MINUTES

MONTANA SENATE
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON PUBLIC HEALTH, WELFARE & SAFETY

Call to Order: By Senator Dorothy Eck, on April 8, 1991, at 3:30 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)
Christine Mangiantini (Committee Secretary)

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

Announcements/Discussion:

HEARING ON HOUSE BILL 977

Presentation and Opening Statement by Sponsor:

Representative Dorothy Bradley, District 79, advised that HB 977 is a committee bill from the sub-committee on Human Services. She informed that two years ago Rep. Hannah opened the door to residential psychiatric care for youth as an alternative to in-patient psychiatric care, doing it in a very limited fashion. The bill essentially applied only to Yellowstone Treatment Center. In examining the situation of continuing services for emotionally disturbed youth, it was the feeling of the committee that the Department of Family Services (DFS) is moving forward in providing a variety of youth services. A portion is residential care which is addressed by this bill. However, the language that was established last session will sunset in July. Approximately $12 million in federal monies has been appropriated to the Department of Social and Rehabilitation Services (SRS) for this type of treatment, and the committee felt it was important to establish legal parameters.

She continued by saying DFS receives the General Fund monies and administers the program. The cost of the residential care is about half the cost of in-patient care. They are trying to avoid having an explosive population situation as was experienced with Rivendell. She stated the bill contains a number of definitions that are the substance of the bill. There is a benefit from an entitlement such as this because of the large portion of federal dollars that is received; the disadvantage is that a certain amount of control is lost because any eligible individuals or facilities can come into the picture. They are trying to control this by: (1) requiring Certificate of Need (CON); (2) requiring utilization review through SRS; (3) requiring Medicaid certification, (4) and an incentive program which allows DFS to access federal monies under certain conditions. This system should result in a continuum of care using General Fund monies. She stated a number of amendments will be presented, and spoke in support of two "clean-up" amendments that are proposed by the Department of Health (DHS). She expressed concern about whether there should be some kind of a window of opportunity for institutions before the CON procedure would be implemented. There is some disagreement as to the implications. A question arises regarding Shodair Hospital and their concern about the CON procedure. They are requesting the window of opportunity. She stated she was informed that both the DHS and SRS supported this; however, she learned just before the hearing that DFS and SRS do not support the window of opportunity.

Proponents' Testimony:

JACK CASEY, Administrator of Shodair Children's Hospital, Helena, spoke in favor of HB 977. He passed out copies of proposed amendments (Exhibit #1). He said currently there are two children at Shodair who are in need of residential treatment but they are unable to place them. According to Mr. Casey, this has been an ongoing problem. With the window of opportunity, all providers in the state would have a chance to provide residential service. It has been clearly demonstrated by the study done that the need is there. It is almost an exercise in futility to go through the CON process at this point because there are 42 children placed in out-of-state placements. He believes if they were given the opportunity to open, it would eliminate the cost and delay of going through a CON process. He urged consideration of the amendment and the bill.

MIKE CRAIG, Health Planning Program, Department of Health and Environmental Sciences, stated he appears as neither a proponent or opponent of HB 977. As a primary regulatory function involved with the development of residential treatment facilities, they feel it advisable to offer two minor modifications in the bill. He supplied copies of the proposed DHS amendments to the committee members. The first recommendation (Exhibit #2) is to modify the definition of health care facilities which are reviewable under Montana Certificate of Need laws by simply including the terminology "residential

treatment facility" within that definition. This modification clarifies that residential treatment facilities are among the health care facilities which are CON reviewable. The second recommendation (Exhibit #3) proposes that along with the repeal of 50-5-317, also 50-5-316 be repealed. They are aware the Public Health Committee may be asked to modify 50-5-316 for purposes of application to Certificate of Need to these facilities; therefore, the second amendment is being offered as an optional course of action in the event the Committee does not otherwise modify 50-5-316. He provided written testimony (Exhibit #4).

ROBERT OLSON, President of the Montana Hospital Association, advised that this association supports HB 977 because hospitals have been proposing to provide this level of treatment for several years and have been frustrated in their efforts to participate in that part of the program. If hospitals can be allowed to provide residential level of care, then they can (1) more expeditiously discharge children from the hospital setting, and (2) reduce cost of children "trapped" in the hospital when appropriate alternatives are not available.

RUSS CATER, Chief Legal Counsel, Social and Rehabilitation Services, stated the Department rises in support of HB 977, but he wished to address the window of opportunity. They are opposed to adding the window of opportunity because the Certificate of Need process is set up to evaluate what the needs are for the state of Montana in the health planning area. They think it is very important that these facilities go through that process. A determination must be made on the number and location of new beds in Montana. He urged adoption of the bill with the DHS amendments.

Opponents' Testimony:

None.

Questions From Committee Members:

Senator Towe asked why 50-5-317 was being repealed. Representative Bradley replied that it was believed 50-5-317 contained meaningless language. Senator Towe asked the purpose of the Department of Health's first amendment, to which Mike Craig stated it was offered for clarification.

Senator Towe asked about SRS's position regarding Certificate of Need. Russ Cater stated that for a new facility, there is a necessity to have the Certificate of Need. Whether or not Yellowstone Treatment Center needs to go through it would be open for consideration. If that Center is allowed in, then other facilities would feel that Center was getting preferential treatment. In response to Senator Towe's comment that Yellowstone Treatment Center is already there, Mr. Cater stated that is why they are not really opposed to Yellowstone Treatment

Center. Senator Hager asked if Yellowstone Treatment Center went through the CON, to which Mr. Cater replied they were issued a provisional license to operate and according to the bill, they did not go through CON.

