MINUTES

MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON PUBLIC HEALTH, WELFARE & SAFETY

Call to Order: By Senator Dorothy Eck, Chair, on February 17, 1993, at 12:00 p.m.

ROLL CALL

Members Present:
Sen. Dorothy Eck, Chair (D)
Sen. Eve Franklin, Vice Chair (D)
Sen. Chris Christiaens (D)
Sen. Tom Hager (R)
Sen. Terry Klampe (D)
Sen. Kenneth Mesaros (R)
Sen. David Rye (R)
Sen. Tom Towe (D)

Members Excused: Sen. Tom Towe

Members Absent: None.

Staff Present: Susan Fox, Legislative Council
Tom Gomez, Legislative Council
Laura Turman, Committee Secretary

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

Committee Business Summary:
Hearing: SB 366, SB 352, SB 403
Executive Action: SB 118, SB 266, SB 291, SB 285, SB 403, SB 366, SB 352

EXECUTIVE ACTION ON SB 118

Discussion:

Sen. Franklin went over the amendments from February 15, 1993. (Exhibit #1)

Motion:

Sen. Franklin moved the amendment.

Discussion:

Sen. Klampe asked if it could read "visited the facility within the year of the signed statement." Chairman Eck said that would be accepted as a friendly amendment.

Sen. Franklin suggested, "visit the facility for purposes of evaluation..."

Susan Fox suggested, "... at the time of evaluation..."

Sen. Mesaros said that on Line 3 it reads, "on an annual basis," and asked Sen. Klampe if that would address his concerns. Sen. Klampe said that a physician could sign statements every year without actually going to the facility.

Vote:

Chairman said the Committee had heard the amendment with the friendly amendment. The motion passed unanimously.

Motion:

Sen. Rye moved SB 118 DO PASS as amended.

Vote:

All Committee members voted yes except Sen. Franklin. The motion carried.

EXECUTIVE ACTION ON SB 266

Discussion:

Chairman Eck said there were amendments to SB 266, and she asked Sen. Klampe if these were the amendments he had worked on. Sen. Klampe said the amendments (Exhibit #2) were not the amendments he had worked on. He said he had other amendments (Exhibit #3). Sen. Klampe said the intent of the amendments was to allow MD's, osteopaths, and chiropractors to practice acupuncture after completing 400 hours of study. The courses must be accredited by the National Accreditation Commission for Schools and Colleges of Acupuncture. After one year, they must pass the national acupuncture test. The reason that chiropractors are included is that they have "considerable knowledge of anatomy," and he had spoken with a member of the Board of Chiropractors who said it was the unanimous opinion of the Missoula Chiropractic Association that they be included in SB 266. Sen. Klampe said that if there is a rationale that MD's be included, then there is a rationale that the chiropractors be included.

Motion:

Sen. Klampe moved the amendments. (Exhibit #3)

Discussion:

Sen. Christiaens asked Sen. Klampe how he arrived at 400 hours of course work. Sen. Klampe said that 400 hours of continuing education is in the range of other states. Sen. Klampe said 400 hours is a considerable amount of course work.

Sen. Mesaros asked Sen. Klampe if 400 hours were taken from the chart submitted as testimony during the hearing of SB 266. Sen. Klampe said that he hadn't, but that he would open to recommendations, and could change it.

Sen. Mesaros asked Sen. Klampe if he had received recommendations from osteopaths. Sen. Klampe said he had not communicated with osteopaths.

Susan Fox said Dr. Healow had telephoned her and said that most courses that the American Medical Association or the American Osteopath Association recommend are 200 hours.

Chairman Eck asked Sen. Klampe who accredits these courses. Sen. Klampe said his rationale for going along with the acupuncturists is that they say the accreditation agency is reliable and is approved by the Board of Medical Examiners. Sen. Klampe asked Mary McCue to address this question.

Mary McCue said the National Accreditation Commission for Schools and Colleges of Acupuncture and Oriental Medicine is the accrediting body for courses on acupuncture and oriental medicine.

Sen. Klampe asked Mary McCue asked what connection it had with the Board of Medicine. Ms. McCue said it was her understanding that was the accrediting body that the Board of Medical Examiners looks to to determine whether the courses are accredited. However, the examination is the significant thing the Board looks at, and that is why that language is included.

Chairman Eck asked Sen. Klampe if the language that the licensee had passed an examination approved by the Board, which is part of Sen. Towe's amendment, was needed.

Sen. Klampe asked Ms. McCue if the Board of Medical Examiners approved of acupuncturists as well as MD's. Ms. McCue said the acupuncturists are licensed by the Board of Medical Examiners and the national exam is the exam they are using for acupuncturists because they do not have their own exam.

Chairman Eck asked if Sen. Klampe's amendments were the correct language, and said that courses are accredited by the American Medical Association (AMA) or the American Osteopathic Association (AOA) because they do not have their own courses.

Susan Fox said the AMA and the AOA accredit courses for their own

people, so perhaps "accredited" is the wrong term. The intent is that the courses are approved by the AMA and the AOA for physicians and osteopaths.

Sen. Klampe said he was open to a friendly amendment to reach a compromise between 200 and 400 hours of continuing education.

Chairman Eck asked if Sen. Klampe wanted to propose 300 hours to his own amendments. Sen. Klampe said yes.

Chairman Eck asked Sen. Klampe if he wanted to approve chiropractors as well. Sen. Klampe said, "absolutely."

Susan Fox said it would include licensed chiropractors under Title 37, Chapter 12, Part 3.

Vote:

The motion carried unanimously.

Discussion:

Sen. Franklin said that it was important for the Public Health Committee to recognize that Advanced Preparation Nurses deal with pain control probably more than any other professional group. She said she would not lobby to include them in SB 266.

Motion/Vote:

Sen. Klampe moved SB 266 DO PASS as amended. The motion passed unanimously.

EXECUTIVE ACTION ON SB 291

Discussion:

Chairman Eck asked Susan Fox to explain the amendments. Ms. Fox went over the amendments to SB 291. (Exhibit #4)

Sen. Christiaens said (b) of the amendments may not be needed because it may already be addressed under the Fair Credit Reporting Act.

Susan Fox said she did not know about that.

Jim Smith said he wasn't familiar with the Fair Credit Reporting Act.

Chairman Eck said that it may be that even though it is covered elsewhere, an individual referring to this section of the law may not be aware of that. Therefore it may not inappropriate to include the language in SB 291.

Sen. Klampe asked if Part 3, Subsection B were going to be changed at all. He asked if there had been discussion about the possibility of levying heavy fines in lieu of trying to keep total secrecy, which may be impossible.

Sen. Christiaens said that this was covered under the Fair Credit Reporting Act, and there is a $15,000 fine for a person who reveals information that is privileged. Sen. Christiaens said he thought that anyone involved in the insurance industry is aware of this.

Sen. Franklin said the insurance people at the meeting were indicating that was correct.

Sen. Klampe asked Sen. Christiaens if the amendment, as written, were asking too much. Sen. Christiaens said no, it wasn't.

Sen. Franklin said that many of the reviewers are nurses who work in utilization review, and Mary Dalton suggested an amendment to add "psychiatric nurse or psychologist" to Line 16. Sen. Franklin said she thought that was appropriate.

Chairman Eck said Subsection 1 had already been stricken.

Sen. Franklin said the language could be inserted as a new amendment under (Section) 5. She agreed that a technical nurse may not be qualified to evaluate psychiatric records.

Motion:

Sen. Christiaens moved the Committee adopt the revised amendments.

Vote:

The motion carried unanimously.

Motion/Vote:

Sen. Christiaens moved SB 291 as amended. All Committee members voted yes, except Sen. Rye who voted no.

EXECUTIVE ACTION ON SB 285

Discussion:

Tom Gomez, Legislative Council, said he had met with the parties of Sen. Yellowtail's bill and Sen. Franklin's bill. Currently, he has about 38 pages of unedited material of a substitute bill. Depending upon the choices of the Committee, things may be added to the substitute bill, or left separate, such as anti-trust language.

Chairman Eck said her understanding was that some decisions had to be made in areas where there may not be unanimous agreement among the different groups working on SB 285. The first decision to be made concerns the naming of the Authority, and whether the Authority will be a group of employed persons or a volunteer board. Chairman Eck asked Sen. Franklin to begin the discussion of this issue.

Sen. Franklin said SB 285 asks for an appointed (unpaid) Board because the state does not have the money to pay the Board members and their experience was that the kinds of individuals they would want appointed to this Board would be "overachievers" with a strong interest in change and who function well in that mode. Another argument is that there may be flexibility as to the make up of the Board. Paid Board members may have an interest in seeing the Board continue. The (volunteer) Board members would be reimbursed as other board members are, and there would also be a paid staff.

Sen. Christiaens asked Sen. Franklin if the discussion pertained to paying only those members of the main authority. Sen. Franklin said that was correct, but that another issue was the membership of the regional boards.

Chairman Eck said paid Board members would be seen as board members and staff as well. A Board doing the decision-making can provide some protection for the staff doing the work. Otherwise, (paid) Board members doing the work would "get hammered" all the time.

Clyde Dailey (Exhibit #5) said their ultimate decision was there was so much to do, given the provisions of SB 285, it was not practical to ask volunteers to do it on a per diem wage. There was also the concern that, with a volunteer board, there was the potential of ex-officio members dominating the board. Mr. Dailey said this is also an educational board.

Sen. Klampe said he wanted to know what kinds of people would be selected to serve on the Board. He said it would be difficult to get a physician to leave his profession for this.

Sen. Franklin said the Majority Leader and the Minority Leader of the House and of the Senate would each come up with a list of five individuals who are recognized as "experts in their field." These names are submitted to the Governor, and the Governor chooses five individuals from the list of ten. SB 285 states that those individuals must be acknowledged for their experience, expertise or interest in health care, and one of those people should be a consumer advocate.

Sen. Klampe said it would be difficult to obtain four health care experts who will quit their jobs for two years.

Sen. Franklin said that it is important for the Committee to

understand that if an individual is a volunteer, he is not expected to quit his job.

Tom Gomez said the next issue for the Committee to address concerns the make up of the regional health care planning boards. The issue was that each board contain one member from each county of the respective regions to be formed.

Clyde Dailey said there needed to be representation that would insure rural input into the regional planning process. The language currently in SB 285 sets the regional boards at five individuals each. They suggest three districts, with one district having 12 members, one having 11, and one with 9. Counties would have the option to petition out of a certain region and into another.

Sen. Mesaros asked Mr. Dailey if his recommendation were to have one representative per county in three regions. Mr. Dailey said that would be in five regions. He said the regions are still flexible.

Sen. Christiaens asked whether or not the regions are made the same as the mental health regions. These regions have been in existence for a long time and they have a history of working together.

Chairman Eck said they were the same regions for the Department of Family Services.

Sen. Franklin said her understanding was that the Committee might accept the Department of Health's recommendations for the regions, which is based on referral patterns. The issue, at this point, is the membership to those regional boards; should the membership be one from each county or limited to five.

Sen. Christiaens said his concern with a group this large, it is difficult to have a quorum present at the meetings.

Chairman Eck said she liked leaving the decision of how to appoint the members of the regional boards up to the Authority.

Sen. Mesaros said his concern was that rural health care be a focus in this process, and for that reason he agrees with the proposal outlined by Mr. Dailey.

Sen. Franklin said there was a concern for the rurality issue in SB 285.

Chairman Eck asked if language stating that each regional board should have "at least five members" would help. Then it would be up to the Authority.

Sen. Franklin asked Sen. Mesaros if language assuring rural representation would be satisfactory. Sen. Mesaros said he was

fearful that the regional board would be made up of five members form the major city in that region.

Sen. Franklin said 56 individuals is too many.

