

## **MINUTES**

### **MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON PUBLIC HEALTH, WELFARE & SAFETY**

**Call to Order:** By Chairman Dorothy Eck, on February 15, 1991, at 3:04 p.m.

#### **ROLL CALL**

**Members Present:**

Dorothy Eck, Chairman (D)  
Eve Franklin, Vice Chairman (D)  
James Burnett (R)  
Thomas Hager (R)  
Judy Jacobson (D)  
Bob Pipinich (D)  
David Rye (R)  
Thomas Towe (D)

**Members Excused:** None.

**Staff Present:** Tom Gomez (Legislative Council).

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Announcements/Discussion:**

#### **HEARING ON SENATE BILL 306**

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

Senator Keating opened by saying several years ago the social workers, licensed professional counselors and clinical psychologists had been considered to be added to the eligibility section of the law regarding Medicaid programs. The licensed professional counselors were left out of the statutes, they were added in the last biennium with the caveat that the funds had to be specifically appropriated for the inclusion of the services. In this biennium the subcommittee has appropriated the money for the counselors.

Senator Keating read from the bill and said it was a housekeeping measure to clean up the codes and to allow the appropriations process to work. The fiscal note states there is about \$89,000 of general fund monies for the biennium. That is what the subcommittee appropriated for these purposes. The licensed professional counselors are rural in nature, and are utilized by the Departments' of Family Services and Social and Rehabilitation (SRS).

Proponents' Testimony:

The first witness to speak in favor of SB 306 was Mary McCue, representing the Montana Mental Health Counselors Association. See Exhibit #1 for a copy of her testimony.

The second witness was Richard Kuka, representing the Montana Mental Health Counselors Association. He stated that he is in private practice in Great Falls and has worked with a clinical psychologist. In the past six months they have received between 30 and 40 calls from Medicaid clients asking for assistance. Some were repeat calls after they were referred elsewhere and were told there were extensive waiting lists. These people are frustrated and some in a crisis situation. The clinical psychologist can accept these people as clients. He limits the number he accepts, normally to 6 or 7. The mental health center in Great Falls has a four to six week waiting list. He recently visited with a Medicaid clients who approached him about counseling. He said he could not accept Medicaid. She was frustrated and said she would attempt to save a \$100 so her son could receive several counseling sessions. He urged passage.

The third witness was Dr. Hugh King who has a private practice in Missoula. He said he supported the bill.

The fourth witness was Jeanette Mills, a licensed professional counselor. She said she supported the bill.

Opponents' Testimony:

None.

Questions From Committee Members:

Senator Jacobson asked about the impact on the Medicaid budget.

Senator Keating responded that it adds about \$89,000 in general fund monies that were approved by the subcommittee. The appropriation must be specific. SRS and DFS will have specific amounts in their budgets for licensed professional counselors.

The chairman recognized Nancy Ellery, representing the Medicaid Services Division of SRS. She said it does become an entitlement program once it is added to Medicaid, just like all other Medicaid services. It is an optional service under Medicaid but once it is approved everyone qualified would be eligible to receive the counseling. The \$89,000 over the biennium was a projection based upon what they have seen in the licensed clinical social work area. See Exhibit #2 for a copy of her hand-out.

The chairman recognized Senator Towe who asked if there was a reduction in another area of Medicaid.

The chairman recognized Nancy Ellery who said yes there will be but it is hard to quantify the amount. There will be people served who might not need to see a psychologist or enter the out-patient hospital setting at a higher cost.

Senator Towe asked Senator Keating about the principal patients that receive the services.

Senator Keating said sexual abuse and chemical dependency clients are common. He said in a number of cases the people have gone to licensed professional counselors and found out they were not Medicaid eligible so they go through another provider. In the rural areas they usually end up with a physician who listens to their problems. The Medicaid bill comes to \$90.00 per hour instead of \$30.00 per hour. This is where we hope to see a savings.

Closing by Sponsor:

Senator Keating thanked the committee for a good hearing and said it is an important bill.

HEARING ON SENATE BILL 200

Presentation and Opening Statement by Sponsor:

Senator Vaughn opened by saying this bill is a consumer protection measure. This bill provides protection for persons who purchase hearing aids and affiliated devices. She said hearing loss significantly affects our social, educational and economic lives. It most certainly has a profound impact on our ability to communicate effectively. The loss of hearing can result with an impact on communication and can easily segregate the hearing impaired person from their family, friends and colleagues. The purpose of SB 200 is to assure hearing impaired persons and their families some measure of quality hearing health care. The primary complaint is that the consumer does not feel that he/she is benefiting from the hearing aid. The consumer's also state they cannot obtain satisfaction from the dispenser and they are unable to obtain a refund. Most complaints are focused on hearing aid dispenser trainees. They can dispense hearing aids for a three year period without obtaining a license. The trainees are hired, disbursed throughout the state with no responsibility by the licensed employer.

She read from the bill, explained the proposed changes and handed out a proposed amendment (Exhibit #3.)

Proponents' Testimony:

The first witness to testify was Ben Hardahl, representing himself. See Exhibit #4 for a copy of his testimony. He is a public member of the Board of Hearing Aid Dispensers.

The second witness to testify was Lorraine Sedahl, from Havre, Montana and representing herself. She stated the harassment, frustration and confusion she has experienced in dealing with hearing aid salesmen. She urged passage of the bill.

The third witness to testify was Darryl Micken, private practice in audiology in Bozeman, Montana. See Exhibit #5 for a copy of his remarks. He said he has had experience with similar bills and said this bill is aimed at consumer protection. He spoke of the proposed amendment and said he was in agreement. He read from page 7 of the bill, regarding the training period and said he thought the intention was to ensure there was some kind of contact for the trainee during that period of time. He said they have listened to the comments of the people in the business and said they felt that was unduly restraining. He offered the following amendment: on line 9, amend the language to say 'work for the first 90 days under direct supervision during which he may do the testing necessary for proper selection and fitting of hearing aids and related devices and make necessary impressions. However, delivery and final fitting of the hearing aid or related devices must be made by the supervisor and trainee.'

Due to time constraints, the chairman asked the remaining proponents to stand and introduce themselves. They were:  
Pat Engels from Butte,  
Fred Patten from the American Association of Retired Persons,  
(Exhibit #6 for a copy of his testimony)  
Evelyn Paugh,  
Glenn Hladek (Exhibit #7 for a copy of his testimony)  
Rosemary Harrison from Missoula,  
Lee Frantz from Missoula,  
Jamie Small from Missoula,  
Mona Jamison, the lobbyist for the Association.

Other testimony was submitted by the following persons:

Lee E. Micken (Exhibit #8).  
Fred F. Bahnson (Exhibit #9).  
Dudley Anderson (Exhibit #10).  
Suzanne Johnson (Exhibit #11).  
Mary Lou Garrett (Exhibit #12).  
Tina Hoagland (Exhibit #13).  
Kristy Foss (Exhibit #14).  
Basil Andeoparlour (Exhibit #15).  
William J. Erickson (Exhibit #16).

Opponents' Testimony:

The first witness was Byron Randall, representing the Rocky Mountain Hearing Aid Company and Miracle Ear Centers. See Exhibit #17 for a copy of his remarks.

The second witness was David Evans, representing the Montana Hearing Aid Society. See Exhibit #18 for a copy of his testimony.

The third witness was Walt Hopkins, owner of Prescription Design Hearing Aid Center. He is also a member of the Board of Dispensers. He said complaints have dropped. He said they guarantee their products and if the consumer is not satisfied they can return the product. He said most dispensers have that policy. He said the trainee program is more than adequate.

The fourth witness was William Fowler, past president of the Montana Hearing Aid Society. See Exhibit #19 for a copy of his testimony.

The fifth witness was Reg McCutcheon, a licensed hearing aid specialist in Montana. He said he operates in rural southwestern Montana. The majority of his patients are senior citizens. At least 60 percent would not be able to come in to a service center or an office. He said this bill will not enable them to properly serve their patients. For the last four years over 65 percent of his time was spent servicing aids in the home.

The sixth witness was Steve Wilson, owner of Canyon Ferry Hearing. He said he was neither an opponent or proponent of the measure but suggested if the hearing aid trainee was required to have accredited schooling it would elevate the grade of trainee. Secondly, if the hearing aid dispenser was required to print his license number on the business card or affiliated literature it would make them more accountable.

Questions From Committee Members:

The chairman recognized Senator Towe who asked about page 2 and the comments of Byron Randall.

Mr. Randall said if an individual is in charge and not necessarily physically present the intention is to require a chain of authority.

Senator Towe asked about related devices being undefined.

David Evans said to look at the definition of hearing aids. He said it was necessary to clarify the terms.

Senator Towe asked if the committee addressed the requirement of authority being present in the office and including a definition of related devices if it would satisfy the opposition.

Mr. Fowler said he could tear apart different sections of the bill. He said it was too ambiguous and vague and would cause grave problems.

Senator Rye asked how many persons were affiliated with Miracle Ear. One person raised his hand. He said he thought their organization was being singled out for persecution.

Mr. Randall said that was not the case.

Senator Rye asked Ms. Sedall for brand names of the products she has had problems with.

Ms. Sedall said she did not have those names and was asked by the county attorney not to mention any.

Senator Pipinich said he must have received 30 letters and asked about complaints.

Mr. Randall said there were 13 active complaints at the present time.

Senator Hager asked about the complaints.

Mr. Randall said there were seven new complaints as of July 1, 1990.

The chairman recognized Mona Jamison who read from Exhibit #12.

Closing by Sponsor:

Senator Vaughn said the bill was not intended to hurt anyone but was an attempt to protect the consumers. She thanked the committee for the hearing.

HEARING ON SENATE BILL 310

Presentation and Opening Statement by Sponsor:

Senator Yellowtail opened by saying SB 310 relates to the dispensing of prescription medicines by the physicians at the urban Indian centers and clinics. Health care on the Indian reservations is a matter of the relationship between the tribes and the federal government as it relates to the trust responsibility of the federal government. He said there is the United States/Indian Health Service (IHS) that provides service units to hospitals and clinics on the reservations. The difference in the urban centers is that there are substantial numbers of Native American people who live in the urban areas far from the clinics and secondly, may or may not be enrolled members of tribes. They may not be eligible for the services even if they lived on the reservations. The urban centers are functioning well in servicing the Indian population. An important part of the centers are the health care clinics.

Proponents' Testimony:

The first witness was Representative Bob Jarvis from the Blackfeet Reservation. He said he stands in support of the bill. It is needed.

The second witness was Francis Belgarde, director of the Helena Indian Alliance. He said the Indian Health Service was created under Public Law 83-586 in 1954. Over half of the Indian population resides off of reservation settings. Many are living in urban areas as a result of the Bureau of Indian Affairs (BIA) relocation program in the 1950s and 1960s. Today, these urban Indian residents are ineligible for basic health care and social services provided through the IHS and BIA. The IHS funds 34 Indian urban health organizations operating in 41 sites in cities throughout the United States. Three of these sites are located in Montana: Helena, Great Falls and Billings. These programs provide activities ranging from outreach and referral services to the delivery of comprehensive ambulatory health care. The three clinics in Montana operate with a small staff and contract with a physician to provide patient care. None of the three clinics are funded to operate eight hours a day with a physician present. Therefore, a physicians service is typically provided for short periods throughout a week. The Leo Pocha clinic in Helena has a physician three times a week, for three hours each time.

The third witness was Doug Kuntzweiler, a physician from Bozeman. He said he has occasionally provided services to the Leo Pocha clinic. He strongly supports the bill because the people using the services do not have the money to go to a private clinic and do not have the money to purchase the prescriptions. It does not make sense to see them and write them a prescription if they cannot have it filled. The physicians are trained in pharmacology courses during medical school. They learn how to use medications in the clinical training and every time a physician writes a prescription he understands the drug being prescribed.

The fourth witness was Marjorie Bear Don't Walk, director of the Indian Health Clinic in Billings and a member of the Flathead Tribe. She said there are approximately 6,000 Indian's in Billings. The Indian Health Board is funded under the Indian Health Improvement Act. Urban Indian clinic's started in the 1960s in the larger cities and were staffed by volunteers. The need for the clinics was caused by government programs relocating Native Americans to urban areas and after a period of time abandoning them. The health workers were given the task of administering the Indian Health Improvement Act. The budgets are appropriated each year by Congress. Appropriations have not kept up the inflation or the growing urban Indian populations. The programs are currently funded at the comparable buying power of 1978 appropriations.

In real dollars the urban programs have lost 70 percent of their buying power in the last eleven years. Many Native Americans do not access other facilities because of institutionalized racism. A majority of Native American people served would receive no health care without their clinic and outreach program. In Billings, a doctor and nurse come in twice a week for a period of four hours. Last year they saw over 3,000 people. There is approximately \$250.00 per month for an emergency pharmacy.

The fifth witness was Connie O'Connor, a physician at the Leo Pocha Memorial Clinic. The clinic was originally established to meet the needs of the Native American population in Helena. It has expanded to serve other families as well. They provide this service through the generosity of United Way and local churches. During the last year they had almost 3,000 visits by patients. Many are medically indigent--no Medicaid, no Medicare and no money to pay for visits or medications. She said they do not deny service to anyone and it is their mission to provide medication to sick persons who have no means to pay for them. When she began working at the clinic they were ordering wholesale prescriptions and she assumed physicians could dispense in Montana as they could in the three other states in which she practiced: California, Washington and Florida. This is a cost-effective way of stretching limited funds. She stopped dispensing when she was told it was unlawful and started looking at alternatives. She said they could have hired a pharmacist but that would exhaust the money they had for medications. They advertised for a volunteer pharmacist but no one came forward. She said she even appealed to the Board of Pharmacy and the Board of Medical Examiners. Their only alternative was to attempt to amend the dispensing law. She said they have written policies for storage, labeling and recordkeeping that comply with existing pharmacy law. This bill will have no financial impact on pharmacies. Physicians in 43 other states can dispense from their offices without restrictions. She handed out Exhibit #20.

The sixth witness was Mike Stephen, representing the Montana Nurses Association. See Exhibit #21 for a copy of the testimony he distributed. He said they strongly support the bill.

The seventh witness was Bob Johnson, city/county health officer for Lewis and Clark County. He said this bill would solve many problems and he supports passage.

The eighth witness was Jerry Loendorf, representing the Montana Medical Association. He said they support the bill.

The ninth witness was Gayle Sandholm from St. Paul's United Methodist Church. See Exhibit #22 for a copy of his testimony.

The tenth witness was Marcia Diaz, representing the Montana Low Income Coalition. See Exhibit #23 for a copy of her testimony.



The eleventh witness was Doug Campbell, representing the Montana Senior Citizens Association. He said they supported the bill.

The twelfth witness was Lloyd Barron, executive director of the North American Indian Alliance. See Exhibit #24 for a copy of a petition he submitted.

Other proponents who did not testify were: Marta Bromlie, representing the Leo Pocha Clinic; Alvina Hanson; Chet Kinsey, representing the Montana Low Income Coalition.

#### Opponents' Testimony:

The first opponent was Sarah L. Green, a registered pharmacist from Great Falls. See Exhibit #25 for a copy of her testimony.

The second opponent was Mark Eichler, vice-president of the Montana Pharmaceutical Association. See Exhibit #26 for a copy of his testimony.

The third opponent was Bonnie Tippy, executive director of the Montana Pharmaceutical Association. See Exhibit #27 for a copy of her testimony and her proposed amendments.

#### Questions From Committee Members:

Senator Pipinich asked Senator Yellowtail about the proposed amendments from Bonnie Tippy.

Senator Yellowtail said he was sorry to say that the amendments missed the mark. He had two reactions. He referred to the bill, line 20, page 1, regarding dispensing of drugs. He failed to see the difference between an M.D. dispensing drugs in a rural area and an M.D. dispensing drugs in an urban Indian clinic. He said he did not know why it is necessary to have the protocol and approval by the Board of Pharmacy. He thought that was unusual. Regarding qualifications, he said the clients that enter the clinics are established by the mission and criteria established by the centers and their funding sources. He said he did not think it would be appropriate for the Board of Pharmacy to begin to impose their notions upon the clinics. Licensure is inappropriate unless it is applied across the board. He said he did not mind if an amendment was added specifying standards about drug labeling, storage and those areas. The trouble with the second suggested amendment is the cost. He said they are concerned about the right to patient care. These are people who cannot afford to go to a pharmacy, let alone pay a doctor.

Senator Burnett asked Mr. Eicher why the Pharmaceutical Association had not assigned volunteers to service the clinics.

Mr. Eichler said it was a good question and said in outlying clinics like in Jordan, Montana, the physicians can dispense medications to their patients. He said they are looking at trying to get physicians to provide the same standards of care pharmaceutically.

Senator Burnett said he did not answer his question.

Mr. Eichler said the Pharmaceutical Association had never been approached. He said he was aware of the advertisement that was printed in the Helena paper. He asked another pharmacist about it and she said if she had seen the advertisement she might have answered it. He said he cannot speak for other people. He said the Association would speak to their members in the areas where the clinics are located and see if a volunteer program was a viable option.

Senator Towe asked Mr. Eichler about doctor's dispensing the drugs.

Mr. Eichler said there could be problems. He said he has seen medications included in an envelope with cryptic instructions. The patient comes to the pharmacist and asks questions about the prescription.

Senator Towe said if you realize there is no money for the pharmacist in this matter what difference does it make.

Mr. Eichler said the money is not the problem. They are after quality of care for the patients.

Senator Jacobson said she had prescriptions filled at a pharmacy and no one ever gave her consultation.

Mr. Eichler said the pharmacy services have fallen. As an Association they are after their members to offer a standard of care.

Senator Hager asked Bonnie Tippy about her suggested amendments regarding receiving three licenses. He wanted to know what impact that would have on the clinic.

Ms. Tippy said the intent of the proposed amendment was one license for the pharmacy located in the clinic. She said a pharmacy license is about \$100 per year.

Closing by Sponsor:

Senator Yellowtail closed by thanking the committee for their understanding of the issue. He assured them that the physicians that service the clinics are licensed by the Board of Medical Examiners. This bill does not propose to license anyone but the M.D.s that prescribe or dispense drugs.

He continued by saying the bottom line is that they are trying to provide services with qualified people and live within their means. He said he appreciated the committee's consideration.

HEARING ON SENATE BILL 326

Presentation and Opening Statement by Sponsor:

Senator Waterman opened by saying this bill is being carried at the request of the Department of Institutions. The bill will expand the membership on regional mental health boards by adding people which will be selected from the categories listed in the bill. She read from the bill. The reason for the bill is that people have recognized the importance of having those involved in services have input into the programs.

Proponents' Testimony:

The first witness to testify was Martha Onishuk, representing the Montana Alliance for the Mentally Ill. See Exhibit #28 for a copy of her testimony.

The second witness was Dan Anderson, administrator of the Mental health Division of the Department of Institutions. He said this bill was the result of a task force formed a year ago which was charged with reviewing the mental health laws in Montana. See Exhibit #29 for a copy of his testimony.

The third witness was Clifford Murphy, representing the Mental Health Association of Montana. See Exhibit #30 for a copy of his testimony.

The fourth witness was Stuart Klein, representing the Region 4 Mental Health Services Organization. See Exhibit #31 for a copy of the proposed amendment he submitted. He said his board represents 11 counties in southwestern Montana. He said they supported the concept. They asked him to present an amendment because they do not think it is necessary to add new members to the board from organizations that may already be represented.

The fifth witness was Kelly Moorse, executive director of the Mental Disabilities Board of Visitors, Office of the Governor. See Exhibit #32 for a copy of her testimony.

The sixth witness was Greg Olsen, representing the Development Disabilities Council. See Exhibit #33 for a copy of his testimony.

The seventh witness was Patricia Emineth, representing the Montana Advocacy Program, Advisory Council for Protection and Advocacy of Mentally Ill Individuals. See Exhibit #34 for a copy of her testimony.

The eighth witness was Hank Hudson, executive director of the Office of Aging. He urged passage.

The ninth witness was John Harwood who urged passage.

The tenth witness was Daphne Jones who said she has a daughter that has been in Warm Springs. She stands in support of the bill.

The eleventh witness was Patrick Pope. See Exhibit #35 for a copy of his testimony.

Other testimony in favor of passage that was submitted was: Kayleen M. Jones, representing the Montana Mental Health Advisory Council; John Lynn, regional community support director for the Western Montana Regional Community Mental Health Center, see Exhibit #36 for a copy of his testimony; Jane Jelinski, a member of the Region IV Mental Health Board of Directors, see Exhibit #37 for a copy of her testimony; Frank L. Lane, executive director of the Eastern Montana Mental Health Center, see Exhibit #38 for a copy of his testimony.

#### Opponents' Testimony:

The first witness was April Milroy, a member of the Eastern Montana Community Mental Health Center. She said she serves on various health committees and boards. She read from the bill. She said their board is composed of 17 members of those 10 could be classified into one of the groups listed in the bill. The composition of their board already meets the general intent of SB 326. She said they see no need for additional legislation.

The second witness was Donna Higgem, representing the Region III Mental Health Center and a county commissioner in Lewistown. She said Region III consists of 11 counties in south central Montana. She said the board opposes this bill. The key is mandatory appointments. It seems to be working well. She said she feels like she serves all people in the county. She urged a do not pass on the measure.

#### Questions From Committee Members:

Senator Towe asked Dan Anderson about certain categories in the bill.

Mr. Anderson said during the task force discussions they reached a consensus that they needed to add other people to the board. Consumers and family members were the first identified.

Anderson continued by saying parents of emotionally disturbed children have a real stake in the program. As Mr. Hudson indicated, the elderly are under represented. There was a feeling that having a health care professional was important. He said this bill was a real compromise.

Senator Towe asked April Milroy about the 10 members of her board that now qualify in the bill's categories. He asked her if they deleted the last three and only limited it to consumers and family members how many then would qualify.

Ms. Milroy said five of the board members are family members, three are health professionals, two former members were primary consumers.

Closing by Sponsor:

Senator Waterman closed by telling the committee she appreciated the time spent discussing this measure and said she thought based upon the number of proponents for the bill it was obvious that the present system is not adequately representing consumers and family members. This bill represents a compromise. Approximately 6 percent of the funding is contributed by counties and 65 percents is provided by state departments and Medicaid. The remainder is derived from clients who contribute a great deal more than the counties. She likened this bill to other types of boards and talked of the similarities between their compositions.

Chairman Eck turned the gavel over to Senator Franklin.

HEARING ON SENATE BILL 348

Presentation and Opening Statement by Sponsor:

Senator Eck opened by saying this bill comes by request of the Department of Family Services (DFS). This measure authorizes the DFS to provide protective services to older and developmentally disabled persons and establishes authority regarding gathering evidence of abuse and neglect. Several protections are included, it gives social workers authority to remove a person from the home if it is deemed they are in immediate danger. They have the authority to arrange for an appropriate placement for that person and their are requirements for hearings. This has not been a major problem but has arisen frequently. It is a movement that has been adopted in many states. The measure primarily provides protection for elderly or disabled persons and provides assistance to some that are still capable of acting on their own volition and allows DFS the ability to collect evidence for presentation of the case to court.

**Proponents' Testimony:**

The first witness was John Melcher, Jr., a resource person from DFS. See Exhibit #39 for a copy of his remarks. He said he wanted to committee to consider an amendment to section 2 of the bill. This section is over broad regarding who must report incidents of neglect and abuse. There are a great deal of nursing home workers required to report such incidents. The Montana Health Care Association feels that these should be funneled to the receivers of the reports, the ombudsman and DFS personnel. The Association has also asked that the ombudsman, the county attorneys and the DFS personnel be required to provide written reports of the evidence of abuse and neglect. Simply put individuals in nursing homes that might notice a bruise might bring it to the attention of the county attorney or someone at DFS instead of requiring them to provide a written report.

The second witness was Hank Hudson, executive director of the Governor's Office On Aging. The Advisory Council on Aging was fully appraised of this bill and went on the record of supporting this, it is time to put it in place.

