

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION
COMMITTEE ON STATE ADMINISTRATION

Call to Order: By Chairman William E. Farrell, on February 3, 1989, 1989, at 10:15 a.m. in Room 331, Capitol

ROLL CALL

Members Present: Senator Hubert Abrams, Senator John Anderson, Jr., Senator Esther Bengtson, Senator William E. Farrell, Senator Ethel Harding, Senator Sam Hofman, Senator Paul Rapp-Svrcek, Senator Tom Rasmussen, Senator Eleanor Vaughn

Members Excused: None

Members Absent: None

Staff Present: Eddy McClure

HEARING ON SB 288

Presentation and Opening Statement by Sponsor:

Senator Tom Hager reported SB288 was introduced at the request of the nurses. He indicated this bill is to address some new federal rules regarding nurses aides.

List of Testifying Proponents and What Group they Represent:

Donna Small, Montana Nurses Association
Donna Schramm, President, Montana State Board of Nursing
Ken Dunham, Montana LPN Association

Testimony:

Ms. Small reported the Omnibus Budget Reconciliation Act, or OBRA, of 1988 mandates that states develop a mechanism to train and evaluate nurses aides employed in nursing homes. She indicated the act mandates that minimum qualifications be established, a training curriculum be developed, instructor qualifications be decided, a competency evaluation be develop-

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ed, a registry be established, and rules be established to protect the public from those assisting in the practice of nursing whose performance has been determined to present a public danger. Ms. Small stated that SB288 amends the nursing practice act by including those who assist in the practice of nursing under the definition of nursing practice. She indicated that the bill, when drafted, inserted the definition in the wrong portion of the bill, and they wish to amend the bill by deleting, on page 2, lines 6 and 7, the words "including the assignment and direction of", and moving the remainder of line 7 and line 8 to page 1, paragraph 3. She stated it would then read "practice of nursing embraces 2 classes of nursing service and activity, and those who assist in the practice of nursing by implementation of a strategy of care, as follows:".

Ms. Small indicated the next change to the act of nursing practice would be on page 5, number 6 (a), (b) and (c), which gives the Board of Nursing the authority to carry out OBRA's mandates. She noted the one function that the Board would not be authorized to perform is the establishment of the registry. She indicated this would remain with the Department of Health, but that the Board of Nursing would supply the names to be added or deleted.

Ms. Small stated the Board of Nursing has historically been responsible for the protection of the public relative to the practice of nursing, and carrying out this additional responsibility would maintain a cohesiveness of purpose not otherwise possible. She indicated this is the Board of Nursing's area of expertise, and would require fewer start-up problems than it probably would for another department. She reiterated that certification of nursing assistants is mandated by federal regulations, and the Board would provide the Department of Health with the names to be added to that registry, or to be deleted. She stated the Association believes the Board is the appropriate agency to hold this responsibility, although OBRA mandates the registry and many questions remain in existence. She noted that pass-through funds for doing this are supposedly available, however, amounts and mechanisms are not known, other than it will come through the agency administering Medicaid, which would be SRS in this state. Ms. Small indicated this has made it difficult for them to know how to proceed but, because the legislative process only occurs every other year, they found it necessary to make this recommendation now, even though they have questions of how it will actually be carried out, and how it can be implemented, because they are still waiting for directives from the federal government.

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Ms. Small pointed out that the Board of Nursing already performs the functions, outlined under number 6, for both the practical nursing profession and the professional nursing profession and, to do the same functions for the nursing aides, would be a continuation of the procedures which they already have in effect. She indicated, to them, it seems natural and appropriate, and proper, that all the functions but the registry for nursing aides be handled by the Board of Nursing and, therefore, they ask for the committee's support of SB288.

Testimony:

Ms. Schramm's testimony is attached as Exhibit 2.

Testimony:

Mr. Dunham reported the Montana LPN Association supports the intent of the bill to provide better nursing care, but that they suggest one amendment, which is that the items that Ms. Small suggested be moved remain in that area of professional nursing, and also include those in the definition of a practical nurse. He noted that moving that back to Section 1, part 3, would accomplish their goals, and they do support the bill, if that change remains.

