

MINUTES

MONTANA SENATE  
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY

Call to Order: By Senator Tom Hager, on April 6, 1989, at  
9:30 a.m., Room 410, State Capitol

ROLL CALL

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

Members Excused: Senator Tom Rasmussen

Members Absent: None

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

Announcements/Discussion: None

HEARING ON HOUSE BILL 304

Presentation and Opening Statement by Sponsor: Tom Hannah, Representative of House District, stated he is the chief sponsor of HB 304. It was introduced and designed to address a problem in the state which deals with children who are emotionally and psychologically distressed to the point of where they become wards of the state and are in need of psychological services. He gave a brief overview of how a youth might be taken to an immediate mental health care facility where they are evaluated and the next step is decided upon. In Billings the next step in care would be the Rivendell Center which is the intensive treatment facility for the Billings area. Both the hospital and Rivendell are Medicaid facilities in that they receive state and federal matching funds for care of these youth. That type care lasts for a couple of months, and then long-care treatment plan is established and in Billings and Helena there are types of providers which would take over after the Rivendell situation. These two providers are Intermountain Deaconess Home and Yellowstone Treatment Center in Billings. They are less intensive facilities and longer term. The next step would hopefully be a group home or a foster home situation. HB 304 stems from the fact that Yellowstone Treatment Center was operating at a loss of about half of what it takes to care for the youth. When HB 304

was first introduced, it included Intermountain Deaconess but that facility has now dropped out and they are now dealing with Medicaid access for matching state funds for the Yellowstone Treatment Center. HB 304, with the amendments, would be a Medicaid pilot project of two-year duration; limited to those residential treatment centers in existence as of January 1, 1989. The Medicaid authorization section of the bill would sunset July 1, 1991. The question of whether the program will be more economical for the state is part of what needs to be solved through the pilot project. The Yellowstone Treatment center believes it will be beneficial financially. The next session of the Legislature would have reliable information. During the biennium the Program would be limited to existing facilities only, ie the Yellowstone Treatment Center. The bill requires (1) that any person wishing to establish a residential treatment facility would have to obtain a Certificate of Need; (2) during the period of the pilot project there would be a moratorium of the Certificate of Need for this service so the need of Medicaid utilization could be studied; (3) it be a non-hospital bed residential treatment facility which provides the service. Yellowstone Treatment Center is currently the only one in the state. All of this is geared so that the pilot project will be assured so that in two years the needs will be known and the costs apparent; (4) that the facility be licensed by the Department of Health as a residential treatment facility which is one of the key parts of the bill in setting up a new standard called residential treatment facility to allow access to Medicaid funds. He stated they have amendments requested by the Administration which he supports. He advised that the fiscal note does not apply because the bill has been amended and changed throughout the process. He stated the amendments are critical to the bill, and urged passage.

List of Testifying Proponents and What Group they Represent:

Loren Soft, Executive Director of Yellowstone Treatment Center  
Russ Cater, Attorney, Department of Social and Rehabilitation Services  
Pat Melby, Attorney, Yellowstone Treatment Center  
Gary Walsh, Department of Family Services  
Steve Waldron, Montana Residential Child Care Association

List of Testifying Opponents and What Group They Represent:

None

Testimony: Loren Soft, Executive Director of Yellowstone Treatment Centers, advised that he wished to emphasize the importance of this bill to their facility. He stated in the early years they served primarily the dependent neglected population - youth that needed a good home, loving house parents, and a "firm hand on the shoulder" approach. In 1979, as the needs began to change in the state, they were asked by the state to move into the realm of intensive treatment for seriously disturbed children and adolescents. They took on that challenge. They sought accreditation in 1979, and are accredited at the present time. This came about because of the tremendous amount of emotional problems surfacing. It was necessary to change their program. This residential treatment center which started out as a custodial care facility for semi-orphan children has become a very intense and sophisticated treatment center for very sick children. He stated the Yellowstone facility is similar to the Deaconess program in Helena; however, Deaconess works with the younger population with average age between 8-10 years. Yellowstone works with youth whose average age is 14. Some have been in the psychiatric hospital setting for short-term treatment and then need a season of residential treatment prior to returning home. They have not been able to keep up with funding. That mechanism has been through the Foster Care Program and while the numbers of seriously disturbed children have increased, the Foster Care budget has not been able to keep pace with what it costs to care for these children. As Rep. Hannah pointed out, they have been operating at about 50% deficit through the Foster Care system and cannot continue to provide the level of intense services under that system. He urged support of HB 304.