Christian Mackay said that if each county is not represented, then there may be a conflict of interest, and there is the potential of rural areas furthering their loss of access. He didn't see that all 56 individuals would have to be together at once in either SB 267 or SB 285, but he does see regions planning among themselves.

Chairman Eck said the Committee might add that qualification for "rural and urban interests" on Page 14, Subsection 2 of the original bill. Therefore, each board would have at least one member representing rural or urban interests. Chairman Eck asked the Committee if they wanted to amend or leave the language as it is.

Sen. Franklin asked Sen. Mesaros if language would help remedy his concerns. Sen. Mesaros said he couldn't respond, but it was an issue that needed to be addressed.

Tom Gomez pointed out that a statement of intent would be required because there are provisions that the Authority would establish "by rule" the make up of the regional boards. How the Legislature wants the Authority to act in establishing the regional boards could be included in the statement of intent.

Motion:

Sen. Mesaros moved that language for rural representation be included in the statement of intent. Sen. Franklin supported the motion.

Discussion:

Chairman Eck said anti-trust amendments should wait until Sen. Towe returns so he could review them.

Tom Gomez said as SB 285 is currently prepared, it contains the list of regions because that was recommended in the amendment. (Exhibit #6) He said he could keep Section 10, which states that the Authority shall establish by rule a maximum of five planning regions.

Clyde Dailey said their regions were different than those proposed by the Department of Health, which are the same as the mental health regions.

Sen. Franklin said she had no problem with accepting the Department of Health regions and inserting that into SB 285.

Chairman Eck asked if they were the same as the mental health

regions. Sen. Franklin said she did not know, and it could wait.

Sen. Christiaens said most of the Committee members had not seen the amendments.

Sen. Franklin said she was happy to leave SB 285 as it is now, but if there is a strong feeling that the regions be established ahead of time, she will go along with that.

Susan Fox said there are sections from Sen. Nathe's bill draft request concerning the health care database and statistics which has not been incorporated in SB 285 as of yet.

Chairman Eck said the language clarifies that there will be only one health care database in the state of Montana.

Sen. Franklin said she would check to see if the Department of Health regions were the same as the mental health regions, and if the language regarding the database were necessary for the Robert Wood Johnson grant.

Tom Gomez said the Committee should address the issue of small group insurance reform. There are extensive amendments offered by the Commissioner of Insurance.

Sen. Christiaens asked if these amendments were printed. Susan Fox said the amendments were distributed February 10th, but the Committee doesn't have printed copies of the sections from Sen. Nathe's bill or the amendments from the Department of Health.

Sen. Franklin said she would be willing to accept the Insurance Commissioner's amendments. (Exhibit #17)

Chairman Eck said the two bills addressed by Sen. Christiaens and the amendments offered by the Insurance Commissioner were not compatible.

Carol Roy, State Auditor's Office, said she believed that Sen. Christiaen's bill would affect all disability insurance, whereas SB 285 affects only small group insurance.

Tom Gomez asked for permission to strike those provisions regarding the small employer health insurance as currently contained in SB 285 or to leave those provisions in to make it easier for the Committee members to address.

Sen. Franklin said she would accept the Insurance Commissioner's amendments as a substitute for what is currently in SB 285. Chairman Eck allowed this as an amendment to SB 285 without objection without the Committee's endorsement. Anti-trust will not be addressed until Sen. Towe returns.

Sen. Klampe asked if the Committee had accepted the Insurance Commissioner's amendments, but other amendments can still be

worked on. Chairman Eck said that was correct.

Sen. Klampe asked if there was a definite time the Committee would be taking Executive Action on SB 285. Chairman Eck said the Committee would meet on adjournment on Thursday, February 18.

Clyde Dailey asked Chairman Eck whether the Committee would act on the decision to pay the Authority Board members. Chairman Eck said the Committee would not act on it because there was no motion to change SB 285.

Chairman Eck said once the Committee receives the new draft, there will be an opportunity to change it.

HEARING ON SB 366

Opening Statement by Sponsor:

Sen. Dennis Nathe, Senate District 10, said he received a lot of calls in favor of the bill, but he didn't see many proponents at the hearing. There is a problem with speech pathologists and the programs they provide in the school systems. None of the Montana universities or colleges has a speech pathology program, and there is a master's degree requirement for licensure. Sen. Nathe provided a hand-out for the Committee (Exhibit #7), and went over Page 2. The problem is that superintendents are having trouble hiring speech pathologists because of the shortage and the cost of supervision. SB 366 allows a bachelor's degree to be enough to receive a speech pathologist license. Sen. Nathe provided another hand-out for the Committee. (Exhibit #8)

Proponents' Testimony:

None.

Opponents' Testimony:

Allison Failing, Glasgow, said she had just finished her master's degree at Washington State University. She said she had hoped to work in Poplar, and she had been contacted by the Poplar School District to apply there. On December 18, 1992, she was at the Poplar school, but had received no reply to her applications. The Secretary told Ms. Failing that she could not be hired because the Poplar school could not afford to hire her.

Beverly Roy, member of the Board of Speech Language Pathologists and Audiologists, provided written testimony. (Exhibit #9)

Kara Sheridan, student at Washington State University, said she will receive her bachelor's degree in May. Ms. Sheridan is currently doing an internship in Missoula where she is learning the importance of furthering her education. While obtaining a

master's degree, speech pathology students must pass oral exams, written comprehensive exams, complete an internship at public schools and a clinical fellowship year. Introductory courses offered in a bachelor's degree program are not adequate training. Ms. Sheridan said Montanans should not expect less for their children.

Robert Runkel, Director of Special Education for the Office of Public Instruction (OPI), said (OPI) opposes SB 366 because it is responsible for enforcing the federal regulation that the minimum academic degree required for persons receiving special education must be the highest entry level degree for any state-approved or recognized certification or registration for that discipline. The highest academic degree required for licensure of speech and language pathologists and audiologists in Montana is a master's degree. Mr. Runkel said OPI recognizes some of the problems facing school administrators because of the shortage of speech and language pathologists, but they hope other conclusions can be reached.

Nickie Eck, Helena, provided written testimony. (Exhibit #10)

Sherri Maxwell, licensed speech-language pathologist for the Laurel Public Schools and the Yellowstone West/Carbon County Special Services Cooperative, provided written testimony. (Exhibit #11)

Kay Carrier, M.S., provided written testimony. (Exhibit #12)

Don Price, Speech Therapist in Twin Bridges, Alder and Sheridan schools, said speech pathology and audiology is one of the newest professions recognized by the Department of Human Services. They require a broad background including the study of human behavior, physics, psychology, biology, medicine, education and anatomy. Mr. Price said allowing individuals with only a bachelor's degree would be not unlike having an individual with a BA in history practicing law.

Dale Aarons, teacher at Pioneer School in Yellowstone County, said his concerns with SB 366 are that Pioneer School, being a small school, does not have an administrator, and therefore they do not have anyone who can supervise. If an individual is hired with a bachelor's degree, and that individual makes a mis-diagnosis, is the school system responsible for that mis-diagnosis.

Sandy Meech, Great Falls, said she had written to superintendents to establish a health related task force to address the issue of the shortages of speech pathologists and audiologists. (Exhibit #13) None of her letters were answered. Ms. Meech talked about the problems associated with allowing individuals with only a bachelor's degree to practice, and she said they are obviously not qualified. SB 366 puts school districts in liable a position, and she urged the Committee give SB 366 a do not pass

recommendation.

Darrell Lively, said he and his wife are consumers of the speech therapy offered through School District #1. They feel the qualifications should be the highest, and they see SB 366 addressing quantity over quality.

Merle DeVoe, self, said he wanted to point out to the Committee that there has never been a recruitment or vacancy factor regarding audiologists.

Patti DuBray, Billings, said individuals with bachelor's degrees are allowed to work for the state, but they are required to have supervision where the law states they do. Ms. DuBray said that implementing SB 366 will not assure that BA level people will "flock to the state." Also, it is a health-based profession, and they choose to work in different areas, including public schools. They are specialists who work in the education setting. Ms. DuBray asked the Committee to give SB 366 a do not pass recommendation.

Mona Jamison, Montana Association of Speech-Language Pathologists and Audiologists, said there were a number of people at the hearing who had not testified. Ms. Jamison said they share Sen. Nathe's concern that there is a shortage, but the way to address it is not to change the licensure requirements. SB 366 allows individuals who are not fully educated in this field to treat children in schools. An individual cannot work and continue his education because there is no facility offering courses in speech-language pathology or audiology in Montana. SB 366 is in conflict with special education requirements, and they urge the Committee to give SB 366 a do not pass recommendation.

Questions From Committee Members and Responses:

Sen. Christiaens asked Robert Runkel if SB 366 were an attempt to lower standards and to supersede federal law. If other states only require a bachelor's degree, Sen. Christiaens asked Mr. Runkel how that could be true. Mr. Runkel said, as far as special education requirements are concerned, the standards for entering the education profession can be no lower than it is for entering private practice. If a BA were permitted for entry level into private practice of this profession, then SB 366 would not be in violation of the law.

Sen. Christiaens asked Mr. Runkel if it were only because Montana requires a master's degree that SB 366 violates the law. Mr. Runkel said entry level requirements for this profession in Montana is a master's degree. For there to be no conflict with federal, the entry level standard for this profession must be lowered in all settings, not just public schools.

Sen. Rye asked Sen. Nathe who the proponent to SB 366 was going

to be. Sen. Nathe said the Bear Paw Cooperative was having a lot of problems, and the supervision part in the contracts provisions was a problem for them. The school district couldn't hire speech pathologists, and they had to contract out the services.

Sen. Mesaros asked Mr. Runkel to address the accreditation process. Mr. Runkel said the accreditation standards are linked to the special education standards. When the Board of Education adopted its standards, it stated that schools must adhere to special education requirements.

Chairman Eck asked Mr. Runkel how the system works, regarding education cooperatives, and how schools hire speech pathologists. Mr. Runkel said the majority of speech-language pathologists that work in the public schools are hired for the purpose of providing special education services. Half of those serve schools in rural settings, and are employed by cooperatives or special education cooperatives serving Montana's smaller schools. The other half provide special education in large districts, and they are hired by the school district.

Chairman Eck asked Mr. Runkel how the aids worked. Mr. Runkel said the aids work under supervision of a licensed speech-language pathologists. There are provisions in licensure law that permit the delegation of selected speech services to be provided by an aid, a non-licensed professional, if they are under the supervision of a licensed professional.

Chairman Eck asked Mr. Runkel how many professionals of this kind work in the school system now. Mr. Runkel estimated it to be approximately 160 speech-language pathologists that are employed by the public schools. He said the fiscal note references 162 FTE's approved by the division of special education as allowable costs for providing speech services in special education in the public schools.

Sen. Christiaens asked Mr. Runkel if there were contract audiologists left to address collaborative work. Mr. Runkel said the audiology program that provides services to the public schools is currently operated out of the Office of Public Instruction. They put bids out on a competitive basis for those audiological services for schools.

Sen. Christiaens said there were audiologists attached to the Montana School for the Deaf and Blind, and he thought they contracted with the school districts throughout the state. Mr. Runkel said, to his knowledge, the Montana School for the Deaf and Blind employed one audiologist and that individual's duties are primarily to serve the children who attend that school. There is an outreach program, but it does not include an audiologist.

Merle DeVoe said that the audiology program was at the School for the Deaf and Blind, and it was removed to balance the school's

budget.

Sen. Christiaens asked Mr. Runkel if the children being served by special education were eligible for Medicaid and if the schools worked with reimbursement for some of the contract work. Mr. Runkel said schools are beginning to access Medicaid dollars for those services. It is still at the "beginning stages."