The third witness was Rose Hughes, executive director of the Montana Health Care Association. She said they support the bill. She referred to the proposed amendment discussed by Mr. Melcher. She said her concern can be easily addressed and was probably the original intent of DFS. She referred to section 3 of the bill on page 4, Evidence of Abuse and Neglect. Currently written it indicates that a person required to report must provide certain information and perform certain activities. The people covered under that section are all health care workers--the list is long and broad and includes maintenance personnel. She said they feel it is the responsibility of the person receiving the information to write the report and perform the investigation. She thought this was originally intended.

The fourth witness was Seth Kennedy, representing the Montana Senior Citizens Association. They support the bill.

**Opponents' Testimony:**

The first witness was Daphne Jones from Missoula. She said the bill is discriminatory. She asked about the people lying under bridges, the severely mentally ill, small children who are at risk. Why just include the elderly and developmentally disabled. She said she did not understand the concept.

**Questions From Committee Members:**

The chairman recognized Senator Pipinich and asked Senator Eck why other special needs populations were not included in the bill.

Senator Eck said we have much legislation protecting children, the mentally ill and there are provisions to assume custody over these persons when necessary. She said some provisions are covered under the elder abuse act.

Senator Pipinich said he agreed with Ms. Jones. He said in Missoula there is quite a community that lives under the bridges and they are mentally retarded and mentally ill. They need help. Every once in a while a law enforcement officer will pick them up.

Senator Eck said if those people are elderly or seriously disabled they could be covered under other statutes. County officials can take these people into protective custody if they feel they are a danger to themselves or others.

Senator Towe asked Mr. Melcher about the consent language in the bill.

Mr. Melcher said if a social worker discovers someone with no heat in their home, under the bill if it is determined that the problem is life threatening due to the severe cold, the social worker must ask the persons consent to remove them from the premises. They can request a temporary guardianship under certain conditions.

Senator Towe asked if they do intend to use the regular guardianship procedures before action is taken.

Mr. Melcher said that was true after 48 hours and only in cases where there is danger of death.

Senator Towe asked about the individual not giving consent.

Mr. Melcher said if the individual did not give consent, the social worker would either have to get a court order or not remove the person from the premises.

Senator Towe said a portion will not want to be removed from the premises.

Mr. Melcher said he envisions this as voluntary first. If they are incapacitated the information is compiled and authorizes DFS to provide nursing care. If they are not coherent, they can place them, agree to get them to stay at another setting and after 48 hours it would require a court order.

Senator Towe said he had a concern about the written description requirement under the bill.

Mr. Melcher said three entities are required to report: the county attorney, the ombudsman and DFS. With the amendment, someone will call DFS and say they saw severe bruising on someone and thinks abuse is involved. The person who receives the information will be required to make a written report.

Closing by Sponsor:

Senator Eck closed by asking Senator Towe to spend time with Mr. Melcher and make sure what we have works and present any amendments to the committee.

EXECUTIVE ACTION ON SENATE BILL 307

Motion:

Senator Franklin moved adoption of the amendments denoted in Exhibit #40.

Discussion:

Senator Franklin said due to time constraints she would like to move the bill now and add additional amendments on the floor of the Senate.

Amendments, Discussion, and Votes:

The motion carried with no objection.

Recommendation and Vote:

Senator Pipinich moved passage of SB 307 as amended. There being 7 ayes and 1 nay by Senator Hager the bill passed as amended.

EXECUTIVE ACTION ON SENATE BILL 205

Motion:

Senator Jacobson moved adoption of the amendments in Exhibit #41 and language pertaining to developmental disabilities that would be written by Mr. Gomez.

Discussion:

Senator Eck explained the amendments denoted in Exhibit #41.

Senator Jacobson asked about inclusion of developmental disabilities services in the bill.

Senator Eck said she concurred that developmental disabilities could be removed from the bill.



Amendments, Discussion, and Votes:

Senator Towe said he was nervous about deleting developmental disabilities.

Senator Jacobson said they have their own boards and their own system and it would complicate matters by including them in this bill.

Senator Eck said developmental disabilities is under the jurisdiction of the Department of Social and Rehabilitation Services and the bill requires DFS to be the lead agency.

Senator Jacobson withdrew the motion to adopt the proposed language regarding developmental disabilities but retained the motion to move adoption of Exhibit #41.

The motion carried to adopt all amendments in Exhibit #41 with no objection.

Recommendation and Vote:

Senator Eck asked that the bill be held until the language regarding developmental disabilities was drafted.

Motion:

Senator Towe moved adoption of an amendment by striking the word 'must' on page 2, line 20 and inserting the word, 'may'.

Amendments, Discussion, and Votes:

Senator Towe asked about the language on page 2, line 20 which stated that the cooperative agreement 'must' include each of the particular items.

Senator Eck said she had marked that as a 'may' on her bill draft. She had no objection to the change.

There being no objection the motion carried to adopt Senator Towe's amendment.

EXECUTIVE ACTION ON SENATE BILL 306

Motion:

Senator Jacobson moved to pass SB 306 without amendments.

Discussion:

None.

Amendments, Discussion, and Votes:

None.

Recommendation and Vote:

There being no objection the bill passed unanimously.

EXECUTIVE ACTION ON SENATE BILL 310

Motion:

Senator Pipinich moved to pass this bill without amendments.

Discussion:

None.

Amendments, Discussion, and Votes:

None.

Recommendation and Vote:

There being no objection the bill passed without amendments.

EXECUTIVE ACTION ON SENATE BILL 285

Motion:

Senator Hager moved to table SB 285.

Discussion:

Senator Towe said he liked the concept and said in fairness to the taxpayers of Montana it is not a bad idea to find out the costs in this area.

Senator Jacobson said she is concerned in light of the pending legislation regarding liquor stores. She said it might be premature by one session.

Senator Eck said she had looked at the bill and thought about taking out the language regarding a pricing system. She said she would like to Department's to determine the costs to the state for the treatment and incarceration of alcohol related incidents.

Senator Jacobson said she might want to considering asking for a performance audit.

Senator Pipinich said it might be a good revenue bill but he thought it was premature.

Senator Rye read from the bill and wondered how you determine the costs of alcoholism.

Senator Jacobson said you have people with dual problems.

Amendments, Discussion, and Votes:

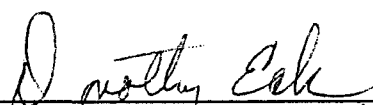
None.

Recommendation and Vote:

There being no objection the motion to table the bill prevailed.

ADJOURNMENT

Adjournment At: 6:17 p.m.

  
\_\_\_\_\_  
SENATOR DOROTHY ECK, Chairman

  
\_\_\_\_\_  
CHRISTINE MANGIANTINI, Secretary

DE/cm

ROLL CALL

PUBLIC HEALTH, WELFARE  
AND SAFETY

COMMITTEE

Date 2/15/91

NAME	PRESENT	ABSENT	EXCUSED
SENATOR BURNETT	X		
SENATOR FRANKLIN	X		
SENATOR HAGER	X		
SENATOR JACOBSON	X		
SENATOR PIPINICH	X		
SENATOR RYE	X		
SENATOR TOWE	X		
SENATOR ECK	X		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
February 16, 1991

MR. PRESIDENT:

We, your committee on Public Health, Welfare, and Safety having had under consideration Senate Bill No. 307 (first reading copy - white), respectfully report that Senate Bill No. 307 be amended and as so amended do pass:

1. Title, lines 5 through 7.

Following: "ENTITLED: "AN ACT" on line 5

Strike: remainder of line 5 through "BOARD" on line 7

Insert: "TO ADD A FIFTH DENTIST TO"

2. Title, line 8.

Following: "BOARD"

Insert: "OF DENTISTRY"

3. Page 1, lines 19 through 21.

Following: "senate." on line 19

Strike: remainder of line 19 through "member." on line 21

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

*Dorothy Eck*  
Dorothy Eck, Chairman

*JEH* 2-16-91  
Ad. Coord.

*SB* 2-16-91 7:45  
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
February 16, 1991

MR. PRESIDENT:

We, your committee on Public Health, Welfare, and Safety having had under consideration Senate Bill No. 306 (first reading copy - white), respectfully report that Senate Bill No. 306 do pass.

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

*Dorothy Eck*  
Dorothy Eck, Chairman

*JGK 2-16-91*  
Asst. Coord.

*B 2-16-91 7:45*  
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
February 16, 1991

MR. PRESIDENT:

We, your committee on Public Health, Welfare, and Safety having had under consideration Senate Bill No. 310 (first reading copy - white), respectfully report that Senate Bill No. 310 do pass.

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

*Dorothy Eck*  
Dorothy Eck, Chairman

*AM 2-16-91*  
Amd. Coord.

*SB 2-16-91 7:45*  
Sec. of Senate

3607163C.Sji





DATE 2/15/91BILL NO. SB 306

STATE OF MONTANA - MEDICAID PROGRAM  
DEPARTMENT OF SOCIAL AND REHABILITATIVE SERVICES  
LICENSED PROFESSIONAL COUNSELORS

The 1989 Legislature authorized the services of licensed professional counselors under Medicaid provided that funds were appropriated. Line item appropriations were not authorized so the service was never added to the Medicaid Program.

Licensed Professional Counselors (LPC) argue that including LPCs will allow a more complete continuum of services in Montana's rural areas and will reduce waiting time for service at community mental health centers. They cite current studies which increasingly show the cost benefit of providing short term counseling services that reduce hospital and other medical costs. They argue that including LPCs will not increase program costs since it would only increase the range of providers which could be reimbursed for rendering mental health services, within existing budget.

The Department of Institutions and Family Services support the inclusion of this service. They indicate that increasing the number of counseling resources available will keep more adolescents and children in their homes and out of expensive residential and hospital settings.

SRS agrees that the addition of LPCs would increase state-wide access to needed outpatient mental health services, as many areas in the state are not served or underserved. SRS does not agree that the proposal will be cost neutral. This is based on our experience when licensed social workers were added in 1986. Expenditures for social work services have increased from \$62,878 in FY 86 to \$442,382 in 1990. Psychologist costs remained relatively static during the same time period.

SRS estimates that the addition of Licensed Professional Counselors would cost a total of \$89,805 in general funds for the 1993 biennium. This assumes utilization at the same level as licensed social workers.

A:LPC

page from Medicaid program descriptions prepared by Dept. of SRS  
presented to committee by Montana Mental Health Counselors Assn.

## WITNESS STATEMENT

To be completed by a person testifying or a person who wants  
their testimony entered into the record.

Dated this 15<sup>th</sup> day of Feb., 1991.

Name: Rich Kuka

Address: F 906 7<sup>th</sup> St S.  
Great Falls MT 59405

Telephone Number: 452-9501

Representing whom?

MT. Mental Health Counselors' Assoc.

Appearing on which proposal?

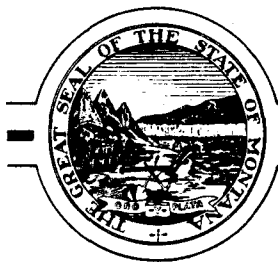
SB 306, Heating

Do you: Support? X Amend? 0 Oppose?       

**Comments:**

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DEPARTMENT OF  
SOCIAL AND REHABILITATION SERVICES



STAN STEPHENS  
GOVERNOR

JULIA E. ROBINSON  
DIRECTOR

STATE OF MONTANA

P.O. BOX 4210  
HELENA, MONTANA 59604-4210  
(406) 444-5622  
FAX (406) 444-1970

TESTIMONY OF THE DEPARTMENT OF  
SOCIAL AND REHABILITATION SERVICES  
BEFORE THE SENATE PUBLIC HEALTH,  
WELFARE AND SAFETY COMMITTEE  
(Re: SB 306 - Medicaid/Professional Counselors)

SENATE HEALTH & WELFARE  
EXHIBIT NO. 2  
DATE 2/15/91  
Bill (s) SB 306

Senate Bill #306 will eliminate the current statutory requirement that professional counselors obtain a specific legislative appropriation before they participate in the Montana Medicaid program. This statutory requirement is not mandated for other medicaid providers.

SB #306 amends 53-6-101, MCA. The amendment will authorize SRS to include professional counselors as an optional service. HB #306 does not require the inclusion of professional counseling as a mandatory service in the Medicaid program. As a matter of policy the Department of Social & Rehabilitation Services has only included medical services that were specifically authorized (and an appropriation granted) by the Joint Appropriations Subcommittee on Human Services.

SRS estimates that professional counseling services will cost a total of \$89,805 in general funds for the 1993 biennium.

Funding for professional counselors has been approved by the Joint Appropriations Subcommittee. If this appropriation is approved by the legislature SRS will include professional counseling services in the Montana Medicaid program.

Submitted by:

*Nancy Ellery*  
Nancy Ellery, Administrator  
Medicaid Services Division  
Department of Social and  
Rehabilitation Services

AMENDMENTS

*Page 3*

Sec. 2 (c) the right to cancel, any warranty or guarantee and the terms of the right to cancel, warranty or guarantee;

Page 6 - Section 4 (2) An applicant who fails two successive practical examinations is eligible for reexamination after a period of two years, and the completion of additional training or education recognized by the licensure board.

*Hypernat  
Sherquist  
Ruech Rithley*

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Date: 2/15/90

Name: Ben Hardan

Address: Box 5421  
Helena MT 59604

Telephone Number: 442 5615

Representing Whom?  
Myself

Appearing on which proposal?  
SB 200

Do you: Support? X Amend? \_\_\_\_\_ Oppose? \_\_\_\_\_

Comments:  
  
(Prepared Statement Submitted)

February 15, 1991

SB 200

Ben Havdahl, Member, Board of Hearing Aid Dispensers

Madam Chairman and members of the committee. For the record my name is Ben Havdahl and I reside in Helena.

I am currently the member of the Board of Hearing Aid Dispensers classified as "the public member who is not in the hearing health care field". I was appointed in June, 1989 and reappointed for a three year term in July, 1990 by Governor Stephens.

Although the Board of Hearing Aid Dispensers has not officially taken a position on SB 200, I, for one, have some strong feelings in support of certain provisions of SB 200 of the bill designed to give more protection to the consumer. These are personal views but they are views from the perspective of my position and experience on the Board. I would like to thank this committee for this opportunity to express my views.

First all, I am severally hard-of-hearing as many of you know. I have a decibel threshold of 90 decibels in one ear and 89 in the other. When you consider that normal conversation can be readily heard and understood at about 15 decibels, you can see that I am bound and have been bound to be a wearer of hearing aids and assistive listening devices for at least the rest of my life.

I can say that it is no small unimportant matter, or responsibility that this Legislature has for the estimated 29,000 hard-of-hearing people with a significant bilateral hearing loss in the state who must, like myself, rely on hearing aids and/or assistive listening devices to function in a near normal capacity when attempting to understand verbal communication.

Those of us who find ourselves with this "invisible handicap" also find ourselves desperately seeking, at times, any and every possible solution and assistance, usually in a vain attempt to overcome or solve our problem.

As a result of our struggle to remain in the hearing world we sometimes fall as an easy prey to some unscrupulous persons seeking to make a quick buck by selling us hearing aids along with a promise that they will be a panacea for the resolve of our problem. A resolve at an expensive price I might add. Usually a pair of hearing aids cost anywhere from \$1,500 to \$2,000 and more, depending on the type of aid, who is selling them and what brand they may be.

For an awful lot of people, usually our older seniors, that is a great deal of money and when we find ourselves burned and or cheated we become desperate in seeking some sort of recourse. It becomes a price that we find ourselves having to pay for hearing restoration. And many people, I feel, let it go at that because of not knowing what to do about it.

Page 2

Now having said all that, I want to make it clear just to whom those comments are aimed. First of all they are not aimed at the professional hearing aid dispensers that are represented by the vast majority of persons licensed under the hearing aid dispensers act. There are the professional audiologists and professional non audiologist dispensers. I have been privileged to work with many of both and have great respect for them and their pursuit of service for hard of hearing persons in Montana.

There are those dispensers, in my experience and opinion, who fortunately represent the small minority that do not seem to have regard for a professional approach for their business and therefore require more assistance from the State to insure they operate as they should. That is what some of SB 200 is all about. At least from my perspective it is.

I would like to go on record in general support of the bill and all its provisions especially those aimed at protecting the consumer of hearing aids.

Specifically the proposed provisions in Section 2 dealing with the requirements for a bill of sale and receipt requirements. Sub paragraph (5) requiring that all purchase agreements or bills of sale contain the statement that all consumers with questions about their rights contact the Board for information is a good policy. The only question I have relates to the limited staffing of the Board, (one person handling the Hearing Aid Board and many other Boards) and the ability to handle this work load.

It would appear this requirement will have the effect of increasing the inquiries. That is good. Handling them may be an other matter. I strongly support the amendments in Section 8 of SB 200 clarifying the grounds for suspension and/or revocation of licenses. The Board needs these clarifications in order to more effectively enforce the provisions of the present law.

Madam Chair, I would particularly urge the passage of SB 200, if no other reason, than to adopt into law Sections 9, the requirement for possible restitution to a purchaser of the purchase price of a hearing aid or device and Section 10 of bill, giving the purchaser a thirty day trial period and right to cancel the sale for good cause. The provisions of this section detailing the good cause for refunds and requirements that both the purchaser and dispenser have to meet are fair and just and are long over-due in my opinion.

90% of the complaints the Board receives from purchasers of hearing aids are from people who are demanding satisfaction after a sale and get either a "no response" or a "put-off" response from a dispenser. The lack of proper servicing is an easy path to follow because there is little risk to the dispenser if the purchaser's complaints are simply ignored. Many times the Board finds itself unable to effectively deal with many problems that center around demands for refunds and restitution. These complaints would disappear, in my opinion, if dispensers were required to give purchasers a 30 day trial period.

Page 3

Many dispensers do that now. Not because they have to but because it is ethical and good public relations to do so. Others use form contracts that provide the purchasers with a "three day money back period from the date of the signing of the contract. This is always long past by the time the hearing aids are actually delivered, fitted, adjusted and the purchases has a chance to adjust to their use in real life situations.

Fop the benefit of the Committee, I would like to provide copies of summaries of complaints from the Board's files over the last five years that could have been more effectively dealt with by Board if Section 9 and 10 had been part of our law all along. This summary of complaints reflects a total of 127 for about 102 licensees over the past five year period. These are not all the complaints, but a representative sampling of the types I have just described.

Thank you again for this opportunity to speak on SB 200.



THE  
NATIONAL  
INFORMATION  
CENTER ON DEAFNESS  
GALLAUDET COLLEGE

Exhibit #4  
2-15-91 SB 200

ESTIMATES OF THOSE WITH HEARING LOSSES

Geographic Area	Total General Population *	Hearing Impaired	Significant Bilateral Loss	Deaf	Prevocationally Deaf
<b>NORTHEAST U.S.</b>					
Maine	1,124,000	67,000	29,000	8,000	2,000
New Hampshire	919,000	55,000	23,000	6,000	2,000
Vermont	511,000	31,000	13,000	4,000	1,000
Massachusetts	5,728,000	342,000	146,000	40,000	10,000
Rhode Island	946,000	57,000	24,000	7,000	2,000
Connecticut	3,096,000	185,000	79,000	22,000	5,000
New York	17,508,000	1,046,000	446,000	122,000	30,000
New Jersey	7,342,000	439,000	187,000	51,000	13,000
Pennsylvania	11,828,000	707,000	301,000	82,000	20,000
<b>MORTHCENTRAL U.S.</b>					
Ohio	10,772,000	707,000	363,000	104,000	26,000
Indiana	5,461,000	358,000	184,000	53,000	13,000
Illinois	11,355,000	745,000	383,000	110,000	27,000
Michigan	9,239,000	606,000	311,000	89,000	22,000
Wisconsin	4,694,000	308,000	158,000	45,000	11,000
Minnesota	4,069,000	267,000	137,000	39,000	10,000
Iowa	2,909,000	191,000	98,000	28,000	7,000
Missouri	4,906,000	322,000	165,000	47,000	12,000
North Dakota	652,000	43,000	22,000	6,000	2,000
South Dakota	688,000	45,000	23,000	7,000	2,000
Nebraska	1,565,000	103,000	53,000	15,000	4,000
Kansas	2,356,000	155,000	79,000	23,000	6,000
<b>SOUTHERN U.S.</b>					
Delaware	595,000	40,000	20,000	5,000	1,000
Maryland	4,198,000	286,000	143,000	38,000	8,000
Washington, DC	635,000	43,000	22,000	6,000	1,000
Virginia	5,323,000	362,000	181,000	48,000	10,000
West Virginia	1,931,000	131,000	66,000	17,000	4,000
North Carolina	5,848,000	398,000	199,000	52,000	11,000
South Carolina	3,070,000	209,000	105,000	27,000	6,000
Georgia	5,404,000	368,000	184,000	48,000	11,000
Florida	9,580,000	652,000	326,000	86,000	19,000
Kentucky	3,643,000	248,000	124,000	33,000	7,000
Tennessee	4,546,000	309,000	155,000	41,000	9,000
Alabama	3,870,000	263,000	132,000	35,000	8,000
Mississippi	2,511,000	171,000	86,000	22,000	5,000
Arkansas	2,284,000	155,000	78,000	20,000	4,000
Louisiana	4,200,000	286,000	143,000	38,000	8,000
Oklahoma	3,001,000	204,000	102,000	27,000	6,000
Texas	14,174,000	965,000	483,000	127,000	28,000
<b>WESTERN U.S.</b>					
Montana	784,000	56,000	29,000	7,000	2,000
Idaho	944,000	68,000	35,000	9,000	2,000
Wyoming	469,000	34,000	17,000	4,000	1,000
Colorado	2,882,000	207,000	106,000	27,000	6,000
New Mexico	1,295,000	93,000	48,000	12,000	3,000
Arizona	2,719,000	195,000	100,000	25,000	5,000
Utah	1,459,000	105,000	54,000	14,000	3,000
Nevada	800,000	57,000	29,000	7,000	2,000
Washington	4,115,000	295,000	151,000	38,000	8,000
Oregon	2,618,000	188,000	96,000	24,000	5,000
California	23,545,000	1,688,000	864,000	219,000	46,000
Alaska	400,000	29,000	15,000	4,000	1,000
Hawaii	965,000	69,000	35,000	9,000	2,000

\* U.S. Bureau of the Census, April 1980.

Hearing Impaired - any degree of hearing loss in one or both ears.

Significant Bilateral Loss - those hearing impaired who have substantial difficulty hearing in both ears.

Deaf - cannot hear and understand speech.

Prevocationally Deaf - those who became deaf prior to 19 years of age.

Prepared by: Office of Demographic Studies, Gallaudet College, Washington, DC.

2-15-91

**Exhibit 4 also contains a chart with information about complaints filed with the Board of Hearing Aid Dispensers between 6/19/86 and 1/4/91. The originals are stored at the Montana Historical Society, 225 North Roberts, Helena, MT 59601. (Phone 406-444-4775)**

Exhibit # 49  
2-15-91 SB 200

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Date: Feb. 15 1991

Name: Lorraine Sedahl

Address: 604-11 St  
Spokane MT 59501

Telephone Number: 265-5158

Representing Whom? Self

Appearing on which proposal? Senate Bill 200

Do you: Support?        Amend? ✓ Oppose?       

Comments:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY. THANK YOU.

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 15 day of February, 1991.

Name: Darrell J. Micken

Address: 507 N. 18<sup>th</sup>, Bozeman, Mt. 59715

Telephone Number: (406) 587-8517

## Representing whom?

S e f

Appearing on which proposal?

Senata 200

Do you: Support? ✓ Amend? ✓ Oppose?       

**Comments:**

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PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

MEDICAL ARTS HEARING CENTER  
300 NORTH WILLSON, SUITE 603-F  
BOZEMAN, MT 59715  
(406) 586-0914

SENATE HEALTH & WELFARE

EXHIBIT NO. 5

DATE 2/15/91

BILL NO. 200

February 12, 1991

Dear Mona:

I have been involved with almost all phases of the Hearing Aid Dispensers law since I first testified on behalf of the original bill in 1969. The law has been brought up periodically for review and proposed modifications based on perceived need within the industry. Always, I believe, the proposed changes have been based on:

1. The need to broaden the base of consumer protection, which this bill provides, and
2. The need to raise the standards and professional training of those entering the profession which is, in fact, also a form of consumer protection.

This is also true in the proposed Senate Bill #200. Some changes are also housecleaning and meant to bring the Hearing Aid Dispensers law in to conformation.