Mike Craig advised they are not sure if Yellowstone Treatment Center would have to go through CON or not. He believed there would have to be a legal opinion. He added that as regulators in the development of residential care facilities, they are able to provide good advice, but it would be somewhat suspect if they appeared stating that this type of facility should or should not be reviewed.

Chairman Eck asked what the impact would be if the Legislature did not address this issue of whether or not Yellowstone Treatment Facility would have to go through CON, and did not adopt the window of opportunity. Mr. Craig responded by stating that they would treat all the facilities equally. He added that Yellowstone Treatment Center would be excluded unless they were mandated through administrative procedures.

Senator Towe asked Jack Casey if Shodair Hospital would fall within the definition of this bill. Mr. Casey stated they have a facility next door to the hospital that they planned to open in 1987, but each time they were blocked. However, they could be operating by August 1, and would be grandfathered. He added that he contacted three hospitals contemplating this type of care and was assured they are not getting into the business.

Chairman Eck said it was indicated that a number of hospitals could benefit from this and had patients that sometimes did not pay. She asked how would they benefit, to which Mr. Olson replied that hospitals would benefit from passage of HB 977, Shodair Hospital included, by starting to provide residential services and could utilize those services when hospitalization ended and residential care is needed. They could step those patients down into the hospital; they would likely see fewer patients admitted to the hospital because of the residential level being available. The other hospitals who could also take advantage of this include Rivendell in Billings and Butte, and other psychiatric hospitals.

Chairman Eck asked if there would be other hospitals which would eventually apply under a Certificate of Need or under a window of opportunity. Mr. Cater replied that when the fiscal note was adopted on HB 681, which he believed was tabled in place of HB 977, they were looking at an October 1 date for a Certificate of Need process. Their research indicated that Rivendell of Billings would be interested and ready by October 1. Whether or not they would be able to operate by August 1 he could not say; however, Rivendell of Billings would be a likely candidate in addition to Shodair Hospital.

Chairman Eck reviewed the fiscal note, and pointed out there is a lot of money involved here. She asked if the residential treatment centers are equivalent to therapeutic group homes. Marie Brazier, DFS, replied negatively, adding that it would consist of more intensive 24-hour residential treatment.

Senator Hager commented that the problem two years ago was that there was a worry about the amount of money and was written to allow a pilot program at Yellowstone Treatment Center. Rep. Bradley responded by stating that all it did was get them in court, which was exactly what those who opposed the bill said it would do. Senator Hager asked how this would fit in the Governor's budget. Rep. Bradley stated she believed it was in the Governor's budget, assuming the bill was to pass. It would involve approximately $3.5 million General Fund dollars, and about $12 million in federal dollars, the regular Medicaid match. When an entitlement is created, it is difficult to control it by very restrictive language in the statutes. Senator Towe asked if she was suggesting someone sued the state contending they cannot be denied a license. Rep. Bradley stated this matter is in District Court now, and she assumed the plaintiff is Shodair Hospital.

Chairman Eck said they would like to know more about the nature of that lawsuit. John Sullivan, lawyer for Shodair, advised that the problem with HB 304, the bill last Legislative session, was that it was an open door. Shodair Hospital did not oppose that. They had been talking to state authorities for several months about an adjacent residential care facility. The facility was needed and would streamline care. Unfortunately, as HB 304 went through the Legislature, it was getting amended and the restrictions on the bill were intended to do one thing: keep Shodair out of the business, according to Mr. Sullivan. He said there was a requirement that the facility had to be operating 30 beds or more. It was his contention that there is no rational basis for that requirement. It put Shodair out of the business because it was a 22 bed facility. There was a stipulation that they could not apply for a Certificate of Need until October 1, 1991, so there was a two-year time period. There was also a requirement that they be accredited by JCHO, which at they time they were not. They are now about one week away from submitting their application to JCHO. When HB 304 was introduced, it included language on a specific time frame for opening a residential care facility. As the bill continued through the process, that language was amended to backdate it to before the time the bill was even introduced. It was his contention that action shut the door in their face, and they felt they were being denied an opportunity to get into the business. They talked to SRS, there were studies done, and the whole business of residential care was put on hold for one and a half years. Last summer SRS decided to enact regulations that would have dropped the residential treatment facility program on line. Shodair asked them to wait until the Legislature convened since they would like to ask the Legislature to take this under

consideration one more time. SRS felt they had a mandate from HB 304 and they went ahead with their plan. Shodair filed a lawsuit to protect the record. He added that if this piece of legislation is passed with the window of opportunity they requested, they will dismiss the lawsuit. All that they are asking for is to be given the same opportunity Yellowstone Treatment Center was given two years ago. He stated Shodair was at the same doorstep waiting to get in that business. He believes they are dealing with an elemental matter of fairness.

Senator Towe asked about the legal theory, to which Mr. Sullivan stated that denial of equal protection is the basic theory.

Chairman Eck asked how many beds are in the proposed unit at Shodair. Mr. Sullivan replied there are 14, while Rivendell has 96. He added one significant fact is that SRS says they oppose the window of opportunity because they think the Health Department should be given the opportunity to review, yet the Health Department is saying "we are going to sit this one out".

Chairman Eck asked Tom Olsen, Director of DFS, how many beds are needed for these treatment center facilities. He stated it was his opinion that approximately 20 additional residential treatment center beds are needed, over and above Yellowstone Treatment Center. He stated they are responsible for administering the General Fund match portion of the psychiatric in-patient hospitalization funds.

Senator Towe asked if there was any problem with Shodair's application and would they still be able to get Medicaid reimbursement. Mr. Cater replied that one of the requirements of federal law is that there be JCHO approval.

