

MINUTES

MONTANA SENATE  
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY

Call to Order: By Senator Tom Hager, on Wednesday, January 11, 1989, at 1:00 p.m. in Room 410.

ROLL CALL

Members Present: All seven members were present.

Members Excused: None.

Members Absent: None.

Staff Present: Tom Gomez, Legislative Council.

Announcements/Discussion: Chairman Hager introduced Tom Gomez of the Legislative Council who will be available to help the committee and will assist any member of the committee in drafting proposed amendments, research and will also review all legislation that is referred to the committee. At this particular time they are very busy drafting bills but after the drafting deadline he should be much more accessible to the members. The chairman also explained that up to January 3, 1989 any bills that were introduced do not show new material as being underlined or as a new section. However, any legislation drafted after January 3rd will indicate amended material by underlining and new material as "New Section." Chairman Hager also introduced Louise Sullivan who will serve as secretary for the committee.

Chairman Hager asked that there be no smoking in the committee room and anyone was welcome to step into the hall if they felt the urge to smoke. Sen. Pipinich wished to be on record as opposing this decision and said there were only two members that smoked. His objection was noted by the chairman.

HEARING ON SENATE BILL NO. 74

Presentation and Opening Statement by Sponsor: Sen. Pat Regan, Senate District #47, chief sponsor, told the committee that the bill was very straightforward in that it simply requires licensing of adult foster care family homes. Child care licensing is mandated and more and more of these adult foster care home

situations are being opened up and there is no requirement at the present time that they be licensed. Sen. Regan went through the sections of the bill and also stated that no statement of intent was required for the bill as that has already been covered. She recommended that the bill be passed and said that it was important legislation because some homes are not adequate and do not provide for the safety and well-being of those in their care.

List of Testifying Proponents and What Group they Represent:

Charles McCarthy, Bureau Chief of the Department of Family Services  
Doug Blakley, State Ombudsman of the Senior's Office of the state of Montana  
Tom Posey, Alliance for the Mentally Ill  
LeDean Lewis, American Association of Retired Persons  
Charles Aagenes, Department of Health and Environmental Sciences

List of Testifying Opponents and What Group They Represent:

Doug Kelley, Montana Family Coalition

Testimony:

Charles McCarthy submitted written testimony which he read to the committee and is attached as Exhibit #1. He stated that there are more and more facilities that only take private pay people. They have investigated complaints in 13 of these facilities. This bill would apply the current rules and regulations to those facilities that care for all aged and disabled adults and not just those on SSI benefits.

Doug Blakley also submitted written testimony which is attached as Exhibit 2. He told the committee members that care to the elderly is a real growth industry. These people are vulnerable, unable to make decisions and are dependent upon the care of the facility. Presently, it is very confusing to the consumer and said that mandatory licensing is essential.

LeDean Lewis provided prepared testimony. (Exhibit #3) She also spoke individually as a senior resident of the state of Montana and stated that this would perhaps alleviate some of the deplorable conditions in which some seniors are forced to live.

Charles Aagenes read his prepared testimony and stated that this legislation is needed to insure quality care for

all residents. (See Exhibit #4)

Tom Posey informed the members that many times when these people are released from institutional care they often go into foster homes. He was aware of one instance in which seven people were housed in the basement of a relatively small three-bedroom home. They were furnished a bed which consisted of an Army cot and a cardboard box in which to keep their personal belongings. These people were only permitted to leave the basement for meals. He was told that the only recourse available would be through a complaint to the county attorney and the court system as the facility was not licensed. He stated that the Alliance for the Mentally Ill felt very strongly about this bill to protect those people who could not protect themselves.

Doug Kelley of the Montana Family Coalition said he was more of a proponent than opponent and appreciated the intent of those supporting the bill. More churches are going to be moving into this area of care and feel it is a violation of their religious conviction that they have a responsibility to care for these people. He asked the committee to consider an exemption for church run facilities.

Questions From Committee Members:

Sen. Lynch questioned Sen. Regan about providing an exemption for these church run facilities. Sen. Regan responded that anyone could say they did not believe in licensing and therefore nothing would be done by passage of this bill. Even if a certificate was awarded stating that they had met all of the provisions of the statutes it would simply be a question of semantics. If an amendment was adopted to exempt religious entities the bill might as well receive a do not pass. Sen. Lynch stated to Mr. Kelley that he just wanted to see that these people are protected. Mr. Kelly answered that there are very few people that would have this type of religious conviction and pointed out that the Hutterites take care of their own people and they never have a problem unless someone complains. He thought that perhaps something could be worked out that would be acceptable to Sen. Regan.