Questions From Committee Members:

Q. Senator Harding asked if the Board of Nursing would provide the training for nurses aides.

A. Ms. Small responded the Board would not provide the training, but they would set up the rules and regulations governing the training. She added the training would be provided by others although, at this time, she could not say who.

Ms. Schramm added the Board is responsible for setting standards for the nursing programs in the state for professional and practical schools of nursing, and there are mechanisms in place to carry out that function.

Q. Senator Bengtson asked who prescribes the training and job descriptions for nurses aides in the institutions.

A. Ms. Schramm responded that each institution sets their own job description and provides in-service training.

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- Q. Senator Bengtson then asked if, in other words, this is an expansion of their authority as the Board of Nursing.
- A. Ms. Schramm responded yes, it would be.
- Q. Senator Bengtson further asked if this will make it more difficult to get nurses aides; will the job descriptions be more stringent to conform with OBRA, even though they do not know what OBRA is doing at the present time. She further indicated her fear is that, to give this additional authority to the Board of Nursing, will have an effect, either positive or negative, depending on where you are sitting.
- A. Ms. Schramm responded she is not sure how to answer the question as to whether it will be more difficult to get nurses aides, but indicated she thinks it will be the intent of the federal legislation to assure that the people who are practicing nursing at this level do meet certain standards and, therefore, it will impact the quality of care received by the citizens of Montana. She added this is the basis upon which the Board of Nursing operates.
- Q. Senator Bengtson indicated that the institutions have a plan in place for training, and it was not mentioned that the Board of Nursing had any part of that. She asked if they were not in conflict with SRS, the nursing homes and the institutions. Senator Bengtson then stated she feels there is more underlying this bill than a simple amendment to their duties.
- A. Ms. Small responded Senator Bengtson is right, but that it is difficult to respond at this time. She noted the portion of OBRA that they are responding to addresses aides in nursing homes and, although it may be expanded to those in institutions, she is not sure of that. Ms. Small added that, however it is done, it has to be done to meet the needs of the people of the State of Montana, and it can not be done in such a way that those facilities are left unstaffed, or that the Medicaid funding for the State of Montana is threatened, which is what would happen if it was done in such a way that those facilities could not be supplied with staff. She noted the funding for Medicaid is attached to this, it is crucial that it be done, and it is going to be done by someone in the state. She added she does not know whether or not the institutions feel they can address the nurse aide

problems for nursing homes, but she thinks it would not be practical.

- Q. Senator Bengtson asked if they have worked at all with SRS or with the institutions.
- A. Ms. Small responded they have not worked with them.

Barbara Booher, Executive Director, Montana Nurses Association, reported she met with officials from the Department of Health because the requirements were directed to them as the only state agency that could set forth the curriculum development that has been taking place. She noted there is a curriculum coalition that is working with Vo Tech, and some of the nursing homes, to get a curriculum in place. Ms. Booher indicated that what would happen, with this bill, is the Board of Nursing would review those curriculums, make sure that they meet the requirements, and approve them, the same way they do for the licensed practical nursing and the schools of professional nursing, so there would be some continuity. She noted that, in Montana, the Board of Nursing needs enabling legislation to take on this additional authority which is mandated by the federal government.

Ms. Booher further stated that Representative Bradley, who chairs the subcommittee for Human Services, indicated their committee is interested in the funding, feels there needs to be some control of how this is administered, and they feel comfortable with the Board of Nursing taking on part of the responsibility. She noted the registry seems to be the most costly part, that this is being developed in the Department of Health, and will stay there.

Ms. Booher indicated that, even though they do not know what the final regulations from the federal government will be, they are trying to be flexible, and believe the Board of Nursing should oversee this. She indicated there is a belief that, eventually, these mandates and requirements for training will apply to acute care settings and, if that happens, having it under the Board of Nursing would remain the logical place to have it. She noted the Department of Health is more geared for licensing and certifying facilities, where as the regulatory boards are responsible for people, and that is why they think, logically, it should be there.