Closing by Sponsor:

Representative Bradley said she could not speak for the rest of her sub-committee, but after hearing the testimony she believed the fairest way was the one month window of opportunity. She stated the sub-committee did not hear the problems voiced today; however, the fairness issue raised by Mr. Sullivan caused her concern. She believed the past situation was selective and exclusive. It would be a one-month window of opportunity that is open to everyone, so there is no equal protection problem. She also felt that the price tag would not be a concern because there would still be safeguards, (1) utilization review and (2) the incentive of General Fund dollars.

HEARING ON HOUSE BILL 937

Presentation and Opening Statement by Sponsor:

Representative Jessica Stickney, House District 26, advised that most portions of HB 937 have been removed except the item pertaining to sunset. She stated she feels very strongly about t the child care resources referral program, and the kinds of potential with that program.

Proponents' Testimony:

BOYCE FOWLER, Department of Family Services, Program Officer for Day Care Services, advised that the Montana Child Care Act was modeled after legislation in Congress during 1989. Legislation services were to be provided by resource referral programs to assist families in obtaining day care services and to promote day care service providers. The Montana bill, therefore, included the resource referral grant program to carry out what was understood to be the federal intention. Although the bill was changed, a version has passed Congress entitled the Child Care Development Block Grant. The 1989 Legislature had a late amendment to the bill to sunset the resource program. Congress at that time still had not passed the federal bill, but has now completed that legislation and Montana will be receiving federal funds for day care programs by next fall. The 51st Legislature passed HB 200, which established the grant program for local resource referral programs. Programs maintain a data base of child care services within their communities; they respond to requests for information assistance to families in need of day care services, and provide parents with a checklist to help them identify quality day care. The resource referral agencies approve day care providers within their districts. The Resource and Referral Grant program is codified in 52-2-711 MCA, with a termination clause at the end of that section. It is believed that an error occurred in the signing of a section of the law to repeal the sunset clause for the R & R Grant Program. The amendments were offered to the House. He believed the section 52-2-712 in the law would repeal the termination date presently contained in 52-2-711, which will allow the Department to continue the R & R Grant Program.

KATE CHOLEWA, Montana Women's Lobby, advised that the Resource and Referral program is a service which is not offered by others; they sponsor child care food programs and alternative lists for sick children; assist in monitoring child care, and are cost effective. She advised the money is there, and they just need the legislative action to continue to use it. She urged support of HB 937.

Opponents' Testimony:

None.

Questions From Committee Members:

Senator Burnett asked if there should be a fiscal note with HB 937. Boyce Fowler advised there was a fiscal note attached when there were items in this bill, but all those items have been taken out, and there is no expense at this stage.

Chairman Eck stated it is her assumption the referral services are going to continue even though federal money may not be available until fall. Tom Olsen stated that was correct.

Closing by Sponsor:

Representative Stickney stated that originally this bill ensured that there would be state money appropriated until they were informed that federal money was available. She said the sunset provision should be deleted. A Resource and Referral Center opened in Miles City and it is her observation they are doing some wonderful things. Another center is planned in Glasgow. She believed it was important that this program continue, and urged passage of HB 937.

EXECUTIVE ACTION ON HOUSE BILL 937

Discussion:

Tom Gomez, Legislative Council, advised that the issue being discussed is a repealer. Originally, the draft of the bill repealed Section 52-2-712, MCA, which is a provision that is codified as part of the child care act that states the requirements for child care assistance under the ANPC Jobs Program and it is a provision that is duplicative and/or inconsistent of the provisions of child care assistance under the federal AFDC Jobs Program. He added there is a provision already in the state law more appropriately to be found in the AFDC state statutes that provide for a child care assistance grant. It is his opinion that the repealer of 52-2-712, Section 1 of this bill, appearing on lines 1 and 2, page 2, should be included in HB 937.

Amendments, Discussion, and Votes:

Senator Towe made a motion that Section 52-2-712, page 2, be re-inserted in HB 937. Those in favor 8; opposed - 0. MOTION CARRIED.

Recommendation and Vote:

Senator Pipinich made a motion that HB 937 BE CONCURRED IN AS AMENDED. Those in favor - 8; opposed - 0. MOTION CARRIED.

Senator Eck will carry HB 937 to the floor of the Senate.

HEARING ON HOUSE BILL 968

Presentation and Opening Statement by Sponsor:

Representative Vivian Brooke, House District 56, stated that HB 968 previously had an appropriation but that was stricken. HB 968 was instituted by HB 422 in 1989 session to enact the living will protocol for emergency medical technicians. HB 968 gives the Department of Health that authority to continue the program.

Proponents' Testimony:

IRA BYOCK, M.D., advised that this bill is in a sense a housekeeping bill to enable the Department of Health and Environmental Sciences to go forward with a plan and a protocol for emergency medical services personnel as it was initially conceived almost three years ago. Dr. Byock submitted written testimony to the committee (Exhibit #5).

DREW DAWSON, Chief of the Emergency Medical Services Bureau in the Department of Health and Environmental Sciences, read and presented copies of his testimony to committee members, and also included a fact sheet (Exhibit #6).

JIM AHERNS, Montana Hospital Association, stated that group would like to go on record as being in support of this legislation.

HANK HUDSON, Governor's Office on Aging, advised that Mr. Dawson worked with them and kept them informed of the progress of HB 968. He stated they have been supportive of this legislation in the past and currently support it.

JERRY LOENDORF, representing Montana Medical Association, stated that in addition to the testimony already given, in reviewing the bill and comparing it to the Living Will Act, it showed that Sections 2, 3 and 4, which are really the substance of the bill, are essentially the same as those provisions in the Living Will Act.

Opponents' Testimony:

None.