Sen. Norman asked Mr. Kelley if they would object to an individual holding the license and the religious entity simply provide the physical plant and services. Mr. Kelley said the problem would be if the church owned the building. Sen. Norman pointed out that these individuals are licensed to drive motor vehicles and

hold other licenses and wanted to know the difference. Mr. Kelley responded that it was the individual that was licensed and not the religious entity.

- Sen. Himsl questioned Mr. McCarthy as to the fee for the 110 foster adult homes that are licensed for SSI beneficiaries. Mr. McCarthy told Sen. Himsl that they do not charge anything for the licenses. Sen. Himsl felt that the Department should recover some of the expenses for investigation, etc., through the charging of a fee.
- Sen. McLane asked if the persons working in these facilities have any type of training or were monitored to see that there was no abuse of any kind. Mr. McCarthy outlined the procedures which these people had to go through in order to be considered for employment such as over 18 years of age, fill out a personal statement form saying whether or not they had ever been treated by a physician, psychiatrist or other health care provider for drug or alcohol use or mental illness and if they answered yes to any of the above they would have to furnish a statement from the attending physician or whoever had treated them, they would also have to sign a release for medical information. These are some of the requirements for employment in one of these facilities. Sen. McLane felt that this was a major flaw in the process but that some people have a knack for taking care of these people and perhaps it should be more of a monitoring type situation than formal training. Mr. McCarthy said that if there is a license required they have some leverage in cases of infractions such as probation whereas if there is no license required they have no recourse other than criminal prosecution.
- Sen. Himsl stated that these homes are run for a profit to which he had no objection however he did feel that they should be paying for their license to offset some of the expense to the State. Mr. McCarthy told Sen. Himsl that youth foster care does not charge for their people but adult foster care averages \$800 per month per person being charged by the provider. Mr. McCarthy asked leave speak on the church exemption and was granted permission by Chairman Hager. Mr. McCarthy stated that they do license day care centers operated by churches, group facilities for foster care, nursing homes and child placement agencies; there are no other exemptions, the same standards apply to everyone and this would be the only exemption.
- Sen. Pipinich asked if there was any investigation into

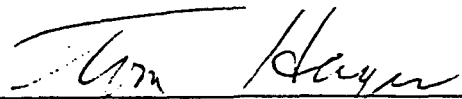
these church run facilities and what recourse they had. Mr. McCarthy responded that only if they were a licensed facility would they have any power but not over those that would be exempted.

Chairman Hager noted that there had been a fiscal note requested on the bill, however, Sen. Regan asked that the fiscal note request be cancelled. Mr. McCarthy said they had estimated one FTE for the increased work but that this could be absorbed within the existing staff.

Closing by Sponsor: Sen. Regan, in closing, mentioned the fact that the conflict between church and state is something that will always be before the legislature and something that must be dealt with. Child care licensing is mandatory and the adult foster home care is the only one that is discretionary. She said she had some sympathy for what Mr. Kelley said but that the state has an overriding interest in the licensure of these people. Abuse sometimes takes place where licensing is required but in that event there is recourse. Some religious groups have committed abuse of children in the name of discipline - these things do happen - and perhaps the state might have been more cognizant of these happenings under licensure. She urged the support of the committee and asked that they pass the bill with some teeth in it and not include the exemption amendment.

ADJOURNMENT

Adjournment At: 1:55 p.m.



SENATOR TOM HAGER, Chairman

TH/lS

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## SB 74 MANDATORY LICENSING OF ADULT FOSTER HOMES

Testimony of Charles McCarthy - Hearing of January 11, 1989

The Department of Family Services currently licenses approximately 110 adult foster homes statewide. The Montana statutes define adult foster homes as "private homes owned by one or more persons 18 years of age or older which offer light personal care or custodial care to disabled adults who are not related to the owner by blood or marriage or which offer light personal care or custodial care to aged persons." See Section 53-5-302, MCA.

In 1975, the first licensing bill for adult foster homes was passed. The law was passed in response to a federal requirement that homes providing care for SSI recipients had to meet minimum standards adopted by the State. Since its inception the licensing law has been mandatory only for those homes that care for SSI recipients.

Adult foster care is a growing industry. An increasing number of aged and disabled adults are being cared for in such facilities, and the Department is responding to an increasing number of complaints about adult foster care. When abuse or neglect does occur in a licensed facility, the Department has several options for enforcement short of requesting that criminal charges be filed; however, when abuse or neglect occurs in an unlicensed facility, the department has no options other than criminal charges.