Mary Dalton, Medicaid Division, said there is a bill in the legislature which would allow OPI to transfer part of their dollars as a Medicaid match.

Closing by Sponsor:

Sen. Nathe said there was a problem that needed to be addressed, and he wasn't sure SB 366 was the correct way to address it.

HEARING ON SB 352

Opening Statement by Sponsor:

Sen. Tom Keating, Senate District 44, said SB 352 is quite simple. Many medical providers are covered under the lien law, and SB 352 amends the law to include psychologists, licensed social workers, and licensed professional counselors so that they may receive direct payment of insurance benefits.

Proponents' Testimony:

Mary McCue, Montana Clinical Mental Health Counselors Association, said the Association asked Sen. Keating to introduce SB 352 because they would like to have the choice of whether or not they can be participating providers under Blue Cross/Blue Shield programs. If they are participating providers, they will be paid directly by Blue Cross, otherwise Blue Cross will pay the patient. Ms. McCue directed the Committee's attention to Section 6 of SB 352. With the passage of SB 43, which removed the Sunset form this legislation, the temporary section will now be in effect. She provided an amendment which will include the language putting counselors, social workers and psychologists into the section that will be permanent law. (Exhibit #14)

Dr. Bob Bachow, President of the Montana Clinical Mental Health Counselors Association and the Executive Director of the Northwest Counseling Center, said he supports SB 352. He encouraged the Committee to include them in the lien act.

Judith Carlson, Montana Association of Social Workers, said the Association supports SB 352, and they appreciate the opportunity to support this bill.

Jim Smith, Montana Psychological Association, said the members of the Association support SB 352.

Jim Ahrens, President of the Montana Hospital Association, said he supports SB 352.

Tom Ebzery, St. Vincent's Hospital, said they support SB 352. They know how difficult it is, in terms of collections, without a lien act.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

Chairman Eck asked Jim Ahrens if the Committee passes SB 285, which provides for managed competition, there would be a contradiction with SB 352.

Jim Ahrens said a lien act is different than managed competition, because a lien has a specific service.

Chairman Eck asked Tanya Ask to address the question. Tanya Ask, Blue Cross/Blue Shield, said the bill would negate one of the means that an insurer would have of contracting with providers. Anytime there is a contractual arrangement there needs to be an incentive on both sides of the contractual arrangement. One of the incentives from the payer's standpoint is the direction of payment, and that is why they were in opposition to the physician lien act being passed. They felt it removed one of the tools that a payer had in negotiating an arrangement with a provider. They did not oppose SB 352 because the concept has already been passed.

Chairman Eck asked Ms. Ask if she had seen a memo from Sen. Mazurek which speaks to the issue of willing provider and also to the issue of restraint of trade through legislation that would discourage cost containment measures. Ms. Ask said she had seen the memo, that instead of encouraging competition, this would quash competition.

Closing by Sponsor:

Sen. Keating said all the medical providers are grouped together if SB 352 passes. He urged the Committee to recommend a DO PASS for SB 352.

HEARING ON SB 403

Opening Statement by Sponsor:

Sen. David Rye, Senate District 47, said SB 403 comes from a request of the Department of Health and Environmental Sciences. It is the result of a court decision handed down in June, 1991,

which will end up costing the state of Montana a great deal of money. SB 403 essentially excluded out-patient facilities from licensure from the Department of Health and Environmental Sciences. It redefines "out-patient" facility as well.

Proponents' Testimony:

Mike Craig, Department of Health and Environmental Sciences Licensure Bureau Chief, said SB 403 has to do with economics and liability. The reason the Department is in this position has to do with the court order (Exhibit #15). If the legislature passes a law requiring the Department to regulate a facility, the court order requires the Department to do "a good job." They are in a position now that they do not have the staff nor the resources to take on this responsibility. There are numerous types of out-patient facilities which meet the definition of a health care facility, including abortion clinics. The fiscal note says there is no fiscal impact of this legislation, but if the Department is required to regulate out-patient facilities, they would have to request additional staff and general funding appropriation of approximately $190,000. The Department needs to limit their liability.

Opponents' Testimony:

Jim Ahrens, President of the Montana Hospital Association, said this is a tough issue, and the Department of Health is obviously in a bind. And, the state may be liable if the inspections of out-patient facilities are not adequate. However, the citizens of Montana have a right to know that they are receiving safe health care services, and that the state has certified them as such. Mr. Ahrens said there should be regulation of ambulatory surgery, for example. If it is exempted from regulation, there will be no one responsible for oversight.

Questions From Committee Members and Responses:

Sen. Christiaens said that the Committee should be aware that HB 400, which deals with licensing of x-ray equipment, is tied up in the Human Services Subcommittee, and will not pass. The Department of Health has said that appropriations must be made from the general fund, or they will eliminate the inspections. The Department said the legislature needs to take statutory action to eliminate the state from liability if there will be no appropriation of funds for inspections. If no money were appropriated, and the state got sued, there would be a real dilemma.

Chairman Eck said the Department of Health had come to the legislature for different fees for regulating industry. She asked Mike Craig if the Department had considered charging fees. Chairman Eck asked Mr. Craig who paid for the hospital inspections. Mr. Craig said hospital inspections are primarily

paid for out of Medicare and Medicaid dollars. In the case of change, the Licensure Bureau has taken the position that it is necessary to prioritize, and they are going to develop a survey system based on state licensure. They are relying on past surveys for hospitals that have not been recently inspected.

Chairman Eck said the Committee passed a bill that allowed the Board of Radiologic Technicians to do inspecting, so that it will be known that the technicians are only doing what they are permitted to do. However, there is no way to know that the equipment they are using is safe. Chairman Eck asked Mr. Craig if there were a way to attach this regulation of facilities to the regulation of technicians and health professionals.

Mr. Craig said that the Department of Commerce deals with the regulation of the professions themselves, and that will not change with SB 403. The professionals who work in the out-patient facilities will continue to be responsible for their professional standards.

Sen. Klampe asked Mr. Craig how many out-patient facilities were in consideration. Mr. Craig said there are approximately 175-180 out-patient facilities. It is difficult to distinguish between a doctor's office and an out-patient facility because of the specialization of health care.

Sen. Klampe asked Mr. Craig if it would cost about $1000.00 for inspection of each facility, would it be outlandish for those facilities to pay for their own inspections? Mr. Craig said it was not outlandish at all. However, there is an issue of unfairness. Mr. Craig added that SB 403 is brought to the Committee "reluctantly."

Chairman Eck asked Mr. Craig if it would be appropriate to Sunset this bill so that the Department would have to come back with a plan for inspection. Mr. Craig said he would not object to that.

Closing by Sponsor:

Sen. Rye said he would not object to a Sunset provision. He said that if the economic situation of the state improved, he would offer to repeal SB 403. The legislature is at the point where it must decide what is "least necessary," and SB 403 is a way to save money and to save the state from possible future litigation. Sen. Rye said he did not disagree with Jim Ahrens' testimony.

Questions From Committee Members and Responses:

Sen. Christiaens asked Mike Craig if there were a certificate of need for any of the out-patient facilities. Mr. Craig said the ambulatory surgery centers are subject to a certificate of need based on ownership.

Sen. Klampe read a letter from the Montana Chiropractic Association in regard to SB 266. (Exhibit #16)

EXECUTIVE ACTION ON SB 403

Discussion:

Sen. Klampe asked if a resolution could be drafted to the Department of Health recommending that facilities charge for the cost of licensure.

Chairman Eck asked Susan Fox if SB 403 could be structured in a way that a Sunset provision would state that the Committee is expecting a review of a fee structure. Ms. Fox said the title of the bill is very specific, and that might be questionable.

Chairman Eck asked Mr. Craig if he had any ideas. Mr. Craig said HB 2 is an appropriate method to getting messages across to the Department of Health.

Motion:

Sen. Klampe moved an amendment that SB 403 be Sunsetted in two years.

Discussion:

Chairman Eck asked Susan Fox to prepare a Sunset amendment.

Vote:

The motion carried unanimously.

Discussion:

Sen. Christiaens said he was not convinced the Department of Health had explored every avenue regarding SB 403, and that the bill established a "terrible precedence" if passed by the Committee. This compromises the safety of people.

Chairman Eck said that because Sen. Christiaens serves on the Human Services Subcommittee he is in a better position to address this issue than the rest of the Committee members. She said there may be an opportunity for collaboration to provide inspections.

Sen. Rye said he did not enjoy sponsoring SB 403, but it may be necessary. If there are any other options, he will recommend a DO NOT PASS in the House Committee that hears this bill.

Sen. Christiaens said there is a necessity for this bill because money is not being appropriated.

Motion/Vote:

Sen. Rye moved that SB 403 DO PASS as amended. The motion carried with all members yes except Sen. Franklin who voted no.

Discussion:

Sen. Klampe asked if Sen. Christiaens were going to ask the Department look at other ways to inspect the facilities, because he thought it was reasonable for facilities to pay for their own licensure.

Sen. Christiaens said there are three other bills that have similar effects as this bill.

Chairman Eck said she would speak for the sentiments of the Committee when those bills are heard.

EXECUTIVE ACTION ON SB 366

Motion/Vote:

Sen. Franklin moved that SB 366 be TABLED. The motion carried unanimously.

EXECUTIVE ACTION ON SB 352

Discussion:

Susan Fox said she wasn't sure if the amendment was needed.

Chairman Eck said the other lien bill has already been signed by the Governor. The Committee could pass SB 352 and let the amendment be presented in the House.

Motion/Vote:

Sen. Christiaens moved that SB 352 DO PASS. All Committee members voted yes, except Chairman Eck, who voted no.

ADJOURNMENT

Adjournment: Chairman Eck adjourned the hearing.

Dorothy Eck
SENATOR DOROTHY ECK, Chair

Laura Turman
LAURA TURMAN, Secretary

DE/LT

ROLL CALL

SENATE COMMITTEE Public Health DATE 2-17-93

NAME	PRESENT	ABSENT	EXCUSED
Eck	✓		
Franklin	✓		
Klampe	✓		
Hager	✓		
Towe			✓
Mesaros	✓		
Rye	✓		
Christiaens	✓		

FC8

Attach to each day's minutes

SENATE STANDING COMMITTEE REPORT

MR. PRESIDENT:

We, your committee on Public Health, Welfare, and Safety having had under consideration Senate Bill No. 118 (first reading copy -- white), respectfully report that Senate Bill No. 118 be amended as follows and as so amended do pass.

Signed: Dorothy Eck
Senator Dorothy Eck, Chair

That such amendments read:

1. Title, lines 7 and 8.
Strike: "ELIMINATING ADULT FOSTER FAMILY CARE HOMES;"

2. Title, line 8.
Following: "50-5-227,"
Insert: "AND"

3. Title, line 9.
Strike: "50-8-101, 52-3-811, AND 76-2-411,"
Strike: "REPEALING"

4. Title, lines 10 and 11.
Strike: "SECTIONS" on line 10 through "MCA;" on line 11

5. Title, line 12.
Following: "PROVIDING"
Insert: "AN"
Strike: "DATES"
Insert: "DATE"

6. Page 9, line 9.
Following: "~~52-3-303,~~"
Insert: "adult foster care licensed under 52-3-303,"

7. Page 14, line 8.
Following: line 7
Insert: "(4) A resident of a personal care facility must have a signed statement, renewed on an annual basis, from a physician, a physician-assistant certified, a nurse practitioner, or a registered nurse, whose work is unrelated to the operation of the facility and who:

(a) actually visited the facility within the year covered by the statement;

(b) has certified that the particular needs of the resident can be adequately met in the facility; and

(c) has certified that there has been no significant change in health care status that would require another level of care."
Renumber: subsequent subsection

8. Page 15, line 3.
Strike: "(4)(b)"
Insert: "(5)(b)"

9. Page 20, line 6.
Strike: "personal-care facilities"
Insert: "adult foster care"
Strike: "50-5-227"
Insert: "52-3-303"

10. Page 21, line 12 through page 25, line 19.
Strike: sections 5 through 8 in their entirety
Renumber: subsequent sections

11. Page 25, line 25 through page 26, line 3.
Strike: "dates" on line 25
Insert: "date"
Strike: "(1)" on line 25 through "are" on page 26, line 3
Insert: "[This act] is"

-END-

SENATE STANDING COMMITTEE REPORT

MR. PRESIDENT:

We, your committee on Public Health, Welfare, and Safety having had under consideration Senate Bill No. 266 (first reading copy -- white), respectfully report that Senate Bill No. 266 be amended as follows and as so amended do pass.