Russ Cater, Department of Social and Rehabilitation Services, stated he had prepared amendments to HB 304, copies of which he distributed to the committee (Exhibit #1). He advised that the bill before the committee today was considerably different than the bill which was introduced. The idea behind the previous changes and the proposed amendments is that they wish to limit the services because of fiscal considerations. However, there are still some costs. He explained the essence of the amendments. The intent behind Amendment 2 is to make the services under the

category of an optional Medicaid service. The Department feels there is a need to keep open the possibility that there will be significant fiscal impact, and there are also concerns of some legal considerations which may be raised by the Federal government regarding the limitation upon this service. They do intend at the present time to go forward with the services. In order to implement these services, the Department of SRS believes that additional appropriations will be needed. These appropriations are listed in Amendment 4. He added that there is a 75% Federal match on this funding. This amount of money is needed because the Department will need \$28,000 for an employee within the Department to perform reviews of the children in the facility; in addition, the Federal government also requires a utilization review program. Currently this program is conducted under a private contract with the Montana-Wyoming Foundation for Medical Care. This is part of \$40,000 in operating expenses which they believe will be necessary. This \$40,000, in addition to the contracting of the Montana-Wyoming Foundation, will also include a small portion for the costs involved in performing audits on this facility to insure that the fiscal costs are in accord with the rules and to insure that the State of Montana is not spending too much money on the program.

Pat Melby, Attorney representing Yellowstone Treatment Center, stated HB 304 has had a long and arduous path in order to arrive at this point. He believes they have a good bill for the State of Montana and for the youth of the state. He added that this is a pilot project, lasting for two years during which time the application of the provisions of the bill will be considered to determine how many individuals are in need of services for the emotionally disturbed. He added that there are a number of safeguards in this bill to insure against a proliferation of services. These safeguards include (1) the requirement that residential treatment facilities be licensed as health care facilities; (2) the existing facilities as of January 1, 1989, would be grandfathered in as residential treatment facilities; (3) in order to add a residential treatment facility, any health care facility would have to go through a Certificate of Need process; (4) a moratorium placed on the issuance of any new Certificate of Need for any new beds for residential treatment facilities; (5) the amendment limiting the eligibility for Medicaid services to those youth who are in the custody of the Department of Family services. Mr. Melby predicted there would be a

significant savings to the General Fund and that the Legislature, upon review of the study which will be done by the Departments on the need for this service, will feel that this a good program and will want to continue it next session.

Gary Walsh of the Department of Family Services stated that the Department recognizes the need for an expansion of the number of services to youth in Montana. He believes HB 304 may be a vehicle to allow the department to better service youth in need of services. He read and presented his written testimony to the committee (Exhibit #2).

Steve Waldron, representing the Montana Residential Child Care Association, stated MRCCA is an organization of foster care group home providers and Yellowstone Treatment Center is one of the members. He stated they have providers who are "mom and pop" group homes, some therapeutic foster care providers, intermediate providers and residential treatment providers. He stated they have looked at this issue and support it. They see this as a way to leverage Federal funds to attempt to deal with serious problems. According to Mr. Waldron, it is an underfunded system. They are underfunded in placement slots for youth, and they are underfunded in the amount that is reimbursed providers. This has caused some significant quality problems in servicing youth in the State of Montana. Yellowstone Treatment Center has made a sincere attempt working with Family Services and SRS to deal with fiscal issues that have been raised in this bill. He believes that a good job has been done to insure that this program will not get out of hand. One of the most critical restrictions is that these are not hospital based facilities. Consequently, the cost can be held down because in-patient residential treatment is less expensive than in-patient hospital care. He emphasized that this bill concerns non-hospital based in-patient facilities that still provide intensive treatment designed for long term. He urged support of HB 304, adding that the amendments are critical.