During the past year, the Department worked with 28 homes that do not have a license. Department staff investigated complaints involving 13 of these facilities. Unlicensed facilities often do not meet minimum standards for health, fire, and safety of the residents. Because unlicensed adult foster homes are not meeting these minimum requirements, they avoid any costs associated with doing so. This places an unlicensed facility at an unfair advantage in establishing its rate of payment for the care of a person.

This bill will eliminate the unfair advantage that unlicensed facilities currently hold over licensed facilities and will assure the consistent application of health, fire, and safety standards to all adult foster homes providing care to the aged and disabled adults in Montana.

I support the bill and encourage you to vote for it.

SENIORS' OFFICE  
LEGAL AND OMBUDSMAN SERVICES

TED SCHWINDEN, GOVERNOR

P.O. BOX 232  
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## STATE OF MONTANA

(406) 444-4676  
1-(800) 332-2272

HELENA, MONTANA 59620

January 11, 1989

TO: Senate Public Health, Welfare and Safety Committee

FROM: Doug Blakley, State Ombudsman

RE: In support of SB 74 - Mandatory Licensing of Adult Family Foster Care Homes

As State Long-Term Care Ombudsman, I serve as an advocate for people living in long-term care settings. I would like to offer the following comments based on my experiences in assisting consumers who have had problems with unlicensed homes providing personal care services.

As our aging population continues to increase, many people are seizing on the opportunity to provide services to the elderly. Over the last three years, there has been a significant increase in the number of facilities that have sprung up to provide non-institutional residential care to the elderly. Recent state regulatory efforts, especially in the area of personal care homes, have been aimed at setting minimum standards to ensure that the potentially vulnerable clientele served in these settings get the care and protection they need.

The current system for licensing residential long-term care facilities is based on a continuum of care model. The greater the residents' need for care, the greater the regulatory involvement. The system is divided into 3 broad categories:

\* independent living (ie., retirement home living), where residents can receive food or laundry services, but do not need oversight in their daily lives;

\* semi-independent care (ie., personal care homes and adult foster care homes), where assistance is provided in the areas of supervision and personal care services (ie., activities of daily living such as bathing, grooming, dressing, eating, or medications); and

\* nursing home care for residents that need more intense medical or nursing services.



Nursing homes have historically been extensively regulated because of the vulnerability of residents and their high care needs. Retirement home services are loosely regulated because of the presumed competence of residents and their ability to resolve problems on their own. Personal care services, because of the vulnerability of the residents and the emerging nature of this industry, is a level where problems continue to exist.

Personal care home licensing, through the Department of Health and Environmental Sciences, starts at 5 residents. This licensing category has regulations that deal with specific environmental and care requirements. Adult foster care homes, licensed by Department of Family Services, are for 1-4 residents. Because of the smaller number of residents and the family setting, this licensing category does not have the same degree of specificity in the area of structural or safety requirements.

Personal care homes and adult foster care homes, however, serve the same level of clients and provide a similar level of care. They both have similar fire and life safety codes they must meet. The major difference is in how they are licensed. While the personal care home license is mandatory, the adult foster care home license is a permissive license. This arbitrary difference in licensing has had negative consequences for consumers. Some providers simply choose not to pursue licensure. Thus, residents in unlicensed settings can end up living in physically unsafe conditions, receive inadequate or inappropriate levels of care, or be without recourse when they have problems. Other providers have used the permissive nature of adult foster care licensing to avoid licensing, continually changing the number of residents they have or bouncing between licensing agencies.

For the safety and wellbeing of all residents in facilities providing personal care level services, there needs to be some minimum standards and oversight of all facilities that provide a comparable level of care to potentially vulnerable elderly residents. Mandatory licensing for adult foster care homes would accomplish this goal. The relatively few administrative requirements for adult foster care licensing should not be a deterrent to a conscientious provider's decision to pursue working in this area.

Several senior citizens groups, including AARP and the Governor's Advisory Council on Aging, support this legislation.



SENATE HEALTH & WELFARE

EXHIBIT NO. 3

DATE 1-11-89

BILL NO. SB 74

1988-1989  
MONTANA STATE LEGISLATIVE COMMITTEE

CHAIRMAN  
Mrs. Molly L. Munro  
4022 6th Avenue South  
Great Falls, MT 59405  
(406) 727-5604

SECRETARY  
Mr. John C. Bower  
1405 West Story Street  
Bozeman, MT 59715  
(406) 587-7535

January 11, 1989

TO: Senate Public Health, Welfare and Safety Committee  
FROM: Le Dean Lewis, American Association of Retired Persons  
RE: Senate Bill No. 74  
Mandatory Licensing of Adult Family Foster Care Homes

The American Association of Retired Persons supports mandatory licensing of adult foster family care homes.