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- Q. Senator Anderson asked if this will affect the licensed practical nurses, or if it addresses only nurses aides.
- A. Ms. Booher responded that the reason for putting it under the Board of Nursing is that registered nurses are responsible for delegation of certain tasks; some to licensed practical nurses, and some to nursing assistants. At this point, Ms. Booher indicated this legislation would also change the name from nurses aide to nursing assistants. She continued that, ultimately, the registered nurses are responsible for those duties that they delegate, and they believe there should be some standardized expectations, so that a registered nurse will know what capabilities the nursing assistant should have, after having received this training. She added the minimum training is currently 75 hours, and there are various curriculum developments in a number of settings.
- Q. Senator Vaughn asked if this would have anything to do with candy strippers and volunteers.
- A. Ms. Small responded that, on the federal level, there was a massive investigation of nursing home care and they developed what they felt was a pattern of problems. She noted a lot of those problems apparently occurred in the nurse aide classification and, therefore, they are addressing what they feel is an area that was overlooked, by requiring this training and registry. She added they felt it was an area in which inadequate care was occurring.
- Q. Chairman Farrell asked, regarding the reference to pass-through money, if they know what the funding rate would be.
- A. Ms. Small responded no.
- Q. Chairman Farrell then asked if it was possible for the Board of Nursing to set up a curriculum, and that the money would not be there to pass-through, without them knowing what the regulations are.
- A. Ms. Small responded that the OBRA act states they will be given direction by October 1, and it further states that, if direction has not been given, they are supposed to go ahead and do it on their own, or they will be in default or out of compliance. Ms. Small indicated, therefore, they are going ahead to do what they can. She added that the Department of Health, at this point

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in time, is taking what steps they feel they can, although it is not geared up, at this point in time, to go into evaluation, training and testing.

Q. Chairman Farrell then asked her to explain why the Department of Health, since they do not have anything to do with the Medicaid funds.

A. Ms. Small responded they are the ones who are mandated by the OBRA act to maintain the registry of those who are removed from the registry. She added that all states are having to address it, and are addressing it according to their own structures. She noted that, in at least 12 states, the Board of Nursing is assuming the full responsibility, including the registry, and there are other states in which it is being done on a partial basis. She stated they felt they should go ahead and amend the act to make it possible for them to do it so that, when the funds became available, they were one of the people who could be considered in there.

Ms. Small then asked Chairman Farrell if he was asking if they are prepared to set up and fund training programs.

Q. Chairman Farrell responded that his question is if it is possible that the Department of Health, as the lead agency, can delegate their authority to SRS. He added that it is not known if this is necessary, or if they will even allow this.

A. Ms. Small responded the interpretation, as it has come down, is that there is no restriction on how the states do it, with the exception of those who are removed from the registry, and the Department of Health has to maintain those. She stated that is the only criteria they have specified has to be in place and, the way it was written, there is flexibility in all other areas.

Q. Chairman Farrell stated that the Department of Health could delegate someone else to be their representatives.

A. Ms. Small responded that, as far as federal regulations, the Department of Health could delegate someone else to do it, but they could not delegate it to the Board of Nursing, unless this amendment is passed.

Q. Senator Rapp-Svrcek asked Ms. Small about her comment that the federal regulations stipulate the registry be

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maintained by the Department of Health, indicating that she also stated that, in other states, the Board of Nursing is in charge of the registry.

- A. Ms. Small apologized if she did not make herself clear, and stated that those who have been deemed unfit to be included in the registry are those which the Department of Health must maintain. She noted that, when they were assessing this situation, they felt that, as long as the Department had to maintain those that were deemed unfit, that they should have the responsibility of the whole registry; that it was easier to have one agency dealing with it. She noted the easiest way to maintain that those who are unfit are not on the registry is to have control of the registry. She added that, when they were going through all the steps, and trying to figure out what to do, it seemed appropriate to leave that with the Department of Health, especially since they are the ones who have taken the initial steps to form the registry, because someone had to do it as of October 1, and they were the only ones that felt that their definition allowed them to do it, as far as this state is concerned.

