MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY

Call to Order: By Chairman Tom Hager, on February 13, 1989, at 12:30 p.m.

ROLL CALL

Members Present: Senators Tom Hager, Chairman; Tom Rasmussen, Vice Chairman; J. D. Lynch, Matt Himsl, Bill Norman, Harry H. McLane, Bob Pipinich

Members Excused: None

Members Absent: None

Staff Present: Tom Gomez, Legislative Council
Dorothy Quinn, Committee Secretary

Announcements/Discussion: Chairman Hager announced that the hearing on SB 373 has been canceled, and the bill has been moved to the Judiciary Committee.

He also announced that the hearing on SB 350 will be delayed until Wednesday, February 15, 1989.

EXECUTIVE ACTION ON SB 259

Chairman Hager called for action on SB 259: Senator Hager advised that this bill would exempt SB 270 from the Sunrise Law.

Discussion: Chairman Hager stated that the Leadership advised that SB 259 must be signed by the Governor before SB 270 can legally be reported out of committee. He stated they would add the amendments to SB 270 and then hold that bill until SB 259 makes it through the process. He further advised that SB 270 is a revenue bill because it provides for fees so it will have a later transmittal date.

Senator Norman asked what mechanism could the Department of Health use to recognize those who are trained to deal with asbestos and those who are not.

Larry Lloyd, Administrator of the Department of Health and Environmental Sciences for the Department of Health, advised that there really is not another mechanism

because they are trying to meet a federal mandate under the Asbestos Hazard Emergency Abatement Act under which they are required to adopt during this legislative session accreditation requirements equally stringent to those of the EPA. Since the accreditation requirements are mandated, he sees no way around it. In response to a question by Senator Norman, he stated there is no federal funding, only the mandate to do the work. He stated they are trying to make it self-supporting with those who are accredited and those applying for permits picking up the cost.

Senator Himsl asked if in this case could they not regulate it through the issuance of permits without setting up a licensing structure. Mr. Lloyd stated that unfortunately the Sunrise law is all encompassing because it defines license as meaning permit, certificate, approval, registration, charter or other form of permission required by law as a condition of practicing a profession or occupation.

Recommendation and Vote: Senator Rasmussen made a motion that SB 259 DO PASS. Senators in favor, 6; opposed, 0.

EXECUTIVE ACTION ON SB 270

Chairman Hager called for action on SB 270: The committee was furnished copies of the amendments for their approval.

Discussion: Senator Norman asked why an Advisory Committee was necessary. Larry Lloyd, DHES, advised that the Advisory Committee was requested by the Montana Homebuilders Association and was alluded to by concerned persons from the refineries. Essentially, the Advisory Committee is really not buying them anything that they would not be given under the normal administrative procedures.

Senator Hager asked what the cost of the Advisory Committee would be. Mr. Lloyd stated he did not see a cost at this particular juncture.

Recommendation and Vote: Senator Rasmussen made a motion that the amendments be adopted. Senators in favor, 6; opposed, 0. Senator Hager stated SB 270 would be held until SB 259 has gone through the process.

EXECUTIVE ACTION ON SB 217

Chairman Hager called for action on SB 217: Senator Hager asked Senator Rasmussen to explain the amendments.

Discussion: Senator Rasmussen explained that the amendments actually blend SB 217 and SB 340 together. It brings SB 340 into SB 217. SB 217 is being used as the vehicle to remove the Sunset provision regarding the Certificate of Need, and then the hospitals would be exempted from the process.

Chairman Hager stated that two things that SB 217 does that SB 340 does not do is (1) SB 217 gets rid of the Sunset provision, and (2) SB 217 deletes the requirement that the Department of Social and Rehabilitation Services report to the Legislature concerning Medicaid funding and recommending future funding levels.

Senator Himsl inquired that if SB 217 was not passed, would the CON sunset for everybody concerned. Senator Hager stated that was correct. Senator Himsl stated that from his experience he is now convinced that CON is a financial burden.

Recommendation and Vote: Senator Rasmussen made a motion to amend SB 217. Senators in favor, 3; opposed, 4.

Senator Norman made a motion that SB 217 DO NOT PASS. Senators in favor, 6; opposed, 1 (Rasmussen).

EXECUTIVE ACTION ON SB 340

Chairman Hager called for action on SB 340:

Discussion: Discussion centered around the Sunset provision. Senator Lynch stated that SB 340 extends the CON for everyone for another two years with the exception of hospitals.

Tom Gomez advised that there was a technical amendment to be added on page 4, line 17. He explained the amendment and the need for it.

Recommendation and Vote: Senator Lynch made a motion that the amendment be adopted. Senators in favor, 6; opposed, 1 (Norman).

Senator Lynch made a motion that SB 340 DO PASS AS AMENDED. Senators in favor, 5; opposed 2 (Himsl, Norman).