At present there are no licensing requirements or procedures in place to ensure that these homes provide safe and quality living conditions for their residents. There are no provisions to ensure fire protection, proper ventilation and adequate heat; no nutritional safeguards for the meals served; no assurance that there is the necessary life-safety equipment to safeguard the residents in these homes.

This bill would make provision for all of these. In addition it would identify who is responsible for the administration of and where these adult family foster care homes are located, as well as periodic inspection of these facilities.

The American Association of Retired Persons strongly urges your passage of this bill.

Department of Health & Environmental Sciences' Testimony before the Senate Public Health, Welfare & Safety Committee on Senate Bill 74.

Mr. Chairman and Members of the Committee, my name is Charles Aagenes. I am Chief of the Health Planning Bureau in the Department of Health & Environmental Sciences.

In the past, the legislature has tried to develop a coordinated system of licensure of facilities caring for those people needing assistance in daily living. This system includes Retirement Homes, Adult Foster Care, and Personal Care facilities. Adult Foster Care and Personal Care facilities are the more dependent of this resident population. They are in a place other than their own home because they do need some assistance.

This coordinated system should provide some assurance to the public and residents that they have adequate and appropriate care and a safe environment. Adult Foster Care and Personal Care homes are directed at essentially the same resident population. The only significant difference between the facilities is size. An Adult Foster Care Home cannot exceed 4 beds and a Personal Care Facility must have 5 or more beds. The intent for a coordinated system breaks down because the Adult Foster Care Homes are not required to be licensed. As a result, we have a number of facilities in Montana with a greater capacity which remain at 4 residents simply so they can avoid routine surveillance by local or state agencies. Our experience with a number of these facilities is that they provide inadequate and inappropriate care and that, because they are not routinely inspected, often exceed the 4 resident limit. The Department of Health and Environmental Sciences gets involved in these facilities through complaint investigations.

The Department of Health and Environmental Sciences believes this Act for mandatory licensing of Adult Foster Care Homes is needed in order to assure consistency in quality care for all residents.

NAME: Doug Kelley DATE: Jan 11, 1980

ADDRESS: 1900 F Loweroo

PHONE: 442-0770

REPRESENTING WHOM? Montana Family Coalition

APPEARING ON WHICH PROPOSAL: SB 74

DO YOU: SUPPORT?  AMEND?  OPPOSE?

COMMENTS: An exemption for facilities operated by churches who object to licensing as a matter of religious conviction is needed

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.







**SENATE MEMBERS**

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PAUL F. BOYLAN  
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# Montana Legislative Council

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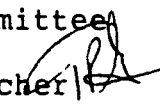
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JEFF MARTIN  
LOIS MENZIES  
ANDREA MERRILL  
PAUL E. VERDON

January 4, 1989

**TO:** Members of the Senate Public Health,  
Welfare, and Safety Committee

**FROM:** Tom Gomez, Staff Researcher 

**RE:** Committee staff responsibilities

I have been appointed to staff the Senate Public Health, Welfare, and Safety Committee this session.

In my capacity as staff to the committee, I will perform the following functions:

- (1) Draft proposed amendments upon request of individual committee members prior to committee action on a given bill.
- (2) Prepare all amendments adopted by the committee, using the same bill drafting guidelines as were applied to the original bill and, with the Chairman's authorization, make necessary changes in grammar, punctuation, word choice, and sentence structure otherwise not affecting the substantive elements of the adopted amendments.
- (3) Draft proposed amendments to be moved on Second Reading upon request of any committee member.



Letter to the Senate Health Committee

January 3, 1989

Page 2 of 2.

- (4) Draft any statement of legislative intent that must be attached to a bill or obtain a draft from the affected state agency.
- (5) Draft committee bills.
- (6) Review all legislation referred to the committee and advise the committee as to the constitutionality, internal consistency, conflict of law, and any other problem in the proposed legislation.
- (7) Attend meetings of authorized subcommittees to perform the appropriate functions listed above.
- (8) Attend conference committee or free conference committee deliberations if I am invited to perform the appropriate functions listed above.
- (9) Assist the committee or an individual committee member in obtaining data or any pertinent information relating to bills under consideration by the committee.

My office is located on the first floor of the Capitol in Room 140-A (Legislative Council Research Division). My telephone extension is 3078. My regular office hours are Monday - Friday, 7:30 a.m. - 6:00 p.m.; Saturday, 8 a.m. - noon.

I look forward to working with you this session!

M5024 9004TGHB