Signed: Dorothy Eck
Senator Dorothy Eck, Chair

That such amendments read:

1. Title, line 6.
Following: "ACUPUNCTURE"
Insert: ", WITH CERTAIN QUALIFICATIONS"
Strike: "37-13-301"
Insert: "37-13-302"

2. Page 1, line 24 through page 2, line 5.
Strike: Section 2 in its entirety
Insert: "Section 2. Section 37-13-302, MCA, is amended to read:

"37-13-302. Application for licensure -- fee -- qualifications. (1) Each person desiring to practice acupuncture in this state shall make application for licensure or provisional licensure with the secretary of the board, upon the forms and in the manner prescribed by the board. A fee prescribed by the board shall accompany the application.

(2) (a) A person making application shall furnish the board evidence that ~~he~~ the person is:

~~(a)~~(i) at least 18 years of age;

~~(b)~~(ii) of good moral character, as determined by the board;

~~(c)~~(iii) a graduate of an approved school of acupuncture that is approved by the national accreditation commission for schools and colleges of acupuncture and oriental medicine and offers a course of at least 1,000 hours of entry-level training in recognized branches of acupuncture or an equivalent curriculum approved by the board; and

~~(d)~~(iv) has passed an examination prepared and administered by the board or an examination prepared and administered by the national commission for the certification of acupuncturists.

(b) A person may apply to the board for a provisional license to practice acupuncture if the person:

(i) is licensed to practice medicine under Title 37, chapter 3, part 3; licensed to practice osteopathy under Title 37, chapter 5, part 3; or licensed to practice chiropractic under Title 37, chapter 12, part 3; and

Amd. Coord.
Sec. of Senate

(ii) has completed a course of study of at least 300 hours of acupuncture training that is accredited by the national accreditation commission for schools and colleges of acupuncture and oriental medicine.

(3) A person who obtains a provisional license to practice acupuncture from the board as provided in subsection (2)(b) must within 1 year pass an examination prepared and administered by the national commission for the certification of acupuncturists to become licensed to practice acupuncture."

-END-

SENATE STANDING COMMITTEE REPORT

February 18, 1993

MR. PRESIDENT:

We, your committee on Public Health, Welfare, and Safety having had under consideration Senate Bill No. 291 (first reading copy -- white), respectfully report that Senate Bill No. 291 be amended as follows and as so amended do pass.

Signed: Dorothy Eck
Senator Dorothy Eck, Chair

That such amendments read:

1. Page 1, lines 13 through 20.
Strike: subsection (1) in its entirety
Renumber: subsequent subsections

2. Page 2, line 25.
Following: line 24
Insert: "(5) The following provisions must govern the conduct of a utilization review of health care services rendered to a patient by a health care provider who is a licensed social worker, licensed professional counselor, licensed psychiatric nurse, licensed psychiatrist, or a licensed psychologist:

(a) If a review of the patient's or the health care provider's records is required by the insurer in the course of an appeal or a redetermination of an adverse determination of medical necessity or appropriateness made pursuant to an insurer's review, the review must be conducted by a person trained in the field of the provider.

(b) During an appeal or redetermination, the patient may, at the patient's expense, request an independent review of the patient's or the provider's records by a health care provider licensed in the field of the provider that rendered the health care service and may require that review to be considered by the insurer in reaching its decision. If the initial adverse determination of medical necessity or appropriateness is reversed, the insurer shall bear the expense of the independent review."

-END-

Amd. Coord.
Sec. of Senate

401158SC.San

SENATE STANDING COMMITTEE REPORT

February 18, 1993

MR. PRESIDENT:

We, your committee on Public Health, Welfare, and Safety having had under consideration Senate Bill No. 403 (first reading copy -- white), respectfully report that Senate Bill No. 403 be amended as follows and as so amended do pass.

Signed: Dorothy Eck
Senator Dorothy Eck, Chair

That such amendments read:

1. Title, line 8.
Strike: "AND"
Following: "MCA"
Insert: "; AND PROVIDING A TERMINATION DATE"

2. Page 13, line 3.
Following: line 2
Insert: "NEW SECTION. **Section 3. Termination.** [This act] terminates October 1, 1995."

-END-

ADP 2/2
Amd. Coord.
Sec. of Senate

401122SC.San

SENATE STANDING COMMITTEE REPORT

February 18, 1993

MR. PRESIDENT:

We, your committee on Public Health, Welfare, and Safety having had under consideration Senate Bill No. 352 (first reading copy -- white), respectfully report that Senate Bill No. 352 do pass.

Signed: Dorothy Eck
Senator Dorothy Eck, Chair

Amd. Coord.
Sec. of Senate

401119SC.San

SENATE HEALTH & WELFARE
EXHIBIT NO. 1
DATE 2-17-93
BILL NO. SB 118

Amendments to Senate Bill No. 118
First Reading Copy

Requested by Sen. Towe
For the Committee on Public Health, Welfare, and Safety

Prepared by Susan B. Fox
February 15, 1993

1. Page 14, line 8.
Following: line 7
Insert: "(3) A resident of a personal care facility must have a signed statement, renewed on an annual basis, from a physician, a physician assistant, a nurse practitioner, or a registered nurse, unrelated to the operation of the facility, who:
(a) actually visited the facility;
(b) has certified that the particular needs of the resident can be adequately met in the facility; and
(c) has certified that there has been no significant change in health care status that would require another level of care."

SENATE HEALTH & WELFARE
EXHIBIT NO. 2
DATE 2-17-93
BILL NO. SB 266

Amendments to Senate Bill No. 266
First Reading Copy

Requested by Sen. Towe
For the Committee on Public Health, Welfare, and Safety

Prepared by Susan B. Fox
February 15, 1993

1. Title, line 6.
Following: "ACUPUNCTURE"
Insert: "WITH QUALIFICATIONS"
Following: "37-13-104"
Strike: "AND"
Insert: ","
Following: "37-13-301,"
Insert: "AND 37-13-302"

2. Page 1, line 24 through page 2, line 5.
Strike: Section 2 in its entirety
Insert: **"Section 2.** Section 37-13-302, MCA, is amended to read:

"37-13-302. Application for licensure -- fee -- qualifications. (1) Each person desiring to practice acupuncture in this state shall make application for licensure with the secretary of the board, upon the forms and in the manner prescribed by the board. A fee prescribed by the board shall accompany the application.

(2) A person making application shall furnish the board evidence that ~~he~~ the person is:

(a) (i) at least 18 years of age;

~~(b)~~ (ii) of good moral character, as determined by the board;

~~(c)~~ (iii) a graduate of an approved school of acupuncture that is approved by the national accreditation commission for schools and colleges of acupuncture and oriental medicine and offers a course of at least 1,000 hours of entry-level training in recognized branches of acupuncture or an equivalent curriculum approved by the board; and

~~(d)~~ (iv) has passed an examination prepared and administered by the board or an examination prepared and administered by the national commission for the certification of acupuncturists; or

(b) (i) licensed to practice medicine under Title 37, chapter 3, part 3, or licensed to practice osteopathy under Title 37, chapter 5, part 3;

(ii) has completed a minimum of 250 hours of training in acupuncture in courses accredited by the American medical association or the American osteopathic association; and

(iii) has passed an examination approved by the board."

SENATE HEALTH & WELFARE
EXHIBIT NO. 3
DATE 2-17-93
BILL NO. SB 266

AMENDMENTS TO SB 266
Prepared by Mary McCue
Lobbyist for Montana Association of Acupuncture and Oriental Medicine

1. Page 1, line 24 through page 2, line 5.
Strike: Section 2 in its entirety

2. Insert:

"Section 37-13-302, MCA, is amended to read:

37-13-302. Application for licensure — fee — qualifications. (1) Each person desiring to practice acupuncture in this state shall make application for licensure with the secretary of the board, upon the forms and in the manner prescribed by the board. A fee prescribed by the board shall accompany the application.

(2) A person making application shall furnish the board evidence that he is:

(a) at least 18 years of age;

(b) of good moral character, as determined by the board;

(c) a graduate of an approved school of acupuncture that is approved by the national accreditation commission for schools and colleges of acupuncture and oriental medicine and offers a course of at least 1,000 hours of entry-level training in recognized branches of acupuncture or an equivalent curriculum approved by the board; and

(d) has passed an examination prepared and administered by the board or an examination prepared and administered by the national commission for the certification of acupuncturists.

or that he is:

(i) licensed to practice medicine under Title 37, chapter 3, part 3, or licensed to practice osteopathy under Title 37, chapter 5, part 3, and

(ii) has completed a course of study of at least 400 hours of acupuncture training which are accredited by the national accreditation commission for schools and colleges of acupuncture and oriental medicine; and

(iii) within 1 year of obtaining a provisional license to practice acupuncture, has passed an examination prepared and administered by the national commission for the certification of acupuncturists."

SENATE HEALTH & WELFARE
EXHIBIT NO. 4
DATE 2-17-93
BILL NO. SB 291

Amendments to Senate Bill No. 291
First Reading Copy

Requested by Sen. Doherty
For the Committee on Public Health, Welfare, and Safety

Prepared by Susan B. Fox
February 17, 1993

1. Page 1, lines 13 through 20.
Strike: subsection (1) in its entirety
Renumber: subsequent subsections

2. Page 2, line 25.
Following: line 24
Insert: "(5) The following provisions must govern the conduct of a utilization review of health care services rendered to a patient by a health care provider who is a licensed social worker, licensed professional counselor, or a licensed psychologist:

(a) If a review of the patient's or the health care provider's records is required by the insurer in the course of an appeal or a redetermination of an adverse determination of medical necessity or appropriateness made pursuant to an insurer's review, the review must be conducted by a person trained in the field of the provider.

(b) During an appeal or redetermination, the patient may, at the patient's expense, request an independent review of the patient's or the provider's records by a health care provider licensed in the field of the provider that rendered the health care service and may require that review to be considered by the insurer in reaching its decision. If the initial adverse determination of medical necessity or appropriateness is reversed, the insurer shall bear the expense of the independent review."

SENATE HEALTH & WELFARE
EXHIBIT NO. 5
DATE 2-17-93
BILL NO. SB 285

Amendments to Senate Bill 285

Page , Section , Line

Strike:

Insert: "All the authority members must be full-time state employees, exempt from Title 2, chapter 18, parts 1 and 2. The annual salary of the presiding officer is 85% of the annual salary of the presiding officer of the public service commission. The annual salary of each of the other members is 85% of the annual salary of public service commissioners other that the presiding officer."

SENATE HEALTH & WELFARE
EXHIBIT NO. 6
DATE 2-17-93
BILL NO. SB 285

Amendments to Senate Bill 285

Page , Section , Line

Strike: Accepted

Insert: " NEW SECTION. **Section . Health care planning regions.** (1) There are five health care planning regions. Subject to subsection 2, the regions consist of the following counties.