EXECUTIVE ACTION ON SB 299

Chairman Hager called for action on SB 299: He advised that this bill was introduced at the request of the Board of Hearing Aid Dispensers. He stated that Senator Norman

requested a representative of the Board to appear to provide some additional information.

Discussion: Senator Norman asked why this bill is needed - what would have to be put in the law that is not there now to enable the Board to act.

Jeff Brazier stated that he is a staff attorney for the Department of Commerce and does some work for that Board. He stated that with regulation under this practice act, they are at a point where they need specific delegations according to what it wants to do. It wants to more strictly regulate the supervision of trainees and some authority to impose monetary sanctions where there are disputes between dispenser and the customer.

Senator Norman asked if they want the Board to enter into this commercial transaction. Mr. Brazier stated that this particular profession finds itself dealing with billing problems. He added that these dispensers are out in the field and it is apparent they have many more disputes than other Boards encounter. Senator Norman stated that the current bill provides that they establish a procedure to act as a grievance board, to receive, investigate, mediate complaints from any source concerning the activities of persons licensed under this bill. He asked what more is needed. Mr. Brazier stated that when talking about monetary sanctions, it must be spelled out in the statute.

Senator Hager asked if the Board had the power to suspend or restrict licenses. Mr. Brazier stated he believed they did have that power. Senator Hager asked if it worked to threaten their license. Mr. Brazier advised that there are four or five people in the field who are litigious by nature and one of the reasons for this bill is to put an end to some of those challenges. Their license cannot be taken away without a due process hearing and all the litigation that goes with it.

Senator Lynch added that whether or not this bill passes, everyone is entitled to due process of law. There could still be hearings and litigation.

Mona Jamison stated she testified in support of SB 299 on behalf of the Audiologists and Speech Pathologists. The significance of this bill was that it did not change the scope of its enforcement authority. What it did was in terms of consumer protection - it made sure that the fly-by-night hearing dispensing companies

would have a permanent residence and supervision over trainees.

Senator Norman asked that in addition to all the powers and duties conferred in this chapter what additional language would resolve the matter. Mr. Brazier stated that the Board has attempted to adopt rules.

Mary Lou Garrett, Board of Hearing Aid Dispensers, explained that the reason they are asking for this is for consumer protection. They would like the authority to order restitution to unsatisfied customers. She stated the bill would give them a negotiation area.

Senator Hager asked Tom Gomez to explain amendments requested by Senator Eck. The amendments were studied by the committee.

Recommendation and Vote: Senator Rasmussen made a motion that the amendments be adopted. Senators in favor, 7; opposed, 0.

Senator Lynch observed that he was not sure the bill was looking out for the consumer. He is concerned that this bill goes further than just demanding a refund for consumers.

Senator Hager asked if there was any interest in cutting the bill down. Ms. Garrett stated the Board gave her permission to say they would delete Sections 6 and 7.

Senator Rasmussen stated that those amendments speak to what Senator Lynch discussed. He added that in the interest of seeing the bill passed, he would move that Sections 6 and 7 be struck. The motion was made by Senator Rasmussen to strike Sections 6 and 7 except the language inserted "passed the written". Senators in favor, 7; opposed, 0.

Further discussion was had regarding related devices, and regarding refunds.

Senator Rasmussen moved that SB 299 DO PASS AS AMENDED. Senators in favor, 2 (Rasmussen, Lynch); opposed, 5. It was recommended to reverse the wording to SB 299 AS AMENDED DO NOT PASS.

HEARING ON SENATE BILL 272

Presentation and Opening Statement by Sponsor: Senator Tom

Keating, Senate District #44, advised that in the last session an intermediate mental health involuntary commitment law was passed with a Sunset date. SB 272 is a repealer of that Sunset in order to continue the law in the statutes. He stated that this law provides that those at a low level of mental illness could be committed locally for a period of thirty days in order to avoid a severe mental illness situation. It would be a tool that could be used in a community for early treatment. He stated that the law has not been used often, and is more like a safety valve. It became effective in October, 1987, and has been used about six times during that time. He said no reports of misuse have surfaced, and he recommended that the committee pass SB 272 to rescind the Sunset date and to allow this safety valve to remain in the statutes for use when and if needed.

List of Testifying Proponents and What Group they Represent:

Steve Waldron, Executive Director, Montana Council of Mental Health Centers
John Thorson, Mental Health Association of Montana

List of Testifying Opponents and What Group They Represent:

Kelly Moorse, Director, Board of Visitors
Mary Gallagher, Staff Attorney, Board of Visitors
Tom Posey, Montana Alliance for the Mentally Ill

Testimony:

Steve Waldron stated that the bill relates to the community commitment law that was passed in the last legislative session. It uses a lower standard to classify someone as seriously mentally ill. This category was developed for a mentally ill person who needs treatment, is deteriorating, but does not meet the current legal definitions necessary for commitment. He told of one instance where this law prevented an individual from going to jail or being institutionalized. He stated that if this bill is passed repealing the Sunset, he would put together some sort of training material so that staff would know what to do. He stated the Sunset was put on because of the fear the law would be overused, and now the law is being criticized because it is under utilized. He pointed out that a number of states have gone into similar outpatient commitment laws and they seem to be working quite well.