The resistance to changing the law seems usually to be based on the perceived notion, by some dealers, that an effort is being made to restrain their methods of selling and thus restrict their trade and practice, primarily as it deals with in-home testing and delivery. To my knowledge, no change ever made in this law has ever restricted anyone's practice unless their activities were illegal or unethical from the onset.

First, as to the matter of "...and related devices." This phrase was merely meant to include alternative listing devices (ALD's) and other devices meant to help the hearing impaired which many of us deal with. "Hearing aid" as defined in 37-16-101 of the law includes most items and appliances, but not all. It certainly is not meant to engulf anyone "in an avalanche of paper" as has been suggested.

There are a disproportionately high number of complaints in this state that relate to dispensers who are in trainee status. Apparently, there is some difficulty disciplining these people because there is a poor chain of authority or responsibility for the conduct and services of these people. There is also not a chain of authority within an office structure which designates who is in charge and responsible for each office.

Mona  
Page 2  
February 12, 1991

In this bill, Sect. 1 (4) (p. 2 lines 12 - 25 & p. 3 line 1) and Sect. 5 (7) p. 8 lines 25 & p. 9 lines 1 - 3) designate that authority and responsibility to specific individuals, while Sect. 8 (15), (16) & (17) (p. 13, lines 19 - 25 and p. 14, lines 1-10) broaden and specify conditions which may lead to disciplinary action. The latter are necessary to assist the board in carrying out their disciplinary duties.

Several new segments of this bill are aimed at providing the consumer with information concerning their rights and/or where they may get assistance. Although the vast majority of the consumers are satisfied with the hearing aids and the services they receive, many do not know how or where to obtain assistance if the need arises. These additions will help the consumer to make judgments as to the appropriateness of services and will help them find assistance if and when they need it. Sect. 2 (2) (a) & (b) (p. 4 lines 5 - 11 & 19 - 25) and (5) (p. 5, lines 12-16) are designed to fulfill this need by mandate.

The following changes recommended by the bill are basically housekeeping. Sect. 3 (2) p. 6 (lines 1 - 3) removes the original and unnecessary "grandfathering" clause; while Sect. 6 (3) (lines 11 - 19) creates an "inactive license" which is needed to allow an individual to temporarily leave the field or state and be relicensed fully upon return to the field without repeating the entire entry process.

Several recommended changes in the bill address trainee supervision, licensing & training.

Sect. 4 (2) (p. 6 lines 15 & 17) will specify the exact number of times one may take the examination. Although the exact wording is awkward and needs clarification, the present law is so written as to allow trainee status to be potentially extended to three full years, allowing an unqualified and incompetent person to practice without full credentialing.

Sect. 5 (2) (b) (p. 7 lines 9 - 13) specifically designates the number of hours that a trainee must spend with their sponsor per week and spreads this time over a forty week training. This addition should greatly enhance the trainee's professional contact with the sponsor and improve their professional growth. Although this measure still only requires a total of 320 hours of direct supervision during their year in training, it spreads the training over a specified period which allows for deliberate professional growth and gives the trainee specific access to their supervisor.

Mona  
Page 3  
February 12, 1991

In writing this change it also, inadvertently, extended the time before a trainee could "fit" a hearing aid to after the 40 week (10 month) period. If, in fact, the purpose of the change is to insure greater training and sponsor access, the accent should be on testing skills, not in the final fitting. The trainee, as it is now written, is allowed to "do the testing necessary for a proper selection and fitting of a hearing aid..," but cannot finalize the fitting until after the 40 week period. Requiring the 10 month wait is unreasonable and would place an undue burden on the trainee, the sponsor, the company and ultimately the consumer by interfering with the delivery of the device.

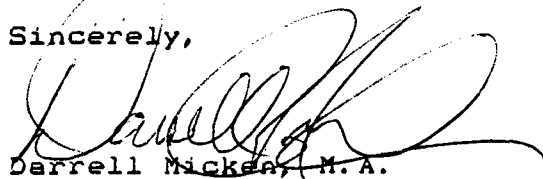
I recommend, therefore, that an amendment be added to line 17 (same section) reading, "...made by the supervisor during the first 60 days of training." *see Amendment as given in oral testimony on 2-16-91*

The definition of types of supervision (Sec. 5, (8), (a) & (b) ((p. 9, lines 4 - 14)) greatly enhance training of the trainee by specifically clarifying availability and responsibility of the sponsor. It guarantees that the trainee will not be turned out by themselves without some proper supervision.

An amendment is also needed in new Sect. 9 (p. 14 line 17) and new Sec. 10 (3), (lines 19 - 20). A specific dollar amount should not be specified as a "dispensing fee." First, the term "dispensing fee" is not defined and it does not specify whether the bill allows \$200 total or \$200 per instrument. Second, it does not take into account inflation rates and changes in the industry.

It is, therefore, recommended that Sect. 9, line 17 be amended to read, "...dispensing fee may not exceed an amount greater than 20% of the total charge." Also, Sect. 10, (p. 15, lines 19 & 20), the sentence "For the purpose of this section, the dispensing fee may not exceed \$200," should be deleted to be consistent with the Sect. 9 amendment.

Sincerely,



Darrell Micken, M.A.  
Audiologist

DM/cvb



Bringing lifetimes of experience and leadership to serve all generations.

SENATE HEALTH & WELFARE  
EXHIBIT NO. 6  
DATE 2/15/91  
BILL NO. 200

MONTANA STATE LEGISLATIVE COMMITTEE

CHAIRMAN  
Mr. Fred Patten  
1700 Knight  
Helena, MT 59601  
(406) 443-3696

VICE CHAIRMAN  
Mr. Paul Stengel  
Route 2, Box 3040  
Miles City, MT 59301  
(406) 232-0016

SECRETARY  
Mrs. Dorothy Fitzpatrick  
Box 174  
Sunburst, MT 59482  
(406) 937-2451

FEBRUARY 15, 1991

TO : SENATE PUBLIC HEALTH, WELFARE AND SAFETY COMMITTEE.

FROM : FRED PATTEN - AMERICAN ASSOCIATION OF RETIRED PERSONS.

RE : SB #200 - " AN ACT REVISING THE LICENSING, RECORDKEEPING, AND TRAINING REQUIREMENTS FOR HEARING AID DISPENSERS; PROVIDING CONSUMER PROTECTION FOR PURCHASERS OF HEARING AIDS AND RELATED DEVICES. "

THE AMERICAN ASSOCIATION OF RETIRED PERSONS SUPPORT THIS BILL. THIS BILL GIVES THE PUBLIC THE PROTECTION THAT IS NEEDED WHEN HEARING AIDS ARE BEING

PURCHASED. IT IS NOT UNREASONABLE TO EXPECT THE PERSONS THAT ARE SELLING

HEARING AIDS TO BE QUALIFIED TO DISPENSE THE AIDS PROPERLY. THE COST OF

HEARING AIDS AND THE NEED TO BE ABLE TO HEAR ARE TWO VERY IMPORTANT

FACTORS. THIS BILL APPEARS TO ADDRESS THESE IMPORTANT FEATURES.

WE URGE YOU TO SUPPORT SB-200.

THANK YOU.



- Exhibit # 6a  
2-15-91 SB 200

L. V. Pugh

$$\frac{2113}{1} \quad \frac{91}{1}$$

Box 507

406 - 398 - 5327

*[Signature]*

Senate Bill 200

SUPPORT?

AMEND?

OPPOSE?

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Date: 2-15-91

Name: Glenn A. Hladik

Address: 803 Rimrock Rd  
Billings, MT

Telephone Number: 245-7877

Representing Whom?

MT Speech - Language - Hearing Association

Appearing on which proposal?

SB 200

Do you: Support?   /   Amend?        Oppose?       

Comments:

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SENATE HEALTH & WELFARE

EXHIBIT NO. 7

DATE 4/15/91

BILL NO. 200

Glenn A. Hladek  
803 Rimrock Rd.  
Billings, MT. 59102

Public Health, Welfare, and Safety Committee

Chairman: Dorothy Eck

Vice Chairman: Eve Franklin

Members: Jim Burnett

Tom Hager

Judy Jacobson

Bob Picpinich

Dave Rye

Tom Towe

I am an audiologist from Billings, and am representing the Montana Speech-Language-Hearing Association. I am writing in support of SB 200.

As the primary profession involved in the identification and rehabilitation of hearing loss, we are concerned about the hearing impaired individuals and the service they receive in Montana. Approximately 80,000 Montanans are hearing impaired, nearly one in ten. The ability to communicate is the most human of traits. The inability to communicate effectively due to a hearing loss causes us embarrassment, it leads to social isolation, to potential employment and/or educational difficulties. It, in effect, touches all aspects of our lives. The primary instrument of rehabilitation for the vast majority of the 80,000 hearing-impaired Montanans is a hearing aid. They are miraculous instruments, and while they are not perfect, ask Basil Andrikopoulos from Billings, or Paul Lande from Lodge Grass, or ask my ten year old daughter the effect hearing aids have had on their lives.

We have a problem, hearing loss, and we have an effective rehabilitation tool, where then is the problem? Why does the hearing aid licensure board, the second smallest board in the state, receive the single largest number of complaints from consumers, nearly one per week? A review of the board complaints indicate that the vast majority of the complaints are directed at the trainee dispenser. For the most part it appears that fully licensed hearing aid dispensers are providing a useful and competent service. It appears clear that many of our problems stem from ill-trained, poorly supervised, and uncommitted trainee dispensers. Under the present law, a person can begin to dispense independently 60 days following the passage of the written exam. What other group of health care providers have such minimal requirements. There is no formal academic requirements, no extensive internship, only an interest in selling hearing aids, and the ability to pass the written examination. Is that the training and level of commitment you want from the person providing service to you, your child, or more likely your parents, for a handicapping condition so devastating and yet so subtle as hearing loss.

2.

SB 200 addresses the trainee period by requiring more direct supervision, for a longer period of time, before the trainee can function independently. It mandates 8 hours/week for ten months. This ten months of close supervision does not seem to be an unreasonable length of time, if it will ensure improved hearing health care to the consumer. Does it seem unreasonable to ask that someone who is going to provide this very important aspect of health care, be closely supervised for a total of 40 days over a period of 300 days. I submit to you that this is not only reasonable, but it would be irresponsible to consider this as anything other than minimal.

This is not a fight against anyone, rather it is a fight for the hearing impaired. We ought to be joining hands in this effort, the hearing aid dispenser, the audiologist, and the otolaryngologist, to provide the highest quality of hearing health care possible. We should not gauge our success by the number of instruments sold. If we are truly interested in improved communication skills, improved vocational potential, improved social involvement, then we must raise the standard of care provided the hearing impaired. We will dramatically increase the number of hearing aids sold, and the number of individuals helped, when we as a group, not just as individuals, raise the level of professional services that we provide. When the public recognizes the benefits from improved hearing that results when committed professionals are involved in their rehabilitation, then we will all have no problem dispensing all the hearing aids we can.

This bill does not solve all of our problems, no legislation will, but it goes a long way in making the hearing impaired consumer and their rehabilitation the focus of our attention. We sincerely believe and can demonstrate that with knowledge, skill, care, and patience, most hearing impaired individuals can benefit dramatically from rehabilitation, which includes the use of hearing aids. SB 200 exists to provide the hearing impaired consumer of Montana some assurance that a qualified person is dealing with their handicap, and that satisfaction and improved communication skills is indeed a reality, and not just the hope of every hearing impaired person.

Thank you for this opportunity, and I ask for your support of SB 200.

Sincerely,



Glenn A. Hladek, M.S.

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Date: Feb 15, 1991

Name: Gaspar Harrison

Address: 217 Woodworth  
Missouri

Telephone Number: 721-7634

Representing Whom?

MT. Sch. Hearing Ass

Appearing on which proposal?

SB 200

Do you: Support? ☒ Amend? ☒ Oppose? ☐

Comments:

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PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY. THANK YOU.

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Date: 2-15-91

Name: LEE FRANTZ

Address: 2332 W. Summit, MSLA, MT 59803

Telephone Number: 251-5176

Representing Whom?

self

Appearing on which proposal?

SB 200

Do you: Support? ☒ Amend? ☐ Oppose? ☐

Comments:

I support this bill in hopes of helping  
consumers so they are able to receive appropriate services  
for their disability without fear of being taken advantage of.  
I have had numerous people tell me "horror" stories  
of trying to purchase aids but never filed a complain.  
They did not know about the existence of the board.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE  
SECRETARY. THANK YOU.

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Date: 2/15/91

Name: Jamie A. Small M.A.

Address: 11385 Fillmont  
Lolo, MT 59801

Telephone Number: (406) 273-2510

Representing Whom?

self

Appearing on which proposal?

# 200

Do you: Support? ☒

Amend? ☐

Oppose? ☐

Comments:

We have to have some control  
over the abuse going on in dispensing.  
Elderly people on a fixed income are  
being taken and they don't know where  
to turn. Meanwhile, certain dispensers  
are charging inordinate sums of money &  
disappearing.

MEDICAL ARTS HEARING CENTER  
300 NORTH WILLSON, SUITE 603-F  
BOZEMAN, MT 59715  
(406) 586-0914

February 15, 1991

SENATE HEALTH & WELFARE

EXHIBIT NO. 8

DATE 2/15/91

BILL NO. 200

Re: Senate Bill 200

Senate Bill 200 culminates from a need for better consumer protection for the hearing impaired. As in any other industry, most hearing professionals are willing and able to monitor their own activities in dealing with the public and have a reasonable degree of professional ethics. However, as with any other industry, there are the few who position themselves to take advantage of the consumer who, in this case, is most often an elderly client. Unfortunately, one of the problems with "the few" unethical hearing professionals in Montana is that they market and sell to a large percentage of the hearing impaired public. This is one of the reasons why the Board of Hearing Aid Dispensers has historically had one of the highest number of complaints per capita of any licensing board in the Department of Commerce.

There are two ways we can enhance consumer protection: (1) we can upgrade the requirements for obtaining hearing aid licensure which are presently far too lax, and (2) we can ensure that every consumer is given a money-back trial period with his hearing aid so that his decision to purchase is made on the basis of informed choice rather than misleading promises and pressure. The proposed FTC rule mandating a 30-day trial period was dropped in 1985 after a survey concluded that "most hearing aid sellers offer buyers trial periods and warranties to deal with problems that might occur." After having served on the Board of Hearing Aid Dispensers from 1988 to 1990, it became clear to me, however, that in Montana (1) some of the highest-volume hearing aid dispensers either are not offering trials such as this survey claimed or (2) the so-called "30-day trial" alluded to during the course of a sale provides, in small print, only for exchange or modification of a hearing aid rather than a money back guarantee. When consumers are being told there is a guarantee, they are often being mislead into believing it is a "money-back" provision, which it is not. This bill will help discourage this unethical tactic and will still allow the hearing aid professional to be compensated for his time and expenses in the case of consumer dissatisfaction.

I have only one objection to Senate Bill 200 - to Section 5, 316-405 (2) (b) which would require one's supervisor to fit and deliver every hearing aid sold by his "trainee" for 10 months.

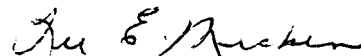


Senate Bill 200  
Page 2

My view is that this would restrict trade, severely limit the employer in producing income, and do very little to protect the consumer. The steps preceding and following the hearing aid fit (the testing, determining one's candidacy for a hearing aid and the counselling involved therein, and the impression, as well as the counselling and service afterwards), have potentially far more margin for serious error and abuse than the actual fitting of the instrument. I would suggest the 10 month recommendation be changed to 60 days, which cannot be construed as being punitive towards an employer, but should also allow for a reasonable period of serious supervision.

With the modification of this section, I see this bill as a vehicle for (1) enhancing the quality of services provided to Montana hearing aid consumers, (2) truly providing for greater consumer protection, and (3) providing the Board of Hearing Aid Dispensers with reasonable and enforceable means of disciplining violators of this statute.

I urge you to pass Senate Bill 200.



Lee E. Micken  
Licensed Hearing Aid Dispenser  
Bozeman

LEM/cvb

BOZEMAN ENT CLINIC  
AN ASSOCIATION OF

LAUREN R. SWARTZ, D.O.  
OTOLARYNGOLOGY, HEAD &  
NECK SURGERY, OROFACIAL  
PLASTIC SURGERY

FRED F. BAHNSON, M.D., F.A.C.S.  
DIPLOMATE, AMERICAN BOARD  
OF OTOLARYNGOLOGY

February 11, 1991

Montana State Senate  
Capitol Building  
Helena, MT 59601

SENATE HEALTH & WELFARE  
EXHIBIT NO. 9  
DATE 2/15/91  
BILL NO. 200

RE: Senate Bill 200

Dear Senators:

I am a physician practicing treatment of disorders of the ears, nose and throat in Bozeman, Montana. I am writing you concerning Senate Bill 200, which is presently before you.

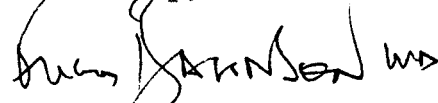
I am writing supporting this bill. In my eight years of practice in Montana, I have noticed numerous occasions of patients being improperly fitted for hearing aids. This is almost always done by people that I consider inexperienced and poorly qualified to perform such an important function to someone with a hearing loss. I continue to see this monthly, and it is in my opinion, shameful for it to continue. I think a patient with a hearing loss has enough disadvantage, and should not fall prey to those who are simply trying to sell them something.

Proper fitting of a hearing aid for maximum benefit for the patient takes training and experience and should not be left to those who simply are looking for work as a salesman.

I encourage you to consider strongly Senate Bill 200 and make our State a place where those with hearing loss are treated by qualified people.

Thank you for your interest and concern.

Yours truly,



Fred F. Bahnson, M. D.

FB:kl



SENATE HEALTH &amp; WELFARE

EXHIBIT NO. 10DATE 2/15/91BILL NO. 200

February 13, 1991

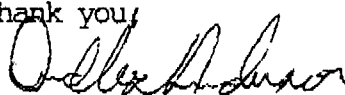
RE: SB 200

Dear Committee Members:

My name is Dudley Anderson. I have been dispensing hearing aids for over twenty years in the Missoula area and have served eight years on the Hearing Aid Dispensers Board both as a member and as chairperson.

Although I support SB 200, it is with one stipulation that Section 37-16-405 (2) part (b) be rejected or amended to refer to a sixty day supervision status, not forty weeks. Forty weeks serves as no valuable time to train for the fitting process, its too long of a time period, and is not cost effective for the participants.

Thank you,



Dudley Anderson, B.S.  
Missoula Hearing Inc.  
943 Stephens  
Missoula, MT 59801

2-11-91

This is a letter of support for SB 200. I am an audiologist working for the public schools in Billings. I do not dispense hearing aids in my office. I see the changes proposed in SB 200 as ones that will protect the consumer. I feel this is important as the Hearing Aid Licensing Board receives the largest number of complaints from consumers in the state.

By strengthening the traineeship, this should help decrease the number of unqualified hearing aid dispensers. It seems to me that allowing a person to dispense hearing aids before having passed the examination is asking for trouble and problems for consumers. I know of no other profession where that is possible.

Also, by allowing a 30 day trial period should help decrease the unethical high pressure dispensers who prey on unwary consumers.

Thank you for your time and assistance.

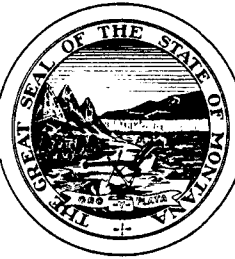
Suzanne Johnson, M.S., CCC-A  
Audiologist

# BOARD OF CHIROPRACTORS

DEPARTMENT OF COMMERCE

STAN STEPHENS, GOVERNOR

ARCADE BUILDING  
111 N. JACKSON



STATE OF MONTANA

(406) 444-5433

SENATE HEALTH & WELFARE  
HEALTH, MONTANA 59620-0407

EXHIBIT NO. 12

DATE 4/15/91

BILL NO. SB 200

Majority of complaints state:

1. Aids don't fit, to loose or to tight (improper fitting & testing)
2. To much noise, whistle, can't adjust volume
3. Aids don't help, no difference in hearing
4. All cite lack of service -
5. Not informed of medical waiver by salesperson
6. High pressure sales, promises never kept, like on 30 day trial and refunds.

Almost all hearing aids are sold to the elderly. Most were tested in their homes with no other person present. Almost all require payment in full before receiving aids. Some companies will only sell 2 aids, never just one whether person needs 2 or not.

In additon to the complaints listed on the other side, twenty-nine (29) allegations were received in the board office. Of those, 14 were against firms where no dispenser was named.

Fiscal Year	Total Complaints	NO Violation	Letter of Warning	Satisfied Complainant	Refund Issued	Withdrawn	Open
FY 88	21	5	4	4	3	2	0
	No jurisdiction - 2		Paid Fine - 1				
FY 89	25	8	8		5	2	1
	No jurisdiction - 1						
FY 90	21	2	1	3	5	2	5
	No jurisdiction - 1		2 pending disciplinary action hearings				
FY 91	6			1	1		4
(7-1-90 to 12-31-90)							

*Mary Lou Garrett*



**EASTERN**  
MONTANA COLLEGE

1500 North 30th Street, Billings, MT 59101-0298

SENATE HEALTH & WELFARE

EXHIBIT NO. 13

DATE 2/15/91

BILL NO. 200

Montana Center for Handicapped Children

406/657-2312

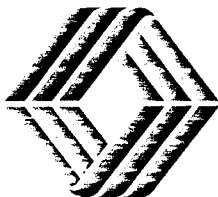
February 7, 1991

I have received and reviewed the draft of Senate Bill No. 200 proposing revisions in the licensing, record keeping, and training requirements for hearing aid dispensers and providing consumer protection for purchasing hearing aids and related devices. As an audiologist who doesn't dispense hearing aids, I refer my clients to licensed hearing aid dispensers if they are in need of amplification.

From my professional point of view, the proposed changes regarding trainees and their sponsors not only help to protect the consumer, but also benefit the trainee. The changes in Section 2 regarding the Bill of Sale will certainly clarify the consumers' rights and the follow up they are entitled to with the purchase of the hearing aid or related device.

I strongly support the changes proposed in Senate Bill No. 200.

Tina Hoagland, M.A., CCC-A  
Montana Center for Handicapped Children  
657-2039



SENATE HEALTH &amp; WELFARE

EXHIBIT NO. 14DATE 4/15/91BILL NO. 200

# BILLINGS CLINIC

## Testimony regarding Senate Bill 200

An estimated 25-30% of Montanans over the age of 65 have some degree of hearing impairment that might benefit from the use of hearing aids or other hearing devices. The population under the age of 65 are also becoming aware of how hearing aids and hearing devices can benefit their varying degrees of loss.

A significant portion of our population would be positively affected by a stronger hearing aid licensure law. The proposed mandatory 30 day return privilege will place the consumer more in control of his or her hearing aid purchase. Often a person doesn't know if he or she would like to purchase amplification. Because of this indecision, a person will often go without a device rather than risk a significant amount of money. Another common occurrence is that of someone spending thousands of dollars searching for better products that may, in fact, not exist. When a mandatory return privilege is granted, a consumer is more encouraged to work with his or her dispenser to obtain a satisfactory hearing aid fit.

The contracts signed with the purchase of hearing aids and other hearing devices are currently different for nearly every dispenser and often unclear to the consumer. A more standardized contract, with guidelines from the Board of Hearing Aid Dispensers would benefit both the consumer and the dispenser. All information regarding the trial period, refunds available and product warranties should be included on the contract.

Finally, the consumer and the hearing aid industry will both be positively impacted by strengthening the dispenser training requirements. Many of the questions and complaints addressed by the Board of Hearing Aid Dispensers concern the practice of Hearing Aid dispensers with trainee licensure status. Very few professions will allow for someone to practice a trade for years without showing some sort of competency through practical and written examinations. The number of failures allowed for the examinations need to be reduced as does the time allowed between reexaminations. Should a trainee have difficulty completing the examination successfully, it only stands to reason that a certain amount of more formalized training should be required.

Strengthening the licensing requirements for Hearing Aid dispensers through the complete approval of Senate Bill 200 will positively impact the hearing impaired population in Montana.