Questions From Committee Members:

Senator Towe asked Mr. Loendorf if those were the same sections passed this session. Mr. Loendorf said they were not, indicating 50-9-204 corresponds to Section 2; 50-9-203 corresponds to Subsection 2 of Section 3; and 50-9-205

corresponds to Subsection 4. Senator Towe asked if these are now duplicative to which Mr. Loendorf responded in the sense that they are the same, but these particular provisions, for example the immunity provisions, refer to the situation presented in this bill, for example relying on the DNR identification bracelet as opposed to the living will. According to Dr. Byock, this bill enables an alternative mechanism of initiating the same protocol and with the similar immunities.

Senator Hager asked Representative Brooke why the language was added and then removed to have a tatoo as the means of identifying persons. She advised that was an idea of Representative Gould during the House Judiciary hearing. He thought that would be a better alternative than the jewelry, but after consulting with Mr. Dawson was amenable to having that deleted simply because the jewelry allows for someone to change their mind.

Chairman Eck commented that Beth Suhr called to express concern about the revocation Section 3 (2). Her concern was that even though the patient and the physician may have agreed, the doctor in the emergency room may be unwilling to comply. Dr. Byock stated he had talked to Ms. Suhr about the revocation issue, and her concern as expressed to him has been that a revocation should only come from the patient and not be affected by anybody, including the attending physician. His answer to her was that in a real-life medical setting the attending physician gives orders to EMTs and nurses which they really need to obey, and at times if the physician, rightly or wrongly, wishes to exercise that control and institute a therapy which in retrospect may have violated the patient's living will or previously arranged DNR order, it would be very hazardous to put the EMTs and nurses in a position to having be in conflict with that physician. Physicians can be sued for the effects of their actions, but the subordinates have been immunized.

Senator Towe and Dr. Byock discussed the various types of revocations.

Senator Hager referred to the effect on insurance section and he wondered if this had been run by the insurance companies. He indicated it could have an effect on the person's life or disability insurance. Representative Brooke advised that she has not talked directly to any insurance people, nor have they contacted her in the course of this bill.

Dr. Byock advised that this bill does nothing innovative from the point of view of expanding people's rights or standard medical care, with the exception of enabling them to occur in an out of hospital setting. The DNR orders are a standard medical procedure and living wills have become standard accepted medical practice and guidelines. He stated it is not clear if this is in any way changing the situation.

In response to questions by Senator Towe regarding health and life insurance covering persons with living wills, Hank Hudson advised that the purpose of the language in the original living will bill was to prevent insurance companies from denying life insurance benefits to people based on the interpretation of possibly committing suicide.

Senator Rye pointed out that the applicability would be limited because most suicide clauses in standard policies are only in effect for about two years after the policy is taken out.

Chairman Eck asked if someone would address the reason for the language stricken that says "with a terminal condition". Dr. Byock advised that was to correct an error in drafting. As previously mentioned, sections of this were taken from the Living Will Act and inserted basically verbatim, and the definition of "terminal illness" in the statute is fairly restrictive and is inapplicable in this particular setting. There are people who do not meet the definition of a terminal illness who may legitimately obtain a DNR order from their physicians.

Closing by Sponsor:

Representative Brooke thanked the committee for a good hearing, and stated she appreciated the fact they took the time to look at this bill carefully. She urged a do concur on House Bill 968.

EXECUTIVE ACTION ON HOUSE BILL 968

Motion:

Senator Towe moved concurrence.

Discussion:

None.

Recommendation and Vote:

There being 7 ayes and 1 nay by Senator Hager the motion carried.

HEARING ON HOUSE BILL 978

Presentation and Opening Statement by Sponsor:

Representative John Phillips, District 33, advised that HB 978 is a simple bill which asks the Department of Social and Rehabilitation Services to apply for a waiver from the federal government to commence a personal care pilot program. SRS would need funding to implement the program.

Proponents' Testimony:

JEAN JOHNSON, Executive Director of Montana Association of Homes for the Aging, advised that HB 978 asks for two things: (1) authority and (2) money. The authority is needed because at present Medicaid reimbursement is available in a nursing home, and for community based waiver, which keeps an individual out of a nursing home, but does not pay for someone to stay out of a personal care home. There is some confusion in the language of the bill wherein they should have asked for an exemption rather than a waiver to do the pilot program. Presently the federal government does not reimburse Medicaid eligible people if they live in a personal care home. By October 1, 1994, states will have to make a choice as to whether or not they offer Medicaid reimbursement in personal care homes as one of the Medicaid options. She thinks it is a good idea that they begin to study that issue now. They have a pilot that is a small piece and it should be looked at to see how it impacts, and have some data in 1994. Regarding item 2 - money, she advised they are requesting $60,000 in the second year of the biennium, and contingent upon giving the exemption from the Health Care Financing Administration to do the pilot in the first place. In the second year the $60,000 would be used to leverage federal funds to the tune of $215,523. She explained how that figure was arrived at, and added that the average cost of personal care is $750.00, and the state's share would be approximately $420.00. The study would last about a year and they would come back to the 1993 session with a preliminary report regarding pre-screening procedures, numbers eligible in 1994 for reimbursement, and other information. If someone can be kept in a personal care home, the state would pay about $420.00 per month. Without that option, they will go into a nursing home which costs approximately $1600.00 per month. They do not make claims that Medicaid reimbursement in personal care facilities will slash the Montana long-term care budget; however, they will serve more people for the same amount of money. The study will help provide answers in that regard. In summary, she advised that the Governor supports the concept. They did not come under the budget because they were in the process of the Governor's Health Care for Montanans program. She added that the Montana Health Care Association also supports the bill. She presented the committee with two handouts from the Department of Health, a profile of personal care facilities in Montana (Exhibit #7), and a fact sheet pertaining to personal care in Montana (Exhibit #8).