Russ Cater, Chief Legal Counsel for SRS, pointed out that in Amendment 4 the language "as provided in Section 2" should be inserted to indicate specific reference to the Medicaid program. Chairman Hager stated he would have Tom Gomez of the Legislative Council to check that revision.

Questions from Committee Members: Senator Norman asked how many patients per year are being discussed. Pat Melby replied approximately 50 children are placed at

Yellowstone Treatment Center per year. A spot check indicated that of those 50 children, 36 would have qualified for Medicaid reimbursement. The other 14 would be under the Foster Care reimbursement.

Senator Norman asked if there was a youth whom the court decided was in need of treatment but the court did not put him in the custody of Family Services, would he be eligible for the program? Mr. Melby stated he might be eligible to be in Yellowstone Treatment Center but there would be no reimbursement available either under Medicaid or Foster Care program. Regarding the request for one FTE, the purpose of that FTE would be to do the utilization review to insure that the services they are receiving are medically necessary. That one position is a cost-containment provision since the more intensive the utilization review the more the cost could be contained.

Senator Pipinich asked if the only center affected would be Yellowstone Treatment Center. Mr. Melby stated that was correct. Deaconess of Helena decided that for this two-year period they would prefer to continue under the Foster Care payment schedule. They are the only two licensed residential treatment centers in Montana that meet the definition in HB 304. Mr. Waldron stated that there are some intermediate level facilities, but they do not treat at the same intensity as residential care.

Senator Pipinich asked if the \$68,000 would cover the total administration costs. He also asked what would the costs be for the 50 children per year. Rep. Hannah advised that the latest figures from the Fiscal Analyst indicate that without HB 304, it would cost through the Foster Care budget at the ranch, somewhere between \$1,100,000 the first year and \$1,400,00 the second year. Under HB 304, about the same amount of money will be spent but an additional 51 youth could be served for virtually the same amount of money because of the Federal match. Rep. Hannah advised that the \$2,500,000 is already in the Foster Care budget.

Senator Himsl asked if this bill is subject to the entitlement fluctuations or qualifications. Mr. Melby stated that the state agency may cover all youth under age 21. They are concerned here with youth whose legal custody has been placed with the Department of Family Services.

Senator Himsl also asked if this required a Certificate of Need. Mr. Melby stated that in order to establish new beds a Certificate of Need would be required.

Yellowstone Treatment Center is already providing services and falls under the definition of a residential treatment facility and should be licensed as such by the state. They would not be converting; it would simply be a maximization of Federal funds available for match by using Medicaid.

Senator Himsl asked if the emotionally disturbed youngsters currently being sent out of state would then be brought back to Montana. Mr. Melby stated some probably would be brought back. However, there is a waiting list of 30 needing residential treatment. Not all of those would be suitable for an intensive treatment program. There are approximately 42 out of state presently.

Senator Himsl referred to the moratorium. Mr. Melby stated that a moratorium can be placed on the issuance of licenses or Certificates of Need if a legitimate governmental objective is being pursued. In this case they are saying that it is not known how many youth need this service, or what level of service is needed, and on that basis under the State and Federal constitution a moratorium can be established.

Senator Pipinich asked what amount is being paid for those 42 youth currently out of state. Mr. Melby stated the average cost is about \$80.00 per day.

