginia. What you have before you today, in the form of HB 749, is patterned after Virginia's law.

The bill establishes a no-fault mechanism whereby lifetime care for infants with severe neurological injuries is assured. It takes only certain very serious birth-related injuries out of the traditional tort system and provides the exclusive remedy for neurologically deficient children alleged to have been damaged as a result of birth trauma. The long-term effect of the bill is to stabilize and reduce malpractice rates by removing the "bad baby" risk from the insurance obstetrical system.

In short, the bill provides a voluntary alternative to medical malpractice tort law; it sets up a no-fault system to address a limited area of injuries which makes it a feasible and manageable approach to reducing costs and rates.

Section-by-Section:

Sections 1. and 2. Definitions/Scope. The act establishes a compensation fund that provides awards regardless of fault to infants who meet the limited definition of neurological birth-related injuries. The act defines a birth-related neurological injury as "injury to the brain or spinal cord of an infant that was caused by deprivation of oxygen or mechanical injury occurring in the course of labor, delivery or resuscitation in the immediate post-delivery period in a hospital which renders the infant permanently nonambulatory, aphasic, incontinent, and in need of assistance in all phases of daily living." The act only applies to live births; genetic or congenital injuries are excluded. The act provides for optional participation by physicians who practice obstetrics or perform obstetrical services.

Section 3. A person can choose to submit a claim under the plan or they can pursue a civil action through the judicial system. Civil litigation is not foreclosed against a doctor or a hospital except that the lawsuit must be filed prior to and

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HB 749

in lieu of payment if an award made under the compensation plan. Because of this elective nature, the act should not raise constitutional questions concerning full redress.

Section 4. If a person chooses to pursue a remedy through the compensation fund, that person will then file a claim with the Program Officer who is entrusted with hearing and determining the claim. This position is placed within the Department of Health and Environmental Sciences, which administers the program.

Section 5. The claim is filed as a petition along with names and addresses of the legal representative for the injured baby, the doctor or doctors providing the obstetrical services and present at birth, the hospital where the birth occurred, time and place of injury, facts and circumstances surrounding the injury and giving rise to the claim, medical records, records of expenses incurred to date, and estimates of future expenses. The Program Office automatically forwards this petition to any doctor or hospital named in the petition, the Montana Board of Medical Examiners, and the Department of Health and Environmental Sciences. These agencies, which have regulatory authority over doctors and hospitals, then evaluate whether disciplinary action is warranted. This provision of the bill is included as a deterrent and as a quality assurance mechanism and is based on the assumption that the prospect of revocation or suspension of a license should logically have a deterrent effect upon the provision of substandard care.

Section 6. The statute of limitations for civil actions is tolled by the filing of a claim under the act. Again, a person is not foreclosed from filing a civil action up until the time an award is made under the act.

Sections 7., 8., and 9. A claim for compensation must be heard within 120 days by the Program Officer. Discovery in the form of depositions and interrogatories are allowed prior to the hearing and costs will for discovery will be included in the final award. A medical advisory panel, consisting of three qualified and impartial physicians, must review the claim to assess whether the injury is one which fits within the act. One of these doctors must be available to testify at the hearing on the claim. The Program Officer is not, however, bound by the panel's recommendation.

Section 10. In order for an award to be made, the injury must have occurred at a participating hospital and the delivery must have been done by a participating doctor. Compensation is limited to net economic losses. These include loss of earning calculated from 18 years of age (50% of the average weekly wage in Montana), reasonable expenses and attorney's fees incurred in filing a claim, medical, rehabilitation, residential and custodial care and service expenses, including travel related to such care and service.

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Sections 11, and 12. Review of an order of the Program Officer is first done by the Program Officer. Appeals of those determinations are before the District Court and are governed by provisions of the Montana Administrative Procedure Act.

Section 13. The Program Officer is granted full authority to enforce his awards and orders.

Section 14. Claims filed more than 10 years after the birth of an infant alleged to have a birth-related neurological injury are barred.

Section 15. The act applies to all claims occurring on or after July 1, 1989.

Section 16. The fund to finance claims is established by this section.

Section 17. A board of directors, five in number, are appointed by the governor, to operate the program and hire the Program Officer.

Section 18. A plan of operation for the program is to be submitted to the commissioner of insurance by the board of directors by May 1, 1989. The plan is basically written to address operation of the program and actuarial soundness of the fund.