KATHERINE REGAN, Townsend, stated she was asked by the Broadwater County Commissioners to manage the Broadwater County Nursing Home in May, 1989. At that time they had moved all of the patients that could not care for themselves to the new facility, so that left five remaining. Within a matter of months her facility was filled. She charges $25.00 per day. She believes personal care facilities are essential for those who cannot afford a nursing home or do not need that type care. She urged passage of HB 978.

RICK TUCKER, representing New Frontier Personal Care and Retirement Home in Livingston, stated there are many favorable benefits of a facility of this kind. It is cost effective spending of state Medicaid monies wherein four persons are cared for in a personal care facility opposed to one person in a nursing home. He also pointed out the enhancement of quality of life is most important to the older people.

JIM AHERNS, President of Montana Hospital Association, stated he has seen this type operation work well in private enterprise. He supported the idea of the pilot study, and urged consideration of HB 978.

ROSE HUGHES, Montana Health Care Association, stated they would like to go on record in support of HB 978. They favor the study to learn what the costs and benefits of offering this kind of service as a Medicaid service. Personal care is clearly a part of the long-term care spectrum. She urged support of the bill.

Opponents' Testimony:

None

Questions From Committee Members:

Senator Hager asked how the beds will be chosen for the pilot project.

Mike Harsheim, SRS, stated it would involve two phases. First, they would ask for the exemption from the federal government; if they grant the exemption, then a request for proposals would be issued and it would be determined what facilities are interested in participating.

Senator Hager asked if there was a danger of someone who was denied their proposal of filing a lawsuit. Mr. Harsheim indicated there certainly was a danger of them being upset; however, he believed it would be clear the program would be limited.

Senator Towe asked what the definition of a personal care facility might be. Mike Craig, Department of Health and Environmental Sciences, advised that personal care facilities are facilities where care is offered on a maintenance level. If the people who are residents of a personal care facility have medical needs, they must contract out on a third party basis. Their cooking, personal hygiene needs, laundry etc. are what are found in a personal care facility.

In response to questioning by Senator Towe regarding the definition of personal care facilities, Jean Johnson advised that there are 25 personal care facilities in Montana, licensed and surveyed by the Department of Health.

Ms. Johnson continued by saying they range in size from five to eighty-two beds; they offer 24 hour supervision, three meals a day, assistance with bathing, reminders of taking medication, but do not offer skilled nursing care.

Chairman Eck asked if people eligible for the community based waiver program could be in personal home care. Mike Harsheim advised that was correct, because in order to be in the waiver a person must require the level of care of a nursing home, and that is the distinction between a personal care facility.

Chairman Eck asked if people in an adult foster home get services under the waiver, to which Mr. Harsheim answered affirmatively. Chairman Eck further asked if people living in a shared home could be served by the waiver program. Mr. Harsheim informed it would depend on how the home was licensed. If it was licensed as a personal care facility, that would be a problem; if it was licensed as a foster home, then they could be served. In reply to Senator Eck's question, he stated if the shared home was not licensed they could be served under the waiver.

Closing by Sponsor:

Representative Phillips stated it was his belief that HB 978 would help provide a better quality of life for many people. He urged support of the bill.

EXECUTIVE ACTION ON HOUSE BILL 978

Recommendation and Vote:

Senator Towe made a motion that House Bill 978 BE CONCURRED IN. Those in favor - 8; opposed - 0. MOTION CARRIED.

Senator Waterman will carry HB 978 to the floor of the Senate.

ADJOURNMENT

Adjournment At: 5:45 P.M.

Dorothy Eck

DOROTHY ECK, Chairman

Christine Mangiantini

CHRISTINE MANGIANTINI, Secretary

DE/cm/dq

ROLL CALL

PUBLIC HEALTH, WELFARE AND SAFETY COMMITTEE

Date 04/08/91

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

April 9, 1991

MR. PRESIDENT:

We, your committee on Public Health, Welfare, and Safety having had under consideration House Bill No. 937 (third reading copy -- blue), respectfully report that House Bill No. 937 be amended and as so amended be concurred in:

1. Title, line 14.
Following: "~~AND~~"
Insert: "SECTION 52-2-712, MCA, AND"

2. Page 2, line 2.
Following: "~~section~~"
Insert: "52-2-712, MCA, and section"
Following: "~~are~~"
Strike: "IS"
Insert: "are"

Signed: _____
Dorothy Eck, Chairman

LB 4/9/91
Amd. Coord.

RR 4/9 9:50
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

April 9, 1991

MR. PRESIDENT:

We, your committee on Public Health, Welfare, and Safety having had under consideration House Bill No. 968 (third reading copy -- blue), respectfully report that House Bill No. 968 be concurred in.

Signed: _____
Dorothy Eck, Chairman

LB 1/9/91
Amd. Coord.

_____
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

April 3, 1991

MR. PRESIDENT:

We, your committee on Public Health, Welfare, and Safety having had under consideration House Bill No. 978 (third reading copy -- blue), respectfully report that House Bill No. 978 be concurred in.

Signed: _____
Dorothy Eck, Chairman

Amd. Coord.

Sec. of Senate

NEW SECTION. Section 3. Section 50-5-316, MCA, is amended to read:

"50-5-316. Certificate of need for residential treatment facility. (1) A person may not operate a residential treatment facility unless he has obtained a certificate of need issued by the department as provided under this part.

(2) A person who operates an existing facility that meets the definition of a residential treatment facility on August 1, 1991, may receive a license to operate the facility as a residential treatment facility and need not obtain a certificate of need as otherwise required under this section.

Renumber bill sections 3 and 4 as bill sections 4 and 5, respectively.