Kristy Foss M.C.S.D.  
Audiologist CCC

Billings Clinic Downtown  
2825 8th Avenue North  
P.O. Box 35100  
Billings, MT 59107-5100  
(406) 256-2500

Billings Clinic Heights  
100 Wicks Lane  
P.O. Box 35104  
Billings, MT 59107-5104  
(406) 256-2575

Billings Clinic West  
Lamplighter Square  
2675 Central Ave.  
Billings, MT 59102  
(406) 652-1598

Billings Clinic Red Lodge  
10 South Oakes  
P.O. Box 1130  
Red Lodge, MT 59068  
(406) 446-2412

Billings Clinic Columbus  
4th Avenue & A Street  
P.O. Box 239  
Columbus, MT 59019  
(406) 322-4542

239 Beverly Hill Blvd.  
Billings, MT 59101  
February 13, 1991

SENATE HEALTH & WELFARE

EXHIBIT NO. 15

DATE 2/15/91

BILL NO. 200

Honorable Senator Jim Burnett  
Montana State Senate  
State Capitol Building  
Helena, MT 59620

Re: S. B. 200  
Public Health, Welfare, & Safety  
Committee Hearing Friday, 2-15-91, 3:00 p.m.

Dear Jim:

I have worn hearing aids, one in each ear, for the last five years. I am one of those very fortunate people whose hearing loss could be helped by the use of these wonderful electronic devices.

It is because I have had substantial hearing restoration that I have taken a positive interest in S. B. 200. Respectfully, I am asking that you support this bill which I believe will contribute to the improvement of the hearing aid consumer's protection.

My hearing aids were fitted by an audiologist after my Ear, Nose & Throat Physician reported that his examination showed that my hearing could be improved with an electronic device -- and, that surgery or medication would not be helpful.

Many who need hearing aids buy them by mail, or by the door-to-door salesman's "pitch", or respond to media advertising which leads them to a person who may or may not be qualified to evaluate their hearing loss. And, sometimes the person who has made the sale may have provided an electronic device which may be ill-suited for the hoped-for hearing loss-restoration.

Hopefully S. B. 200 will contribute to the gradual improvement and elevation of qualifications of the purveyors of hearing aids. Although laws don't "fix" everything (in terms of legislating against certain damaging practices of purveyors), S. B. 200 seems to me to be a step in the right direction to legislate in favor of improved minimum standards. Hopefully, with the adoption of S. B. 200 there can be a little bit better chance for the consumer getting what is needed for a chance of hearing restoration.



Page 2

Not everyone will have availed themselves of the advice of a physician-surgeon, let alone consult a licensed audiologist, as I did. The explanation for that, whether ignorance or economics, makes no difference. In this situation, the priority should be to see that those folks have a better chance to get what they are paying for.

My good luck with hearing restoration makes me sensitive to the hearing needs of many people who bought unsatisfactory hearing aids from purveyors who failed to meet needs.

"Let the buyer beware" is not appropriate. Please help pass this bill to begin the process of better qualifications for those who sell hearing aids.

Sincerely —

Paul J. Malley

Rosemary Harrison  
714 Kensington  
Missoula, Mt. 59801

Feb 11, 1991

Dear Ms. Harrison:

This acknowledges your call of last week and the arrival of your letter today. In answer to and in support of your question, I am mailing you a copy of my letter to the Board of Hearing Aid Dispensers in July of 1989, which shows details of my problems which may be of assistance in favor of Senate Bill 200.

Incidentally, I was ultimately refunded my total purchase price, returned the hearing aids and haven't really had the urge to get them and trying again for hearing assistance.

I would have enjoyed the hearing, on Senate Bill 200, but Mrs. Erickson and I are leaving for Seattle at midnight of February 14, on Amtrak.

Good luck on your efforts to get passage of Senate Bill 200, I am with you all the way.

Yours

William J. Erickson

July 21, 1989

Board of Hearing Aid Dispensers  
Department of Commerce  
1424 Ninth Avenue  
Helena, Montana 59620-0407 -

Attention: Mary Lou Garrett  
Administrative Assistant

Dear Ms. Garrett:

This acknowledges your letter of July 10, 1989 which I was happy to receive. In answer to it I am enclosing herewith a copy of the Contract which I originally entered into, apparently without sufficient study.

I am also enclosing herewith a Complaint Form which I have completed to the best of my ability, and is to the best of my knowledge and belief accurate in all respects. I have built up some memorandums with specific dates from the date of the original Contract, with requests and with statements of the facts pertaining to each incident, as follows.

I am a retired educator, coach, teacher, principal and administrator of the Libby School System, seventy-nine years of age and a resident of Libby since 1935, except for the four years, August 1941 until September 1945, which were spent in the military service as an officer.

My appeal to your unit is to give me help in resolving a situation which results from my purchase of a pair of hearing aids from the Hearing Aid Institute, located in Great Falls and doing business in various cities and towns in Montana. A Mr. Jim Odom, representing the above named firm, contacted me in November of the past year and influenced me into contracting to purchase two hearing aids. He made very glowing promises of what the hearing aids would do for me. He promised personally to see that my hearing would improve and that he would provide needed service to accomplish that end. He made the tests on my ears and then made the necessary molds of my ears. I signed the contract and paid him the \$400.00 down payment.

Mr. Odom appeared again the week before Christmas, fitted me with a pair of hearing aids and was testing me with them in my ears until he discovered that he was in the wrong house with the wrong person for whom the hearing aids were intended. He then took the hearing aids and left. Mr. Odom next appeared

Page 2 - Board of Hearing Aid Dispensers

January 13 with hearing aids, fits me with them and runs the usual tests. He makes the usual glowing claims for the wonderful hearing aids and promises he will be back the following week to check me again. I pay him by check the balance of \$1550.00. The first evening of the hearing I discover the right aid has no battery. Three days later the left hearing aid fails completely. Neither battery door can be opened. Then there is a complete failure of Mr. Odom or the Company to respond to my call for help. I wait two weeks for the promised visit by Mr. Odom. He does not appear nor call me.

I call the Great Falls office January 26th. Mr. Odom appears at my home February 1, without making an appointment. I was absent at the time and he declined to wait a few moments for my return. There was no further word from Mr. Odom or the Company. I write letters to the Hearing Aid Institute complaining of the lack of service and that my purchase price be refunded.

On March 2 Odom called and stated he would be in Libby that evening. He failed to show but called instead. At this time he denied knowing I had any hearing aid problem. He also stated that he would get me my money refunded. He also admitted that he was at fault for not contacting me. From March 2 to March 20 no response from the Hearing Aid Institute or Odom. Not until March 28 did I see Mr. Odom, when he appeared at my door, with the words "I understand you have a service problem." I asked him to go down town to an office for our discussion. He refused. I asked for the check which he had said he would get for me. He merely stated again that "I understand you have a hearing aid problem. That's all they told me." He refused to talk about anything else and left.

On April 5th I received the first response from Mr. Evans, Regional Manager of the Hearing Aid Institute, stating they had a problem answering my letter. On April 6th I wrote another letter to Mr. Evans stating my position, and asked for some competent person to meet with me to reach some accord. Mr. Pat Fournier was sent to Libby to discuss the matter with me. I met with Mr. Fournier and in attendance was a retired attorney friend of mine, Joe Fennessy. We reviewed the foregoing problems regarding the lack of attention that I had received. Mr. Fournier admitted that I had been poorly treated. In answer to Mr. Fournier's question as to whether Odom had made the remark, "I will get your money back," Mr. Fournier said that Odom denied making such statements.

Page 3 - Board of Hearing Aid Dispensers

I resent the fact that this man, Odom, is implying that I am lying; this in addition to the delivery of faulty hearing aids, failure of the agent and the Company to provide me with proper service. I do feel that I shouldn't be compelled to suffer the lack of hearing aids or the indignities forced upon me by an agent and company which, to all intents and purposes, has little regard for the well being of their clients.

Since the last letter of May 31, 1989, mailed to me by Mr. Evans, I have not received any further information from him. Neither have I received a copy of the Newsletter and Schedule mailed monthly by the Hearing Aid Institute, called the Hearing Herald. To all intents and purposes I have been taken off the mailing lists as a Persona-Non-Grata.

However, I did learn that a service date was scheduled for June 22, at the Venture Inn in Libby. I did go there to ask some questions of Mr. Odom. Mr. Odom was not there, but a young woman by the name of Ms. Miller was substituting for Mr. Fournier, who was substituting for Mr. Odom. I did request that Ms. Miller obtain for me a copy of the hearing test and/or report of said test done by Mr. Odom on November 9, 1988. Ms. Miller informed me that she would call the Great Falls office and would then call me as to the possibility of getting said report. To date I have not received a phone call, letter or a copy of the report.

Copies of the Contract, letters of mine to Mr. Evans and his to me are enclosed.

I would like your assistance with suggestions as to what course of action I should take in expediting this problem. I desire to have my money refunded so that I can seek a hearing aid firm that is more concerned about their clients and will not give me a "brush off" as indicated by Mr. Evans' last letter to me as of May 31.

I would be happy to come to Helena to discuss this matter with you if it would help me or any other elderly persons. I did talk with another elderly gentlemen just this week who also is having problems with Mr. Odom.

Thank you,

*William J. Erickson*  
William J. Erickson  
P. O. Box 645  
Libby, Montana 59923

My name is Byron Randall, I have been the chairman of the board of hearing aid dispensers for two years. I am not speaking for the board of hearing aid dispensers, but I am speaking as a hearing aid dispenser having the Miracle-Ear franchise for Montana and part of Wyoming.

I was very disturbed upon hearing that senate bill 200 was being introduced. I normally am not a person who enjoys or seeks notariety or speaks out, but when I feel about something as strongly as I do about Senate Bill 200, I have to speak out.

Our business consists of eight offices in Montana, 42 service centers and employs approximately 25 people. This is one of the largest hearing aid companies in this part of the country. We have been in business for 14 years and have served approximately 8-10,000 clients during that time. I am the owner and operator of the firm.

Senate Bill 200 poses numerous problems for our company. If we were to cover each problem area, it would take an exorbitant amount of time. So in the interest of time, and propriety, I intend to cover just one or two areas that hold significant consequences for the continued longevity of the business.

We have been in business for 14 years and have served approximately 8-10,000 clients during that time.

The topic I would like to discuss is the 40 week direct supervision proposal. If Senate Bill 200 were passed, it would cause many problems for hearing aid dealers that cover large territories such as we do. Let me explain. We attempt to bring our services to all of rural Montana and Wyoming. I will take Billings for example: The consultant in our Billings office during the first week of every month travels to Miles City, Glendive, and Sidney Montana for testing, service and fitting of hearing aids in our service centers. He is back in the Billings area during the second week and off to service centers in Cody, Worland and Greybull, Wyoming the third week. The fourth week he is back in Billings area. If our consultant were to have the responsibility of directly supervising a trainee for a 40 week period of time, who would pay the road expenses and who would pay the trainees salary? The worst scenario would be to have our Billings area consultant leave our employment. If this bill were to pass, I would have to relocate to Billings and leave my family in Kalispell to directly

additional cost would require us to increase our prices.

The other alternative is to require our consultants to remain in their offices thereby abandoning all service centers and in home services.

In conclusion, I am not a person who gets excited about changes in our industry, but when a proposed change that is as potentially destructive as Senate Bill 200, I have to get involved. I see it as a threat to the health of our company and our 25 employees, and every other hearing aid company which operates as we do. I also see it as a threat to our rural clients who depend on our services. I do see a need for some changes in the statutes and rules regulating the practice of hearing aid dispensing in Montana. I would like to charge the board with this responsibility and between the Montana hearing aid society and the board of hearing aid dispensers, I feel that a series of just laws can be brought about. Laws which will continue to improve this industry and at the same time protect the people of Montana. I envision laws which will be equitable for all dealers in this business and laws which will not be detrimental to any segment.

Thank you for the opportunity to speak here today.

supervise a trainee for 40 weeks. I would have to relocate because I would have a very real obligation to our clients, for service. There is no way to place a trainee in these areas without supervision according to the proposals in the Senate bill 200.

This bill was proposed by hearing aid dispensers with small single office businesses located in urban areas not requiring extensive travel as ours does and would not suffer as a result of this bill. Also I believe there is a good possibility that the persons who are pushing this bill realize that over the long run they will benefit from its passage as this bill is ultimately detrimental to businesses like ours ultimately benefiting smaller businesses. If the true intent of the people who are pushing this bill is to provide accountability for trainees, a very adequate accountability is found in the substantive rules 8.20.401 traineeship requirements and standards. A copy of these rules are attached to this letter and all licensed hearing aid dispensers in Montana are required to abide by these rules.

In addition, from my perspective as a member of the board of hearing aid dispensers, for the past three plus years, I have seen the number of consumer complaints dramatically decrease. Attached you will find a portion of a letter from Mary Lou Garrett who is the administrative assistant, to the board of hearing aid dispensers to all board members. In this letter, Mrs. Garrett said "at the present time there are 13 active complaints. This is a small number compared to fiscal year 1988 where the board was dealing 35-48 complaints at a time." As you can see fiscal year 1991 (7/1/ 90 to 1/31/91) there are only seven new complaints. I see us as a board having more and more of an impact on the hearing aid dealers as far as holding them accountable for their actions.

The second area I would like to cover is the part of the bill on page 2 section 4a "there must be one licensed dispenser in charge at a permanent place of business at all times." Approximately 90% of our testing is done at our service centers or in our clients homes. There are many shut-ins and non ambulatory people who count on this service in their home. According to this bill, we would need an additional eight trained consultants to man our offices at all times to accomplish the same work load that we are accomplishing now. Who is going to come up with this tremendous outlay of money? We certainly cannot. This



BOARD OF HEARING AID DISPENSERS  
DEPARTMENT OF COMMERCE

Exhibit #17  
2-15-91 SB 200

ARCADE BUILDING  
111 N. JACKSON



STATE OF MONTANA

(406) 444-5433

HELENA, MONTANA 59620-0407

COMPLAINTS FILED

FY 86	30
FY 87	48
FY 88	21
FY 89	21
FY 90	21
FY 91	7 7-1-90 thru 1-31-91

<u>EXAMINATIONS</u>	Applications Received	Exams Given	New Licensees	Renewed * Licensed
FY 88	22	30	9	102
FY 89	17	32	13	78
FY 90	17	19	6	79
FY 91	12	25	6	

Next exam March 8-9, 1991

<u>FINANCIAL</u>	Total Expended	Appropriation	Revenue	ERA Cash Balance
FY 90	\$9,851.46	\$13,520	\$11,827.50	\$15,561.77
FY 91 (to date)	7,624.22	12,755.00	6,310.00	13,574.70

Refer to Biennial report for FY 88-89 information

\* With renewals decreasing, the need for the inactive status is very important. For instance, on Monday, February 4th, a former licensee called to find out how to reinstate her dispensers license. The reason she had let it lapse for the last several years was the cost when she wasn't dispensing hearing aids. Now she wants to sell again and needs her license reinstated. Under the statute it would cost her \$437.50 with penalty fees. If there was an inactive status, a lesser fee would be charged, thus allowing these individuals to retain their license and also maintain the revenue sources for the board.

## Sub-Chapter 4

Exhibit #  
2-15-91 SB 200

## Substantive Rules

8.20.401 TRAINEESHIP REQUIREMENTS AND STANDARDS (1) The dispenser (supervisor) will:

(a) peruse every fitting made by the trainee. The supervisor shall approve the selection of the ear mold, aid and choice of ear to fit prior to fitting, during the trainee's first 60 days of the training period.

(b) the dispenser shall have personal contact with all customers of the trainee who experience difficulty in fitting.

(2) Both the trainee and the supervisor must notify the board in writing, of any break in training program, stating reasons for such break in training or termination.

(3) A trainee who loses his or her supervisor for any reason shall not continue in a trainee status with a new supervisor until written notification is received by the board, within 20 days of change, stating the reasons for such change in supervisor.

(4) A supervisor of a trainee who desires to terminate his or her supervisory responsibility shall give the trainee written notice of such termination, giving reasons, and shall immediately notify the board.

(5) When there is any break in a training program lasting more than six months, the trainee status terminates and the trainee must make new application for original trainee status and pay fees as required.

(6) Trainees shall affix the designation "trainee" after his or her name on all business cards, correspondence, advertising or any written material concerning the hearing aid field.

(7) A licensed hearing aid dispenser who sponsors a trainee is directly responsible and accountable under the disciplinary authority of the board for the conduct of the trainee in his training activities. (History: Sec. 37-16-202, MCA, AUTH extension, Sec. 11, Ch. 404, L. 1985, Eff. 10/1/85; IMP, Sec. 37-16-301, 405, MCA; Eff. 12/31/72; AMD, Eff. 3/7/74; AMD, Eff. 9/4/75; AMD, Eff. 6/5/76; TRANS, from Dept. of Prof. & Occup. Lic., C. 274, L. 1981, Eff. 7/1/81; AMD, 1982 MAR p. 2175, Eff. 12/31/82, AMD, 1983 MAR p. 1457, Eff. 10/14/83; AMD, 1986 MAR p. 202, Eff. 2/14/86; AMD, 1987 MAR p. 371, Eff. 4/17/87; AMD, 1989 MAR p. , Eff. 10/30/89.)



# MONTANA HEARING AID SOCIETY

Affiliated Member of  
NATIONAL HEARING AID SOCIETY

3301 14th Ave. So.  
Great Falls, MT 59405  
727-7269 - 761-8334



SENATE HEALTH & WELFARE

EXHIBIT NO. 18

DATE 3/15/91

5 BILL NO. 200

DATE: February 5, 1991

TO: Senator Dorothy Eck, Chairman, Public Health, Welfare and Safety Committee

FROM: David E. Evans, Secretary, Montana Hearing Aid Society

SUBJECT: Statement of Opposition to SB 200

The Montana Hearing Aid Society is a professional organization composed of Montana licensed hearing aid dispensers all of whom work under the jurisdiction of the Board of Hearing Aid Dispensers. All of the members are Montana residents engaged in the fitting and service of hearing instruments across the state. Together, they account for the majority of hearing instrument fittings made in the state and provide almost all of the in-home and small town services and fittings available. SB 200 is primarily designed to affect these dispensers and to limit or eliminate their ability to effectively provide in-home and small town hearing instrument fitting and service to the people of Montana. The ultimate effect of the bill is to legislate into the industry a bias that favors small, single office practices offering very limited, if any, outside service. This is not in the best interest of the citizens of Montana who would, in many cases, do without hearing health care if it were not conveniently brought to them.

This bill is not necessary and is not supported even by the members of the Board of Hearing Aid Dispensers. Members of the Board will be present to state their opposition to this bill at its hearing.

Some of the specific problems with the bill include:

1.) The addition of the term "related devices" to hearing aids. Page 1, line 16 and throughout the bill. The term "related devices" is totally undefined and therefore subject to definition and interpretation at a later date. The term would logically include any device intended to assist a person with a hearing problem. This would include all types of assistive listening devices, cordless infrared systems, telephone amplifiers and amplified handsets, hearing aid cleaning supplies, and even specialized hearing aid batteries. All of these items are currently available at most drugstores, discount stores, electronics stores, general merchandise stores, and by mail order. There is absolutely no reason for government to regulate or interfere with the distribution of these products, and to do so could only cause inconvenience and expense to the people of Montana. From the standpoint of a licensed hearing aid dispenser, this represents a potential windfall, at the

expense of the public by being given a virtual monopoly over what are now readily available items.

2.) The section, beginning on page 2, line 12 through lines 25, requiring the placement of a licensed hearing aid dispenser in charge of a permanent place of business, holding them responsible for all trainees working out of the location and making them responsible for all business records, is very poorly thought out. This section is a prime example of the bias this bill is attempting to establish against any company with more than one office, or against any company that provides hearing health care services in-home or to small town patients who do not have access to a local hearing aid office.

Several hearing aid dispensers in Montana are incorporated and operate multiple branch offices. Each of these branch offices is considered a permanent place of business and provides service to the people of the community in which it is located. These companies keep central record systems, do centralized accounting, and use a common paymaster. The dispensers who work in a particular office are employees and do not own the office. It is totally unreasonable to expect a company to turn over absolute control and responsibility for company property and patient files to an employee. It is also unreasonable to expect that any employee would accept total responsibility for these assets. In addition, this provision would make the office dispenser responsible for all of the activities of any trainee working out of that office even though the trainee may be sponsored by another licensed dispenser within the company who is by law responsible for the conduct of the trainee. This creates a confusing situation in which control of a trainee is uncertain at best and double jeopardy is probable.

The requirement that there be a licensed hearing aid dispenser in charge at a permanent place of business at all times is a thinly disguised attempt to eliminate in-home and small town service. A dispenser cannot be in charge of an office at all times unless they are in the office at all times. Most dispensers currently work both in and out of their offices and leave staff in the office who are qualified to do minor service, sell batteries, and etc., when they are not present. The staff can determine when a patient needs to see the dispenser and make an appointment. Under this proposed law, this would not be allowed as the dispenser would have to be present at all times and could not go out and do in-home service or do small town service centers without having to hire a second dispenser to staff the office. This is not only prohibitively expensive, but there are simply not enough licensed hearing aid dispensers available. The result is the closure of numerous branch offices, elimination of in-home and small town service, inconvenience, and greater expense to the hearing impaired patients of Montana. The only advantage is to the minority of hearing aid dispensers who operate single office practices and provide no outside service as they will see decreased competition.

3.) Page 4, lines 22 through 25, requires the medical waiver to be a separate receipt. It is a basic assumption of any business that when a person signs an agreement, they read it first. The standard practice in this industry is to include the medical waiver on the contract above the signature. This is adequate and has never caused a problem for anyone. The only possible result of this provision is to unnecessarily increase paperwork and as a result, expense to the hearing impaired patient.

4.) Page 6, line 15 through 17, provides that when an applicant fails two consecutive practical examinations, they must have two years of additional experience or training before they can apply for reexamination.

There is no evidence that the current procedure has caused any problems whatsoever. The only result of this provision is to make the licensing system more

restrictive, and thus, reduce the number of licensees. It is unrealistic to assume that any license candidate could afford not to work for two years or that they would work at some other job to support themselves while waiting until they could take the test again. This provision is also internally inconsistent with the rest of the bill as section 37-16-405 (c)(5)(a) still authorizes the Board to grant two renewals of the trainee license following failure of the practical exam. This is the current procedure and results in the candidate having three opportunities to take the practical exam.

5.) Page 7, lines 9 through 13: This provision to require 8 hours per week for 40 weeks of direct supervision represents the heart of the attempt to restrict access to the profession and to reduce the current level of in-home and small town service to the people of Montana. First, there is no evidence that current training procedures are causing any problems. Second, if there were any problems with training procedures, there is no evidence that this change, which is specifically designed to favor in office workers only, would have any beneficial effect.

Under the present rules, a sponsor must in effect provide close supervision and make final delivery and fitting for 60 days, after which the trainee may work under supervision but with more freedom. The 60 days of work at a normal 40 hour week provides 320 hours of instruction and experience. The proposed change will still require the same 320 hours of training but it will stretch it out to a period of 40 weeks. The proposed change does not change page 7, lines 16-17, which requires that the supervisor make delivery and final fitting during the direct supervision period. The result of this is to tie the supervisor to the trainee for ten months.

It is possible under the current system for a dispenser to spend 60 days working directly with a trainee both in the office and on the road working in homes and small town service centers and making deliveries. It is not possible, or economically feasible, for a dispenser to travel with a trainee for ten months to provide the same amount of training. This becomes even more impossible in light of item two of this discussion which ties the dispenser to his office for all practical purposes.

There is absolutely no reason to change these rules on training especially since the proposed change provides for no additional training. The only effect is to legislate the minority business practice into prominence by making it impossible for the major Montana hearing aid dispensers to train replacement staff. The result will be the virtual elimination of in-home hearing health care and small town service centers to the people of Montana and the gradual reduction in the already too small number of dispensers available to serve the public.

6.) Page 14, New Section 9, beginning on Line 11: This section would grant the Board of Hearing Aid Dispensers authority to order restitution of purchase price in addition to other disciplinary actions.