Closing by Sponsor: Representative Tom Hannah stated that there are children in need of care in addition to the children the state is caring for currently. He added that there is a tight budget situation and they are not serving all those who need to be served. HB 304 is designed to meet those needs. It attempts to leverage available money to serve more youth, to provide a rate to the provider that they can live with, and keep the youth in the State of Montana. He believes HB 304 comes close to achieving its goal. In addition, it will be determined if accessing the Medicaid system for residential treatment care is a good idea. There will be hard data to look at and that will be important in the next Legislative session. He stated he believes they have a good bill and urged support of HB 304.

DISPOSITION OF HOUSE BILL 340

Discussion: Tom Gomez, Legislative Council, read the new language of the amendment to incorporate the change suggested by Russ Cater, Attorney for SRS.

Amendments and Votes: Senator Norman made a MOTION THAT THE AMENDMENTS BE ADOPTED WITH THE CHANGE, AS CITED Senators in favor, 5; opposed, 0. MOTION PASSED.

Recommendation and Vote: Senator McLane made a MOTION THAT HOUSE BILL 304 BE CONCURRED IN AS AMENDED. Senators in favor, 5; opposed, 0. MOTION PASSED.

Senator Hager will carry HB 304 to the floor of the Senate.

ADJOURNMENT

Adjournment At: 10:30 a.m.

  
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SENATOR TOM HAGER, Chairman

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SENATE STANDING COMMITTEE REPORT

April 6, 1989

MR. PRESIDENT:

We, your committee on Public Health, Welfare, and Safety, having had under consideration HB 304 (third reading copy -- blue), respectfully report that HB 304 be amended and as so amended be concurred in:

Sponsor: Hannah (Hager)

1. Title, line 19.  
Following: "FACILITIES;"  
Insert: "TO APPROPRIATE FUNDS;"

2. Page 11, line 19.  
Following: "SERVICES."  
Insert: "(1)"

3. Page 11, line 20.  
Following: "53-6-101"  
Strike: "INCLUDES"  
Insert: "may include"

4. Page 11, line 25.  
Following: line 24  
Insert: "(2) To the extent allowed by federal law, the department shall by rule limit eligibility for medicaid reimbursement for residential treatment facility services to those persons under 18 years of age committed to the department of family services by a youth court under 41-5-523 or placed in the legal custody of the department of family services under 41-3-406."

5. Page 17, line 23.  
Following: line 22  
Insert: NEW SECTION. Section 6. Appropriation. The following money is appropriated to the department of social and rehabilitation services to provide inpatient psychiatric services for persons under 21 years of age, as provided in [section 2]:

Fund	FY 90	FY 91
General fund	\$ 17,027	\$ 17,027
Federal special revenue	51,080	51,080
Total	\$ 68,107	\$ 68,107"

Re-number: subsequent sections

AND AS AMENDED BE CONCURRED IN

Signed: Thomas O. Hager  
Thomas O. Hager, Chairman

PROPOSED AMENDMENTS TO HB 304  
(Corrected Third Reading, Third Printing,  
As Amended -- Blue Bill)

1. Page 11, line 19.  
Following: "SERVICES."  
Insert: "(1)"
  
2. Page 11, line 20.  
Following: "53-6-101"  
Strike: "includes"  
Insert: "may include"
  
3. Page 11.  
Following: line 24  
Insert: "(2) To the extent allowed by federal law, the department shall by rule limit eligibility for medicaid reimbursement for residential treatment facility services to those persons under the age of 18 committed to the department of family services by a youth court under section 41-5-523 or placed in the legal custody of the department of family services under sections 41-3-406."
  
4. Page 17.  
Following: line 22  
Insert: "New Section. Section 6. Appropriation. The following money is appropriated to the Department of Social and Rehabilitation Services for the purpose of administering [this Act]:

*Section 2 of*

<u>Fund</u>	FY 90	FY 91
<u>General Fund</u>	17,027	17,027
<u>Federal Special</u>		
<u>Revenue</u>	51,080	51,080
<u>Total</u>	68,107	68,107

Renumber: Subsequent sections.