SENATE HEALTH & WELFARE
EXHIBIT NO. 2
DATE 4/8
H BILL NO. 977

Proposed DHES amendment to House Bill 977 - Rep. Dorothy Bradley

AMENDMENT NUMBER 1.

Page 19, line 16, add the following section:

Section 2. Section 50-5-301(3)(a), MCA, is amended to read:
50-5-301(3)(a) "Health care facility" or "facility" means a nonfederal ambulatory surgical facility, home health agency, long-term care facility, medical assistance facility, mental health center with inpatient services, inpatient chemical dependency facility, rehabilitation facility with inpatient services, residential treatment facility, or personal care facility. The term does not include a hospital, except to the extent that a hospital is subject to certificate of need requirements pursuant to subsection (1)(i).

Renumber subsequent sections.

Proposed DHES amendment to House Bill 977 - Rep. Dorothy Bradley

AMENDMENT NUMBER 2.

Page 23, line 9, insert into the existing Section 3:

NEW SECTION. Section 3. Repealer. Sections 50-5-316 and 50-5-317, MCA, ~~is~~ are repealed.

(This section would be renumbered to section 4 if the first DHES recommendation is adopted.)

SENATE HEALTH & WELFARE
EXHIBIT NO. 4
DATE 4/8
HBILL NO. 977

April 8, 1991

Senate Public Health Committee

Hearing on HB977 (Rep. Dorothy Bradley)

Madam Chair and Committee members, good afternoon. My name is Mike Craig and I work in the Health Planning Program of the Department of Health and Environmental Sciences.

I appear before you this afternoon neither as a proponent nor an opponent to House Bill 977. As the primary regulatory function involved with the development of residential treatment facilities, we feel it advisable to offer two minor modifications to this bill. We have made our recommendation known to Representative Bradley prior to coming before you.

Our first recommendation is to modify the definition of health care facilities which are reviewable under Montana's Certificate of Need laws by including the terminology "residential treatment facility" within that definition. This modification simply clarifies that residential treatment facilities are among the health care facilities which are Certificate of Need reviewable.

The second recommendation to House Bill 977 is also presented as a basic housekeeping measure. We are proposing that, along with the repeal of 50-5-317 called for in section 3 on page 23 of this bill, 50-5-316 also be repealed. We are aware that this committee may be asked to modify this section of the law for purposes of application of Certificate of Need for these facilities. Therefore, we only offer this second amendment as an optional course of action in the event that this committee does not otherwise modify 50-5-316.

SENATE HEALTH & WELFARE
EXHIBIT NO. 5
DATE 4/8
HBILL NO. 968

Montana Senate
Public Health, Welfare and Safety Committee
Testimony regarding HB 968
Ira R. Byock, MD, FACEP

April 8, 1991

I wish to give testimony today in favor of HB 968, An Act authorizing the Department of Health and Environmental Sciences to adopt a standard means of identification for persons for whom a medical order not to perform cardiopulmonary resuscitation exists.

I am testifying as Chair of the Living Will Protocol Task Force (now called Comfort One Task Force). This group, which is comprised of representatives of all relevant facets of Montana's health care community (physicians, emergency medical technicians, home health agencies, hospice programs and the DHES Emergency Medical Services Bureau chief) was formed by DHES and has been working since the end of the last legislative session to implement provisions of the Amended Living Will Act (previous HB 422) that address recognition of a qualified patient's living will declaration by emergency medical services (EMS) personnel. The resultant program and clinical EMS protocol has been given the term **COMFORT ONE**. This protocol has been prepared through a true consensus process addressing the concerns and incorporating the ideas of all those involved. The **COMFORT ONE** Protocol has been formally approved by the Board of Medical Examiners.

There are ordinarily very few situations in which prehospital providers may withhold or withdraw CPR. Except for obvious signs of death (such as rigor mortis, pooling of body fluids, decomposition, decapitation, etc) or the exhaustion of rescuers conducting CPR, EMTs can cease efforts only when a physician assumes control of the case or on presentation of a written, physician's DNR order - as might occur on arrival at a hospital or at a nursing home.

In 1989 HB 422, which amended Montana's Living Will Act, broke new ground by creation of the entity of "reliable documentation". This created a clear, all or none, mechanism for prehospital providers to know whether or not the a living will had been signed and, if so, whether the necessary qualifying terminal condition for the living will had been certified by a physician.

The Task Force charged with drafting implementing Rules and an EMS clinical protocol for this legislation recognized the importance of providing EMS personnel at the scene with a means of knowing **immediately** and **unequivocally** whether or not to begin cardiopulmonary resuscitation. Within the Rules "reliable documentation" was made synonymous with the term **COMFORT ONE** as presented in a standardized logo within a standardized form or identification jewelry. The Rules were formally noticed and hearings were held in several cities.

Ex. 5
4/8/91
HB 968

After the Rules had been approved it became apparent that the Task Force, and, by extension DHES, had inadvertently gone beyond its Rule-making authority by including provisions for issuing **COMFORT ONE** certification to patients on the basis of a written do not resuscitate (DNR) order of a licensed physician. While legal counsel for DHES and the Board of Medical Examiners reaffirmed the propriety of EMS personnel honoring a written physician's DNR order at the scene, the Task Force continues to strive to provide a consolidated, prospective means of identifying patients for whom CPR is to be avoided.

The current legislation is necessary to allow implementation of the **COMFORT ONE** program as it has been approved in hearings on the Rules (now rescinded) and as approved as an EMS protocol by the Board of Medical Examiners. The Bill before the Committee does not extend the program beyond what has been approved with the exception of adopting the **COMFORT ONE** credentials (under development by DHES) as the standardized format for written physician DNR orders to be complied with in the non-institutional setting.