This is totally improper. The Board is organized under the Department of Commerce as a licensing board. It is improper for the Board to usurp the power and responsibility of the courts by making summary judgements in contractual matters. The only legitimate reason to order restitution is if there has been fraud, misrepresentation or some other improper act on the part of the dispenser. If this type of a problem has occurred then Montana has perfectly adequate legal remedies through the courts. In addition, the courts have the power to award full compensation plus costs and damages if appropriate. If a person has been wronged, they are entitled to full compensation and it is not in the best interest of the public that they should accept restitution less a \$200 fitting fee just so the Board can exercise their authority.

7.) Page 14, Line 18, New Section 10: This section is intended to provide a mandatory thirty day trial period with provision for refund.

This is a very misunderstood concept that is regularly introduced by well meaning people who do not understand the reality of the situation. It is usually proposed as a consumer protection measure which it most definitely is not.

A hearing aid is only one part of an aural rehabilitation program designed to help a person with a hearing loss. It is not uncommon for a fitting to be adjusted several times. Sometimes a hearing aid must be completely remade, refit, or even changed to a different type. The vast majority of modern hearing aids are fully custom built to the needs of the individual patient. Even then the actual hearing aid is only one component of the process that includes testing, evaluation, fitting, counselling, adjusting, service, and etc. Thirty days does not even approach the actual time required to competently help a person with a hearing problem. In the case of a first time patient who has an advanced hearing loss, the process may take years to achieve satisfactory results. Anyone, especially anyone who claims to provide hearing health care services, who sincerely believes that a hearing aid is a simple consumer product that can be tried on like a pair of shoes and accepted or rejected within a month, is dangerous to the public. There is simply no reasonable way to determine, within any preset time period, if treatment is effective or not in every case.

The concept of a short thirty day trial period encourages a lack of proper treatment and indecision on the part of the patient. The existence of a thirty day trial period places pressure on the patient to make a decision on the effectiveness of treatment within an unrealistic time frame. It also encourages impatience and implies that treatment should be concluded and successful within this time. This results in patients who go to every dispenser in their area to try their hearing aids expecting a magic cure that is not possible. The result is people without proper hearing help and higher prices for everyone because of the number of custom built hearing aids returned for no real legitimate reason. There is no other product in the health care industry, or any other business, that is subject to this kind of a requirement. It is not right to single out one item to be subject to a thirty day trial period, and it is an especially poor idea to start with a product that requires professional fitting as part of an overall program. This can only cause confusion and lower the quality of hearing health care.

This section permits the return of a hearing aid, or related device, if it is defective in fit or function but makes no provision for how and by whom the defective condition is to be determined. There will unquestionably be honest and legitimate differences of opinion as to whether or not there is a defect in fit or function. The simple fact that a person decides they do not like something does not mean it is defective or that a dispenser has failed to correct a problem. Each and every claim under this section is subject to bringing the patient, the dispenser, and the Board into legal confrontation. Anytime the Board is involved in legal action, the taxpayer pays; this is not in the public interest.

The Board has all the power and authority it requires to oversee the ethical conduct of licensees. Any ethical licensee will deal fairly with patients or will face both board and court action. The Board does not need to be given powers that overlap the legitimate powers of the courts. This does not provide any additional consumer protection and only serves to increase confusion and expense to all parties.

This bill was introduced before this committee in essentially the same form as SB 299 during the 1989 session and was properly killed by the committee for most of the same

reasons as stated above. I ask that you carefully consider the consequences of this legislation and stop this bill from going any farther.

The Board of Hearing Aid Dispensers has all of the power and authority they need and are quite capable of handling legitimate problem areas by simple rule change.

In summary, this is a bad bill. It is poorly thought out, and every aspect will have a long term negative impact on the hearing impaired citizens of Montana. The only positive effect of the bill is to the self interest of the minority group of small in-office hearing aid dispensers who would personally benefit from the elimination of honest competition provided by Montana's major dispensers. Both the quality and the availability of hearing health care would suffer with the reduction of in-home and small town service. It would allow a minority special interest group to achieve through legislation what they are unable to achieve through other means. I strongly urge you to carefully consider the negative impact of this bill and to reject this bad legislation.

For the Montana Hearing Aid Society

Sincerely,

A handwritten signature in cursive script, reading "David E. Evans". The signature is written in dark ink and is positioned above the printed name and titles.

David E. Evans  
Ethics Committee Chairman, MHAS  
Secretary, MHAS  
Member, National Hearing Aid Society

WITNESS STATEMENT

Exhibit #18a  
2-15-91 SB 200

NAME: Walt Hopkins DATE: 02-15-91

ADDRESS: 2311 Tenth Ave S.

PHONE: 406-761-0611

REPRESENTING WHOM? SELF - OWNER Prescription Design NAC

APPEARING ON WHICH PROPOSAL: 200

DO YOU: SUPPORT? \_\_\_\_\_ AMEND? \_\_\_\_\_ OPPOSE? L

COMMENTS: \_\_\_\_\_

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.



## WITNESS STATEMENT

(b)

Exhibit # 18b  
2-15-91 SB 200NAME: Reg Mc CytcheonDATE: 2-15-91ADDRESS: PO Box 1515 HamletPHONE: 363-2224REPRESENTING WHOM? myselfAPPEARING ON WHICH PROPOSAL: 200DO YOU: SUPPORT? \_\_\_\_\_ AMEND? \_\_\_\_\_ OPPOSE? ☒COMMENTS: \_\_\_\_\_  
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PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

WILLIAM V. FOWLER  
2806 Garfield, Suite G  
Missoula, Montana 59801  
(406)728-8799/1-800-446-3502

February 4, 1991

Legislative Council  
Room 138  
State Capitol  
Helena, Montana 59620

SENATE HEALTH & WELFARE

EXHIBIT NO. 19

DATE 2/15/91

§ BILL NO 200

Dear Sirs:

Every two years the same small group of people beat the same drums crying public health. With this cry they try to enact a law that will in turn feather their bed in the hopes of controlling their competition.

These people went through college, got their degree and then found out the position they studied for, had been filled and there wasn't any opportunity for them in their chosen field.

Like any one else they started looking around for an opportunity where they could use some of their training as they tried to forge out a living in their second choice profession.

This is the story of the Audiologist Vs. the Hearing Aid Dispensing Professional.

Last year I hired an Audiologist from the U. of M., to work in the field with me in the hopes of bringing up the level of competence in our dispensing business. I thought maybe there was something he could do that could help us provide better service for our people. He is a great person, knew a lot about diseases of the ear, working with doctors etc. However, he had very little on hands dispensing knowledge or proper fitting of hearing aids. In short, in a clinic testing for diseases in the ear, or working with a doctor was all he was trained for. He personally told me over and over again that the University did not cover the actual dispensing of hearing aids, and certainly not dispensing in the home.

My experience in the hearing aid dispensing business goes back twenty six (26) years. For five and one half (5 1/2) years I owned a manufacturing and dispensing of hearing aid business, and for almost six (6) years was President of the Montana Hearing Aid Society.

About fourteen (14) years ago the Audiologist started encroaching into the dispensing of hearing aids, and the fight between the two camps has been going on ever since. It sort of reminds me of the fight that went on twenty five (25) or so years ago between the Opticians, and Optometrist. When the Optometrist received the title of Doctor by legislative action they immediately set out to put the lowly little Optician out of business. Why? They didn't want the competition because the Optician charged a lot less than the Optometrist.

The original Optometrist was not a doctor at all but was grandfathered in as one.

Today that field has leveled off because the Optometrist did not succeed in putting the Optician out of business by legislative acts. The Optician has been credited for keeping the price down for contacts and glasses. So who in the long run served the public better?

The average hearing aid dispenser has very little referrals from doctors to fit hearing aids, and none from Audiologists. He has to go in the field, the homes of the people that by and large don't wish to go to town and be bothered with going through the headache or expense of seeing a doctor or Audiologist. Some went through the medical evaluation, yet wish an in home hearing aid dispenser so they don't have to keep going back to town for service.

We now have a Senate Bill No. 200, submitted before you that is designed to put the present hearing aid dispenser out of business, because a few people can't compete with the average dispenser in the field or home.

They want the business to be forced to come to them, rather than a licensed person going to the people.

Many sections of this Bill would literally by themselves drive me out of business, let alone the Bill as a whole. This whole Bill must be defeated because its intent is to deprive legitimate business people the right of fair trade, the free enterprise system, along with their constitutional and civil rights.

If this Bill passes on its face, it violates state and federal law and will have to be challenged.

Below are some of my reasons for that statement:  
The changes proposed in Section 1. 37-16-301 would cause major problems in the dispensing business, take for example "designation licensee in charge."

In the office I'm presently associated with, there are two other licensed hearing aid dispensers. Each of us are in association with each other only as independent contractors.

Each of us have our own individual corporation and we are not responsible to one another in any manner, except we share office facilities, secretary etc.

This law would make us designate one person to be responsible for the other two. My status would change from independent contractor to employee, or we would have to break up our association and go our separate way which would increase our expense.

All of us do 99.9% of our business out of the office and only need an office for a central message place and record keeping facility.

At present I'm in charge of myself, and if I have a trainee, I'm in charge and responsible for him. Never will I or my associates be responsible for another duly licensed dispenser or his trainees. The state licenses each dispenser, and he alone, should be responsible for his own acts along with the acts of his trainee.

The intent of the changes are three fold:

1. Force a designated licensed dispenser to remain in his office full time so he won't be competition to others in the field.
2. Force a designated licensed dispenser to do 40 weeks of in-office training on all new trainees, so that neither the trainee nor the trainer leaves the office.
3. Require the designated licensed dispenser to do nothing else but train that trainee full time 8 hours a day - 40 weeks per year, which would stop both of them from going into the field where the business is for the non-audiologists.

The changes here are designed to put the non-audiologist out of business and to make sure the only way a future person can be licensed is to go to the University and get a degree in Audiology.

Can you imagine what the public will have to pay for hearing aids in a couple of years?

In Section 2. 37-16-303 (1) (e) it states "a provision that maintenance service for the hearing aid or related device is available".

Do you mind telling me what this means? It is so vague the Board could order any type of maintenance program. Presently the Manufacture Warrants the aid usually for 1 year or 2 years and sometimes more.

Also, in (4) "the Board may establish and adopt minimum requirements for the form of bills of sales and receipts".

There is nothing wrong with the Board having the power to insert certain sentences or statements, but to give them unspecified powers that are so vague and unqualified, is to hand them power and control over a business.

In Section 4. 37-16-403 (2) "An applicant who fails two successive practical examinations may apply for re-examination after 2 years of additional experience or training."

Now the supervisor must come out of the field for 2 more years, 8 hours a day, 40 weeks per year to train and do nothing else.

Why is it they won't let the trainee take the test again at the next available time and allow him to keep doing it until the Board passes him? Are they saying the Board can't qualify him if he presents himself again for a new test?

Again the non-audiologist is being discriminated against without justifiable cause for the so called good of the public health. They are attempting to eliminate competition plain and simple.

The Board has been trying to insert "direct supervision" into this licensing law since just a few years ago when we last changed the law.

Here is the reason why:

At present general supervision of a trainee is all that is required by a licensed supervisor, even though that supervisor is responsible for all the acts of a trainee in the field.

In short the supervisor can decide when, where, and the type of training a trainee may get. He can have this training in the office, field, or classroom as he chooses.

Since the last changes in the law, complaints on trainees have gone down, but more people are being licensed each year. This causes more competition for everyone and some people don't like this. Get the picture!

Now they want "direct supervision" "in the same place of business", meaning it has to be in the office.

Anyone can see the intent is to control competition, eliminate the trainee, tie the hands of the sponsor in his training methods so that the program that is successful will be eliminated.

The New Sections 9 and 10 are an attempt to set the Board, who is usually made up of competitors, as your judge and jury.

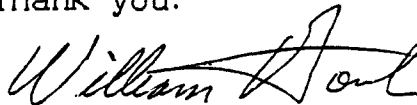
It tells me, that even though my client lives 300 miles from my office one way, that I can't charge one dime more for my fees upon a cancellation than the individual setting in his office. Why can't I negotiate this with my client?

The Justice Court, or District Court should retain the sole authority on restitution or the right to cancel, the Board does not have the legal expertise to officiate in these areas.

This letter is too long and yet there are a dozen other things that could be addressed. It is my hope you see the hopelessness of these attempted acts by a few people and will vote against this bill.

Please allow me to address these issues more completely at all hearings.

Thank you.

A handwritten signature in dark ink, appearing to read "William V. Fowler", with a long horizontal line extending to the right.

William V. Fowler

WITNESS STATEMENT

To be completed by a person testifying or a person who wants  
their testimony entered into the record.

Dated this 15 day of FEB, 1991.

Name: FRANCIS BELGARDE

Address: 436 N. JACKSON, HELENA, MT

Telephone Number: (406) 442-9334

## Representing whom?

# HELENA INDIAN ALLIANCE

Appearing on which proposal?

SB 310

Do you: Support? ✓ Amend? \_\_\_\_\_ Oppose? \_\_\_\_\_

**Comments:**

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Date: 15 FEB 91

Name: Douglas Kuntzweiler, M.D.

Address: Box 9 Boulder MT 59632

Telephone Number: 225-3652

Representing Whom?

myself

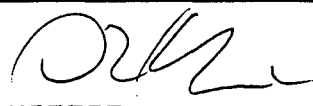
Appearing on which proposal? SB 310

Amendment to allow physician dispensing at urban Indian Health

Do you: Support? ☒ Amend? ☐ Oppose? ☐ CLB/ES

Comments:

Dispensing is necessary in order to provide  
useful medical services to this segment  
of the population.



PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY. THANK YOU.



**WITNESS STATEMENT**

To be completed by a person testifying or a person who wants  
their testimony entered into the record.

Dated this 15 day of Feb, 1991.

Name: Martina Dean Land Walk

Address: ✓ 1730 Ave C

Telephone Number: ~~2574~~-9553

## Representing whom?

1HBO

Appearing on which proposal?

Do you: Support? ☒ Amend? ☐ Oppose? ☐

Comments:

SB 311

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Date: 3/15/91

Name: Connie O'Connor, M.D.

Address: 40 P.O. Box 2046 MCS

Clancy, Montana 59634

Telephone Number: 406-443-1183

Representing Whom?

Leo Pocha Memorial Clinic

Appearing on which proposal?

SB 310

Do you: Support? ☒ Amend? ☐ Oppose? ☐

Comments:

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PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY. THANK YOU.

## PHYSICIAN DISPENSING - STATE REGULATION

STATE	Restricted Dispensing	Board Notice and Approval	Continuing Education	Disciplinary Action	Access to Prescriptions	Drug Labeling
Alabama				X		
Alaska				X		
Arizona				X		X
Arkansas		X		X		X
California				X		X
Colorado				X		X
Connecticut		X		X		X
Delaware				X		X
Dist. of Columbia				X		X
Florida		X	X	X		X
Georgia						X
Hawaii				X		X
Idaho				X		X
Illinois				X	X	X
Indiana						X
Iowa				X		X
Kansas				X		X
Kentucky				X		
Louisiana				X		X
Maine				X		
Maryland		X		X		X
Massachusetts	X	X				X
Michigan		X		X		X
Minnesota				X		X

STATE	Restricted Dispensing	Board Notice and Approval	Continuing Education	Disciplinary Action	Access to Prescriptions	Drug Labeling
Mississippi			X		X	
Missouri			X		X	
Montana	X		X			
Nebraska	X		X		X	
Nevada		X	X		X	
New Hampshire		X				
New Jersey						
New Mexico			X		X	
New York					X	
North Carolina			X		X	
North Dakota			X		X	
Ohio			X		X	
Oklahoma		X	X	X	X	
Oregon			X		X	
Pennsylvania			X		X	
Rhode Island			X			
South Carolina					X	
South Dakota			X			
Tennessee			X			
Texas	X		X		X	
Utah	X					
Vermont			X		X	
Virginia	X	X	X		X	
Washington			X		X	
West Virginia	X		X			
Wisconsin			X		X	
Wyoming			X			

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Date: 2-15-91

Name: Mike Stephen

Address: P.O. Box 4348  
Halla

Telephone Number: 449-6134

Representing Whom?

MT Nurses Assoc.

Appearing on which proposal?

SB 310

Do you: Support? ☒ Amend? ☐ Oppose? ☐

Comments:

Terese Henry Comments

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PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY. THANK YOU.

To: Senators, Public Health Committee

From: Montana Nurses' Association

Teresa K. Henry RN, Legislative Committee

Subject: Senate Bill 310

"An Act Allowing Contract Physicians at  
Urban Indian Clinics to Dispense Drugs"

The Montana Nurses' Association supports this bill. We believe that physicians at the 3 urban Indian clinics can safely dispense non-controlled drugs such as antibiotics, anti-hypertensives, oral hypoglycemics and treatment for sexually transmitted diseases to medically indigent clients. The medications referred to are those that are most frequently prescribed at these clinics. We believe this practice is safe and is a good thing to do as it allows for provision of health care to the medically indigent while restraining costs.

We are also aware that clients who have their medications dispensed at a clinic without a pharmacist do not receive the benefit of pharmacist input. We recommend that this information is made clear to the clients + public by clarifying that the medication is dispensed free of charge + is not included in any fee for service.

Thank You

SENATE HEALTH & WELFARE

EXHIBIT NO. 22

DATE 2/15/91

SBILL NO. 310

My name is Gayle Sandholm. I am a pastor at St. Paul's United Methodist Church in Helena. I am here this afternoon to speak in favor of SB 310. For 10 years St. Paul's has been proud to support the Leo Pocha Clinic here in Helena. We have given this support precisely because the Leo Pocha Clinic provides medical services to persons in need, persons who would not receive care if it were not for the Clinic. We are proud of our support because the Clinic has over these past 10 years provided professional care to thousands of persons.

Our support is consistent with the resolve of our General Church. Our Church's resolution on Health Care Delivery states:

... The United Methodist Church urges that medical and health care services of good quality should be made available to all persons and should be so organized as to be readily accessible to all, subject only to necessary limitations of resources. Services should be provided in a compassionate and skillful manner on the basis of need, without discrimination as to financial status, mental or physical handicap, race, color, religion, sex, age, national origin, or language.

--"Health Care Delivery Policy Statement", 1988 BOOK OF RESOLUTIONS, p. 242

The services of the Leo Pocha Clinic do precisely that.

When there exists a program which provides services like these, in a compassionate and professional manner, they need our support. That is why we at St. Paul's not only provide local support but have worked hard and successfully to get a small grant from our General Church for the Clinic.

When there exists a program of this quality, they need your support as well. Your vote for this bill will support the continuation of this vital service.

Your vote for SB 310 is a vote to continue access to medical care and medical prescriptions for persons who simply will not receive this professional treatment without the services of clinics like the Leo Pocha. Your vote for SB310 will make it possible for clinics on a very limited budget, like Leo Pocha to serve indigent people in a professional and compassionate way. I urge you to vote yes on SB 310.

SENATE HEALTH & WELFARE  
EXHIBIT NO. 23  
DATE 2/15/91  
BILL NO. 310

MADAME CHAIR AND COMMITTEE MEMBERS

I am Marcia Dias with the Montana Low Income Coalition. I support HB

Leo Pocha Clinic is well respected in Helena for its professional staff and service. It provides necessary medical services to low income persons whose health needs would otherwise be neglected.

In my contacts with low income people I hear on a regular basis of people unable to buy prescription medicines... thereby oftentimes undermining their health. Just this past week I was told by 2 separate mothers how their asthmatic children had to eventually be hospitalized because they could not afford inhalers. In one case, the mother said an ambulance had to be called to transport her son to the hospital in order to save his life. This cost over \$900.....because the mother was unable to provide \$15 of the required spind-down for the inhaler.

By allowing Leo Pocha and the other Indian clinics to provide necessary medicine will prevent unnecessary suffering.....and serve a preventive function. Thank you.

Marcia Dias  
10 Washington Place  
Helena, MT 59601

443-4496



WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Date: Feb. 15 - 91

Name: Dave Campbell

Address: 1818 Sherman, Missoula

Telephone Number: 543-5761

Representing Whom?

Montana Senior Citizens Assoc.

Appearing on which proposal?

SB 310

Do you: Support? ☒ Amend? ☐ Oppose? ☐

Comments:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY. THANK YOU.

*petition.*

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Date: 2-15-91

Name: LOYD BARRON

Address: 2219 S 5TH W

MISSOURI

Telephone Number: 782-0461

Representing Whom?

HURTLE AMERICAN INDIAN ALLIANCE

Appearing on which proposal?

SB 310

Do you: Support? X Amend?        Oppose?       

Comments:

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**2-15-91**

**Exhibit 24 contains 19 pages of signed petitions supporting SB 310. The originals are stored at the Montana Historical Society, 225 North Roberts, Helena, MT 59601. (Phone 406-444-4775)**

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 15 day of February, 1991.

Name: Marta Bromlie

Address: 6580 Canyon Ferry Rd  
Helena MT

Telephone Number: 475 3037

Representing whom?

Leo Poacha Clinic HIA

Appearing on which proposal?

SB 310

Do you: Support? X Amend?        Oppose?       

Comments:

As a nurse at the Leo Poacha Clinic  
I see many people daily who would  
go without medical care or medicines  
without our help. Thank God those  
people have some place to go  
I myself was a single parent working  
two jobs and if this clinic & doctors  
had not been available both of my children  
would have gone without care and medicine  
Please pass this Bill

Thank You

Marta Bromlie

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 15 day of February, 1991.

Name: Olivia Hanson

Address: 1030 N Jackson

Telephone Number: 449-2006 work 442-0545 home

Representing whom?

Appearing on which proposal?

sb 310

Do you: Support? ☒ Amend? ☐ Oppose? ☐

Comments:

I wanted to say that as a  
Native American of Helena for  
22 yrs that the Helena Indian  
Alliance Clinic has always  
been there for me I never  
have had the problems the  
oppose spoke on. Dr O'Connor  
is a wonderful caring person  
that is not there for a pay  
check but for the people.  
I don't know what I would  
have done when I have  
been out of money to get

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Date: \_\_\_\_\_

Name: Chet Riving

Address: 6860 Applegate  
Helena

Telephone Number: \_\_\_\_\_

Representing Whom?

Senior Citizens

Appearing on which proposal?

SB 310

Do you: Support? \_\_\_\_\_ Amend? \_\_\_\_\_ Oppose? \_\_\_\_\_

Comments:

We gave them meals  
we gave them small pay  
we should be able to give  
them more money

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY. THANK YOU.

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 15 day of February, 1991.

Name: David L Green

Address: 204 22nd Ave. N.W.  
Great Falls MT

Telephone Number: 406 767 4563

Representing whom?

Pharmacy - Board of Mt. Assn

Appearing on which proposal?

SB 310

Do you: Support?        Amend?        Oppose? X

Comments:

patient care without pharmacist counselling  
+ expert drug knowledge would be compromised

**Testimony - SB 310**  
**Submitted by Sarah Green, R.Ph.**  
**February 15, 1991**

SENATE HEALTH & WELFARE  
EXHIBIT NO. 25  
DATE 2/15/91  
BILL NO. SB 310

Physician dispensing and how it relates in the total picture of patient health care has been a topic of debate for many years. It has generally been accepted that the pharmacist is a vital link in the physician-patient relationship. As the most accessible members of the health care team, pharmacists are in a unique position to counsel patients on the correct way to take their medications, what to expect, why they are taking it, any precautions, involved to check for drug allergies or drug-drug interactions. These professional services are a safeguard to each patient, as their medical history increases, they may see different physicians for different health care problems and unrelated medications may interact. Any change in this established team approach should not be taken lightly and should only be made after failure of all other options.


In that increased patient care should be the goal of this bill--and eliminating the pharmacist as part of the checks and balances on the health care team is seen as a decrease in care--I am opposed to this bill.

It appears to me that the main reason for introduction of this bill is that the INS urban clinics are underfunded by the federal government. This lack of funds directly relates to this dispensing request and an overall decrease in total patient concern. Each patient seen in this health care setting is entitled to the same quality of care he or she would receive by the same physician outside this setting. Federal law through the Pryor Bill will be ensuring counseling and drug reviews at the very least. Drug review will include appropriate medication for diagnosis. Without going through the pharmacist-patient relation, this will be denied this group of patients.