John Thorson, representing the Mental Health Association of Montana, stated they support this legislation. They acknowledged some problems with the legislation that was alluded to, stating it is complex and has not been used very often. However, they feel that two years is too short a period to make a final evaluation. They do think it provides an additional method for local officials to deal with the problems of the mentally ill. He urged the committee to extend this legislation by passing SB 272.

Kelly Moorse, Director of the Mental Disabilities Board of Visitors, advised that the 1987 legislature requested the Board to complete a report on the outpatient commitment. That was part of their annual report and she provided the committee with copies of the section pertaining to outpatient commitment (Exhibit #1).

Mary Gallagher advised that she is a staff attorney with the Mental Disabilities Board of Visitors legal services program. She read and presented her written testimony to the committee (Exhibit #2). She urged the committee to vote against this bill.

Tom Posey, representing the Montana Alliance for the Mentally Ill, stated he is tired of coming before the legislature every two years and trying to defeat a bill that wants to take away part of his liberties strictly because he is mentally ill. He is totally opposed to the lessening of the standards of imminent danger. They are the only standards that are proven to have the safeguard that is necessary to protect the rights of the mentally ill. He expressed concern over the fact that Mr. Waldron stated that he would instruct people in how to use the law that affects Mr. Posey's liberty. He concluded by asking the committee to kill this bill.

Questions From Committee Members: None

Closing by Sponsor: Senator Keating stated that he has had experience with mental illness through friends and family. He said he finds it hard to believe that this little procedure can bring an indictment upon the whole mental illness program in Montana. He stated he could not determine where early commitment and prevention of severe mental illness was causing all the consequences of the mental illness program in the state. He stated he is at a loss to understand the opposition to the measure and he does not believe the effects of it warrant that impact. He asked the committee to leave

the safety valve in place for at least two more years.

DISPOSITION OF SENATE BILL 272

Discussion: None

Amendments and Votes: None

Recommendation and Vote: None

FURTHER DISCUSSION ON SB 124

Senator Hager advised that Senator Norman had asked someone to appear to answer questions regarding the aids patient being refused admittance to a care facility.

John Patrick, Department of Social and Rehabilitation Services, advised that the nursing homes cannot discriminate on the basis of diagnosis or handicap. However, they reserve the right to limit the types of patients that they can serve through their admission policy. He stated when their department got the call from the community hospital, he contacted two or three of the facilities in Missoula who indicated that their admission policies did not discriminate against an aids patient, but they were unable to take this particular patient, since they did not have a bed available that day. Their policy is to try to provide a private room for that type patient. From the SRS standpoint, ability to do any more to enforce that policy is fairly limited. If there truly was discrimination, the consequence could be that the Medicaid-Medicare funding could be terminated. At this point of time there is nothing of a lesser degree in the way of enforcement.

Mr. Patrick was asked if he felt the law was broken in the case, to which he stated he cannot really answer that. If they did have a private room available, it would suggest that they did not do all they could to admit the patient.

Janet Perkins, Supervisor at the Licensing Certification, stated that they have two mechanisms in place to address this. On the Federal side, Section 504 says the issue of the failure to admit aids patients is a civil rights question and all such allegations or issues are referred to the Office of Civil Rights. On the state side, in 50-5-105 it is stated that all phases of the operation of the health care facilities shall be without discrimination against anyone on the basis of race, creed, color, religion, national origin,

sex, age, marital status, physical or mental handicap or political ideas. She stated they were not aware the law was broken, if it was. No one reported the situation so these mechanisms were not used.

ADJOURNMENT

Adjournment At: 2:40 p.m.

SENATOR TOM HAGER, Chairman

TH/dq

senmindq.213

ROLL CALL

PUBLIC HEALTH COMMITTEE

51st LEGISLATIVE SESSION -- 1989 Date 2/13/89

NAME	PRESENT	ABSENT	EXCUSED
Sen. Tom Hager	X		
Sen. Tom Rasmussen	X		
Sen. Lynch	X		
Sen. Himsl	X		
Sen. Norman	X		
Sen. McLane	X		
Sen. Pipinich	X		

Each day attach to minutes.

ROLL CALL

PUBLIC HEALTH COMMITTEE

51st LEGISLATIVE SESSION -- 1989 Date 2/13/89

NAME	PRESENT	ABSENT	EXCUSED
Sen. Tom Hager	X		
Sen. Tom Rasmussen	X		
Sen. Lynch			
Sen. Himsl	X		
Sen. Norman	X		
Sen. McLane	X		
Sen. Pipinich	X		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

February 13, 1989

MR. PRESIDENT:

We, your committee on Public Health, Welfare, and Safety, having had under consideration SB 259 (first reading copy -- white), respectfully report that SB 259 do pass.