The **COMFORT ONE** program represents an innovative strategy that effectively addresses a problem that has long plagued EMS and hospice care providers - and the patients and families they serve. The Task Force, and the multiple component groups it represents, is anxious to proceed with development of educational programs and materials to implement **COMFORT ONE.** After three years of discussion and evolution the current legislation will enable the promise of this important program to be realized.

Respectfully submitted,

Ira R. Byock, MD, FACEP
Chair **COMFORT ONE** Task Force

341 University Ave.
Missoula, MT 59801

SENATE HEALTH & WELFARE
EXHIBIT NO. 6
DATE 4/8
H BILL NO. 968

HOUSE BILL 968

Madam Chair, members of the committee. I am Drew Dawson, Chief of the Emergency Medical Services Bureau in the Department of Health and Environmental Sciences.

When emergency medical services personnel respond to the scene of a patient who is not breathing and who has no pulse, it is a very emotional and difficult situation for both the family and the EMS personnel. Sometimes, when the death is anticipated, the patient and their physician have previously decided they do not wish the patient's life to be extended by the application of Cardiopulmonary Resuscitation (CPR). The EMS personnel are often faced with conflicting information at the scene by family and friends who are, understandably, quite upset.

During the 1989 legislature, the Montana Living Will Act was amended. Now, terminally ill patients who have declared living wills may wear a uniform, state-wide identification bracelet or card which signifies to EMS personnel that they are to follow procedures (a protocol) set forth by the Montana Board of Medical Examiners. This protocol instructs the emergency care personnel to withhold cardiopulmonary resuscitation while placing emphasis on providing comforting, supporting care to the dying patient and their family. In fact, the entire program is called **COMFORT ONE.**

The Montana Hospice Association, the Montana Association of Home Health Agencies, the Montana Medical Association, the Montana Emergency Medical Services Association, and the Department of Health and Environmental Sciences, have been working for two years to implement this **COMFORT ONE** program. However, we learned that the identification could be issued only to terminally ill patients who had declared a living will...not to patients for whom a physician had issued a Do Not Resuscitate Order...a standard medical practice. The EMS people are again caught in the middle; they hear conflicting stories from family members and friends, and attempt to determine if there is a valid physician's DNR order. In the heat of the moment, this is an almost impossible task.

This legislation simply allows this uniform identification to be issued to patients who have a valid DNR order in their medical chart and provides immunity to the personnel who then follow the protocol. It also allows EMS personnel to follow a direct, verbal DNR order from a physician.

The intent is simple. When EMS personnel see this identification, they follow the standard, state-wide protocol already adopted by the Board of Medical Examiners. It provides a good mechanism for EMS personnel to follow the wishes of the patient and his physician. If they do not see the uniform identification, they follow their usual procedures and begin resuscitating the patient.

I would be happy to respond to any questions.

Thank you.

SENATE HEALTH & WELFARE
EXHIBIT NO. 7
DATE 4/8/91
BILL NO. HB 978

Montana Association of Homes for the Aging
P.O. Box 5774 • Helena, MT 59604 • (406) 443-1185

A Profile of Personal Care Facilities in Montana prepared by the Montana Association of Homes for the Aging as testimony before the Senate Public Health & Welfare Committee

HB 978

- 25 licensed personal care facilities in Montana provide a total of 577 beds. The smallest has 5 beds; the largest has 82. Privately owned and operated; licensed and surveyed by the State Department of Health and Environmental Sciences.

- Costs range from $400 to $1405, with at least one larger facility offering "packages" of specialized, additional services for additional charges. Average cost is $750 (summer, '90).

- Majority of personal care residents are private pay. It is estimated that only 5 to 10 percent of pc residents are eligible for Supplemental Security Income (SSI). SSI is a federal program that provides monthly payments to aged, blind and disabled individuals. Individuals receiving SSI, and living in personal care facilities in Montana, receive a state supplement of $94.00 toward the cost of the facility.

- Located in: Billings (2); Bozeman (3); Great Falls (2); Hamilton (1); Hot Springs (1); Kalispell (1); Laurel (2); Lewistown (2); Livingston (2); Malta (1); Miles City (1); Missoula (5); Sidney (1); and Townsend (1).

- Certificate of Need regulates the growth of pc beds in Montana. In 1989 and 1990, CON requests totaled 521 beds and represented new construction, conversion and additions to existing structures in 16 communities — 7 of those communities do not now have pc facilities.

- Interestingly, communities with the most existing pc facilities — Billings and Missoula — seek to add even more. The CON break down: Stevensville; Billings (3); Fort Benton; Helena; Lewistown (3); Chester; Miles City; Missoula (7); Wolf Point; Corvallis; South Park County; Hamilton; Bozeman (2); Conrad; Sidney; and Laurel.

• • •

62% of the personal care facilities in Montana (13) responded to a survey conducted by the Montana Association of Homes for the Aging in late December, 1990. The following information is taken from that survey and reflects <u>only</u> those 13 facilities that responded to the survey:

- 6 homes are best described as serving primarily independent elderly needing very little personal care, but may need medication reminders.

- 8 homes are best described as serving marginally frail elderly needing assistance in at least 2 of the activities of daily living, such as bathing and dressing.

- 1 home is best described as serving the frail elderly needing assistance in most or all of the activities of daily living, including medication reminders.

- The 13 homes responding said that an average of 21% of their residents can be considered totally independent.