I do believe there are other solutions to this problem that should be tried prior to passage of this bill. For example, if the clinic can obtain medication at a lower price, could they not contract with a pharmacist to dispense this stock for a fee to cover such dispensing and counseling. By doing this all present rules and regs of the pharmacy practice act will be met and clinic patient care will be at an equivalent level to nonclinic patients. If a physician did order a drug not stocked in the inventory of the clinic, it is more than likely the pharmacist would have it in his own inventory and it could be dispensed to the patient under another fee schedule to include cost of ingredient. This age of new drugs, new dosage forms and new delivery systems--physicians would then not be compromised by limiting them to only the drugs available in the clinic inventory.



Passage of this bill demands strong decisions on:

 Exhibit # 25  
2-15-91 SB 310

- 1) drugs allowed on hand
- 2) security for such medications
- 3) how they must be labeled--who will label them
- 4) wording in this bill to ensure that only the physician can dispense medication & ensure that counseling requirements are met
- 5) if this is to be a licensed facility--who will enforce it and will the state have the money to ensure there is compliance -

Patient care is the goal of this bill. And passage of it in no way improves patient care!

SENATE HEALTH & WELFARE  
EXHIBIT NO. 26  
DATE 2/15/91  
BILL NO. SB 310

2-15-91

STATEMENT OF

MARK EICHLER, R.Ph., FASCP, VICE-PRESIDENT OF THE MONTANA  
STATE PHARMACEUTICAL ASSOCIATION

SB 310 - THE DISPENSING OF DRUGS BY A CONTRACT PHYSICIAN AT  
IHS CONTRACTED URBAN HEALTH CLINICS

SEN. ECK AND MEMBERS OF THE COMMITTEE:

SB 310, A BILL THAT ALLOWS PHYSICIAN DISPENSING AT IHS  
CONTRACTED URBAN HEALTH CLINICS, RAISES QUESTIONS THAT YOU  
MUST CONSIDER BEFORE YOU MAKE A DECISION ON THIS ISSUE BASED  
ON APPLICABLE LAWS AND THE HEALTH NEEDS OF THOSE INVOLVED.

THE MONTANA STATE PHARMACEUTICAL ASSOCIATION SUPPORTS  
THE PRINCIPLE THAT ALL PATIENTS RECEIVING PRESCRIPTION  
MEDICATIONS ARE ENTITLED TO COMPREHENSIVE PHARMACEUTICAL  
SERVICES INCLUDING, BUT NOT LIMITED TO, PATIENT COUNSELING,  
MAINTAINING PATIENT PROFILES, AND PROVIDING THE CHECK AND  
BALANCE SYSTEM WITH OTHER HEALTH PROFESSIONALS TO HELP  
PREVENT PRESCRIBER ERRORS AND ADVERSE DRUG REACTIONS.

MSPA BELIEVES THE TRADITIONAL HEALTH CARE SYSTEM USING  
PHYSICIANS SKILLED AT DIAGNOSIS AND PHARMACISTS SKILLED IN  
DISPENSING AND MONITORING OF PRESCRIPTION DRUG REGIMENS IS IN  
THE BEST INTERESTS OF THE PATIENT.

WE CITE FOUR ROLES OF THE PHARMACIST IN DISPENSING --

1) DRUG KNOWLEDGE - PHARMACISTS ARE THE AVOWED EXPERTS IN  
THIS AREA. EXAMPLES ARE: a) PROPER STORAGE REQUIREMENTS,

b) INTERACTION POTENTIALS WITH OTHER DRUGS AND FOODS,  
c) CURRENT PRESCRIBING PROTOCOLS AND EXCESSIVE DOSES,  
d) BIOAVAILABILITY OF GENERIC MEDICATIONS, RELEASE RATES OF  
SUSTAINED RELEASE PRODUCTS, AND PROPER TIMING AND  
ADMINISTRATION OF DRUGS. 2. PATIENT COMPLIANCE - COMPLIANCE  
IS A SERIES OF TRADE-OFFS BETWEEN DAILY ROUTINES AND  
RESTRICTIONS IMPOSED BY THE DRUG SCHEDULE. PATIENTS MAY  
FORGET 1/2 OF THE INSTRUCTIONS GIVEN TO THEM BY THE PHYSICIAN  
AND THE PHARMACIST IS IN THE BEST POSITION TO FOLLOW UP ON  
CORRECT MEDICATION ADMINISTRATION. 3. ACTUAL DISPENSING -  
PLEASE CONSIDER THAT DISPENSING IS DONE BY A TRAINED  
PROFESSIONAL AND NOT LAY PERSONS UNTRAINED IN THE DISPENSING  
PRACTICES OF PROPER LABELING AND STORAGE. 4. PATIENT  
CONSULTATION - CONGRESS HAS RECENTLY PASSED INTO LAW  
PROVISIONS THAT PHARMACISTS MUST COUNSEL THEIR MEDICAID  
PATIENTS RECEIVING DRUGS AS WELL AS PROVIDE DRUG UTILIZATION  
REVIEW FOR THESE PATIENTS. IT IS RECOGNIZED THAT THE  
PHARMACIST IS IN THE BEST POSITION TO PROVIDE THIS SERVICE.

THE AMERICAN MEDICAL ASSOCIATION, ALONG WITH THE JOINT  
COMMISSION OF PHARMACY PRACTITIONERS, HAS ISSUED A STATEMENT  
SUPPORTING THE TRADITIONAL ROLES OF PHYSICIAN PRESCRIBING AND  
PHARMACIST DISPENSING, A SYSTEM THAT PRESERVES THE ESSENTIAL  
CHECKS AND BALANCES BUILT INTO THE DRUG DISTRIBUTION SYSTEM.

MSPA HOPES YOU UNDERSTAND THAT DISPENSING OF MEDICATIONS  
IS A RESPONSIBILITY NOT TAKEN LIGHTLY. HOWEVER, WE RECOGNIZE  
THE NEEDS OF THESE CLINICS AND ARE WILLING TO COMPROMISE OUR  
POSITION. MSPA SUPPORTS THE POSITION THAT WHEN A NON-

PHARMACIST PRACTITIONER EXPANDS HIS/HER ROLE TO INCLUDE THAT  
OF A PHARMACIST, HE/SHE SHOULD BE SUBJECT TO THE SAME LEGAL  
REQUIREMENTS AND RESPONSIBILITIES AS A PHARMACIST. OTHERS  
GIVING TESTIMONY FOLLOWING MINE WILL DELINEATE THESE  
COMPROMISES. THANK YOU.

## Testimony

Regarding: SB 310

Submitted by: The Montana State Pharmaceutical Association ~~SENATE HEALTH & WELFARE~~

Contact: Bonnie Tippy, 449-3843

EXHIBIT NO. 27

DATE 2/15/91

SBILL NO. 310

The whole issue of physician dispensing of drugs has been hotly debated for years, and the vast majority of states mirror Montana law which strictly prohibits physician dispensing with a very few exceptions.

There are good reasons for opposition to physician dispensing. Some have to do with conflict of interest and the profit motive, which I won't go into in addressing this particular bill. However, all opposition has to do with quality of patient care and a very important system of checks and balances which is now in place. Much of the material I will quote to you today is from an excellent article found in the American Journal of Law and Medicine. This particular issue was published in 1989, and I am providing the committee with full copies of the article.

The biggest problem with SB 310 is that it eliminates very important checks and balances in the health care delivery system, whereby the pharmacist reviews the prescription for errors, contraindications and drug interactions. One study has shown that 24.3 million prescriptions, or 1.6% of all prescriptions, contain errors which are detected by pharmacists. Of these, 411,000 prescriptions, or 0.2%, are life threatening. Evidence also exists that a major reason why consumers select a pharmacy is because of confidence that the pharmacist will detect prescription errors. In short, pharmacists argue, two heads are better than one to protect the patient. Pharmacists are not infallible, however, they are well educated in dispensing and they will most likely make far fewer errors than will physicians--or the office personnel to whom many physicians delegate the dispensing function.

Aside from prescription errors, drug-drug and drug-food interactions are numerous and can be very serious. Patients often see different physicians and purchase over the counter medications. Pharmacists are therefore in the best position to keep the appropriate patient medication charts, monitor the patients overall drug use and advise the patient.

Another major issue is that of patient compliance in taking their medications. Within the traditional health care system, studies show that patient non-compliance ranges from twenty percent to eighty-two percent depending upon the class of drugs and demographic factors of the patient. This means, in many cases, patients are not taking medications correctly. A number of studies show that pharmacists intervention causes a significant rise in patient compliance. Compliance depends on reinforcement of advice. Pharmacists are in a better position to more effectively minimize patient dissatisfaction and utilize factors which will improve compliance such as the use of computer programs,

patient medication records, calendars, charts and special labeling.

-Exhibit #27  
2-15-91 SB 310

If this bill should pass in its present form, patients will be deprived of one of the most significant services that pharmacists perform, that of patient counselling. Today, there is a strong professional trend by pharmacists towards consulting and providing drug information. This is going to continue to increase for a number of reasons, including education of pharmacy students as health care professionals, price competition among pharmacies and computerization.

Another issue of significance is the number of choices a physician at an Urban Indian Clinic will have in medications they dispense. The number will probably be in the hundreds, whereas pharmacies stock thousands of medications. This can only be detrimental to patient care, because the physician will have a conflict regarding what they can simply hand a patient and what a pharmacy can provide.

All in all, even with the dollar considerations that the clinics have, I believe that this bill is definitely not in the best interests of the people they are serving. Patients will be deprived of a very important system of checks and balances, and their overall health care picture will be jeopardized.

While it would be best if this bill were not to pass and that other solutions to this problem be found, if the committee does choose to pass it there are some amendments that will make it more palatable. I would ask that these be given serious consideration.

**Amendments for Senate Bill 310  
Submitted by the Montana State Pharmaceutical Association  
February 15, 1991**

**Contact: Bonnie Tippy  
449-3843**

(g) The dispensing by a contract physician at an Urban Indian Clinic of those drugs listed in a protocol filed with and approved by the board of pharmacy to qualified patients of the clinic who qualify by virtue of having no third-party reimbursement source, medicaid or nongovernmental, available to defray the cost of outpatient drugs. The clinic must be licensed by the Board of Pharmacy and it must comply with the drug labeling, storage, and recordkeeping requirements of the board. The contract physician must be licensed by the board of medical examiners and may not delegate the dispensing function to any other person.

NEW SECTION. Pharmacy license for Urban Indian Clinics-- conditions. The board may issue a special pharmacy license to an Urban Indian Clinic upon finding that the applicant for such a license will comply with the requirements of 37-2-104 (2) (g), and has a contract with a consulting pharmacist under which an adequate level of prospective and retrospective drug utilization review is available to the contract physician and the qualified patients.

American Journal of Law & Medicine Vol. XIV #4

p. 307-352

# Physician Dispensing: Issues of Law, Legislation and Social Policy

Richard R. Abood\*

Despite the fact that physicians have dispensed prescription drugs for profit for several years, the practice is currently under intense challenge and controversy. This recent flare-up can be explained by several factors including the involvement of the Federal Trade Commission (FTC), increased competition among physicians, alternative delivery systems and drug repackagers.

Federal laws including the Food Drug and Cosmetic Act and Controlled Substances Act regulate dispensing practices, but have been interpreted to regulate dispensing by pharmacists, not physicians. All states have laws applicable to the dispensing of prescription drugs by physicians, but the wording of these laws raises unclear legal issues. Both uncertainty about these legal issues and pharmacists' concern over the increase in physician dispensing has promoted state legislative efforts to restrict or regulate the practice. These legislative efforts and the corresponding regulatory actions by state boards have triggered FTC involvement.

From a social policy perspective physician dispensing raises significant concerns of ethics, conflicts of interest, patient welfare and economics. Based upon social policy, physician dispensing for profit is not a practice which should be condoned or allowed to flourish.

## I. INTRODUCTION

Dr. Martin completed her examination of Mr. Brown and remarked, "[y]our condition is serious, but once we get you started on a couple of medications I think we'll see substantial improvement." With that Dr. Martin scrawled the names of two drugs on a piece of paper.

"Take this piece of paper to Mary out front and she'll fix you up with the proper medications."

Mary, an office assistant, selected the two medications from a cart containing about 30 different prepackaged and prelabeled medications.

---

\* R.Ph., J.D., Professor Pharmacy Administration, Executive Director, Wyoming Pharmaceutical Association, School of Pharmacy, University of Wyoming.



WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 15<sup>th</sup> day of February, 1991.

Name: Marty Onishuk

Address: 5555 Pinewood Ln  
Missoula, MT 59803

Telephone Number: 251-2754

Representing whom?

MonAMI -alliance for the Mentally Ill

Appearing on which proposal?

SB 326 -expanding MHC. Boards

Do you: Support? X Amend?        Oppose?       

Comments:

We would like family members + consumer to  
be voting members on Community Mental  
Health Center Boards of Directors.



MonAMI

SENATE HEALTH & WELFARE

EXHIBIT NO. 28

Feb. 15, 1991

DATE 2/15/91

BILL NO. SB 326

*Marty - SB 326*

## Montana Alliance for the Mentally Ill

Supporting SB 326--Expanding the Boards of  
Regional Mental Health Centers to include  
Consumers and Family Members

Chair Eck and Members of the Senate Public Health, Welfare and  
Safety Committee

I'm Marty Onishuk, representing the Montana Alliance for the Mentally Ill. MonAMI supports expanding the mental health center boards to include individuals who are affected by decisions made by this board. Most boards have members with knowledge and interest in areas addressed by the board. This board should be no different.

The county commissioners who are members of these boards have many other duties under state law. They usually meet once a month for two hours and spend about this much additional time on mental health center matters. But they have a conflict of interest and duties in serving the needs of their consumers and family members.

For example, the Mental Health Center Council voted in January to oppose the bill (HB 103) which will prohibit the jailing of the mentally ill before a civil commitment hearing. Two of the three commissioners present said, while they supported the concept of not jail individuals because of illness, they had to take off their mental health center director hats and put on the county commissioner hats because the bill might cost the counties some money. Now the mentally ill person is put in jail where the cost comes out of the sheriff's budget, or the sick person is transported to Warm Springs at county cost while the state picks up the tab when the person is admitted. The point I'm making is that the needs of an individual with mental illness was not the first consideration of the commissioners. And four of the five mental health directors voted with their bosses, the commissioners. Again, the illness was not the primary consideration, but money. (and not antagonizing the boss.)

In Region V, encompassing the 7 most westerly counties, AMI members have been attending all the board meetings but one for the last year and 3/4ths. After an icy, antagonistic response at the first meeting, we are now welcomed to each meeting and are asked for input before the board makes decisions. We would like to have formal representation on this board because we have valuable information to share to make the boards better. Until someone has walked in our shoes of a consumer or a family member with an ill loved one, the agony cannot be appreciated. We have much to offer. We belong on the Mental Health Center Boards.

We are proud of the Region V board which endorses SB326.

Martha L. (Marty) Onishuk  
5855 Pinewood Lane  
Missoula, Mt. 59803



MonAMI

Montana Alliance for the Mentally Ill

SENATE HEALTH & WELFARE

EXHIBIT NO. 28A

DATE 2/15/91

BILL NO. SB 326

(Mary)

My name is Helen Bengel. I am the President of the Montana Alliance for the Mentally Ill.

It is of upmost importance the CMHC's branch be expanded to include HHS family members and consumers. Montana is rated 46th in the nation for caring for the Seriously Mentally Ill. The CMHC branches need direction and input that only someone that has experienced what it means to be seriously mentally ill can provide.

You would not have a bank board without bankers or a hospital board without a physician. Having family members and consumers on the CMHC boards will strengthen the system.

Thankyou

SENATE HEALTH & WELFARE

EXHIBIT NO. 2813

DATE 2-15-91

BILL NO. SB 326

Open Minds  
PO Box 7194  
Missoula, MT 59807  
12 February 1991  
(406)549-9370

Dorothy Eck, Chairwoman  
Public Health, Welfare and Safety  
Committee  
MT State Legislature  
Helena, MT 59601

Dear Ms. Eck:

I am a Montana native whose parents are MT natives. I have a History degree from MSU, worked as a Case Manager in a day treatment facility in Missoula, and I have been a consumer of the mental health services in MT for eighteen years. I have attended three mental health board meetings in Region 5, and I strongly feel that there is a place for a consumer of mental health services on each of the five mental health boards in Montana.

I am an active member of the mental health consumer movement, and of the consumer group Open Minds, which both support and advocate for progressive change of the conditions consumers live in. To this end, I believe it is vitally important to include consumers on each of the mental health boards in the state. There are many consumers who are capable, intelligent, sensitive, and would make exceptional members of the boards.

I strongly advocate for passage of Senate Bill 326 for the sake of all the mental health consumers of this state.

Yours most sincerely,

*Jane L. Tremper*  
Jane L. Tremper

TESTIMONY ON SB 326  
BY DAN ANDERSON

SENATE PUBLIC HEALTH, WELFARE &  
SAFETY COMMITTEE

FEBRUARY 15, 1991

SENATE HEALTH & WELFARE

EXHIBIT NO. 29

DATE 2/15/91

BILL NO. 326

ABOUT A YEAR AGO, THE DEPARTMENT  
OF INSTITUTIONS CREATED A MENTAL  
HEALTH LAW TASK FORCE CONSISTING  
OF MENTAL HEALTH SERVICE PROVI-  
DERS, A COUNTY ATTORNEY, PHY-  
SICIANS, ADVOCATES, CONSUMERS OF  
MENTAL HEALTH SERVICES AND FAMILY  
MEMBERS OF CONSUMERS. THIS TASK  
FORCE REVIEWED CURRENT MENTAL  
HEALTH LAW AND MADE RECOMMENDA-  
TIONS FOR AREAS WHERE CHANGES  
SHOULD OCCUR. ONE OF THE  
RECOMMENDATIONS MADE BY THIS  
TASK FORCE TO THE DEPARTMENT WAS

THAT COMMUNITY MENTAL HEALTH CENTER BOARDS SHOULD BE EXPANDED TO INCLUDE CONSUMER MEMBERS. SB 326 REPRESENTS SOMETHING OF A COMPROMISE BETWEEN PEOPLE IN THE MENTAL HEALTH COMMUNITY WHO FEEL THAT THE BOARD MEMBERSHIP WE CURRENTLY HAVE, WHICH IS COUNTY COMMISSIONERS AND PEOPLE APPOINTED BY COUNTY COMMISSIONS, IS ADEQUATE, AND THOSE WHO FEEL THAT BOARDS OF MENTAL HEALTH CENTERS SHOULD CONSIST OF A MAJORITY OF CONSUMERS AND FAMILY MEMBERS.

THE MENTAL HEALTH SYSTEM IN MONTANA HAS UNDERGONE A

REMARKABLE TRANSFORMATION IN THE PAST FEW YEARS. WHEN I BEGAN AT THE DEPARTMENT OF INSTITUTIONS NEARLY TWELVE YEARS AGO, COMMUNITY MENTAL HEALTH POLICY WAS DETERMINED, ALMOST EXCLUSIVELY, BY THE FIVE REGIONAL MENTAL HEALTH CENTER DIRECTORS AND A SMALL NUMBER OF BUREAUCRATS WORKING IN THE DEPARTMENT.

THE GROWING INVOLVEMENT OF CONSUMERS AND ADVOCATES AND FAMILIES OF CONSUMERS IN MENTAL HEALTH SERVICES, HAS BEEN AN EXCITING, AND YET SOMEWHAT SCARY, EXPERIENCE. GROUPS LIKE THE MENTAL HEALTH ASSOCIATION OF

MONTANA, THE ALLIANCE FOR THE MENTALLY ILL AND PARENTS LETS UNITE FOR KIDS, ALONG WITH INDIVIDUAL ADVOCATES AND CONSUMERS HAVE BEEN VERY ACTIVE IN PROVIDING THEIR VIEWS OF WHAT OUR SYSTEM SHOULD BE. MANY OF THE BASIC ASSUMPTIONS AND BASIC WAYS OF DOING BUSINESS, HAVE BEEN CHALLENGED BY THE PEOPLE WHOSE LIVES HAVE BEEN MOST AFFECTED BY MENTAL ILLNESS. SOMETIMES THAT HAS BEEN UNCOMFORTABLE TO PEOPLE IN THE SYSTEM BUT I THINK THE END RESULT HAS BEEN A BETTER SYSTEM, A MORE RESPONSIBLE SYSTEM.

THE INVOLVEMENT OF CONSUMERS,



FAMILY MEMBERS AND ADVOCATES HAS  
CREPT INTO A VARIETY OF DECISION-  
MAKING AND ADVISORY BODIES IN THE  
MENTAL HEALTH SYSTEM. THIS BILL  
SEEKS TO BRING THESE VOICES ON TO  
THE GOVERNING BODIES OF THE  
COMMUNITY MENTAL HEALTH CENTERS.

THIS BILL WOULD EXPAND COMMUNITY  
MENTAL HEALTH CENTER BOARDS A  
LITTLE BIT, BY 3 MEMBERS, ON EACH  
BOARD. THOSE 3 MEMBERS WOULD BE  
CHOSEN FROM AMONG 5 GROUPS WHICH  
HAVE BEEN IDENTIFIED AS BEING ABLE  
TO RAISE IMPORTANT ISSUES IN THE  
GOVERNANCE AND MANAGEMENT OF  
COMMUNITY MENTAL HEALTH CENTERS.

AS I SAID EARLIER, THIS BILL REPRESENTS SOMETHING OF A COMPROMISE BETWEEN THOSE WHO ARE SATISFIED WITH THE STATUS QUO AND THOSE WHO WOULD PROPOSE A MUCH MORE RADICAL CHANGE IN THE MEMBERSHIPS OF THE COMMUNITY MENTAL HEALTH CENTER BOARDS. THIS BILL DOES NOT IN ANY WAY INTERFERE WITH EACH COUNTY COMMISSION'S FREEDOM TO APPOINT WHOMEVER THEY CHOOSE TO THE BOARD. IT SIMPLY REQUIRES THAT 3 ADDITIONAL BOARD MEMBERS BEYOND THE COUNTY REPRESENTATIVES BE CHOSEN. I THINK IT IS A VERY CONSERVATIVE, REASONABLE APPROACH TO EMPOWERING THE

GROUPS OF PEOPLE WHO ARE MOST  
DIRECTLY INVOLVED AND AFFECTED BY  
THE COMMUNITY MENTAL HEALTH  
SYSTEM. THIS BILL, AS WRITTEN, WAS  
ENDORSED UNANIMOUSLY BY THE  
MONTANA MENTAL HEALTH PLANNING  
AND ADVISORY COUNCIL.

I URGE THE COMMITTEE TO SUPPORT SB  
326.



# Mental Health Association of Montana

*A Division of the National Mental Health Association*

State Headquarters • 555 Fuller Avenue • Helena, Montana 59601 • (406) 442-4276

**Working for  
Montana's  
Mental  
Health**

SENATE HEALTH & WELFARE

EXHIBIT NO. 30

DATE 2/15/91

SB NO. 326

1301 Rimrock Road  
Billings, MT 59102

February 13, 1991

TO: Members, Senate Public Health, Welfare and Safety Committee

FROM: Clifford E. Murphy *C. E. Murphy*

SUBJECT: SB 326, Senator Waterman, sponsor

This memo is to state briefly the three reasons why I hope you will act favorably on SB326. In testimony I shall elaborate on these reasons and offer illustrations.

1. When services are provided in whole or in part from public funding it is important that the consumers of those services have easy means to express their views on the satisfactoriness of those services. Easy access to the Boards of the mental health centers is not available for persons with severely disabling mental illness now.
2. Consumer participation in the planning for, and evaluation of, broad treatment programs can be expected to increase significant discussion of issues. Consumers will tend to raise questions that do not get discussed as policy matters currently, I am confident.
3. The seating of consumers on Center boards, particularly if those seated are chosen by fellow consumers, will aid the treatment process for all or the majority. It will say to persons with mental illness that they are respected and their opinions valued. Such assurance can be as healing as any treatment since so far medication does not heal but only reduces the worst symptoms of the ailments.