DO PASS

Signed: _____

Thomas O. Hager, Chairman

2/14/89
7:56
a.m.

scrsb259.213

SENATE STANDING COMMITTEE REPORT

February 13, 1989

MR. PRESIDENT:

We, your committee on Public Health, Welfare, and Safety, having had under consideration SB 217 (first reading copy -- white), respectfully report that SB 217 do not pass.

DO NOT PASS

Signed: _____

Thomas O. Hager, Chairman

2/14/89
9:54 a.m.

SENATE STANDING COMMITTEE REPORT

February 14, 1989

MR. PRESIDENT:

We, your committee on Public Health, Welfare, and Safety, having had under consideration SB 340 (first reading copy -- white), respectfully report that SB 340 be amended and as so amended do pass:

1. Page 4, line 17.
Following: "hospital"
Insert: ", except to the extent that a hospital is subject to certificate of need requirements pursuant to subsection (1)(i)"

AND AS AMENDED DO PASS

Signed: _____
Thomas O. Hager, Chairman

4LC
3/14/89
1:12 pm

SENATE STANDING COMMITTEE REPORT

February 14, 1989

MR. PRESIDENT:
We, your committee on Public Health, Welfare, and Safety, having had under consideration SB 299 (first reading copy -- white), respectfully report that SB 299 be amended and as so amended do not pass:

1. Title, lines 11 through 12.
Following: "RECEIPTS" on line 11
Strike: ","
Insert: "AND"
Following: "LICENSURE" on line 11
Strike: remainder of line 11 through "LICENSES" on line 12

2. Page 2, lines 3 through 5.
Following: "receipts," on line 3
Strike: remainder of line 3 through "licensees," on line 5

3. Page 7, line 25 through page 8, line 1.
Following: "has" on line 25
Strike: "not previously applied to take the practical"
Insert: "passed the written"

4. Page 8, lines 12 through 13.
Following: "board" on line 12
Strike: remainder of line 12 through "license" on line 13

5. Page 8, lines 14 through 19.
Following: "~~he~~"
Strike: remainder of line 14 through "trainee" on line 19
Insert: "a period of 60 days during which he"

6. Page 9, line 1.
Following: "the"
Strike: "general"

7. Page 9, line 8.
Following: "a"
Strike: "qualified"

continued

8. Page 10, lines 6 through 25.
Strike: subsections (7) through (10) in their entirety

9. Page 11, lines 2 and 3.
Following: "fee" on line 2
Strike: "-- inactive license"

10. Page 11, line 22 through page 12, line 5.
Strike: subsection (3) in its entirety

AND AS AMENDED DO NOT PASS

Signed: _____
Thomas O. Hager, Chairman

4.a.
2/15/89
12:40 p.m.

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".

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.

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

SENATE HEALTH & WELFARE
EXHIBIT NO. #2
DATE 2/13/89
BILL NO. 272

TESTIMONY ON SENATE BILL 272
FEBRUARY 13, 1989 BY MARY GALLAGHER
BEFORE SENATE PUBLIC HEALTH COMMITTEE

Mr. Chairman, members of the committee, my name is Mary Gallagher and I am a staff attorney with the Mental Disabilities Board of Visitors legal services program. As Kelly Moorse mentioned, the Board of Visitors was requested to report back to this Legislature regarding the 1987 House Bill 316. We sent a survey out to all the mental helath centers and count attorneys. We spoke with some public defenders and others involved with commitments. As the report notes, approximately 41% of the results indicated the statutes were ineffective or totally ineffective; 39% of those responding either had no comment or had not used it because it was not appropriate or beneficial to the situation or else no situation had arisen which called for its' use. 20% of those responding did think that the statute was effective or somewhat effective for its' purpose. As a result of this survey and our further research discussed below, we would recommend that this committee vote against this bill and allow the out-patient commitment provisions to sunset.

You may hear the term 'outpatient' used in a variety of ways when people talk about mental health issues. I want to clarify that what we are talking about here in the underlying statutes should not be confused with:

1. Conditional Releases from an inpatient hospital like Warm Springs when a patient has been committed there on a 90-day involuntary petition after being found to be seriously mentally ill (that is, found to be an imminent threat of danger to self or others) or

2. Out-patient Commitment as Least Restrictive Alternative: Those same 90-day involuntary statutes require that a person committed under them must be committed to the least restrictive alternative to accomplish the treatment needs of the person-which could be out-patient treatment say, at a mental health center.

Perhaps the more accurate description for the statutes at issue in HB374 is that they require forced treatment in the community -that is 'preventive treatment' of persons who are not seriously mentally ill-the goal of the statutes being to prevent institutionalization before it happens and stop what has been called the revolving door syndrome.

The solution envisioned by these "preventive commitment" statutes is to prevent reinstitutionalization by forcing recalcitrant patients to accept treatment in the community. And this is to be accomplished by commiting them to community

treatment before they meet the standards for involuntary inpatient commitment-that is before they become a danger to themselves or others.