Personal Care profile/page 2

- The statewide average size of the 25 licensed Montana homes is 23 beds.
- The average vacancy factor of those responding appears to be very low with some reporting 100% occupancy year around. While most had some type of waiting list, none had a long list.
- Price range of those responding is from the low: $440 (average low is $664) to the high: $1438 (average high is $984).
- The "oldest" pc home in Montana has been in operation 36 years; the "newest" is 1 year. The average time in business is 12.9 years.
- An average-size single bedroom is 139 sq ft. The state regulation requires each single bedroom to be at least 100 sq ft and each multiple bedroom (no more than 4 individuals) shall offer at least 80 sq ft per individual.
- All of the facilities have at least 1 common room (not counting the dining room), most have 2 and the larger homes have 4 or more. Suprisingly, 3 homes do not have common rooms that are accessible to wheelchair residents; all the others do.
- Death is the most frequent reason for residents leaving a facility; the second most frequent is to return to their own home; third most frequent reason was moving in with family members; fourth was entering nursing homes. The average length of stay in the 13 homes is 2.8 years.
- In 1990, 31 residents in the homes responding to the survey left to enter a nursing home; in 1989 that number ranged from 1 to 21 with an average of 7.75 residents.
- 1 facility claimed 7 residents entered a nursing home in 1990 because they ran out of funds and there was no other housing alternative for them. In the 4 years prior to 1990, the numbers were much smaller but someone made the comment that the numbers for his facility have been "quite substantial" over the years.
- Transportation to doctor's office, physical therapy, barber/beauty shop, downtown, community functions, and recreation is the service most frequently offered by those homes responding to the question. Other services include religious and social activities.
- 5 homes hire an activities director; only 2 of those are on a full-time basis. Several cite "not enough money" as the reason why they don't hire an activities director.
- Several homes bring in home health agencies to provide special services to residents who need special care for a limited period of time.
- 10 responding homes employ from 1 to 26 full time employees (average 8.66). Nearly every home reported spending from 50% to 90% of their annual budget in their own community with the remainder spent within Montana.
- $840,000 was the largest budget of the 7 homes providing that information; $10,500 was the smallest budget. The average budget for the 7 homes is $127,214; the total was $890,000.
- 3 of those responding said Medicaid reimbursement would make "running a personal care facility easier." (The question did not refer to Medicaid reimbursement.)
- An unusually high percentage of residents are regularly visited by family members, ranging from 100% to a low of 40% — the average is 84%.

SENATE HEALTH & WELFARE
EXHIBIT NO. 8
DATE 4/8/91
BILL NO. HB 978

Montana Association of Homes for the Aging
P.O. Box 5774 • Helena, MT 59604 • (406) 443-1185

A Profile Personal Care in Montana, prepared by the Montana Association of Homes for the Aging, in support of HB 978

- "Long term care" is a generic term; both personal care homes and nursing homes are considered long term care.
- "Intermediate" and "skilled care" refers to nursing home care.
- Nursing homes are for those who need skilled, nursing care on an on-going basis. People who need such care are <u>not</u> eligible to live in a personal care home.
- Personal care homes provide 24-hour supervision, three meals a day, and some assistance with the activities of daily living, such as dressing, bathing, medication reminders.
- The cost to live in a personal care home might range from $400 a month to $1400 a month — significantly less than the cost to live in a nursing home.
- It is important, both in a financial sense and in a caring sense, to retain the frail elderly in a personal care home as long as they do not need skilled nursing care.
- 25 licensed personal care homes provide housing for approximately 577 elderly and disabled Montanans. The smallest home has 5 beds; the largest has 82.
- Personal care homes are regulated by the Certificate of Need process. In 1989 and 1990, CON requests totaled 521 beds and represented new construction, conversion and additions to existing structures in 16 communities — 7 of which do not now have pc facilities.
- HB 978 would allow a pilot study of Medicaid reimbursement in personal care homes to see if we could prevent frail elderly individuals from having to enter a nursing home solely because they have depleted their resources and there is no other paid housing alternative.

ROLL CALL VOTE

SENATE COMMITTEE PUBLIC HEALTH, WELFARE & SAFETY

Date 04/08/91 H Bill No. 937 Time 4:25 p.m.

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

Secretary Chairman

Motion: Senator Towe moved that Section 52-2-712, MCA, AND be inserted into the bill in the appropriate areas. There being no objections the motion carried.

1987

ROLL CALL VOTE

SENATE COMMITTEE PUBLIC HEALTH, WELFARE & SAFETY

Date 04/08/91 H Bill No. 937 Time 4:30 p.m.

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

Secretary Chairman

Motion: Senator Pipinich moved concurrence as amended. There being no objections the motion carried.

1987

ROLL CALL VOTE

SENATE COMMITTEE PUBLIC HEALTH, WELFARE & SAFETY

Date 04/08/91 H Bill No. 978 Time 5:30 p.m.

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

Secretary Chairman

Motion: Senator Towe moved concurrence. There being no objections the motion carried.

1987

ROLL CALL VOTE

SENATE COMMITTEE PUBLIC HEALTH, WELFARE & SAFETY

Date 04/08/91 H Bill No. 968 Time 5:45 p.m.

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

Secretary Chairman

Motion: Senator Towe moved concurrence. There being 7 ayes and 1 nay the motion carried.

1987

DATE 4-8-91

COMMITTEE ON Senate Public Health, Welfare & Safety

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
Jean T Logsdon	Mt. Medical Assn	HB968	✓	
Roger Tippy	D Family Sv	HB937		
Robert W. Olsen	MT Hospital Assoc	HB977	✓	
Robert W. Olsen	MT Hospital Assoc	HB968	✓	
Drew Dawson	EMS, Dept Health	HB968	✓	
Mike Craig	DFES			
J Casey	Sheridan	HB977	✓	
Ada Byock MD	CHAIR COMMITTEE ON ONE TASK FORCE	HB968	✓	
Kate Cholewa	MT Womens Lobby	937	✓	

(Please leave prepared statement with Secretary)