(a) Region I: Valley, Daniels, Sheridan, Roosevelt, Garfield, McCone, Richland, Dawson, Wibaux, Prairie, Fallon, and Carter;

(b) Region II: Glacier, Toole, Liberty, Hill, Blaine, Phillips, Pondera, Chouteau, Teton, Cascade, Judith Basin, and Fergus;

(c) Region III: Custer, Powder River, Rosebud, Treasure, Petroleum, Musselshell, Golden Valley, Wheatland, Stillwater, Yellowstone, and Carbon;

(d) Region IV: Sweetgrass, Park, Meagher, Broadwater, Gallatin, Madison, Beaverhead, Silver Bow, Deer Lodge, Jefferson, and Lewis and Clark;

(e) Region V: Powell, Granite, Ravalli, Missoula, Mineral, Sanders, Lake, Flathead, and Lincoln;"

Page , Section , Line

Strike:

Insert: "Within each region, the authority shall establish by rule a regional health care planning board. Each board must include one member from each county within their respective regions. The members on each board must represent a balance of individuals who are health care consumers and individuals who are recognized for their interest or expertise, or both, in health care.

SENATE HEALTH & WELFARE
EXHIBIT NO. 7
DATE 2-17-93
BILL NO. SB 366

DEPARTMENT OF COMMERCE
PUBLIC SAFETY DIVISION

STAN STEPHENS, GOVERNOR

111 N. JACKSON

STATE OF MONTANA

HELENA, MONTANA 59620-0407

BOARD OF SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

TO Andrea Merrill, Legislative Council

FROM Helena Lee, Administrative Assistant

RE LC 1479 proposed bill to allow B.A. level individuals to practice on the same level as a Master's level individual, with no supervision.

DATE January 21, 1993

This memo is in response to your telephone inquiry today requesting a summary on the National Standards from ASHA (American Speech-Hearing Association) and the Board of Speech-Language Pathologists and Audiologists requirements for licensure. The accreditation standards and qualifications for licensure are enclosed with this memo.

It is my understanding that you will share this information with Senator Dennis Nathe who would possibly sponsor this legislation for Douglas Sullivan and several other school administrators and superintendents of schools.

Montana requires that applicants meet ASHA standards for licensure in Montana. (See 37-15-303 (a) enclosed .)

In 1962 ASHA adopted the master's degree as the minimum requirement for their membership/certification standard. Please see the enclosed standards for Certificate of Clinical Competence from ASHA.

Also, for statistical information, there is a national survey of requirements for the public schools enclosed as well as a national survey of state qualifications for employment for speech-language pathologists.

As a point of interest, I have enclosed an article from the National Council which speaks directly to the issue which would be raised of B.A. level people doing Master level work should LC 1479 become proposed as legislation.

Speech-Language Pathology Certification Requirements for the Public Schools

	BA	MA or Equivalent	Other Combinations
Alabama	BA		
Alaska		MA	
Arizona	BA		
Arkansas		MA effective 6/1/92	Level 1: BA 6 yr. nonrenewable Level 2: MA 10 yr. renewable
California			BA plus "fifth year"
Colorado		MA	
Connecticut		MA	
Delaware		MA	
Florida		MA	
Georgia			Entry level BA - 5 yrs. nonrenewal requires MA
Hawaii		MA	
Idaho		MA	
Illinois		MA	
Indiana		MA	
Iowa		MA	
Kansas		MA	
Kentucky		MA effective 8/1/94	Entry level BA; after 5 yrs. or by 8/1/94 requires MA
Louisiana		MA	
Maine			Entry level BA 5 yr. term + 1 renewal (10 years total) then renewal requires 30 hrs.
Maryland		MA	
Massachusetts		MA	
Michigan		MA	
Minnesota	BA		
Mississippi		MA	
Missouri		MA	
Montana		MA	
Nebraska		MA	
Nevada	BA		
New Hampshire		MA	
New Jersey		MA	
New Mexico		MA	
New York			Entry level BA - after 5 yrs. renewal requires MA.
North Carolina			Entry level BA - after 5 yrs. renewal requires MA.
North Dakota		MA	
Ohio		MA	
Oklahoma		MA	
Oregon	BA		

2-17-93
SB-366

State Qualifications for Employment for Speech-Language Pathologists

LICENSURE+ REQUIRED FOR EMPLOYMENT IN ALL SETTINGS

Connecticut
Delaware
Hawaii
Illinois
Kansas
Louisiana
Massachusetts
Montana

MA CERTIFICATION*/LICENSURE

Florida
Indiana
Iowa
Maryland
Mississippi
Missouri
Nebraska
New Jersey
New Mexico
North Dakota
Ohio
Oklahoma
Wisconsin (effective 12/1/90)

BA CERTIFICATION/LICENSURE

Alabama
Arkansas (MA effective 6/1/92)
California
Georgia
Kentucky (MA effective 8/1/94)
Maine
Nevada
New York
North Carolina
Oregon
Pennsylvania
Rhode Island
South Carolina
Tennessee
Texas
Utah
Virginia (MA effective 7/1/92)
Wyoming (MA effective 7/1/92)

MA CERTIFICATION/NO LICENSURE

Alaska
Colorado
District of Columbia
Idaho
Michigan
New Hampshire
Vermont
Washington
West Virginia

BA CERTIFICATION/NO LICENSURE

Arizona
Minnesota
South Dakota

+Licensure laws for speech-language pathologists have been enacted in 39 states. The minimum degree required to obtain a license in all 39 states is a Master's degree.

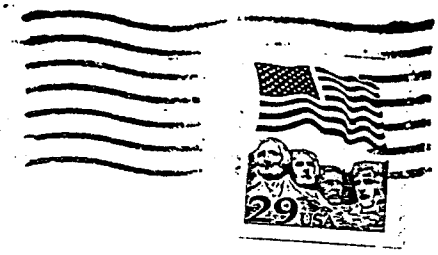
*Certification is issued by the state education agency and is needed to practice speech-language pathology in the public schools. MA - Master's degree and BA - Bachelor's Degree and signifies the minimum education required to obtain certification.

GAD/6-91/CEL

SENATE HEALTH & WELFARE
EXHIBIT NO. 8
DATE 2-17-93
BILL NO. SB 366

for your information

Newsletter Licensure



The National Council of State Boards of Examiners for Speech-Language Pathology and Audiology
P.O. Box 326
Wellsburg, WV 26070

Board of Speech-Language
Pathologists & Audiologists
111 N. Jackson
Arcade Building
Helena, MT 59620

Helena Lee
Administrative Assistant
444-3091

STANDARDS AND LICENSURE IN SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY

Eugene B. Cooper
The University of Alabama, Tuscaloosa

Licensing laws exist to protect the public. License laws protect the public by defining standards relating to the delivery of services. The relationships between the process of licensing individuals to perform service and the process of establishing standards pertaining to the delivery of that service are complex. State boards of licensure are created primarily to enforce standards as defined in the law; however, a decision made by a licensure board concerning a procedural matter results in the establishment of a new standard. Obviously, standards and licensure are inextricably related.

Thirty-five years ago, our discipline's professional association consisted of 1800 members. Its annual meetings were more like reunions than conferences. The discipline was still new because those who began it were still among us. They transmitted to us their excitement in this new endeavor as well as their determination that the practitioners in this new discipline would be individuals whose qualifications would assure the deliverance of quality services. That commitment to standards has characterized our discipline's development. In 1925 our professional association's founders set membership qualifications that, among other things, included the requirement that members hold a master's or a doctorate and hold a professional reputation untainted by unethical practices. The discipline continued its development of standards in 1942 by defining three levels of membership. Fellows and Professional Members were defined as those individuals with a broad education in the field of speech correction qualified to work independently. Clinical Members were those with a minimum academic preparation and experience capable of providing speech correction under supervision. An Associate Member category was offered individuals who were students in training in speech correction.

With the Association's continued growth in the late 1940s and early 1950s, with the development of audiology as a area of study within the developing discipline, and with the increasing demand for the profession's clinical services in the nation's schools and health care system, the need for more specific standards became evident. No longer could a simple membership categorization provide evidence of the member's academic as well as clinical credentials. Thus, in 1951, the professional association adopted the first set of standards, independent of membership requirements, for qualifying an individual to provide clinical services. Two levels of certification were approved: A Basic Certificate was awarded those with a bachelor's degree and one year of experience and an Advanced Certificate was awarded those with a master's or doctorate in either speech-language pathology or audiology.

Faced with the demands for the services of speech-language pathologists but lacking nationally accepted standards by which the competencies of these practitioners could be identified, state boards and departments of education assigned their teacher certification administrative units the task of setting standards for this new specialist. By the time our professional association had matured sufficiently to begin promulgating its own standards in 1951, the profession's standards had been defined and set for over three quarters of our profession's practitioners by state departments of education throughout the nation.

During the 1950s, when a bachelor's degree in the discipline was still the minimal requirement for membership in ASHA as well as for a certificate indicating an acceptable level of competency to practice, there was little conflict between standards being promulgated by our professional association and standards defined by educationalists. However, it was evident that conflicts over standards were imminent. Members of the association argued among themselves as to whether public school practitioners needed the same qualifications as those who worked in clinical settings. Discussions were common as to whether our public school practitioner colleagues should behave as "separatists" or "participants" on the educational team, and as to whether students should be required to complete courses in education to be eligible to work in the schools. Such discussions were of little more than academic interest in view of the fact that such decisions concerning standards had already been made by the state departments of education. Nevertheless, throughout the decade, ASHA continued its growth and its obsession with internally-oriented standards. There is little evidence the association's focus on standards-setting was accompanied by efforts to have those standards adopted by the nation's public school systems, which continued to employ the vast majority of the profession's practitioners.

As the 1960s began, the discrepancy between our professional association's standards and the standards for employability under which the vast majority of our profession's practitioners work increased significantly. In 1962 ASHA adopted the master's degree as the minimum requirement for membership. At the same time, new certification requirements to take effect in 1965, were approved. These new certification requirements included a master's degree in speech pathology or in audiology, specified course requirements, a nine month full time paid professional experience and the passing of a national examination. Suddenly, the standards for communicative disorders practitioners set by educationalists throughout the nation and the standards set by the national professional

STANDARDS AND LICENSURE (CONTINUED)

organization were markedly different.

In the 1960s, over three-fourths of the nation's speech-language pathologists were employed in the public schools. Fortunately, the task of promulgating our national association's standards programs coincided with federal legislative activities in the 1960s that significantly increased the federal government's involvement in the nation's education and health systems which, in turn, focused federal attention on the standards governing the delivery of education and health services.

As rules and regulations for implementing federal health and education legislation were being written, our professional association's national office staff was able to identify our certificates of clinical competency and our educational program as the acceptable national standards in governmental publications and regulations. The Council of Postsecondary Accreditation and the Department of Education formally recognized ASHA as the agency responsible for the accreditation of master's degree programs in speech-language pathology and audiology. Federal and state public and private agencies as well as the insurance community began to require that practitioners possess the appropriate ASHA certificate of clinical competence in order to be reimbursed for their services. In spite of these gains, the vast majority of our state education departments maintained the bachelor degree entry level standards for our practitioners, and no state laws governed the practice of our profession. However, our colleagues in Florida brought the decade to a successful conclusion in 1969 by having their state legislature pass the first state licensure law regulating the practice of speech-language pathology and audiology **embodying standards defined by our national professional association.** It was an historical first for our profession.