The standards for preventive commitment contain a diminished set of due process protections. These standards apply to a person with a mental disorder whose actions fit criteria pointing to potential "serious deterioration" in the person's condition and the disorder poses a significant risk that might eventually lead to the person becoming seriously mentally ill and requiring hospitalization ...that is, a person seemingly caught in the revolving door syndrome.

The revolving door problem is a major mental health policy problem not only in Montana, but nation-wide. However, I believe proponents of this bill and of the underlying preventive commitment statutes are mistaken as to the source of the problem and also, therefore, as to its solution. It is our belief that any explanation for the revolving door phenomenon is much more complex than the singling out the usual targets of deinstitutionalization or so-called recalcitrant patients which are blamed for the problem.

It is necessary to examine some of the unarticulated assumptions og preventive commitment and this bill. The first is that the reason for the pattern of chronic rehospitalization among some patients is that these patients resist the very treatment--most often medications-- that will permit them to remain in the community. The second is the assumption that only the "treatment resistant" individual's mental illness leads him or her to the conclusion that medication is unnecessary. Third, they assume that failure to take medications is causally linked to deterioration , decompensation, psychosis, and reinstitutionalization. These assumptions essentially say that the patient is responsible for the failures and his or her ultimate return to an inpatient setting.

Despite these assumptions, one recent report states that: research shows that a substantial minority of mentally ill individuals will decompensate whether or not they receive medication; and that even more will improve whether or not they receive medication; and that these two groups combined constitute some 50% of the population of seriously mentally ill people. So the assumption that medication is necessary for the individual to prevent decompensation does not apply to at least half the targeted population of the out-patient commitment statutes ,yet, the statutes force treatment on all individuals who meet the standards.

In addition, the report notes that many people who refuse medication have entirely understandable reasons for doing so which are not necessarily related to their mental illness, including fear of tardive dyskinesia, a disabling condition which will strike a substantial portion of people who take psychotropic medications on a regular basis, or neuroleptic malignant syndrome, which affects between 1% and 2.4% of individuals taking psychotropic medications and kills one out of four patients. Many patients simply cannot stand the side effects of psychotropic medications, which include akathesia(a distressing urge to move),

akinesia (inertia, inactivity, and lack of spontaneous movement), pseudo-Parkinsonism (causing retarded muscle movements, masked facial expression, body rigidity, tremor and a shuffling gait), muscle spasms, blurred vision, dry mouth, sexual dysfunction, drug-induced mental disorders and occasionally, sudden death. Stefan, Preventive Commitment: Misconceptions and Pitfalls in Creating a Coercive Community(1989).

The more accurate explanation involves a system of interlocking deficiencies that make it possible for all parties to shift the blame to each other. Such legislation exacerbates the problem and presents no lasting solution.

One recent article by an expert on out-patient commitment addresses how current mental health systems, such as Montana's, stack the odds against survival in the community. The article notes 5 areas which impede this survival.I think it is important to briefly mention these areas.

First, it notes the failure of institutions to provide adequate and realistic discharge plans for patients who leave the hospital.

Second, it notes the lack of affordable housing in the 80's due to the federal government policy of drastically reducing federally subsidized low income housing without a corresponding increase in the private sector and also notes the problems with reimbursement schemes by Medicaid and SSI which ultimately encourage institutionalization of the mentally ill instead of community treatment;

Third, it notes the failure of state mental health agencies to finance adequate community services such as trained crisis intervention, mobile treatment teams, case managers, and sufficient therapy and socialization programs. The bulk of state funding goes instead to the huge fixed expenses associated with institutional care.

Fourth, the article notes the tendancy for community mental health centers to discriminate against the seriously mentally ill because of the tendancy to prefer higher functioning, motivated clients who can pay for their services. Often the ones most in need of services are the ones who are provided with only a routine medication monitoring and no follow-up is done if a patient does not show up for an appointment.

Finally, the article notes the zoning and other discriminations in the community when an attmept is made to create neighborhood and community services and highlights the problems in dealing with the stigma of being mentally ill in our society.

Thrust into the community with no discharge planning and little chance of finding any housing, few individuals are a match for the battle with a hostile community, inadequate opportunities for training or education, and the absence of resources to provide mental health care in the community. There is little to do but struggle in poverty, since the supportive networks that may carry others through hardtimes are closed to many people recently discharged form institutions. We would ask, who among us could survive such isolation , poverty, and homelessness without "deterioration"?

Financing a system of preventive care is bound to increase the number of persons subject to commitment for treatment in the community. The outpatient commitment statutes which we are requesting be sunsetted, have failed to examine these problems, have failed to examine the adequacy of the existing resources and have failed to budget realistically to meet the increased demand created by such a statute.