Section 19. Assessments paid pursuant to the plan of operation are to be held in a restricted cash account which is separate from the fund.

Section 20. To participate, those "participating physicians" who practice obstetrics or perform obstetrics, either full or part time, would pay an initial fee of $5,000.00 on or before July 1, 1989. All other licensed doctors shall pay an initial assessment of $250.00. Participating hospitals are required to pay an initial assessment of $50.00 per delivery for the prior year, not to exceed $150,000.00 per hospital in any twelve month period.

Sections 21, and 22. Annual assessments may be made on participating hospitals and doctors in the same amount as the initial assessment. If funding generated from these sources is inadequate, liability insurers operating in the state of Montana as of July 1, 1989, may be assessed an amount up to 1/4 of 1% of net direct premiums written. Liability insurers which are to be assessed include casualty insurers, professional malpractice insurers including medical malpractice, and products liability insurers. In adequacy will be determined, in part, from actuarial reports. If the fund cannot be maintained on an actuarially sound basis after maximum assessments are made, the Program Officer is to promptly notify the legislature.

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Section 23. There is an appropriation from the general fund to the Department of Health and Environmental Sciences for a grade 17 Program Officer.

Sections 24., 25., and 26. Extension of authority, saving and severability clauses.

Section 27. Short title, definitions, establishment of the fund, board of directors, plan of operation, assessments held in separate account, initial assessments, annual assessments, and actuarial investigations and notification to the legislature in the event of unsoundness sections are effective on passage and approval. Injuries and the procedure for determining and awarding funds for claims are effective July 1, 1989. In other words, the mechanics of the legislation are effective immediately while the injuries to be addressed by the legislation are effective on July 1, 1989.

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HB 749: Montana Medical Association Testimony

The Montana Medical Association opposes HB 749 on the following grounds:

1. THE BILL WILL IMMEDIATELY INCREASE THE COST OF COVERAGE TO PHYSICIANS INVOLVED WITH OBSTETRICS.

The Montana Medical Association believes that if a piece of legislation does not immediately reduce the overall cost of insurance coverage for physicians who deliver babies, it is irrelevant to solving the problem of the loss of obstetrical services, especially in Montana.

Even though the legislation may have independent merits, it is irrelevant to the loss of obstetrical services because one of the major reasons physicians are leaving obstetrics is the cost of insurance coverage.

HB 749 imposes a large annual fee over and above the cost of insurance on physicians who choose to participate in the program.

2. THE LEGISLATION ORIGINATED IN A STATE WHICH WAS CONCERNED WITH A LACK OF INSURANCE COVERAGE AND NOT A LOSS OF OBSTETRICAL SERVICES.

Similar legislation was introduced in the State of Virginia. The bill became law on January 1, 1988. The bill was in response to the loss of insurance coverage brought on by the non-renewal of insurance by the state's largest insurance carrier.[1]

3. OBSTETRICAL PHYSICIANS PAY MORE THAN BEFORE THIS TYPE OF LAW IN THE ONLY OTHER STATE WITH THIS TYPE OF LEGISLATION.

The combination of obstetrical insurance plus the annual charge for the pool created in Virginia -- the total cost of coverage -- still, in 1989, leaves each participating physician in that state paying more for coverage than before the law was enacted.

Even though the Virginia Commissioner of Insurance ordered a 15% rate credit given to participating physicians on May 10, 1988 -- an order which cannot be made in Montana -- the $ 5,000 annual fee to participate still is in excess of the savings from that 15% credit. Until the savings mandated or accrued exceed $ 5,000 on an annual basis, there can be no overall decrease in the cost of coverage.

For example, the carrier with 30% of the market in Virginia -- Virginia Professional Underwriters -- indicates that its 15% credit gave family practitioners an annual $ 800 break. With those physicians paying $ 5,000 per year into the pool, there is still a net $ 4,200 increased cost to those physicians. Similarly, obstetricians were given a $ 3,500 break and the legislation thus costs them a net $ 1,500 per year more.[2]

4. LIMITED COVERAGE OF FUND. The fund created is limited to very severe brain-damaged babies and hence only deals with a small portion of the problems associated with obstetrical claims.

As indicated by the accompanying chart, of the 135 OBGYN claims in Montana from 1977 - 1988 -- a twelve- year period -- only 10 of those claims, or 7.4, involved major brain damaged babies.