The challenge of the 1970s had been set. In the next ten years, the success of our professional community in Florida was repeated throughout the country time and again and by the end of the 1970s, 30 states had passed similar licensure laws. Without exception, these licensure laws embodied practitioner requirements similar to, if not identical to, the ASHA certificate requirements. During the same period, our colleagues were successful in encouraging nearly half of the state departments of education to upgrade their standards for the employment of speech-language pathologists to require the master's degree. The time-proven process of national standards development and promulgation appeared to be working for us. A national professional association (ours) had provided the guidelines for standards development and state legislative processes assured their application. The momentum for the universal adoption of national standards following guidelines established by our nationally recognized standards-setting professional association was there. The force was with us.

And then came the 1980s. Attacks on the viability and integrity of our association's standards as embodied in the certificates of clinical competency arose from several sources. First came the shift in public sentiment concerning governmental regulations. Reagan brought in the era of deregulation and sunsetting. It was more popular for state legislatures to dismantle rather than promulgate regulatory acts. Efforts to push for state licensure laws were abandoned by our colleagues in several states, and our leaders in licensed states shifted from the offense to the defense as they were called upon to appear before sunset committees.

A second factor impeding the acceptance of our association's standards for its practitioners was related to developments in education. The pressures for change in the nation's educational system that had been exerted in the 1960s and 70s through federal involvement were significantly diminished in the 1980s. The move for upgrading standards in schools stalled as the Holmes and the Carnegie reports so dramatically documented and our own experiences in dealing with state departments of education verify. Confronted with the need to expand services for the handicapped to fulfill 1970s federal legislative mandates without accompanying federal support, state departments were in no position to respond favorably to demands for upgrading standards. The recent attempts of state directors of special education to deny the congressional intent behind passage of the qualified provider proviso in P.L 99-457 is indicative of the support we can expect to receive from the educational establishment in the promulgation of our profession's national standards.

A third factor impeding the promulgation of our association's standards is the recent and unanticipated attack on the integrity of the certificates of clinical competence by our own colleagues. A significant number of our colleagues, in response to suggestions that state departments of education in states with licensure laws comply with P.L. 99-457's qualified provider proviso by adopting state licensure as the minimal credential for employment in the schools, are taking the position that licensure is not sufficient evidence that an individual is qualified to practice in the public schools. They maintain that speech-language pathologists and audiologists also need to complete practicum experiences in the schools as well as coursework in education. Undoubtedly, these challenges to the validity of the certificates of clinical competence for public school practitioners are not without substance. It is unfortunate, however, that we are not seizing this rare opportunity, brought about by the qualified provider issue, to promulgate the acceptance of our association's certificates of clinical competence. Resis-

tance to passing laws that do not exempt public school practitioners, or to removing such exemptions in existing laws, originates not only from state boards and departments of education, but from our own colleagues. Unfortunately and incorrectly, public school employment on the basis of licensure has been equated unequivocally, in the minds of many, to employment by annual contracting and a consequential ineligibility to participate in teacher tenure and retirement programs. In no case has the passage of licensure laws not exempting public school speech-language pathologists resulted in the loss of benefits. Such exemption-free laws, however, do protect the public from the education establishment's use of certification waivers.

Colleagues choosing to allow state departments of education to continue to define our profession's standards are misguided. If any truth can be garnered from the study of the history of standards development in education, it has to be that state boards and state departments of education invariably can be depended upon to opt for the lowest standards available and to maintain those standards only so long as they can find warm bodies to meet them. A recent example of this truism, was the decision by the Oklahoma Board of Education, which less than two years ago had adopted the master's degree as the minimum standard, to begin employing, "one week wonders," as some of our colleagues are labeling the bachelor degree personnel who, after completing an "intensive" one week course in communicative disorders, are eligible for employment in the schools as speech-language pathologists.

While one of the most significant achievements of our professional association has been its commitment to, and success in, defining standards for our practitioners, perhaps our professional association's greatest weakness has been its failure to pursue aggressively the implementation of those standards with over half of the nation's state boards and state departments of education. The education establishment now employs an estimated 20,000 bachelor's degree level practitioners. Shame on us for allowing this to continue. The definition and promulgation of our profession's standards must not remain in the hands of state boards of education.

State department of education personnel, in licensure states continuing to employ speech-language pathologists at the bachelor's level, are delighted with our professional community's division over minimal competencies for our public school practitioners. They note many of our own professionals agree public school speech-language pathologists are similar to classroom teachers and therefore, should not be subject to the same standards as applied to speech-language pathologists employed as health care practitioners. Educationalists argue, in fact, that public school speech-language pathologists should be defined as teachers. Seizing on our public school practitioners' recent unbridled infatuation with consultative nd collaborative roles in the education of language disordered school children, educational administrators are finding new opportunities for bachelor level personnel with such titles as communication skills teachers.

A fourth factor challenging the integrity of the standards embedded in our licensure laws is the burgeoning health care industry with accompanying calls for increased standards for our profession's health care practitioners. Examples of the professional community's displeasure with existing standards include the move to establish professional doctorates in the discipline; the move to create medical speech-language pathologists and audiologists credentialled at the doctoral level; the move to establish speciality recognition groups that will lead to speciality certification in one form of another; the formation an autonomous audiological professional association; and the continuing pressures to increase the scope of our practice.

As the new decade begins we find our discipline's standards for its practitioners under assault from several quarters. Twenty-two state departments of education continue to employ our public school practitioners at the bachelor's degree a quarter of a century after our professional association adopted the master's degree as the minimal requirement. In addition, most, if not all, state departments of education which require the master's degree continue to employ bachelor's level practitioners through emergency certification. Thus, standards for the vast majority of our practitioners are set by a stagnant and disordered national educational system, with a substitute-teacher mantality, that reflexively responds to personnel shortages and budget crises by lowering standards. In contrast, standards for our health care practitioners, primarily the result of federal guidelines and 39 state licensure laws, are similar to standards promulgated by our national professional association through its certificates of clinical competence. Those standards, however, are under widespread attack by public school practitioners who perceive them to be **inappropriate** and health care practitioners who perceive them to be **inadequate.**

The two major positive factors in our discipline's practitioner standards situation are the certificates of clinical competency and the 39 state licensure laws. Acceptance of the standards promulgated by the certificates in federal guidelines and in the laws of 39 states provides us with our most powerful tool in extending those standards to cover all practitioners. Our licensure laws provide us with state boards of licensure which, if not consumed with housekeeping details, can provide leadership in obtaining assurances that all communicatively handicapped individuals, no matter where or by whom they are

Exhibit #8
2-17-93
SB-366

STANDARDS AND LICENSURE (continued the end)

served, receive services from a qualified practitioner.

Exemption-free licensure laws, embodying our professional association's practitioners standards, represent the discipline's best hope for assuring the public that it will be receiving our services from qualified personnel. Unfortunately, exemption-free licensure laws are more of a hypothetical construct than a reality. Few if any laws are exemption-free. Employees of the federal government working in federal facilities are exempt from state licensure laws governing the practice of speech-language pathology and audiology, as are physicians. Progress is being made. Today, while it remains virtually impossible to include physicians in such legislation, legislators are less inclined to exempt those working under their supervision. Although the attainment of universal exemption-free licensure laws may be an impossible dream, it nevertheless remains, similar to the attainment of other constructs such as freedom and brotherhood, an ennobling goal. The extent to which we achieve the goal of exemption-free licensure laws governing the practice of speech-language pathology and audiology will determine how successful we are in promulgating our discipline's standards and in protecting the public.

June, 1990

Look for our new logo in the fall.

STATE BOARDS of EXAMINERS
NATIONAL COUNCIL
SPEECH LANGUAGE PATHOLOGY / AUDIOLOGY

Designed by Pres. Elect Gregg Givens

SENATE HEALTH & WELFARE
EXHIBIT NO. 9
DATE 2-17-93
BILL NO. SB 366

SB 366 PROVISIONAL LICENSING OF SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

TESTIMONY OF BEVERLY ROY
FEBRUARY 17, 1993

INTRODUCTION

Madam Chair, members of the committee, my name is Beverly Roy. I am a member of the Board of Speech-Language Pathologists and Audiologists.

OPPOSITION

The Board of Speech-Language Pathologists and Audiologists is OPPOSED to Senate Bill 366.

SB 366 IS AN ATTEMPT TO LOWER LICENSURE STANDARDS

No state has successfully lowered licensure standards. No state has lowered its' licensure requirements. Attempts have been made by the states of Florida and Arkansas but these attempts failed.

I am including with my written testimony a national survey conducted by the American Speech and Hearing Association which shows results in regard to state licensure requirements.

Also included is a statement from the Director of the Office of Special Education Programs, Department of Education in regard to Federal statue.

SB 366 TRIES TO SUPERSEDE FEDERAL LAW

Federal law calls for a single standard. The highest standard in the state of Montana requires a Master's degree. ~~The Federal law ties licensure to Medicaid re-imbursement~~.

~~Public schools would still be faced with the same problem if SB 366 goes into effect. There would be no medicaid reimbursement~~.

~~There is no place in Montana for B.A. level individuals to pursue a Master's De~~gree.

SB 366 INTERFERES WITH MEDICAID REIMBURSEMENT

Medicaid only reimburses for speech therapy services provided by a fully-licensed speech pathologist. In order to be licensed in the state of Montana, the individual needs a Certificate of Clinical Competence from ASHA or its equivalent, which is a master's degree.

SB 366 DOES NOT MEET ENTRY LEVEL REQUIREMENTS

The entry level for a fully licensed individual is a Master's Degree. A B.A. is not equivalent to a Master's degree in any way.

SB 366 DOES NOT INDICATE ANY OVERSIGHT OF DUTIES OR FUNCTIONS PERFORMED

This bill does not indicate any supervision or guidance from a fully-licensed, fully-qualified practitioner.

Rural schools would have less-than-qualified services being provided.

SB 366 DOES NOT CONSIDER THE PUBLIC HEALTH, WELFARE AND SAFETY

The Montana Board of Speech-Language Pathologists and Audiologists has, as its' focus, the assurance that all communicatively handicapped individuals, no matter where or by whom they are served, receive services from a qualified practitioner.

STATISTICS

There are 16 B.A. level individuals working as aides in the state of Montana. To my knowledge only 2 would benefit from passage of SB 366.

FISCAL IMPACT

SB 366 requires that a Fiscal Note be attached.
There would be additional Board meetings, rule hearings, communication, administrative time and printing costs.

Steve Meloy, Bureau Chief, is available to explain the fiscal impact of this bill.

CLOSING

In closing, the Board of Speech-Language Pathologists and Audiologists is in OPPOSITION to this bill and urges the Committee members to vote **NO.**

I am available for any questions concerning the Board's OPPOSITION to Senate Bill 366. Carol Grell, legal counsel for the Board and Helena Lee, Administrative Assistant for the Board, are also available to answer any questions you might have.

