

## MINUTES

### MONTANA SENATE 51st LEGISLATURE - REGULAR SESSION

#### COMMITTEE ON PUBLIC HEALTH

Call to Order: By Senator Tom Hager, Chairman, on April 18, 1989, at 1:00 P. M. in Room 410 in the State Capitol

#### ROLL CALL

Members Present: Senator Hager, Chairman, Senator Harry H. McLane, Senator Bob Pipinich, Senator Bill Norman, Senator Matt Himsl, and Senator Tom Rasmussen, Vice-Chairman.

Members Absent: Senator J. D. Lynch

Staff Present: Tom Gomez, Legislative Council Analyst and Mary Florence Erving, Secretary.

Announcements/Discussion: There were no announcements or discussions.

#### HEARING ON HOUSE JOINT RESOLUTION 48

##### Presentation and Opening Statement by Sponsor:

Representative Dorothy Cody, House District 20, sponsor of the resolution, stated the joint resolution of the Senate and The House of Representatives of the State of Montana requests an interim committee to study the implications of the Commission for Human Rights' Ruling in Wheeler V. Montana Department of Family Services regarding public and private adoption services in the state, and requires the committee to report the findings to the 52nd Legislature.

Representative Cody stated the preferences of the birth parent is the essence of the adoption process. The constitutional rights of the birth mother in determining her child's upbringing terminates when she voluntarily relinquishes the right by placing the child for adoption. Representative Cody stated she went through the ruling and found it to be disturbing. Representative Cody spoke of a young woman who gave her child up for adoption and was concerned with the religion of the adopting family. The grieving process was for six years. She bought herself a Christmas present each year, and she acknowledged the gift was from the baby.

Representative Cody asked the Human Services Committee to kill a tentative adoption bill, and Representative Cody stated she would draft a study resolution to study the whole adoption issue. The department does not want to go back into infant adoption until the resolution is studied. Although the ruling states the religion of the child is important to the mother, the department can only refer her to the private agency. The division administrator suggested the department ask for a declaratory ruling as it affects private agencies. This is an extreme fear. The ruling could have national repercussions, as other states look to Montana for direction. Representative Cody stated the resolution is important. Senator Rasmussen is the co-sponsor of the resolution.

List of Testifying Proponents and What Group they Represent:

Leslie Taylor, attorney, representing the Department of Family Service.

D. Mark Ricks, Agency Directory, representing LDS Social Services.

Marilyn McKibben, Helena, representing Catholic Social Services and, by request, representing Lutheran Social Services.

Testimony:

Leslie Taylor, Department of Family Services, attorney for the Department of Family Services, stated she supports HJR 48. Ms Taylor stated the situation created by the Wheeler case was the Department did not feel comfortable continuing the infant adoption program because the Department was no longer able to accommodate the wishes of the birth parent, who was voluntarily relinquishing her child for adoption. The decision in the Wheeler Case, although it applies only to infant adoptions arranged by the Department of Family Services, the ultimate resolution of the case will have a ripple effect on many other programs. The private adoption agency, the state adoption program run for children ages one through eighteen, and the state foster care programs can be effected. The Department evaluates the suitability of people who act as foster parents. The Department considers age, marital status and religion, as it relates to matching the child to the family. The Department favors HJR 48.

D. Mark Rieko, agency Director of LDS Social Services, stated support and offered written testimony to HJR 48. (Exhibit 1). Mr. Rieko stated LDS Social Services, in dealing with the Wheeler's decision, the commission has no need to abolish the rights of religion and religious people. The commission does not need to be so blunt. The LDS Social

Services challenges the proposed finding because it threatens religious rights. The rule making must not be biased against or hostile to religion. The nation was founded on the freedom of religion. The state may not deny the religious preference of the Montana people.

Marilyn McKibben, Director of Montana Catholic Social Services and representing Lutheran Social Services, at Lutheran's request, stated she is in support of HJR 48. The Wheeler case has definite ramifications for private adoption agencies. The social services feel, since this action was brought about against an adoptive couple, the Human Rights commission did not take into consideration anything to do with the best interest of the child or the rights of the birth parents. The organization is very concerned about the situation of birth parents in the world of adoption. Over time, the organization has found it is important to have the birth mother involved in the child's adoption. The decision of the Human Rights Commission takes away the birth mothers' prerogative to make decisions dealing with the child's future. It is a hard decision to place a child for adoption. It is also a hard situation to be placed in where you have nothing to say about the future of the child or the type of family the child is placed. Giving all rights to the adoptive parents and no rights to the birth parents is not fair. This factor will discourage adoptions, rather than encourage adoptions. Ms. McKibben urged support of HJR 48.

List of Testifying Opponents and What Group They Represent:

There were no testifying opponents.