Rationale: Proposed amendments numbered 1 and 3 will limit services to children under 18 years of age. The federal law allows inpatient psychiatric services for children under 21 years of age but restrictions to a lower age may be permitted. (See 42 C.F.R. 435.222.) This amendment restricts services to children placed by the Department of Family Services. DFS only has authority for children under age 18 thus the age limit has been lowered.

Amendments to House Bill No. 304  
Corrected Third Reading Copy, Third Printing, as Amended  
For the Senate Public Health, Welfare and Safety Committee

Prepared by Tom Gomez  
April 6, 1989

1. Title, line 19.  
Following: "FACILITIES;"  
Insert: "TO APPROPRIATE FUNDS;"

2. Page 11, line 19.  
Following: "SERVICES."  
Insert: "(1)"

3. Page 11, line 20.  
Following: "53-6-101"  
Strike: "INCLUDES"  
Insert: "may include"

4. Page 11, line 25.  
Following: line 24  
Insert: "(2) To the extent allowed by federal law, the department shall by rule limit eligibility for medicaid reimbursement for residential treatment facility services to those persons under 18 years of age committed to the department of family services by a youth court under 41-5-523 or placed in the legal custody of the department of family services under 41-3-406."

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Total	\$ 68,107	\$ 68,107"

Renumber: subsequent sections

**Testimony -- HB 304**

GARY WALSH

Department of Family Services

The Department of Family Services recognizes the need for an expansion of the number of services to youth in Montana. The department presently has 30 plus youths on a waiting list for services. HB 304 may be a vehicle to allow the department to better serve youth in need of services.

The Stephen's administration has no objection to HB 304 with the accompanying amendments. The amendments represent the attitudes of the Department of Family Services and the Department of Social and Rehabilitation Services. It is the opinion of the departments that these amendments are essential to attempting to control the potential costs of this legislation.

The departments would like to mutually specify that they are in full concurrence with the sunset provision of the bill. The departments of DFS and SRS would like to also go on record of stating that if there is any expansion of general fund expenditures during the two year "pilot period", that they would not recommend reauthorization of the legislation. It is the intent of the departments to closely scrutinize the success of HB 304.

In addition, the departments would like to call to your attention the situation that is occurring in other states. In states such as Colorado, the number of available beds have been proliferated at an astronomical pace the last three to four years. If this situation is allowed to occur in Montana we will not be able to contain costs, and a run-away problem will be occurring in the general fund. We feel that, as amended, the bill will meet its objective, during the two year test period.

It is our belief that the suggested amendments will enable us to control the costs and expansion of the program. It is our desire that the Department of Family Services would act a gate-keeper by strictly enforcing placement. We feel as though every effort has been made to allow the departments to be able to live with the bill if it is enacted.



ROLL CALL VOTE

SENATE COMMITTEE \_\_\_\_\_ on Public Health

Date 4/6/89 Bill No. 304 <sup>413</sup> Time \_\_\_\_\_

NAME	YES	NO
<i>Sen.</i> Tom Hager	X	
Sen. Tom Rasmussen	-	
Sen. J. D. Lynch	-	
Sen. Matt Himsl	X	
Sen. Bill Norman	X	
Sen. Harry McLane	X	
Sen. Bob Pipinich	X	

Dorothy Quinn  
Secretary

Tom Hager  
Chairman

Motion: Sen. Norman made motion  
that the amendments be adopted with the  
changes, as cited. In favor - 5 - 0  
Opposed

ROLL CALL VOTE

SENATE COMMITTEE PUBLIC HEALTH

Date 4/6/89 Bill No. HB 304 Time \_\_\_\_\_

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

DOROTHY QUINN  
Secretary

TOM HAGER  
Chairman

Motion: Sen McLane made MOTION  
THAT HB 304 BE CONCURRED IN  
AS AMENDED. Senators in favor,  
Opposed, 0