2/15/91SB 326

# Mental Health Association of Montana

A Division of the National Mental Health Association

State Headquarters • 555 Fuller Avenue • Helena, Montana 59601

(406) 442-4276 • Toll-Free 1-800-823-MHAM



TM

**Working for  
Montana's  
Mental  
Health**

**Board Members**

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Dorothy Leonard

*Billings*

LuAnn McLain

*Haure*

Kelly Moore

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Tom Peterson

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**Chapters in:**

*Billings*

*Daniels County*

*Great Falls*

*Helena*

*Pondera County*

*Sheridan County*

*Sweet Grass-Stillwater*

*Counties*

TESTIMONY BEFORE THE SENATE PUBLIC HEALTH COMMITTEE

by CLIFF MURPHY

on behalf of the

MENTAL HEALTH ASSOCIATION OF MONTANA

555 Fuller Ave, Helena, MT 59601 442-4276

Chairwoman Eck and Members of the Committee,

My name is Cliff Murphy from Billings. I represent the Mental Health Association of Montana. The Mental Health Association of Montana strongly supports Senate Bill 326. Currently, members of the boards of directors of the regional mental health centers are exclusively appointed as representatives of the counties participating in the regional center. Senate Bill 326 adds three consumers and/or providers of mental services to the boards

Senate Bill 326 adds, in addition to, AND NOT IN LIEU OF, three members at large to the boards of directors. If a board has ten participating counties, then its new composition would include thirteen, not ten members. This assures that each participating county will continue to have equal geographic representation on the board.

Senate Bill 326 adds consumers and providers of mental services to the boards of mental health centers in a manner that provides administrative flexibility to the boards; the bill allows each board to add members according to its own bylaws.

Adding consumers will give the boards a unique and ongoing perspective as to how best direct mental health services at the community level across Montana.

Opposition to this legislation will probably take a couple of forms:

First, there is concern that this bill will upset the geographic balance of "counties" on the community mental health center board. Senate Bill 326 wears geographic blinders; it seeks to add knowledge to the boards' decision making processes. It does not seek to enhance or diminish the geographic balance on any board. In fact, the bill does not require that the consumer or professional members come from any geographic place; the corporation can look to its own bylaws to for guidance and change if it wishes to keep a geographic or "county driven" balance in place.

Second, you may hear that this bill is in response to some fault with Montana's county commissioners operation of community mental health centers. Montana's county commissioners are, by and large, dedicated to providing the best mental health services possible at the local level. County commissioners are public decisions makers who traditionally seek input from people at the local level. We appreciate the fact that many county commissioners will welcome the additional knowledge and expertise that Senate Bill 326 will bring to the local mental health decision making process.

Consumers and professionals have much to offer the local ongoing decision making process. We note that the number of additional board members does not infringe upon the commissioners' representatives losing voting "control" of any community mental health center board.

The Mental Health Association of Montana asks that you include consumer and professionals on the board of local community mental health centers across Montana. We urge your support for Senate Bill 326. Thank you.

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Date: 2-15-91

Name: STUART KLEIN

Address: 512 LOGAN  
HELENA, MT 59601

Telephone Number: 442-0310

Representing Whom? Region 4 Mental Health Services

Appearing on which proposal? 326

Do you: Support?        Amend? ✓ Oppose?       

Comments:  
\_\_\_\_\_  
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SENATE HEALTH & WELFARE

EXHIBIT NO. 31

DATE 2/15/91

BILL NO. 326

(3) Upon the establishment of the mental health regions, the county commissioners in each of the ~~participating~~ counties in the region;--~~as defined in subsection (5)~~ designated as participating counties pursuant to subsection (8); shall ~~designate~~ appoint a person from their respective county to serve as a representative of the county on the regional mental health corporation board. The Board must include three members representative of three of the following groups:

- (a) persons with severe and disabling mental illnesses;
- (b) family members of persons with severe and disabling mental illnesses;
- (c) parents of children with emotional disturbances ;
- (d) advocates of mental health services for the elderly; and
- (e) health care professionals.

(4) If the board composition does not represent three of the above groups, then additional appropriate members must be added according to the corporate bylaws.

(3) Upon the establishment of the mental health regions, the county commissioners in each of the ~~participating~~ counties in the region, ~~--as-defined in subsection (5)--~~ designated as participating counties pursuant to subsection (8), shall ~~designate~~ appoint a person from their respective county to serve as a representative of the county on the regional mental health corporation board. The Board must include three members representative of three of the following groups:

- (a) persons with severe and disabling mental illnesses;
- (b) family members of persons with severe and disabling mental illnesses;
- (c) parents of children with emotional disturbances ;
- (d) advocates of mental health services for the elderly; and
- (e) health care professionals.

(4) If the board composition does not represent three of the above groups, then additional appropriate members must be added according to the corporate bylaws.

OFFICE OF THE GOVERNOR  
MENTAL DISABILITIES BOARD OF VISITORS

STAN STEPHENS, GOVERNOR

CAPITOL STATION

STATE OF MONTANA

(406) 444-3955  
OR TOLL FREE 1-(800)-332-2272

HELENA, MONTANA 59620

15 February 1991

Senator Dorothy Eck, Chair  
Senate Public Health and Safety Committee  
State Capitol, Room 410  
Helena, Montana 59620

SENATE HEALTH & WELFARE  
EXHIBIT NO. 32  
DATE 2/15/91  
BILL NO. 326

Senator Eck and Members of the Committee,

For the record my name is Kelly Moorse and I am the Executive Director of the Mental Disabilities Board of Visitors. On behalf of the Board of Visitors I wish to offer our support of Senate Bill 326.

As an advocacy agency, we feel this bill and the Patient Bill of Rights are two of the most important pieces of mental health legislation this session, in that they directly affect the people who live with a mental illness.

A similar bill was before this committee in 1987 and it was defeated. Since that time, the consumer voice in Montana has become stronger, the family movement has significantly grown and both have taken a very active role in mental health issues. As a member of the Mental Health Law Task force who re-examined the issue of expanding membership on regional Mental Health Center Boards, our initial proposal included the addition of all five members to the boards. Although I personally would prefer to see all five membership categories represented, it was reduced to three of the five in a spirit of compromise.

Who better qualified to comment on the quality and/or quantity of mental health services than the consumer or a family member who has direct knowledge of the need for services? Who better qualified to participate and make decisions that will affect regional mental health services? The contributions of consumers and family members are invaluable in improving our mental health delivery system. Their voice will help make a difference.

We urge your support of Senate Bill 326.

Respectfully submitted,

*Kelly Moorse*

Kelly Moorse  
Executive Director

Montana



DDPAC

# Planning For The Future Of Services In Montana

## Developmental Disabilities Planning & Advisory Council

Post Office Box 526 Helena, Montana 59624 Phone 406-444-1334

SENATE HEALTH & WELFARE

EXHIBIT NO. 33

DATE 2/15/91

5 BILL NO. 326

### TESTIMONY BEFORE THE SENATE COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY

Madame Chairman, Members of the Committee, for the record, my name is Greg Olsen. I am the Director of the State of Montana Developmental Disabilities Planning and Advisory Council.

I am here representing the 22 members of the Council in their support of Senate Bill 326.

In part, this bill would mandate that the Boards of the Regional Mental Health Centers add as many as three persons with mental health problems or family members of persons with mental health problems to their membership. The Council would, in general, support all measures designed to share the creation and direction of human services systems with the people who receive those services. As evidence of our support, the DDPAC has operated with such a membership requirement since its creation under state law in 1975 and find that it is imperative for our purposes that advocates for services have representation.

It is clear to the members of our Council that the only justifiable manner to define what a human service system should consist of is to allow the people who will be receiving those services to be an integral part of the service design and decision-making process.

FEBRUARY 15, 1991  
SENATE BILL 326  
GREG A. OLSEN



SOCIAL AND REHABILITATION SERVICES  
"WORKING TOGETHER TO EMPOWER MONTANANS"

February 15, 1991

SENATE HEALTH & WELFARE

EXHIBIT NO. 34

DATE 2/15/91

SBILL NO 326

Senate Public Health Committee  
Room 410, State Capitol  
Helena, Mt. 59620

Re: S.B. 326  
An Act to Expand Membership of  
Boards of Regional  
Mental Health Corps.

Dear Legislators:

I have been a consumer of mental health services. I am also a member of the federal Montana Advocacy Program, Advisory Council for Protection and Advocacy of Mentally Ill Individuals (PAMII).

Because I have had first hand experience as a consumer of mental health services, I bring an important perspective to the PAMII Advisory Council that could otherwise go unrepresented. My participation as a Council member has been a productive, growth producing experience for the Montana Advocacy Program, for the Advisory Council and for myself.

The biggest obstacle for a person who has suffered a mental illness is the stigma associated with mental illness. Did you know that statistics indicate that on every city block, in our Montana towns, lives one or two individuals who suffer from mental illness. These citizens have a right to representation on the local Boards, which determine how mentally ill individuals will best be served.

Please recommend "do pass" for S.B. 326 so that the perspective of consumers of mental health services will be a reality on the Boards of Regional Mental Health Corporations. Your support will, at the same time, be one very important step in helping to remove the stigma associated with mental illness in Montana.

Thank You,



Patricia R. Emineth  
1012 Prospect  
Helena, Mt. 59601

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Date: 2/15/91

Name: John Harwood

Address: Box 604

Simsbury, Ct 06482

Telephone Number: 937-2890

Representing Whom?

self

Appearing on which proposal?

SB 326

Do you: Support? ☒ Amend? ☐ Oppose? ☐

Comments:

Bill is important to improve services and get know  
ideas to save money. One other pool of people  
that would be good to have input from would be special  
education teachers. There are tremendous needs in our state,  
an expansion of the board would add valuable input.  
We can better serve people with severe mental illness with  
the expanded board.

~~Chairman~~ <sup>Mrs. Pope</sup> members of the committee. My name is Patrick Pope and I am a primary consumer of mental health services from Helena.

SENATE HEALTH & WELFARE

EXHIBIT NO. 35

DATE 2/15/91

I am testifying in support of Senate Bill Number 326. I believe ~~primary~~ and SB 326 secondary consumers would bring to the boards of directors of Community Mental Health Centers experience and perspective that is necessary for the improvement of mental health services in Montana. We live with the realities of mental illness every day, 24 hours a day, and know first hand the real urgency of the need for the development of services such as Case Management and Crisis Intervention.

I'd like to quote from an October of 1987 National Institute of Mental Health Report-titled: Toward a Model Plan for a Comprehensive, Community Based Mental Health System. In this report it gives several value statements. Two of these are:

First, and I quote: "Families are frequently the most important resource and support to individuals with severe, disabling mental illness."

and second: "The rights, wishes, and needs of primary and secondary consumers are paramount in planning and operating the mental health system."

I'd also like to quote from a June of 1990 report on Observations of Strengths and Weaknesses of the Montana Mental Health System, by Sinikka McCabe; Director of Technical Assistance, of Consultants for Community Change, Inc.

In this report, McCabe states as a weakness in Montana: Quote: "There seems to be extreme reluctance to involve family members or consumers in Community Mental Health Center activities, especially on the Boards of Directors."

This same report cites as a strength, a large but untapped resource in consumers and family members.

McCabe states, and I quote: "I had the privilege of meeting many intelligent, talented consumers and family members who will be able to make a great contribution to Montana's Mental Health System once their value is fully recognized by the formal system. I met persons with advanced college degrees, great artistic talent, remarkable computer skills, and surprising political savvy and understanding.

In a system with limited resources like Montana, the untapped resource in consumer and family members is the most important resource to access for new thinking, ideas and energy." End of quote.

If we continue to be barred from the policy making process, if words like stigma, prejudice, inequality, and discrimination exist in the very organizations that were set up to help us:

THEN HOW ARE WE EVER GOING TO BE ABLE TO JOIN AND BE ACCEPTED BY SOCIETY?

And that's all we are really asking for:

The chance to take charge of our lives.

The chance to take our rightful places as vital, productive members of our communities.

I urge you, please support this bill. Thank-you



WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Date: 2/15/91

Name: Kayleen M. Jones

Address: 2754 Palm Dr.

Billings, Mt. 59102

Telephone Number: 656 2761

Representing Whom?

Mt. Mental Health Advisory Council

Appearing on which proposal?

SB 326

Do you: Support? X Amend?        Oppose?       

Comments:

I speak as a parent of a mentally ill child in support  
of SB 326. The developments of the family based  
services concept is a significant change in the nature  
of the kind of services offered in the past. These new  
services will best meet the needs of our children. In order  
that the new direction of services be more effective, parents  
who are to be intimately involved in the planning also  
need to be involved in presenting their perspectives at  
the board level. My participation as a member of  
the advisory <sup>council</sup> ~~board~~ has allowed the council to  
hear a parent's perspective.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE  
SECRETARY. THANK YOU.

western montana regional community  
MENTAL HEALTH CENTER

River House  
337 Stephens Avenue  
Missoula, MT 59801  
February 13, 1991

SENATE HEALTH & WELFARE  
EXHIBIT NO. 36  
DATE 2/15/91  
BILL NO. 326

Senate Committee on Public Health, Welfare and Safety  
Capitol Station  
Helena, MT 59601

Re: Senate Bill 326

Dear Legislators:

I write in support of Senate Bill 326. As a Mental Health Professional in Western Montana responsible for the development of appropriate treatment programs for individuals suffering from mental illness, I have learned to rely increasingly on the input of consumers and family members. Moreover, as a member of the Department of Institutions Planning and Advisory Council and a member of the Department of Institutions Mental Health Law Task Force, I wholeheartedly endorse this legislation. Who has more at stake in this process than those most closely touched by this disabling illness? Who can more clearly articulate the deficiencies in the current system than those who have suffered under these deficiencies? What other Human Services Boards so blatantly minimize the input of those individuals who are to benefit from the services provided? This legislation not only insures a voice on the policy-making board to consumers and family members, it insures the continued development of a system of care for individuals with mental illness which is increasingly sensitive to their needs and the needs of their families. I urge your support.

Sincerely,



John Lynn, M.S.  
Regional Community Support Director

PUBLIC HEALTH COMMITTEE  
MONTANA LEGISLATURE

SENATE 37  
DATE 2/15/91  
BILL NO. 326

Re: SB 326

Dear Legislators:

I am a Gallatin County Commissioner and a member of the Region IV Mental Health Board of Directors. I support SB 326 which would require that consumers of mental health be represented on regional mental health boards of directors.

In the early 1980s, I was a member of the Board of Directors of the Montana Advocacy Programs. At that time Congress passed a law requiring state Protection and Advocacy Programs to expand their services to mentally ill persons. The legislation further required that an advisory board be created with a majority of its members being primary or secondary consumers. We were not happy with this requirement initially, but we soon learned its wisdom.

We learned that people who have been diagnosed as having schizophrenia, manic depression, chronic depression and post war stress syndrome could be smart, prudent, and effective board members. Their recommendations had directness and clarity that cut through much of the bureaucratic vagueness of program planning.

More recently I found myself on a Board of County Commissioners in a county with a twenty year history of refusal to fund a mental health program. For all those years the commission was regularly lobbied by professionals and citizens to initiate a program, to no avail. It took a group of consumers to finally make such a compelling case that a program was funded this year.

Please support SB 326. Who can better articulate the needs of the mentally ill than those who have suffered its effects? Professionals who work in bureaucracies naturally tend to support the status quo. Consumers of the services of those bureaucracies on the other hand, will advocate change when it is needed. To exclude consumers from mental health boards would be insulting, demeaning, and poor public policy.

Thank you for your time and consideration.

Sincerely,

JANE JELINSKI  
433 North Tracy  
Bozeman, MT 59715

(w) 585-1400  
(h) 587-8367

Mike Kauffman  
September 21, 1990  
Page 2

Clinicians have been encouraged, in staff meetings, to examine the consistency of their diagnosis with other diagnosis that have been given the patient.

5.2.6., 5.3.1., 5.3.4., 5.3.5. - As of this writing we have not received copies of the worksheets the file reviewers used. We continually try to provide quality records and quality treatment plans. I would ask the Department to please provide us with a set of examples of treatment plans for psychological treatment and not developmental disability treatment. We would be happy to distribute those to clinicians who have shown not to have good treatment plans on the worksheets.

5.9. - As was stated in the exit interview, the client letters with multiple names sent to nursing homes, which asked for updates on their medication, was merely an oversight by us and was not meant in any way to violate a patient's confidentiality. The administrators of the nursing homes certainly know which residents are members of our groups or are receiving services from us. However, this has been discontinued as of the date of the site visit. Those letters again will not be filed in the client's charts with multiple names. Number two of the recommendation is the client grievance procedure is overly cumbersome. We disagree with this statement but the mental health center is in the process of developing, in cooperation with the M.A.P. people, a common grievance procedure. This will be adopted by this center when it becomes final.

This ends my comments for the Department of Institutions portion of the site visit. We again thank the Department's staff for their fair and professional manner in which the site visit was conducted.

#### COMMENTS CONCERNING THE BOARD OF VISITORS FINDINGS

The Board of Visitors and its consultants were thorough in their performance of their duties. We appreciate their comments and will do all that we can reasonably do, within the money available, to comply with the recommendations.

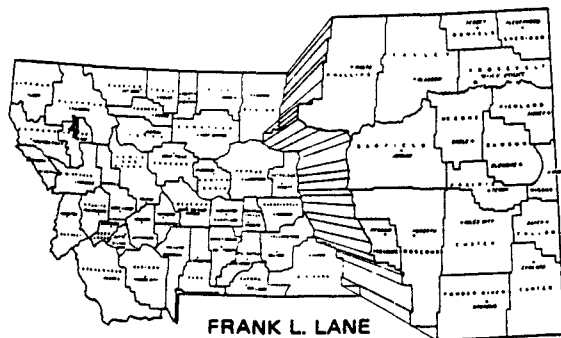
Specifically, under transitional living services, number two of the report states "on page two item number 16 of the house rules states Clark Street Inn will periodically sponsor groups outings. Everyone is encouraged to participate and attendance is mandatory on some outings. This statement needs to be revised". The language concerning mandatory attendance is there for two reasons. One, some of our residents would not become involved in the activities and would not be very physically active. It seems to be beneficial to them to tell them that it is required that

SEP 24 1990

# EASTERN MONTANA MENTAL HEALTH CENTER

REGIONAL ADMINISTRATIVE OFFICE  
BUSINESS AND STATISTICAL OFFICE

1819 Main Street  
Miles City, Montana 59301  
Ph. 232-0234



FRANK L. LANE  
EXECUTIVE DIRECTOR

September 21, 1990

Mike Kauffman, M.S.W.  
Quality Assurance Manager  
Mental Health Bureau  
Department of Institutions  
1439 Eleventh Avenue  
Helena, Montana 59620-1301

SENATE HEALTH & WELFARE

EXHIBIT NO. 38

DATE 9/15/91

§ BILL NO. 326

Dear Mike:

Please excuse the lateness of this response to the Site Visit Report but things have been terribly busy. I would like to take this opportunity to thank you and the Department of Institution's staff for a professional site visit. I believe that the site visit process, over the past two years, has been greatly improved.

I will address each recommendation by its number.

1.2.1 - We are in the process of revising the organizational chart to comply with the two recommendations listed in the report. There will be a solid line drawn from Dr. Peterson's Miles City position to the Glendive position to comply with the first recommendation. The second recommendation asked for a detail program level organizational chart which will be drawn. However, I cannot help but comment that the organizational chart of two years ago was a detailed organizational chart with all positions listed and we were asked to simplify it.

4.1.7. - We stated during the site visit and during the exit interview we strongly disagree with this recommendation. We do not feel it is necessary to evaluate part-time employees. They are evaluated continually, are not subject to all the termination due process procedures necessary for a full-time employee and, they can be terminated without cause at any time. However, we have discussed this with the Director of Clark Street Inn, and she will begin evaluating night managers at Clark Street Inn on a systematic basis.

4.4. - The policy is being revised to identify that the Executive Director, the appropriate Associate Director, and the Personnel Officer will make the privileging determination and the policy will be revised to reflect that, in determining a counseling psychology degree, the relative foot note of Attachment C will be the guiding provisions.

5.2.5. - We thank the reviewer finding that, at times, our diagnosis do differ from Montana State Hospital diagnosis.

Mike Kauffman  
September 21, 1990  
Page 3

everyone go on the activity. Two, it is also for budgetary purposes. If we have one staff on at Clark Street Inn and no resident is sick or unable to attend the activity it is a cost saving measure for us to make it mandatory for the people to attend. I would suggest that the Board of Visitors staff suggest revised wording to us and still keep the two considerations in mind.

The next paragraph in the draft suggests that we do not have language in our rules to address what happens if the rules are broken. In consultation with the Clark Street Inn Director, I respectfully submit that they do contain provisions for dismissal and provisions for remedy when the rules are broken.

Number three under the same section said that some residents of Clark Street Inn are not aware of the grievance procedure. The house rules are reviewed on a quarterly basis in the town meetings of Clark Street Inn. Included in the review of the rules is information concerning our grievance procedure. The reviewer did not look at the minutes of the town meetings which reflect the fact that the rules of Clark Street Inn are being reviewed on a regular basis.

6.2.7. - Client Staff Ratio. It was suggested that more staff could be utilized in our day treatment programs. We have no doubt that this is true but it must be realized that this mental health center is operating under \$140,000.00 less state dollars than it was in 1983. We are also understaffed in every other area of the center. When additional state money is available, or additional money period, then the center staffing will increased.

6.2.8. - In recommending that our staff visit other day treatment programs, which seems to be a constant theme every year, we would like to invite people from other small day treatment programs to visit ours. We think ours is second to none. If the staff chooses to use their staff development monies, as other staff choose to use their monies, to attend the International Day Treatment Conference it will certainly be approved. As to the recommendation that we hire a full time regional alternative services director, this Region does not divide its management structure by services. We divide our management structure into geographic areas with licensed clinicians being responsible for the supervision of those small areas. I do not, at this time, believe it possible or necessary to hire a regional after-care director and change our management model.

Under Summary Comments - No. 3 - Other Issues. In discussing the comment about individuals volunteering to go to the

Mike Kauffman  
September 21, 1990  
Page 4

nursing home and the concern about possible conflict of Medicaid billing, this is an attempt by the Glendive day treatment program to provide a work adjustment training program out of the day treatment program. Therefore, in our opinion, it is an appropriate billable activity as an extension of our day treatment program.

Under Other Issues - B. Comments concerning the development of the new building; if the program chooses to give a new name for their program, they certainly may. This is not a contract compliance issue and does not deserve to be in the report. The revisions and concerns about the architectural design of the buildings are noted. You can be assured the ventilation system for the woodworking unit will meet codes. It should be noted that the design of the building had to be final by the end of June. The bids were let out the end of July for the building. Under CDBG regulations, change orders are very limited and the preconstruction meeting was the middle of August. This report was not received until the latter part of August. We have in the original designs, windows from all the exterior rooms to the interior rooms for supervision purposes.

Under Other Comments - C. It was stated that the reviewers had difficulty obtaining information on exactly how many individuals in the Miles City and Glendive day treatment programs were Priority Group 2. It would have been very easy to look at the client file because the client priority sheet was in each file. We do not understand the origin of this comment.

Concerning the general comments about the deficiencies of vocational opportunities for our day treatment clients. The following statistics are appropriate to be considered. As of August 1990, the Miles City day treatment program has served 71 different clients in the past year. Twenty-four of those clients found work with day treatment assistance, six were served by the supported employment program, and two are in sheltered employment situations. Of the remaining people, six could work if the right position could be found and support systems were in place. Five refuse to work because they would lose government benefits, eight are over 62 years, six are too disabled by mental illness at this time, four are too physically disabled to work, five are refused employment in the community because of their behavior, six are too short term to assess and place, and seven refuse to work. I would stack these statistics up against any program in the state in terms of finding employment for clients. Vocational rehabilitation has designated four supported employment slots in Miles City for the mentally ill and they are filled at this time.

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 15<sup>th</sup> day of February, 1991.

Name: April L. Milroy

Address: Box 182

Angley MT 59312

Telephone Number: (406) 557-6173

Representing whom?

Eastern Montana Community Mental Health Center

Appearing on which proposal?

SB 326

Do you: Support?        Amend?        Oppose? X

Comments:

A typed statement will be  
forwarded next week.