The Board of Visitors survey also noted other difficulties with this law:

Monitoring is a problem. If the state orders a person to be treated involuntarily, it must ensure that the treatment is accomplishing its purpose. It is difficult to monitor the many scattered mental health centers because of their scattered sites plus this legislation provided no additional funding for such purposes.

Enforcement difficulties also exist. Since out-patient standards are necessarily different than for inpatient commitment, hospitalization may not be used as punishment for noncompliance. The most that can be done is to request a court order for the person to be examined to see if he meets the criteria for inpatient commitment.

The right of a competent person to consent to or refuse medications or other treatment is still a complicated and unresolved issue which is integrally tied to many out-patient commitments.

The concern for liability of treating professionals with their current limited ability to monitor the quality of treatment provided to persons on preventive commitments.

And finally, the important fact that the basic standard of deterioration which is part of the commitment criteria under our outpatient statute is constitutionally questionable. It has not been challenged in court yet but experts note that there is simply no precedent for depriving people of their liberty in order to treat them because they may need treatment in the future. Such commitments are questionable because the restriction on liberty is great and the government interest in providing unwanted treatment to competent non-dangerous adults simply does not have the same weight as its interest in hospitalizing those who are dangerous to self or others.

The single most common theme throughout the survey was the belief that such legislation was useless without adequate, available facilities in the community.

For all the above reasons the Board of Visitors recommends that you vote against this bill and encourages all involved to address a more wholesale solution to the complex problems of providing treatment to the mentally ill individuals of our state.

More than any tinkering with involuntary treatment criteria or modification of our civil commitment scheme, the actual availability of community programs would have the most dramatic impact on the current crisis in the mental health care.(Schwartz 1987)

Thank you.

SB 217
2-13-89

Amendments to Senate Bill No. 217
First Reading Copy

Requested by Senator Tom Rasmussen
For the Senate Public Health, Welfare and Safety Committee

Prepared by Tom Gomez, Staff Researcher
February 13, 1989

1. Title, line 7.
Following: "LAWS;"
Insert: "EXEMPTING HOSPITALS FROM CERTIFICATE OF NEED REQUIREMENTS IN CERTAIN CIRCUMSTANCES;"

2. Title, line 11.
Following: "AMENDING"
Insert: "SECTION 50-5-301, MCA;"

3. Page 1, line 16.
Following: line 15
Insert: "**Section 1.** Section 50-5-301, MCA, is amended to read:

"**50-5-301. (Temporary) When certificate of need is required -- definitions.** (1) Unless a person has submitted an application for and is the holder of a certificate of need granted by the department, he may not initiate any of the following:

(a) the incurring of an obligation by or on behalf of a health care facility for any capital expenditure, other than to acquire an existing health care facility or to replace major medical equipment with equipment performing substantially the same function and in the same manner, that exceeds the expenditure thresholds established in subsection (4). The costs of any studies, surveys, designs, plans, working drawings, specifications, and other activities (including staff effort, consulting, and other services) essential to the acquisition, improvement, expansion, or replacement of any plant or equipment with respect to which an expenditure is made must be included in determining if the expenditure exceeds the expenditure thresholds.

(b) a change in the bed capacity of a health care facility through an increase in the number of beds or a relocation of beds from one health care facility or site to another, unless:

(i) the number of beds involved is 10 or less or 10% or less of the licensed beds (if fractional, rounded down to the nearest whole number), whichever figure is smaller, in any 2-year period;

(ii) a letter of intent is submitted to the department; and

(iii) the department determines the proposal will not significantly increase the cost of care provided or exceed the bed need projected in the state health plan;

(c) the addition of a health service that is offered by or on behalf of a health care facility which was not offered by or

on behalf of the facility within the 12-month period before the month in which the service would be offered and which will result in additional annual operating and amortization expenses of $150,000 or more;

(d) the acquisition by any person of major medical equipment, provided such acquisition would have required a certificate of need pursuant to subsection (1)(a) or (1)(c) of this section if it had been made by or on behalf of a health care facility;

(e) the incurring of an obligation for a capital expenditure by any person or persons to acquire 50% or more of an existing health care facility unless:

(i) the person submits the letter of intent required by 50-5-302(2); and

(ii) the department finds that the acquisition will not significantly increase the cost of care provided or increase bed capacity;

(f) the construction, development, or other establishment of a health care facility which is being replaced or which did not previously exist, by any person, including another type of health care facility;

(g) the expansion of the geographical service area of a home health agency; ~~or~~

(h) the use of hospital beds to provide services to patients or residents needing only skilled nursing care, intermediate nursing care, or intermediate developmental disability care, as those levels of care are defined in 50-5-101; or

(i) the provision or expansion by a hospital of services for ambulatory surgical care, home health care, long-term care, inpatient mental health care, inpatient chemical dependency treatment, inpatient rehabilitation, or personal care.

(2) For purposes of subsection (1)(b), a change in bed capacity occurs on the date new or relocated beds are licensed pursuant to part 2 of this chapter and the date a final decision is made to grant a certificate of need for new or relocated beds, unless the certificate of need expires pursuant to 50-5-305.