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[1] American Medical News, "Virginia Creates No-Fault System To Compensate Injured Infants," at p. 1. March 13, 1987.

[2] For confirmation, contact Gordon McClean at Virginia Professional Underwriters, Inc., 1-804965-1243.

March, 1989 Montana Medical Association

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There is no assurance that all of these claims which involved allegations of negligence would even come under HB 749 if the numbers remained the same in the future, because the legislation is only applicable to claims involving both a participating physician and a participating hospital.

But even if all such negligence claims did come before this panel, it would be at a rate of about 1 claim per year.

5. THERE IS NO ASSURANCE HB 749 WILL EVER REDUCE THE COST OF INSURANCE COVERAGE.

Unlike ordinary cases of negligence, it is not clear how many claims will come into a no-fault system. Thus, a no-fault system funded by the people who are already have major cost problems which are causing those people to leave obstetrics does not make sense; it also cannot be certified as actuarially sound.

According to one carrier, all carriers in the state of Virginia:

> " *** are convinced the effect on cost of the recent Birth Injury Act cannot be accurately forecast." [3]

This is a result that can be deduced without an actuary.

HB 749 abolishes non-economic damages, which account for about one-half of the dollar payments to injured parties.

Thus, if the number of claims not involving negligence which come into the no-fault system are more than double the number of claims where there is negligence, there must be a net cost to the new legislation over and above the cost of administration. That net cost would be in excess of the current cost of coverage.

6. TO THE EXTENT THE RATIONAL OF THE BILL IS THAT "REPEAT" OFFENDER PHYSICIANS ARE A MAJOR PROBLEM IN OBSTETRICS IN MONTANA, THE BILL IS BASED ON A FAULTY PREMISE.

While it is correct that physicians with strong patterns of negligence ought not to be allowed to continue to practice, there is no indication that large numbers of such physicians exist in Montana in the obstetrical field.

As noted on the attached chart, not one physician who is delivering babies in Montana at the current time has had more than one adverse OBGYN claim against him or her. The four physicians who did have two such claims are no longer in practice, and no physician has had more than two adverse obstetrical claims.

While it is important to be vigilant against "bad" physicians, it cannot accurately be the underpinning of a piece of legislation.

[3] John Latham, Jr., Virginia Professional Underwriters, Inc.,Letter of April 14, 1988. Further confirmation can be obtained by speaking to their actuary, Jerry Van Riper.

Major Brain-Damage Claims To Infants: Montana Medical Malpractice

1977 - 1988

Montana Medical Malpractice, 1977 - 1988

Claims Alleging Major Brain-Damage To Babies - Type Of Health Care Provider Involved In Claims

Type Of Health Care Providers In Claim	Number Of Claims	(135 Total) Percentage Of OBGYN Claims
Just Physician(s)	4	2.96 %
Both Physician(s) And Hospital	6	4.44 %
TOTAL	10	7.40 %

Montana Medical Malpractice, 1977 - 1988

Claims Alleging Major Brain-Damage To Babies - Whether An Indication Of Negligence By Type Of Health Care Provider Involved In Claims

Type Of Health Care Providers In Claim	Number Of Claims	(135 Total) Percentage Of OBGYN Claims
Just Physician(s)		
No Indication Of Negligence	3	2.22 %
Indication Of Negligence	1	.74 %
Both Physician(s) And Hospital		
No Indication Of Negligence	4	2.96 %
Indication Of Negligence	2	1.48 %
TOTAL	10	7.40 %