AMERICAN
SPEECH-LANGUAGE-
HEARING
ASSOCIATION

State Education Agency Certification Requirements for Speech-Language Pathology

	BA	MA or Equivalent	Other Combinations
Alabama	BA		
Alaska		MA	
Arizona	BA		
Arkansas		MA	
California			BA plus "fifth year"
Colorado		MA	
Connecticut		MA	
Delaware		MA	
Florida		MA	
Georgia			Entry level BA - 5 yrs. nonrenewal requires MA
Hawaii		MA	
Idaho		MA	
Illinois		MA	
Indiana		MA	
Iowa		MA	
Kansas		MA	
Kentucky		MA effective 8/1/94	Entry level BA; after 5 yrs. or by 8/1/94 requires MA
Louisiana		MA	
Maine		MA effective 9/1/95	Entry level BA 5 yr. term + 1 renewal (10 years total) then renewal requires 30 hrs.
Maryland		MA	
Massachusetts		MA	
Michigan		MA	
Minnesota	BA	MA effective 7/1/94	
Mississippi		MA	
Missouri		MA	
Montana		MA	
Nebraska		MA	
Nevada	BA		
New Hampshire		MA	
New Jersey		MA	
New Mexico		MA	
New York			Entry level BA - after 5 yrs. renewal requires MA.
North Carolina			Entry level BA - after 5 yrs. renewal requires MA.
North Dakota		MA	
Ohio		MA	
Oklahoma		MA	
Oregon	BA	MA effective 1/15/93	

10801 ROCKVILLE PIKE ROCKVILLE, MARYLAND 20852 301-897-5700 VOICE OR TDD FAX 301-571-0457

	BA	MA or Equivalent	Other Combinations
Pennsylvania			Entry level BA Instructional Certificate I after 3 yrs. renewal requires Instructional Certificate II - 24 credits
Rhode Island		MA	
South Carolina	BA		
South Dakota	BA		
Tennessee	BA	MA effective 5/1/94	
Texas	BA	MA effective 10/1/94	
Utah			BA entry level - BA - 5 yr. nonrenewable - after 5 years requires MA or equivalent
Vermont		MA	
Virginia		MA	
Washington		MA	
West Virginia		MA	
Wisconsin		MA	
Wyoming		MA	
District of Columbia		MA	
TOTAL	9	34	8
	6 states have policies to upgrade certification as of a "date-certain."		

GAD/12-92/CEL

Exhibit #9
2-17-93
SB-366

AMERICAN
SPEECH-LANGUAGE-
HEARING
ASSOCIATION

June 17, 1991

Judy Schrag, Ed.D.
Director, Office of Special Education Programs
Department of Education
MES Room 1086
400 Maryland Avenue, S.W.
Washington, DC 20202

Dear Dr. Schrag:

The American Speech-Language-Hearing Association (ASHA) is aware that states are submitting to the Office of Special Education Programs (OSEP) their applications for assistance in implementing Part H of the Individuals with Disabilities Act (IDEA).

As you know, one of ASHA's biggest concerns relative to state implementation of IDEA-Part H programs rests with the the utilization of qualified personnel. Such personnel are described at 34 CFR 303.21 and 303.361 as persons who have met entry-level requirements that are based on the highest requirements in the state applicable to the profession or discipline in which a person is providing early intervention services for infants, toddlers and their families.

Speech-language pathologists provide services in many varied settings, encompassing education, healthcare and private practice. Consequently, there may be several state policies from a variety of state agencies that set forth personnel standards for speech-language pathologists. The task of the lead agency for Part H is to determine what constitutes "the highest requirements," defined at 303.361(a)(2) as the highest entry-level academic degree, for the profession or discipline of speech-language pathology. This determination is to be made after reviewing the requirements of all state statutes and the rules of all state agencies applicable to serving children and their families (303.361(e). The most common requirements and rules are as follows:

- Medicaid or medical assistance: ALL states have policies for certifying personnel to provide speech-language pathology services under Medicaid or medical assistance programs. The personnel policies for ALL states require a master's degree or equivalent, and they are based on federal regulations at 42 CFR 440.110(c)(2). See the enclosed reference.

- State licensure: 39 states have licensure laws for speech-language pathologists, the requirements for whom include a master's degree or equivalent. Except in eight states in which state licensure is required of school-based personnel as the entry-level credential for employment, these laws apply only to persons who do not hold state education agency certification.

10801 ROCKVILLE PIKE ROCKVILLE, MARYLAND 20852 301-897-5700 VOICE OR TDD FAX 301-571-0457

- o State education agency credentialing (usually certification): 30 states have state education agency certification standards that require the master's degree or equivalent for persons providing services in schools. Four additional states have approved a date-certain for the implementation of such a requirement.

In those states for whom the SEA is the lead agency for Part H, speech-language pathologists providing early intervention services now may be required to hold only a bachelor's degree, while prior to the enactment of Part H, individuals outside the purview of the SEA were providing these services, and such persons may have been required to have a MA degree or equivalent to qualify for licensure, where applicable, or hold the ASHA Certificate of Clinical Competence in Speech-Language Pathology in order to have their services paid by Medicaid or other third party payors. This is the kind of two-tiered service delivery system that exists in some states, and that which the personnel standards requirements and procedures of Part B and Part H are intended to eliminate.

If a state employs personnel to provide early intervention services using personnel standards that are not based on the "highest requirements in the State," we would expect to see delineated in the state's application for assistance, "the steps the State is taking and the procedures for notifying public agencies and personnel of those steps and the timelines it has established for the retraining or hiring of personnel to meet appropriate professional requirements in the State," as required in the regulations set forth at 34 CFR 303.361(c). Our understanding of states' responsibilities relative to requirements and procedures for personnel standards also is based on the policy interpretation letter of October 9, 1990, that was sent to ASHA from Robert R. Davila, Assistant Secretary for Special Education and Rehabilitation Services and that pertained to both Part B and Part H of IDEA.

Because application requirements for years four, five, and thereafter must include policies and procedures that are consistent with the personnel standards requirements in 303.361, it would seem appropriate for the following information to be contained in the state applications or requested of states:

1. A listing of each profession or discipline, (i.e., a specific occupational category) in which a person is providing early intervention services. As indicated in Dr. Davila's October 9, 1990 letter, states may redefine existing professions or disciplines to meet instructional needs only if each new occupational category has a separate and distinct scope of responsibility and degree of supervision (emphasis added).

2. An indication that all qualifications for each profession or discipline providing early intervention services are based on the highest requirements in the state, (i.e., other state approved or

recognized certification, licensing, registration or other comparable requirements that the state has enacted or authorized a state agency to promulgate through rules to establish the entry-level standards for employment in a specific profession or discipline in that state) [CFR 303.361(a)(4)], such as requirements for state licensure and qualifications to provide services under the state's medical assistance program. Licensure is established by statutory action while medical assistance qualifications may be either in statute or in rules or regulations.

If a state indicates that all qualifications for each profession or discipline are based on the highest requirements in the state, such requirements should be referenced in the application or included in the body or appendixes of the application. Based on the experience from the 1990 review of plans for the implementation of Part B of IDEA, some states may say that the qualifications are based on the highest requirements when they are not, or they may omit information relative to this requirement.

Because of the various policies that may be in place for the profession of speech-language pathology and the various way states may report such information, we suggest that OSEP staff look for references to the requirements of the various agencies involved in the provision of early intervention services or ask states to provide such information.

3. If a state has professions or disciplines that do NOT meet the highest requirements in the state, such a state is required to delineate in the plan the following:

    a. The steps the state is taking and the timelines it has established for the retraining or hiring of personnel that meet appropriate professional requirements in the state. According to Dr. Davila's October 9, 1991 letter to ASHA, such timelines must include a date-certain deadline after which time only the highest requirements will be used as the qualifications to hire individuals and award state education agency certification; and

    b. The procedures for notifying public agencies and personnel of those steps.

Likewise, it is our understanding that the following would NOT be acceptable to OSEP, as per federal statute, regulations at CFR 303.361, and the October 9, 1990, letter to ASHA from Dr. Davila, and that additional information from or discussions with the state would be necessary:

EXHIBIT #7
2-17-93
SB-366

1. More than one occupational category for the profession of speech-language pathology unless the state can demonstrate how the categories differ in regard to scope of responsibility and degree of supervision.

2. Different qualifications for different occupational categories relative to speech-language pathology unless there are clear differences in the scope of responsibility and degree of supervision. Therefore, an unacceptable arrangement would be for a bachelor's degree requirement for SEA certification and a master's degree requirement to qualify for licensure, as a provider under Medicaid, or as a provider of speech-language pathology services via a home health agency, for example. Such a state would have to indicate a date-certain deadline for terminating this arrangement and the timeline and steps it has established for the retraining and hiring of personnel, as well as procedures for notifying public agencies and personnel of those steps.

3. A two-tiered certification system, which may be indicated through a variety of titles by different states (e.g., provisional, interim, temporary), in which individuals with a bachelor's degree are hired and permitted to provide services for a designated amount of time after which they must meet the second, or highest, qualification of the system, which in all likelihood is the master's degree or equivalent coursework and practicum experience. This is not permitted even though the second, or highest, qualification may, and usually is, identical to the highest requirements in the state. The only way such a system could exist is if it is in the context of an emergency certificate, which has a time-limited period for being awarded as well as a time-limited amount of time in which the individual may practice under the terms of the certificate.

4. The absence of timelines to retrain existing personnel who do not meet the "highest requirements in the State" and for whom the SEA certificate is not a personal property right.

To assist your staff in their review of state applications and the determination of whether or not states have sufficient laws, policies and procedures in place to meet the intent of federal statute and regulations regarding the use of qualified personnel in providing special education and related services, and speech-language pathology and audiology services in particular, I have enclosed material relative to the "highest requirements" for each state as well as the current SEA certification requirements. I also have enclosed letters or copies of letters I have received from three state speech-language-hearing associations relative to the personnel standards requirements and procedures contained in their state's Part H application.

I also have sent this information to Jim Hamilton and Tom Irvin because of their responsibilities relative to these issues.

ASHA understands that the recent reauthorization of Part H allows for differential participation in this program which will influence components of states' applications for funds. ASHA would be grateful to receive all policy clarification letters or memoranda that OSEP will issue regarding procedures that states must follow regarding differencial participation, and especially those sections that impact on personnel standards.

We thank you and your staff for your efforts to more completely understand the profession of speech-language pathology and how it is regulated in the states so that you may appropriately implement the intent and wording of the qualified personnel provisions. We hope this information is useful to the staff reviewing fourth-year Part H applications, and that they will contact me if they have questions about state requirements for persons providing speech, language and audiology services.

Sincerely,

Connie Lynch

Constance E. Lynch
Director
State Policy Division

Enclosures

cc: Tom Irvin, OSEP
James Hamilton, Early Childhood
Patrick J. Carney, ASHA President

Exhibit #7
2-17-93
SB-366

PROJECT SPEECH OVERVIEW

Project SPEECH is a recruitment project, funded by the Office of Public Instruction (OP) and staffed by the Montana Speech, Language and Hearing Association (MSHA). The project was initiated in spring, 1990 and is now beginning its third year.