Not  
received  
cm



WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 15 day of February, 1991.

Name: Donna Heggen

Address: 712 West Main  
Lewistown, MT 59457

Telephone Number: 538-~~54~~5119

Representing whom?

Region III Mental Health Center - Billings

Appearing on which proposal?

SB 326

Do you: Support?        Amend?        Oppose? X

Comments:

Bill is not necessary.  
Already covered under law.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

## DEPARTMENT OF FAMILY SERVICES SENATE HEALTH &amp; WELFARE

EXHIBIT NO. 39

DATE 1/15/91

(406) 444-5900

BILL NO. 348



STAN STEPHENS, GOVERNOR

## STATE OF MONTANA

P.O. BOX 8005  
HELENA, MONTANA 59604

## TESTIMONY IN SUPPORT OF SB 348

AN ACT TO PERMIT EMERGENCY PROTECTIVE SERVICES INTERVENTION AND PHOTOGRAPHS AND OTHER DOCUMENTATION OF INJURIES IN CASES OF SUSPECTED ABUSE OR NEGLECT OF OLDER PERSONS AND DEVELOPMENTALLY DISABLED ADULTS; AMENDING SECTIONS 53-5-504, MCA, 53-5-521, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Submitted by John Melcher, Jr.  
Staff Attorney for the Department of Family Services

This bill adds two important protections against elderly and disabled adult abuse and neglect. First, where an older person or disabled adult is suffering from abuse or neglect so severe that there exists a substantial risk of death or immediate serious physical injury, social workers may immediately remove the individual to a safe environment and/or to a hospital for treatment. Unless it appears that the at-risk individual lacks the capacity to consent, the social worker must obtain the individual's consent prior to removal. Within 48 hours (excluding weekends and holidays) following removal the social worker must either petition the appropriate district court to act as temporary guardian (or appoint a temporary guardian) or provide appropriate voluntary services.

The intent of the 48 hour provision is to extend the authority of the social worker for removal and placement of a seriously endangered individual for a very limited period. After that point, the services are either sanctioned by court order or provided on a voluntary basis only.

DFS expects that if enacted, the emergency intervention procedures will be seldom used. However, in the event of the discovery of severe neglect or abuse, the availability of immediate removal could save lives.

**Section 2** of the bill authorizes needed methods for preservation of evidence in elderly and developmentally disabled adult abuse/neglect cases. Professionals discovering trauma they suspect to be the result of abuse or neglect will have legal authorization by statute to preserve this evidence through photographs. Similarly, physicians may require x-rays or other procedures and tests for the purpose of preserving evidence of abuse or neglect. As in **Section 1** of this bill, the allegedly abused or neglected individual must consent or appear to lack the capacity to consent before the professional photographs, x-rays, or subjects the individual to other tests or procedures. Those required to report must also include either a photograph or a written description of visible trauma they have found on the individual. "Incapacitated" is defined in the probate code.

# DEPARTMENT OF FAMILY SERVICES

SENATE HEALTH & WELFARE

EXHIBIT NO. 29

DATE 2/15/91

BILL NO. 348

(406) 444-5900

STAN STEPHENS, GOVERNOR

## STATE OF MONTANA

P.O. BOX 8005  
HELENA, MONTANA 59604



TO: Sen. Dorothy Eck  
From: John Melcher, Jr., Dept. Attorney

### SUMMARY OF SB 348

AN ACT TO PERMIT EMERGENCY PROTECTIVE SERVICES INTERVENTION AND PHOTOGRAPHS AND OTHER DOCUMENTATION OF INJURIES IN CASES OF SUSPECTED ABUSE OR NEGLECT OF OLDER PERSONS AND DEVELOPMENTALLY DISABLED ADULTS; AMENDING SECTIONS 53-5-504, MCA, 53-5-521, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

The purpose of this bill is to include in existing adult protective services statutes two new protections against elderly and disabled adult abuse and neglect. First, Section 1 provides authority for social workers to immediately remove aged persons and developmentally disabled adults from environments that pose a substantial risk of death or immediate serious physical injury. Authority for removal is also conditioned on obtaining the consent of the endangered person, unless, based upon the social worker's observations, the endangered person lacks the capacity to consent.

Following removal the social worker must arrange for an appropriate placement of the endangered individual, and within 48 hours (excluding weekends and holidays), either petition the district court for a temporary guardianship pending hearing, or provide appropriate voluntary services. An order of temporary guardianship would provide a court sanctioned extension of authority for maintaining the endangered and incapacitated person in a safe environment. If the endangered person has the capacity to see to his or her own safety following the removal, then the social worker may volunteer other types of protective services, i.e., helping the individual to locate to a safe environment of his or her own choice.

Social workers in the field had the opportunity to review this legislation, and the majority agreed that in the rare situation where death or serious injury appears imminent, the authority to remove immediately could save lives. Passage of the bill would allow Montana to join the majority of jurisdictions who have in place legislation specifically addressing emergency adult abuse/neglect intervention. Montana would also join a growing minority of states which provide for emergency intervention prior to any court order where the abuse/neglect is life threatening.

Some of the provisions of Section 1 are from a recently enacted Florida statute providing for emergency intervention. (See copy attached.) Specifically, the provisions on consent are a modified version of their Florida counterparts. In addition, the language "substantial risk of death or immediate and serious physical harm" is verbatim from the Florida statute. However, the Florida provision provides for extensive hearing procedures immediately following removal. In SB 348, these procedures are replaced by reliance on the temporary guardianship provisions of the probate code. Social workers are already skilled at using the temporary guardianship procedures of the probate code. The Florida provisions on consent for medical treatment are also omitted because Montana law already provides for emergency consent procedures for medical providers. (See attached letter from Sharon Anderson, Montana Deaconess Staff Attorney.)

Section 2 of the bill provides authority for improved methods for preservation of evidence in elderly and disabled adult abuse/neglect cases. Specifically, professionals already required to report suspected incidents of abuse/neglect may also photograph areas of trauma if the abused individual consents, or it appears such individual lacks the capacity to consent. Those required to report must also include either a photograph or a written description of visible trauma they have found on the individual. Finally, a physician suspecting abuse or a history of abuse may require x-rays to document the abuse if the abused person consents or lacks the capacity to consent. This section of the bill also requires that evidence preserved under these provisions must be sent to DFS and to the county attorney.

The provisions of Section 2 are similar to those found in Section 41-3-204, MCA, which provides for preservation of evidence in suspected incidents of child abuse/neglect. However, as is the case in Section 1, the provisions providing for either consent or incapacity prior to taking action are modeled after the Florida statute with some modification.

You may encounter questions on how incapacity is defined. Incapacity for purposes of both Section 1 and Section 2 is defined under the probate code. In particular, an individual is incapacitate where he or she lacks "sufficient understanding or capacity to make or communicate decisions concerning his person or which cause has so impaired the person's judgment that he is incapable of realizing and making a rational decision with respect to his need for treatment". Section 72-5-101, MCA.

Please call me if you have any further questions or concerns whatsoever--444-5904.

(5) *Emergency protective services intervention.*—If the department has reason to believe that an aged person or disabled adult is suffering from abuse or neglect which presents a substantial risk of death or immediate and serious physical harm to such aged person or disabled adult, and that the aged person or disabled adult lacks the capacity to consent to emergency protective services, the department may take action pursuant to this subsection. If the aged person or disabled adult has the capacity to consent and refuses consent to emergency protective services, emergency protective services shall not be provided. For purposes of this subsection "immediate" means within 24 hours. For purposes of this subsection specified medical personnel means those medical personnel included in the adult protection teams in s. 415.1102.

(a) *Emergency entry of premises.*—If, upon arrival at the scene of the incident, consent is not obtained for access to the alleged victim for purposes of conducting a protective services investigation pursuant to this subsection and the department has reason to believe that the situation presents a potential risk of death or immediate and serious physical harm, a representative of the department, accompanied by the appropriate law enforcement officer, may forcibly enter the premises. If, after obtaining access to the alleged victim, it is determined through a personal assessment of the situation that no emergency exists and there is no requirement for emergency intervention pursuant to this subsection, the department shall either terminate the provision of services or shall provide protective services pursuant to the provisions of s. 415.104 or this section.

(b) *Emergency removal from premises.*—When, from the personal observations of a representative of the department including specified medical personnel, it appears that the aged person or disabled adult lacks the capacity to consent to emergency protective services and it appears from the personal<sup>1</sup> observations of the representative of the department, including specified medical personnel<sup>2</sup> and the law enforcement officer, that the aged person or disabled adult is likely to incur a substantial risk of death or immediate and serious physical harm if such person is not immediately removed from the premises, the representative of the department shall transport or arrange for the transportation of the aged person or disabled adult to an appropriate medical or protective services facility. The department shall, within 24 hours of taking such action, petition the court for an emergency order authorizing protective services.

## § 415.105

## SOCIAL WELFARE

(c) *Authorization for medical treatment.*—If, immediately upon admission to a medical facility, a person who is legally authorized to give consent for the provision of medical treatment to an aged person or disabled adult has not given or has refused to give such consent and it is the professional opinion of the medical staff of the facility that treatment is necessary to prevent serious physical harm or death, the medical facility may proceed with treatment to the aged person or disabled adult. The person who is authorized to give consent may petition an appropriate court to prevent or withdraw treatment.

(d) *Contents of petition.*—The petition filed pursuant to the provisions of paragraph (b) shall allege the name, age, and address of the aged person or disabled adult and the facts constituting the emergency intervention and subsequent removal, information relating to the capacity of the aged person or disabled adult to consent to services, and the efforts of the department to obtain consent, and the services needed.

(e) *Preliminary hearing.*—

1. When action is taken under this subsection, a preliminary hearing shall be held within 48 hours of the signing of the emergency protective services order, excluding Saturday, Sunday, and legal holidays, to establish probable cause for grounds to continue emergency protective services. If the court finds that probable cause to continue emergency protective services does not exist, the provision of emergency protective services pursuant to this subsection shall be discontinued.

2. In the event that probable cause for continued emergency protective services is determined to exist, the court may order temporary emergency protective services for up to 4 days. In issuing an emergency protective services order, the court shall adhere to the following limitations:

a. Only such protective services as are necessary to remove the conditions creating the emergency shall be ordered, and the court shall specifically designate the approved services in the order of the court.

b. Protective services authorized by an emergency protective services order shall not include a change of residence, unless the court specifically finds such action is necessary to remove the conditions creating the emergency and gives specific approval for such action in the order of the court. Emergency placement may be made to such facilities as adult foster homes, adult congregate living facilities, nursing homes, or other appropriate facilities. Emergency placement shall not be made to facilities for the acutely mentally ill, except as provided in chapter 394.

Florida  
(law)

— Exhibit # 39  
2-15-91 SB 348

(f) *Notice.*—Notice of the filing of a petition pursuant to paragraph (g) and other relevant information, including the factual basis of the belief that emergency protective services are needed and a description of the exact services rendered, shall be given to the aged person or disabled adult, to his spouse, to his guardian, if any, to legal counsel representing the aged person or disabled adult, and, where known, to his adult children or next of kin. Such notice shall be given at least 24 hours prior to the hearing of the petition for emergency protective services pursuant to paragraph (g).

Exhibit # 39  
2-15-91 SB 348

(g) *Hearing.*—A hearing shall be held at the end of 4 days to determine whether:

1. Protective services shall be provided with the consent of the aged person or disabled adult pursuant to subsection (1);
2. Protective services shall be discontinued; or
3. A petition shall be filed to provide protective services pursuant to the provisions of subsection (3).

(h) If at a hearing held under the provisions of this paragraph<sup>3</sup> it is decided to file a petition pursuant to the provisions of subsection (3), the court may order continued protective services until a determination is made by the court regarding the aged person's or disabled adult's capacity to consent.

(6) *Limitations.*—This section shall not be construed as limiting in any way the authority of the court, or a criminal justice officer or any other duly appointed official, to intervene in emergency circumstances under existing statutes.

Amended by Laws 1986, c. 86-220, § 31, eff. Oct. 1, 1986; Laws 1989, c. 89-294, § 29.

164

## SOCIAL WELFARE

§ 415.106

<sup>1</sup> The word "personal" was substituted by the division of statutory revision for the word "personnel."

<sup>2</sup> The word "personnel" was substituted by the division of statutory revision for the word "personal."

<sup>3</sup> The reference to hearings held under the provisions of paragraph (h) may mean those hearings required to be held by § 415.105(5)(g).

### Historical Note

Laws 1989, c. 89-294, provided therein that the law, except for §§ 5 to 7, take effect July 1, 1989; however, approval by the governor occurred subsequent thereto. The Florida Supreme Court in an advisory opinion to the governor of July 19, 1979 (374 So.2d 959) stated in part "... the effective date provided in the bill is inoperative unless the bill becomes law on or before that date" and concludes that under such circumstances the provision of Const. Art. 3, § 9, that the law take effect on the sixtieth day after adjournment sine die of the session of the legislature in which enacted, is applicable.

### Law Review Commentaries

Representing older persons: Ethical challenges. Marshall B. Kapp, 68 Fla.B.J. 25 (June 1989).

### Notes of Decisions

Counsel 1

#### 1. Counsel

The Department of Health and Rehabilitative Services is not responsible for payment of the costs of court-appointed legal representation provided at a hearing to determine the need for protective services for an aged person or disabled adult pursuant to subsec. (3)(a) of this section. Op. Atty. Gen., No. 87-43, May 12, 1987.



**Montana  
Deaconess**

Medical Center

1101 Twenty Sixth Street South  
Great Falls, Montana 59405-5193  
406 761-1200

Exhibit # 39  
2-15-91 SB 348  
**RECEIVED**

JAN 11 1991

**DFS**

January 10, 1991

John C. Melcher, Esq.  
Department of Family Services  
P.O. Box 8005  
Helena, MT 59604

Dear John:

At your request, I am summarizing the contents of our earlier telephone conversation regarding medical treatment in an emergency.

Generally, medical treatment may be provided in an emergency without the patient's consent. More accurately stated, the law has created a fiction that implies consent when a patient is incapable of giving it and immediate treatment is necessary to prevent serious harm. This legal fiction reflects a public policy judgment that a reasonable person would rather be treated than suffer permanent injury or death.

A medical emergency exists when a patient is suffering from a life- or health-threatening disease or injury that requires immediate treatment. While the law can establish criteria for emergency treatment, when an emergency exists is a ultimately medical judgment. Medical personnel must determine both that a patient is incapacitated and that a need for immediate treatment is present, before treatment will be provided without a patient's consent.

We also discussed my opinion as to whether specific statutory authorization for department representatives to consent to emergency medical treatment for adults receiving emergency protective services intervention pursuant to statute was necessary or desirable. As set forth above, the patient's consent is not required when medical personnel determine the conditions for the emergency medical treatment are met. Authorizing department representatives to consent under those circumstances seem redundant and unnecessary.

I hope that this letter provides you with some helpful information. While this letter is based on my experience as an attorney for MDMC and



John C. Melcher  
January 10, 1991  
page 2

Exhibit # 39  
2-15-91 SB 348

reflects Medical Center policy, it is my opinion and should not be construed as an official statement of MDMC.

Sincerely,

Sharon M. Anderson  
Assistant General Counsel

SMA/lrp



Amendments to Senate Bill No. 307  
First Reading Copy

SENATE HEALTH & WELFARE

EXHIBIT NO. 40

DATE 2/15/91

§ BILL NO. 307

Requested by Senator Eve Franklin  
For the Senate Public Health, Welfare, and Safety Committee

Prepared by Tom Gomez  
February 13, 1991

1. Title, lines 5 through 7.

Following: "ENTITLED: "AN ACT" on line 5

Strike: remainder of line 5 through "BOARD" on line 7

Insert: "TO ADD A FIFTH DENTIST TO"

2. Title, line 8.

Following: "BOARD"

Insert: "OF DENTISTRY"

3. Page 1, lines 19 through 21.

Following: "senate." on line 19

Strike: remainder of line 19 through "member." on line 21

Amendments to Senate Bill No. 205  
First Reading Copy

SENATE HEALTH & WELFARE

EXHIBIT NO. 41

DATE 2/15/91

BILL NO. 205

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

Prepared by Tom Gomez  
February 15, 1991

1. Page 2, line 11.

Following: line 10

Insert: "(d) the board of crime control provided for in  
2-15-2006;"

Renumber: subsequent subsections

2. Page 2, line 25.

Strike: "eliminate"

Insert: "recognize"

3. Page 3, lines 3 through 5.

Strike: subsection (d) in its entirety

Renumber: subsequent subsections

4. Page 3, line 13.

Strike: "and"

5. Page 3, line 14.

Following: line 13

Insert: "(ii) representatives of local school districts, youth  
probation offices, and other public agencies serving youth;  
and"

Renumber: subsequent subsection

ROLL CALL VOTE

SENATE COMMITTEE PUBLIC HEALTH, WELFARE & SAFETY

Date February 15, 1991 Senate Bill No. 307 Time 5:57 p.m.

NAME	YES	NO
SENATOR BURNETT	X	
SENATOR FRANKLIN	X	
SENATOR HAGER	X	
SENATOR JACOBSON	X	
SENATOR PIPINICH	X	
SENATOR RYE	X	
SENATOR TOWE	X	
SENATOR ECK	X	

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Chairman

Motion: Senator Franklin moved adoption of the amendments  
denoted in Exhibit #40. There being no objection the motion  
carried.

ROLL CALL VOTE

SENATE COMMITTEE PUBLIC HEALTH, WELFARE & SAFETY

Date February 15, 1991 Senate Bill No. 307 Time 5:59 p.m.

NAME	YES	NO
SENATOR BURNETT	X	
SENATOR FRANKLIN	X	
SENATOR HAGER		X
SENATOR JACOBSON	X	
SENATOR PIPINICH	X	
SENATOR RYE	X	
SENATOR TOWE	X	
SENATOR ECK	X	

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Chairman

Motion: Senator Pipinich moved to pass SB 307 as amended.

There being 1 nay and 7 ayes the motion carried.

ROLL CALL VOTE

SENATE COMMITTEE PUBLIC HEALTH, WELFARE & SAFETY

Date February 15, 1991 Senate Bill No. 205 Time 6:06 p.m.

NAME	YES	NO
SENATOR BURNETT	X	
SENATOR FRANKLIN	X	
SENATOR HAGER	X	
SENATOR JACOBSON	X	
SENATOR PIPINICH	X	
SENATOR RYE	X	
SENATOR TOWE	X	
SENATOR ECK	X	

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Chairman

Motion: Senator Jacobson moved adoption of the amendments  
denoted in Exhibit #41. There being no objection the motion  
carried.

ROLL CALL VOTE

SENATE COMMITTEE PUBLIC HEALTH, WELFARE & SAFETY

Date February 15, 1991 Senate Bill No. 205 Time 6:09 p.m.

NAME	YES	NO
SENATOR BURNETT	X	
SENATOR FRANKLIN	X	
SENATOR HAGER	X	
SENATOR JACOBSON	X	
SENATOR PIPINICH	X	
SENATOR RYE	X	
SENATOR TOWE	X	
SENATOR ECK	X	

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Chairman

Motion: Senator Towe moved adoption of the following language:  
on page 2, line 20 strike the word 'must' and insert the word  
'may'. There being no objection the motion carried.

ROLL CALL VOTE

SENATE COMMITTEE PUBLIC HEALTH, WELFARE & SAFETY

Date February 15, 1991 Senate Bill No. 306 Time 6:10 p.m.

NAME	YES	NO
SENATOR BURNETT	X	
SENATOR FRANKLIN	X	
SENATOR HAGER	X	
SENATOR JACOBSON	X	
SENATOR PIPINICH	X	
SENATOR RYE	X	
SENATOR TOWE	X	
SENATOR ECK	X	

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Chairman

Motion: Senator Jacobson moved to pass SB 306 without  
amendments. There being no objection the motion carried.

ROLL CALL VOTE

SENATE COMMITTEE PUBLIC HEALTH, WELFARE & SAFETY

Date February 15, 1991 Senate Bill No. 310 Time 6:12 p.m.

NAME	YES	NO
SENATOR BURNETT	X	
SENATOR FRANKLIN	X	
SENATOR HAGER	X	
SENATOR JACOBSON	X	
SENATOR PIPINICH	X	
SENATOR RYE	X	
SENATOR TOWE	X	
SENATOR ECK	X	

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Chairman

Motion: Senator Pipinich moved to pass SB 310 without  
amendments. There being no objections the motion carried.



ROLL CALL VOTE

SENATE COMMITTEE PUBLIC HEALTH, WELFARE & SAFETY

Date February 15, 1991 S Bill No. 285 Time 6:15 p.m.

NAME	YES	NO
SENATOR BURNETT	X	
SENATOR FRANKLIN	X	
SENATOR HAGER	X	
SENATOR JACOBSON	X	
SENATOR PIPINICH	X	
SENATOR RYE	X	
SENATOR TOWE	X	
SENATOR ECK	X	

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Chairman

Motion: Senator Hager moved to table the bill. There being  
no objection the motion carried.

B 200, Vancouver  
 B 306, Keating  
 B 310, Yellowknife  
 B 348, Eek  
 COMMITTEE ON

DATE 2/15/91

Public Health, Welfare & Safety.

VISITORS' REGISTER

(1)

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Eraine Tolahl	self	200	✓?	
Melvin V. Pough	Self	200	✓?	
William F. Fowler	Self	200		✓
BYRON RANDALL	SELF	200		✓
David E. Evans	Mt. <sup>Self/and</sup> Hearing Aid Society	200		✓
Ben Haddock	Hearnd MT	200	✓	
Reg McGateheart	Hamilton	200		✓
Walt Appelman	Cort. Falls	200		✓
Xatrup Killen	Hearing Aid Institute	200		✓
Don Gotsman	Deaf Family Services	438	✓	
Frank J. Allen	AARP	200	✓	
Steve Klein	Region 4 Mental Health	326	✓	
CLALock, Jule L.	Self.	200	✓	✓
Don Anders	Deaf. Institutes	326	✓	
Kayleen M. Jones	Mt. Mental Health Adv. Council	326	✓	
Bernard S. Shucrin	Mt. Speech Hearing Ass	200	✓	
Chiff Humphy	MHAM & self	326	✓	
DEE (JEN)	DDPDC	326	✓	
David M. Munk	Self	200	✓	
Pat Ingalls	self	200		
Jamie A. Small	self	200	✓	
Lois Long	self	200	✓	
Connie O'Connor	Leo P. Chas. Memorial Clinic	310	✓	
LLOYD BARRON	NORTH A.A.C.C.A. 140.00 141.140	310	✓	
Levy Moore	Board of Visitors	326	✓	
John Howard	self	326	✓	

B 200, Vaughn  
 B 306, Keating  
 B 310, Yellowtail  
 326, Waterman  
 348, Eck.

DATE 2-15-91

COMMITTEE ON

Sen. Public Health Welfare & Safety

(2)

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Elmer A Hinkle	mt speech & hearing Assoc.	200	✓	
Christian Grover	" "	300	✓	
Mark Eickler RPH FASCD.	MSPA	310		X
K. L. K. Johnson	LHC Health Dept	310	✓	
Bob FERRAI	H.D. #9	310	✓	
Maryann Bear Nordmark	IHB	310	✓	
Francis Belgauche	Halong Indian Alliance	310	X	
Clinton R. Usher	MMHCA	306	✓	
Senata Vaughn		200	✓	
Jan T. Zander	mt. Medical Assoc	310	✓	
MARK LANGDORF	SELF	200	✓	
Mary McCue	mt. Mental Health Counselors	306	✓	
FB Richard		200		X
Mona Hansen	MASHA	200	✓	
John L. L.		200		X
Paul L.	MSPA	310		X
Ulla Stoll-Anderson	Self	370	✓	
GAYLE SANDHOLM	SPRINGS UNITED METHODIST	310	✓	
Marta Bromberg	HIA	310	✓	
Doug Kuntzweiler, M.D.	Myself	310	✓	
Donna M. Hanson	Indian Law Resources	310	✓	
Gary Foster	JTPA	310	✓	



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COMMITTEE ON Senate Public Health Welfare + Safety

# VISITORS' REGISTER

[illegible]