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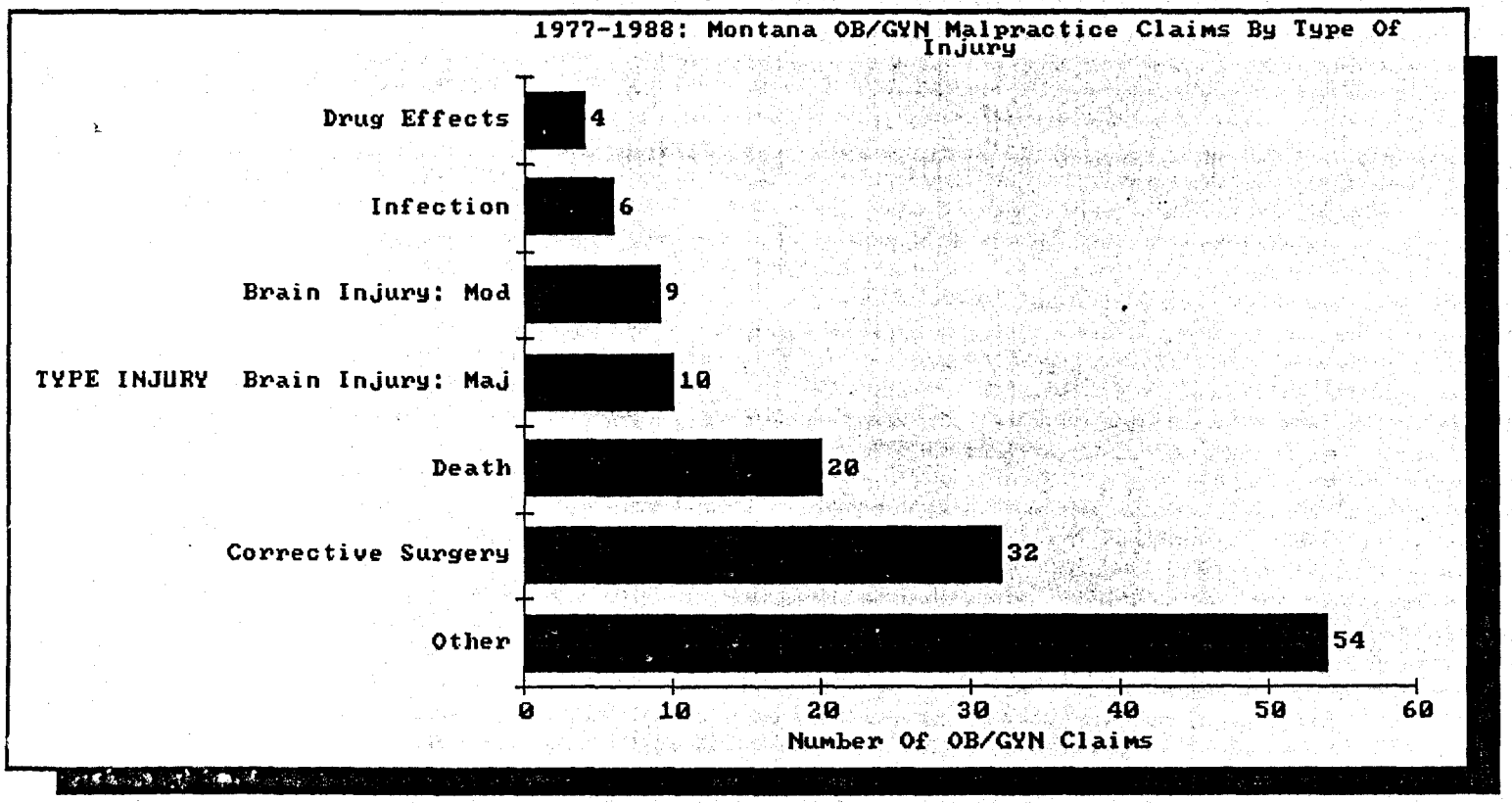
IMPACT OF HB 749 ON OBSTETRICAL COST OF COVERAGE

Montana Family Practitioner With Obstetrics Participating In The Legislation - $ 1 Million/$ 3 Million Coverage

Carrier	Annual Current Insurance	Minimum Annual Cost Of HB 749	Total Cost of Coverage	% Increase Total Cost of Coverage
Doctors Co	$ 20,880	$ 5,000	$ 25,880	19.32%
UMIA	$ 20,185	$ 5,000	$ 25,185	19.85%
St Paul	$ 17,000	$ 5,000	$ 22,000	22.73%
ICA	$ 13,011	$ 5,000	$ 18,011	27.76%



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DATE
HB

VIRGINIA PROFESSIONAL UNDERWRITERS, INC.
Attorney In Fact For
THE VIRGINIA INSURANCE RECIPROCAL

POST OFFICE BOX 31394
RICHMOND, VIRGINIA 23294-1394

John K. Latham, Jr.
Senior Vice President
Operations
(804) 965-1249

April 14, 1988

Gerald J. Neely, Esquire
2525 Sixth Avenue, North
Billings, Montana 59104

Re: OBSTEIRICAL RATES

Dear Mr. Neely:

Further to Mr. McLean's letter of March 29, there remains a great deal of uncertainty.