Questions From Committee Members:

Senator Himsl asked about the rights of the adoptive parents to determine the education, the cultural environment, and other benefits for their adoptive children. Ms McKibben stated the adoptive parents have rights, but they are determined during the final stages of adoption. The adoptive parents must go to court and sign official papers before they become legal parents. The study wants to focus on the factor the birth mother gives up her rights when she makes the decision to place the child for adoption, perhaps even before the child is born.

Senator Himsl asked when the birth parents rights cease. Representative Cody stated the point where the adoptive parents goes to court and receive the adoption certificate. The law allows the birth mother the opportunity to change her mind. The state does not terminate her rights until after the birth of the child and the placement is finalized.

Senator Himsl asked if it is the intent of HJR 48 the birth mother, who has a strong Lutheran background, may direct the adoptive parents to raise the child in the birth parents preferred religion. Representative Cody said yes. Yet, somewhere down the road the family may opt to change their religion. The initial phase, however, satisfies the birth mother the child is placed in a family practicing the same religion.

Representative Cody stated, in her opinion, if the state does not conduct the study and write legislation for the next session, it is likely the ruling will effect the private agency. The Department of Family Services licenses the private agency for adoption. In the process, the private agency could be forced to use the same criteria the state must use to place children in adoptive homes

Representative Pipinich stated the birth mother has just a short time to control the destiny of her unborn child. Representative Cody stated the state has to consider the birth mother until then. Montana law does not have a provision concerning when a birth mother must make up her mind. After a period of time, the birth mother can take the child from the adoptive parent. It is not uncommon for the birth parents and the adoptive parents to meet on a first name basis. Some do not want to meet at all.

Senator Hager stated some adoptive parents and birth parents exchange gifts. McKibben stated there may be confusion as to the birth parents rights. The birth parents sign papers and totally transfer all their rights to the adoption agency. The legal papers are filed in Judiciary Court, and absolute total custody is given to the agency. After this point, the birth parent cannot change her mind, unless she shows fraud, undue duress or pressure from the agency, or any other very serious situation. The situation would be very rare. The birth mother does not have influential power after she relinquishes parental rights.

Representative Cody stated the Human Rights Commission is trying to take away rights before the birth parent gives rights up. The birth mother should have the right to choose the family with whom the child is placed. At present, it is somewhat of an agreement between birth parents, adoptive parents and agency as to whether they meet or not. An open adoption allows both birth parents and adoptive parents to agree ahead of time whethr or not they will meet on a first name basis. No identifiable information is given for either side. Therefore, it is up to the adoptive parent whether or not they meet in the future.

Senator Himsl asked if the father has any rights. Ms Taylor

stated she should have used the term birth parents. Sometimes, the agency steps out of the adoptive process when there are problems between the birth mother and birth father.

Closing by Sponsor:

Representative Cody stated the problem has been brought to a head by the Human Rights Ruling. Montana has to do something in this area.

HEARING ON HOUSE JOINT RESOLUTION 49

Presentation and Opening Statement by Sponsor:

Representative Elliot, House District 51, sponsor of HJR 49, stated the resolution is to create a study commission to evaluate options for containing Medicaid cost for the State of Montana. This is one of the fastest growing components of state costs. Between the years 1983 and 1988 the Medicaid costs have risen 66%. Inflation for the prior year was around 30%. The 1988 program cost \$156 million in 1990, the program will rise to \$180, and in 1991, the program will rise to \$194 million dollars, a 15.54% increase over the biennium.

The General Assistance Program runs between \$4 and \$5 million per year. The areas recommended for study are: 1) Preferred provider systems, such as HMO's); 2) Volume purchasing services and supplies; 3) Preventative health care maintenance; 4) Third party liability of absent parents and child support; and 5) Second opinions in elective surgery. The resolution provides for a complete review of the Medicaid Program in Montana. There were objections raised on the floor of the House. There had been an interim study on Welfare. Tom Gomez reported to Elliot that the interim committee, while looking at Medicaid, specifically eliminated studying cost containment alternatives for Medicaid. The SRS Department in a move to look at cost containment, commissioned a study by the Compass Group in 1984. Four years later, in 1988, the Department implemented only one of the Compass Group's recommendation, which was the diagnostic related group reimbursement.

The bulk of the study's cost would be in the area of collection of data. SRS has performed department budget analysis for the year, so, there is need for funding. The SRS, according to certain people, are reluctant to initiate change. Perhaps some Legislative direction is needed, and SRS may benefit from Legislative control over programs. It has also been suggested that approval of the study would put pressure on SRS to accomplish same changes in the area of cost cutting.

List of Testifying Proponents and What Group They Represent:

There were no testifying proponents.

list of Testifying Opponents and What Group They Represent:

There were no testifying opponents.