(3) For purposes of this part, the following definitions apply:

(a) "Health care facility" or "facility" means a nonfederal ambulatory surgical facility, home health agency, ~~hospital,~~ long-term care facility, medical assistance facility, mental health center with inpatient services, inpatient chemical dependency facility, rehabilitation facility with inpatient services, or personal care facility. The term does not include a hospital, except to the extent that a hospital is subject to certificate of need requirements pursuant to subsection (1)(i).

(b) (i) "Long-term care facility" means an entity which provides skilled nursing care, intermediate nursing care, or intermediate developmental disability care, as defined in 50-5-101, to a total of two or more persons.

(ii) The term does not include adult foster care licensed under 53-5-303; community homes for the developmentally disabled licensed under 53-20-305; community homes for physically disabled persons licensed under 53-19-111; boarding or foster homes for

children licensed under 41-3-1142; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or persons not requiring institutional health care; or juvenile and adult correctional facilities operating under the authority of the department of institutions.

(c) "Obligation for capital expenditure" does not include the authorization of bond sales or the offering or sale of bonds pursuant to the state long-range building program under Title 17, chapter 5, part 4, and Title 18, chapter 2, part 1.

(d) "Personal care facility" means an entity which provides services and care which do not require nursing skills to more than four persons who are not related to the owner or administrator by blood or marriage and who need some assistance in performing the activities of everyday living. The term does not include those entities excluded from the definition of "long-term care facility" in subsection (b).

(4) Expenditure thresholds for certificate of need review are established as follows:

(a) For acquisition of equipment and the construction of any building necessary to house the equipment, the expenditure threshold is $750,000.

(b) For construction of health care facilities, the expenditure threshold is $1,500,000. ~~(Repealed effective July 1, 1989--sec. 9, Ch. 477, L. 1987.)~~""

Renumber: subsequent sections

SB 340
2-13-89

SENATE HEALTH & WELFARE
EXHIBIT NO.
DATE
BILL NO.

Amendments to Senate Bill No. 340
First Reading Copy

For the Senate Public Health, Welfare and Safety Committee

Prepared by Tom Gomez, Staff Researcher
February 13, 1989

1. Page 4, line 17.
Following: "hospital"
Insert: ", except to the extent that a hospital is subject to certificate of need requirements pursuant to subsection (1)(i)"

Pink Slip Sent 2/14/89

SB 299
2-13-89

Amendments to Senate Bill No. 299
First Reading Copy

Requested by Senator Dorothy Eck
For the Senate Public Health, Welfare and Safety Committee

Prepared by Tom Gomez, Staff Researcher
February 14, 1989

1. Title, lines 11 through 12.
Following: "RECEIPTS" on line 11
Strike: ","
Insert: "AND"
Following: "LICENSURE" on line 11
Strike: remainder of line 11 through "LICENSES" on line 12

2. Page 2, lines 3 through 5.
Following: "receipts," on line 3
Strike: remainder of line 3 through "licenses," on line 5

3. Page 7, line 25 through page 8, line 1.
Following: "has" on line 25
Strike: "not previously applied to take the practical"
Insert: "passed the written"

4. Page 8, lines 12 through 13.
Following: "board" on line 12
Strike: remainder of line 12 through "license" on line 13

5. Page 8, lines 14 through 19.
Following: "~~he~~"
Strike: remainder of line 14 through "trainee" on line 19
Insert: "a period of 60 days during which he"

6. Page 9, line 1.
Following: "the"
Strike: "general"

7. Page 9, line 8.
Following: "a"
Strike: "qualified"

8. Page 10, lines 6 through 25.
Strike: subsections (7) through (10) in their entirety

9. Page 11, lines 1 and 2.
Following: "fee" on line 1
Strike: "-- inactive license"

10. Page 11, line 22 through page 12, line 5.
Strike: subsection (3) in its entirety

DATE 2/13/18

COMMITTEE ON PUBLIC HEALTH

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
LARRY Lloy	DHES	SB270	~	
Adrian Howe	DHES	SB259	—	
Mary Gallagher	BON / MHPEA	SB270		X
Kerry Moore	Board Visitor			
Tom Posey	a Md	SB272		X

(Please leave prepared statement with Secretary)

ROLL CALL VOTE

SENATE COMMITTEE PUBLIC HEALTH

Date 2/13/89 Bill No. SB 259 Time 1:00

NAME	YES	NO
SEN. TOM HAGER	X	
SEN. TOM RASMUSSEN	X	
SEN. LYNCH	–	
SEN. HIMSL	X	
SEN. NORMAN	X	
SEN. McLANE	X	
SEN. PIPINICH	X	