All carriers attending the recent meeting are convinced the effect on cost of the recent Birth Injury Act cannot be accurately forecasted. There remains the question of constitutionality which is certain to be tested. Further, the definition of qualified injury will likely be "adjusted" through the judicial process.

Still, there appears to be some consistency in support of a 15 percent rate differential. Obstetricians participating (it is optional) in the Act will pay 15 percent less than the regular OB rate. There is much debate over the carriers' ability to recover these differences should the Act fail the test of constitutionality. We are granting a 15 percent differential here.

I hope this answers your inquiry.

Sincerely,

John K. Latham, Jr.

dh-JL15TH2
c: Gordon McLean

MONTANA OB/GYN CLAIMS, 1977 - 1988

DISTRIBUTION OF CLAIMS - CONSIDERING PANEL DISPOSITION
Number Of Physicians And Number Of OB/GYN Claims Which They've Had - Whether An Expert Panel Found An Indication Of Negligence

Number Of Claims Where Indication Of Physician Negligence	Number Of Different Physicians	Number Of Physicians Not Now In Practice	Number Of Physicians Still In Practice
ONE OR MORE CLAIMS			
Zero Adverse Claims	102	23	79
One Adverse Claim	34	8	26
Two Adverse Claims	4	4	0
Three Or More Adverse Claims	0	0	0
	140	35	105

Source: Records Of Montana Medical-Legal Panel, Closed Claims From 1977 - 1988. Thirty-Seven physicians who were delivering babies in 1988 have not had any claims.

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Proposed Amendments to House Bill 749
Offered by Michael Sherwood, MTLA

Page 4, line: 15

Strike: "clear and convincing"

Insert after is: "a preponderance of"

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HB 749

VISITORS' REGISTER

HUMAN SERVICES AND AGING COMMITTEE

BILL NO. SB 163 DATE 3/8/89

SPONSOR _____

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
DENNIS M. TAYLOR	Helena		✓

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

HUMAN SERVICES AND AGING COMMITTEE

BILL NO. SB 272 DATE 3/8/89

SPONSOR

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Kerry Moorse	Board of Visitors		✓
Mary Gallagher	Board of Visitors		X
Don Harris	Mental Health Center Bldg	✓	
[illegible]	MENTAL HEALTH ASSOC.	✓	
Ellen Waldron	Mental Health Center HELENA	✓	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

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VISITORS' REGISTER

HUMAN SERVICES AND AGING COMMITTEE

BILL NO. SB 289 DATE 3/8/89

SPONSOR

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Scott Turner	Yellowstone County	✓	
Tom Hagen	Senate dist 4 &	✓	

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PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

HUMAN SERVICES AND AGING COMMITTEE

BILL NO. SB 352 DATE 3/8/89

SPONSOR

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Leslie Taylor	Dept of Family Services		
Jan Bahnsen	Helena	X	
Joan Gebhardt	Helena	X	
John W. Miller	Helena	X	
Rep. Abrahamson	Helena	X	
Dorothy A. Cody	HD 20		X

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

HUMAN SERVICES AND AGING COMMITTEE

BILL NO. SB 398 DATE 3/8/89

SPONSOR

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Gene Becker	Bozeman	X	
Lloyd Linden	Helena	X	
Bonnie L Lopez	MT Funeral Directors	X	
Michael McCollum	MFDA Sidney	X	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

HUMAN SERVICES AND AGING COMMITTEE

BILL NO. SB 399 DATE 3/8/89

SPONSOR

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Russ Cater	Helena / SRS	(Neutral)	
Phil Schweber	4401 Timberlane Missoula MT	X	
Judith P Evans	931 Main St W Ronan, MT	X	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

HUMAN SERVICES AND AGING COMMITTEE

BILL NO. HB 749 DATE 3/8/89

SPONSOR

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Susan C. Witte	State Auditor's Office	✓	
Ron Ashbrenner	State Farm Insurance		✓
LEONARD KAUFMAN	The Doctors' Co	✓	
Michael Sherwood	MTLA	✓ as amended	✓
Gerald Neely	Mont. Medical Assoc.		✓
Allan Chronister	State Bar		✓ in part
Kay Foster	Gov. Council on OB Services OSAAC.		
ROGER McGLENN	INDEPENDENT INS. AGENTS OF MT		✓
Jacqueline N. Terrell	Amer. Ins. Assoc.		✓
GENE PHILLIPS	NAII		✓
BONNIE TIPPY	ALLIANCE AMER INSURERS		✓

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.