Closing by Sponsor:

Senator Hager indicated, regarding nurses aides who work in nursing homes, some who go from nursing home to home, and from town to town, are not very good at caring for people, and the idea of the registry is to identify these people and keep them out.

DISPOSITION OF SB 288

Chairman Farrell announced the hearing on SB288 would remain open until Wednesday, February 8, to allow for additional written testimony, due to the possibility of the bad weather preventing people from attending this hearing.

OTHER BUSINESS

Discussion:

Chairman Farrell directed the committee's attention to the list of the Governor's appointments, and read off the names. He announced to the committee that these appointments will be heard in committee on Wednesday, February 8, 1989.

ADJOURNMENT

Adjournment At: 10:50 a.m.


WILLIAM E. FARRELL, Chairman

WEF/mhu
SB288.023

ROLL CALL

STATE ADMINISTRATION COMMITTEE

51ST LEGISLATIVE SESSION

DATE:

February 3, 1989

NAME	PRESENT	ABSENT	EXCUSED
HUBERT ABRAMS	✓		
JOHN ANDERSON, JR.	✓		
ESTHER BENGTON	✓		
WILLIAM E. FARRELL	✓		
ETHEL HARDING	✓		
SAM HOFMAN	✓		
PAUL RAPP-SVRCEK	✓		
TOM RASMUSSEN	✓		
ELEANOR VAUGHN	✓		

SENATE STATE ADMIN.

EXHIBIT NO. 1

DATE 2/3/89 STATE ADMINISTRATION COMMITTEE

BILL NO. SB288

WITNESS STATEMENT

To be filled out by a person testifying or a person who would not like to stand up and speak but wants their testimony entered into the record.

NAME: Donna Small DATE: _____

Address: 2216 Choteau
Helena, Mt 59601

Phone: 442-4485

Representing whom?
Mt. Nurses Assoc -

Appearing on which proposal?
SB 288

Do you: SUPPORT? AMEND? OPPOSE?

Comments:
testimony has not been - Will get to you when
it is typed.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

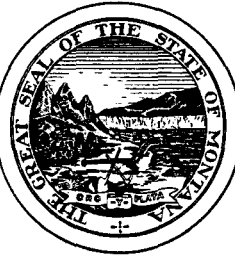
BOARD OF NURSING
DEPARTMENT OF COMMERCE

SENATE STATE ADMIN.

EXHIBIT NO. 2

DATE 2/3/89

BILL NO. SB288 1424 9TH AVENUE



STATE OF MONTANA

(406) 444-4279

HELENA, MONTANA 59620-0407

To: Members of the Senate Administration Committee

Date: February 3, 1989

Subject: Testimony on SB288

My Name is Donna Schramm, president of the Montana State Board of Nursing.

I am here today to speak in support of SB288.

On behalf of the Montana State Board of Nursing, I am speaking in support of SB288.

The Board of Nursing is the legal authority to regulate the practice of licensed nurses for the purpose of protecting the public. The requirements of the Omnibus Reconciliation Act have implications related to the functions and responsibilities of the Board of Nursing.

The Board of Nursing believes the functions defined in the Omnibus Reconciliation Act relating to Nursing should be developed consistent with the regulatory authority as found in the Statutes & Rules relating to Nursing as amended 1981. These functions are covered in the proposed legislation.

SENATE STATE ADMIN.

EXHIBIT NO. 3

DATE 2/3/89

STATE ADMINISTRATION COMMITTEE

BILL NO. SB288

WITNESS STATEMENT

To be filled out by a person testifying or a person who would not like to stand up and speak but wants their testimony entered into the record.

NAME:

DATE:

Linda Schramm

2/3/89

Address:

1211 Geneva Dr
Billung CT 07101

Phone:

259-4769

Representing whom?

State Board of Nursing

Appearing on which proposal?

SB288

Do you: SUPPORT? AMEND? OPPOSE?

Comments:

I support the replacement of the amendment as
proposed to the committee
see Exhibit #2

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