Questions from the Committee Members:

Senator Himsl stated the cost containment issue was studied four years ago. Two years were spent on cost containment issues. The hospital group, the medical group, and the provider and government agency group were involved. Renewal of the Certificate of Need was thought to cut costs, but actually increased costs. The HMO are relatively new within the past two years. Senator Himsl stated there is not enough leverage to contain the costs, unless congressional restraints are placed on the industry.

Senator Himsl stated Iowa has a hospital utilization commission. A comparable commission could be set up.

Closing by Sponsor:

Representative Elliot stated the federal government is considering limiting Medicaid payments because of the budget deficits. Senator Himsl asked what Representative Elliot would recommend. Would you recommend a pricing condition or a compulsory acceptance. Unless the commission would "Bite the Bullet", it would be difficult to come up with pertinent changes.

Senator Pipinich asked if the previous report came up with pertinent facts, but to implement the findings and to reduce costs was not possible. The federal government put in the DRG's.

EXECUTIVE ACTION

DISPOSITION OF HOUSE JOINT RESOLUTION 48

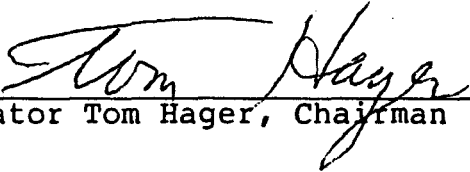
Senator Himsl moved to Be Concurred In. The motion passed unanimously.

DISPOSITION OF HOUSE JOINT RESOLUTION 49

Senator Tom Rasmussen made a motion to table HJR 49. The motion passed

ADJOURNMENT

Adjournment at: The meeting was adjourned at 2:13 P.M.

  
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Senator Tom Hager, Chairman

TH/mfe  
Health.321

ROLL CALL

PUBLIC HEALTH

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date *April 18*

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NAME	PRESENT	ABSENT	EXCUSED
Sen. Tom Hager	X		
Sen. Tom Rasmussen	X		
Sen. Lynch		X	
Sen. Hims1	X		
Sen. Norman	X		
Sen. McLane	X		
Sen. Pibinich	X		

Each day attach to minutes.



SENATE STANDING COMMITTEE REPORT

April 19, 1989

MR. PRESIDENT:

We, your committee on Public Health, Welfare, and Safety, having had under consideration HJR 48 (third reading copy -- blue), respectfully report, that HJR 48 be concurred in.

Sponsor: Cody (Rasmussen)

BE CONCURRED IN

Signed: \_\_\_\_\_

*Tom Hager*  
Thomas O. Hager, Chairman

4/19/89  
4/19/89  
3:30 p.m.

HOUSE JOINT RESOLUTION #48

Mr. Chairman and members of the Committee

I am D. Mark Ricks, Agency Director of LDS Social Services,

Public Health Comm  
SENATE HEALTH & WELFARE  
EXHIBIT NO. 1 page 1 of 2  
DATE April 18, 1989  
BILL NO. HSR 48

a private child placement agency licensed by the Department of Family Services.

We are ~~in favor~~ <sup>Support</sup> of House Joint Resolution #48 sponsored by Representative Dorothy Cody which calls for a legislative study of the issues presented in the resolution.

Last Fall the Human Rights Commission issued an order that the Department of Family Services cannot use age, marital status or religion as factors in deciding where to place an infant. This decision placed the Department into a position that hindered their ability to place infants. In a letter from the Administrator of the Human Rights Commission to the Department of Family Services attorney, it states "I think an argument still can be made that the Department should not license private adoption agencies which deny placements based on age, marital status or private non-religious agencies which utilize religion." The letter also requested a declaratory ruling concerning this matter.

If this same Order were to be placed on private agencies, we would be forced into the same kind of decision that the Department was last fall.

SENATE HEALTH & WELFARE

EXHIBIT NO. page 2 of 2

DATE April 18, 1989

BILL NO. HSR 48

I believe that one of the main components of the adoption process has been ignored and that is the constitutional rights of the birth mother. She is the client of the agency and the adoptive parent is a resource to the agency.

Birth Mothers are concerned about where their child is placed and trust in the agency to have a pool of adoptive families that will meet her wishes.

If we are to put restrictions on adoptive agencies then birth mothers will be forced to go private causing situations to happen as the well known case of Joel Stienberg of New York.

Joint House Resolution #48 does provide for important adoption issues to be reviewed and studied and legislative action to be taken.

We would encourage Joint House Resolution #48 be passed.

*National Reproductive  
Filed on Amicus Brief in behalf of DOJ & Simon  
age, mental status*

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Al Mark Liko	LDS Social Serv	HJR48	✓	
Marilyn M. Kibben	Catholic Social Services Lutheran Social Services	HJR48	✓	
Rep. Dorothy Coxy	Home Dist #20 Neff Point	HJR48	✓	
Wesley Taylor	Dept of Family Services	HJR48	✓	
BETTY BAY	DEPT OF FAMILY SERVICES	HJR48	✓	

(Please leave prepared statement with Secretary)