Louise Sullivan
Secretary

Sen. Tom Hager
Chairman

Motion: Senator Rasmussen SB 259 DO PASS

6 – 2

6 – 0

1987

ROLL CALL VOTE

SENATE COMMITTEE PUBLIC HEALTH

Date 2/13/89 Bill No. 270 Time 1:10

NAME	YES	NO
SEN. TOM HAGER	X	
SEN. TOM RASMUSSEN	X	
SEN. LYNCH	-	
SEN. HIMSL	X	
SEN. NORMAN	X	
SEN. McLANE	X	
SEN. PIPINICH	X	

Louise Sullivan
Secretary

Sen. Tom Hager
Chairman

Motion: Sen. R. moved to Pass the amendments all in favor 6 - 2 6 - 0 and are attached opposed 0 6 - 0

1989

ROLL CALL VOTE

SENATE COMMITTEE PUBLIC HEALTH

Date 2/13/89 Bill No. 217 Time

NAME	YES	NO
SEN. TOM HAGER	X	
SEN. TOM RASMUSSEN	X	
SEN. LYNCH		O
SEN. HIMSL		O
SEN. NORMAN		O
SEN. McLANE	X	
SEN. PIPINICH		O

~~Louise Sullivan~~ D. Zuern
Secretary

Sen. Tom Hager
Chairman

Motion: 3 in favor Amendments. against
Sen Rasmussen 6 3 in favor
4 Opposed.

1987

ROLL CALL VOTE

SENATE COMMITTEE PUBLIC HEALTH

Date 2/13/89 Bill No. 217 Time 1:25

NAME	YES	NO
SEN. TOM HAGER	X	
SEN. TOM RASMUSSEN		X
SEN. LYNCH	X	
SEN. HIMSL	X	
SEN. NORMAN	X	
SEN. McLANE	X	
SEN. PIPINICH	X	

Louise Sullivan
Secretary

Sen. Tom Hager
Chairman

Motion: 6 in favor do Not Pass.
#217; 1 opposed

1989

ROLL CALL VOTE

SENATE COMMITTEE PUBLIC HEALTH

Date 2/13/89 Bill No. SB 340 Time 1:25

NAME	YES	NO
SEN. TOM HAGER	X	
SEN. TOM RASMUSSEN	X	
SEN. LYNCH	X	
SEN. HIMSL	X	
SEN. NORMAN		O
SEN. McLANE	X	
SEN. PIPINICH	X	

Louise Sullivan
Secretary

Sen. Tom Hager
Chairman

Motion: Motion (Sen Lynch.) Amendment ad

In Favor - ~~6~~ 6

Opposed - No - 1

1987

ROLL CALL VOTE

SENATE COMMITTEE PUBLIC HEALTH

Date 2/13/89 Bill No. SB 340 Time

NAME	YES	NO
SEN. TOM HAGER	X	
SEN. TOM RASMUSSEN	X	
SEN. LYNCH	X	
SEN. HIMSL		O
SEN. NORMAN		O
SEN. McLANE	X	
SEN. PIPINICH	X	

Louise Sullivan
Secretary

Sen. Tom Hager
Chairman

Motion: To Do Pass As Amended

5 in favor

Lynch 2 Opposed

1985

ROLL CALL VOTE

SENATE COMMITTEE PUBLIC HEALTH

Date 5/13/89 Bill No. 299 Time 1:55

NAME	YES	NO
SEN. TOM HAGER	X	
SEN. TOM RASMUSSEN	X	
SEN. LYNCH	X	
SEN. HIMSL	X	
SEN. NORMAN	X	
SEN. McLANE	X	
SEN. PIPINICH	X	

Louise Sullivan
Secretary

Sen. Tom Hager
Chairman

Motion: Sen Rassmussen: [illegible]
All in favor
Passed unanimously

1987

ROLL CALL VOTE

SENATE COMMITTEE PUBLIC HEALTH

Date 2/13/89 Bill No. 299 Time

NAME	YES	NO
SEN. TOM HAGER	X	
SEN. TOM RASMUSSEN	X	
SEN. LYNCH	X	
SEN. HIMSL	X	
SEN. NORMAN	X	
SEN. McLANE	X	
SEN. PIPINICH	X	

Louise Sullivan
Secretary

Sen. Tom Hager
Chairman

Motion: Sen. Rasmussen moved to strike Section 6 & 7 (except the language inserted after "written examination") in favor.

In favor - 7

Opposed - 0

1985

ROLL CALL VOTE

SENATE COMMITTEE PUBLIC HEALTH

Date 2/13/89 Bill No. 299 Time

NAME	YES	NO
Sen. Tom Hager		O
Sen. Tom Rasmussen	X	
Sen. Lynch	X	
Sen. Matt Himsl		O
Sen. Bill Norman		O
Sen. Harry McLane		O
Sen. Bob Pipinich		O

Dorothy Quinn
Secretary

Sen. Tom Hager
Chairman

Motion: Sen Rasmussen Motion to DO PA
5 opposed; 2 in favor.

It was recomended to reverse the word
to DO NOT PASS, 5-2.
AS AMENDED

1989