In 1991, our activities were as follows:

Total Openings Reported to Project Speech:

Roose-Valley Special Ed Coop
2 FTE (not filled)
Tri-County Coop
1 FTE (not filled)
Malta Public Schools
1 FTE (filled by district)
Missoula Area Special Ed Coop
2 FTE (filled by coop)
*East Yellowstone County Special Ed Coop
1 FTE (filled by Project SPEECH)
Prickly Pear Special Services Coop
1 FTE (filled by coop)
Libby Schools
1 FTE (not filled)
*Browning Public Schools
1 FTE (filled by Project SPEECH)
*Bear Paw Coop
3 FTE (1 filled by Project SPEECH)
*Bitterroot Special Ed Coop
1 FTE (filled by Project SPEECH)
Prairie View Special Services
2 FTE (not filled)
*Columbus Schools
1 FTE (filled by Project SPEECH)
Boulder Educational Specialist Consortium
2 FTE (filled by coop)
Big Sky Special Ed Coop
5 FTE (filled by coop)

Total FTE - 24

714 KENSINGTON · MISSOULA, MONTANA 59801 · (406) 721-6096

Percentage of Openings Filled by Project SPEECH - 21%

Total Number of Interview Stipends Given - 15 ($300 each)

Total number of Stipend Recipients Hired - 5 (33.5%)

Our current year (1992-1993) is as follows:

Number of Vacancies Reported:

Roose-Valley Special Ed Coop
2 FTE (open)
Big Sky Special Ed Coop
2 FTE (92-93)
Tri-County Coop
1 FTE (open)
Libby Schools
1 FTE (open)
Browning Public Schools
1-2 FTE (92-93)
Bear Paw Coop
3 FTE (open)
Bitterroot Special Ed Coop
1 FTE (open)
Prairie View Special Services
1 FTE (open)
Havre Public Schools
1 FTE (92-93)

Current Number of Applicants - 9

OPENINGS REPORTED

1991-92

Roose-Valley Special Ed Coop
2 FTE (not filled)

Tri-County Coop
1 FTE (not filled)

Malta Public Schools
1 FTE (filled by district)

Missoula Area Special Ed Coop
2 FTE (filled by coop)

East Yellowstone County Special Ed Coop
1 FTE (filled by Project SPEECH)

Prickly Pear Special Services Coop
1 FTE (filled by coop)

Libby Schools
1 FTE (not filled)

Browning Public Schools
1 FTE (filled by Project SPEECH)

Bear Paw Coop
3 FTE (1 filled by Project SPEECH)

Stevensville Coop
1 FTE (filled by Project SPEECH)

Prairie View Special Services
2 FTE (not filled)

Boulder Educational Specialist Consortium
2 FTE (filled by coop)

Columbus Schools
1 FTE (filled by Project SPEECH)

Big Sky Special Ed Coop
5 FTE (filled by coop)

714 KENSINGTON • MISSOULA, MONTANA 59801 • (406) 721-6096

Exhibit #1
2-17-93
SB-366

PROJECT SPEECH

POSITIONS FILLED BY PROJECT SPEECH

1991-92

(21%)

1 FTE
Browning Public Schools
Karen Kirkpatrick deAguilera

1 FTE
East Yellowstone County Special Ed Coop
Mary Ann Jones

1 FTE
Bear Paw Coop
Arthur Rosenburg

1 FTE
Columbus Schools
Judy Pilsner

1 FTE
Bitterroot Special Ed Coop
Toby Schirmer

714 KENSINGTON · MISSOULA, MONTANA 59801 · (406) 721-6096

VACANCIES - 1992

Attn: Kathy Buckles
Roose-Valley Special Ed Coop
Box 458
Poplar, MT 59255
(406)768-3835
2 FTE Currently

Attn: Judy Gosnell-Lamb
Big Sky Special Ed Coop
215 S. Maryland
Conrad, MT 59425
(406)278-7558
2 FTE 92-93

Attn: Charlotte Miller
Tri-County Coop
Box 515
Broadus, MT 59317
(406)436-2488
1 FTE Currently

Attn: Vern Reed
Libby Public Schools
111 E. Lincoln
Libby, MT 59923
(406)293-8815
1 FTE Currently

Attn: Bill Meehan
Browning Public Schools
School District #9
Box 610
Browning, MT 59417
(406)338-2759
1-2 FTE 92-93

Attn: Dick Slonaker
Bear Paw Coop
421 Ohio St.
Chinook, MT 59523
(406)357-2269
3 FTE Currently

Attn: Bill Pellant
Stevensville Coop
281 Elk Ridge Rd
Hamilton, MT 59840
(406)363-3820
1 FTE Currently

Attn: Diane Fladmo
Prairie View Special Services
409 Alder Ave., Suite A, FP
Glendive, MT 59330
(406)365-5446

Attn: Robert Griffin
Havre Public Schools
Box 7791
Havre, MT 59501
(406)265-4356
1 FTE 92-93

1/20/92)

Exhibit #4
2-17-93
SB-366

PROJECT SPEECH

CURRENT LIST OF POSSIBLE APPLICANTS

SPEECH/LANGUAGE PATHOLOGISTS

Margaret Jones Dillon
1274 St., Rt. 343
Yellow Springs, OH 45387
(513)767-1742

Amy J. Blazek
298 Meander Way
Greenwood, IN 46142
(317)882-8754

Sandra Johnson
27 Chateau Village
Conway, AR 72032
(501)329-6915

Kathy Babb
1428 Oakcrest
Norman, OK 73071
(405)364-5431

Kim Swarts
HC 87, Box 2730
Mayking, KY 41837
(606)633-8801

Michelle Bradford
1700 Seaspray Ct., #2185
Houston, TX 77008

Mary Mailand
12289 W. Albama Pl.
Lakewood, CO 80228
(303)985-5326

Ronald Laeder
1558 Maplewood Dr.
Caro, MI 48723
(517)673-4619

Cecelia Scow
145 West Huron
Bad Axe, MI 48413
(517)269-2116

PROJECT SPEECH

January 22, 1992

Dear Administrator:

I wanted to drop you a note to provide you with the latest names of Masters level speech/language pathologists Project SPEECH has collected. Each of these individuals has contacted us and expressed a real interest in coming to Montana. I would encourage you to contact each of them as soon as possible.

If you have had a change in the status of your openings and/or have hired someone, please give me a call at 721-6096. We need to keep our records as current as possible.

I will be giving you a call in about two weeks to see how you're doing and how we can help you further.

Sincerely,

Rosemary S. Harrison

Rosemary S. Harrison, M.S., C.C.C.-SP
Director, Project SPEECH

714 KENSINGTON · MISSOULA, MONTANA 59801 · (406) 721-6096

Exhibit #9
2-17-93
SB-366

POSITION VACANCY FORM FOR SPEECH/LANGUAGE PATHOLOGISTS

SCHOOL DISTRICT/COOPERATIVE:_____

ADDRESS: _____

CONTACT PERSON:_____ PHONE#_____
NAME TITLE

NUMBER OF POSITION VACANCIES:_____ FULL TIME _____ PART-TIME

SALARIES/BENEFITS

1. What is the salary range for a speech/language pathologist?_____
(You may attach your salary schedule).

2. Total Number of contract days? _____

3. What is maximum experience allowed for purposes of salary? _____

4. Possible stipends available? _____

5. Benefits offered (briefly explain):

Health:

Retirement:

Paid Leave:

Personal Leave:

Professional Leave: (workshops, convention,)

Other Benefits:(paid professional dues, workshop fees, etc.)

6. Average caseload size: _____

7. Average weekly travel: _____

8. Size of area population: _____

9. Is housing readily available? ___ Yes ____No

10. Approximate monthly rental cost: _____

11. Two bedroom home: Average purchase cost: _____

Please comment on what you feel would make your position particularly appealing to a prospective applicant.

Return this form to: Rosemary S. Harrison
Project SPEECH
714 Kensington
Missoula, MT 59801
(406)721-6096

Exhibit #4
2-17-93
SB-366

Thank you for contacting Project SPEECH regarding openings in Montana. Montana is a great place to live and work and we would like to have you come be part of it!

Enclosed please find our informational packet including three brochures, a map and our current list of job openings. Some of the openings are in very rural areas and some are in urban communities. Salaries vary widely from position to position. CFY supervision is available uniformly.

I am forwarding your name, address and phone number to administrators of the enclosed districts. I am sure they will be in contact with you. However, if you find an area that is of interest to you, don't hesitate to give them a call.

We currently have up to $300.00 available for travel expenses when you come to Montana to interview. Additional travel money may be available from specific districts. Please keep me informed of your progress and plans. I will be happy to answer any questions you might have.

Information on obtaining a speech pathology/audiology license may be obtained by contacting:

Board of Speech Pathologists and Audiologists
1424 9th Avenue
Helena, MT 59620-0407
(406)444-3728

Sincerely,

Rosemary S. Harrison, MS, CCC-SP
714 Kensington
Missoula, MT 59801
(406)721-6096

Enclosures

PROJECT SPEECH

January 14, 1992

ASHA Classifieds
Box 1396
Rockville, MD 20849-1396

Dear Gentlepersons:

Please include the following in your March, April, May, June, July and August issues of ASHA:

Speech-Language Pathologists: CCC-SLP or CFY in broad variety of public school settings. Great opportunity. Bring a friend and come to Montana! Interview travel stipend available. Contact Rosemary Harrison, Project SPEECH, 714 Kensington, Missoula, MT 59801, (406)721-6096.

Statements should be sent to:

Mary Price, Treasurer
MSHA
1615 Alder Court
Bozeman, MT 59715

Sincerely,

Rosemary S. Harrison

Rosemary S. Harrison

RSH:pd

Exhibit #9
2-17-93
SB-366

UNIVERSITY PROGRAMS

Arizona State University
Department of Speech and Hearing Science
Tempe, AZ 85287-0102
(602)965-2373
Attention: Dr. Leonard Lapointe

Northern Arizona University
Department of Speech Pathology and Audiology
NAU Box 15045
Flagstaff, AZ 86011
(602)523-7443
Attention: Dr. Nye

University of Arizona
Department of Speech and Hearing Sciences
104 Speech Building, #25
Tucson, AZ 85721
(602)621-1644
Attention: Jackie Gifford

University of Colorado
Department of Communication Disorders and Speech Science
Campus Box 409
Boulder, CO 80309-0409
(303)492-5208
Attention: Catherine Webster

Colorado State University
Department of Communication Disorders
Fort Collins, CO 80523
(303)491-6981
Attention: Howard Larimore

University of Northern Colorado
Department of Communication Disorders
Greeley, CO 80639
(303)351-2734

Idaho State University
Department of Speech Pathology and Audiology
Box 8116
Pocatello, ID 83209-0009
(208)236-3495
Attention: Jo

Fort Hays State University
Area of Communication Disorders
600 Park Street
Hays, KS 67601
(913)628-5366

University of Kansas
Department of Speech Sciences and Disorders
290 Haworth Hall
Lawrence, KS 66045
(913)864-4690
Attention: Kim Wilcox

Kansas State University
Department of Speech
Leasure Hall
Manhattan, KS 66506
(913)532-6879
Attention: Bruce Flanagan

University of Minnesota - Duluth
Department of Communication Disorders
10 University Drive
242 Montague
Duluth, MN 55812
(218)726-7974
Attention: Sue Kreager

University of Minnesota
Department of Communication Disorders
115 Shevlin Hall
164 Pillsbury Drive, SE
Minneapolis, MN 55455
(612)624-3322
Attention: Julie Paepke

Saint Cloud State University
Department of Communication Disorders
Saint Cloud, MN 56301
(612)255-2092
Attention: Elaine

University of New Mexico
Department of Communication Disorders
901 Jassar, NE
Albuquerque, NM 87131
(505)277-2918
Attention: Florence Gonzales

New Mexico State University
Communication Disorders
Box 3001-3 SLPE
Las Cruces, NM 88003
(505)646-2402
Attention: Dr. Farmer

University of North Dakota
Department of Communication Disorders
PO Box 8040, University Station
Grand Forks, ND 58202-8040
(701)777-3232
Attention: Dr. Swisher

Exhibit #9
2-17-93
SB-366

Minot State University
Department of Communication Disorders
500 University Avenue, NW
Minot, ND 58701
(701)857-3030
Attention: Dr. David Williams

University of Oklahoma
Department of Communication Disorders
825 NE 14th, PO Box 26901
Oklahoma City, OK 73190
(405)271-4214
Attention: Glenda Ochsner

Oklahoma State University
Speech and Language Pathology and Audiology
120 Hanner Hall
Stillwater, OK 74078
(Phone number no longer in service)

University of Tulsa
Department of Communication Sciences and Disorders
600 South College Avenue
Tulsa, OK 74104
(918)592-6000 X2504
Attention: Kara Manke

Portland State University
Speech and Hearing Sciences Program
Box 751
Portland, OR 97207-0751
(503)229-3533
Attention: Mary Gordon, Director

University of South Dakota
Department of Communication
Vermillion, SD 57069
(605)677-5474
Attention: Dr. Lockwood

Utah State University
Department of Communication Disorders
Logan, UT 84322-1000
(801)750-1375
Attention: Lynette Crookston

Brigham Young University
Communication Sciences and Disorders
136 John Taylor Building
Provo, UT 84602
(801)378-5056
Attention: Faughn Ashworth

University of Utah
Department of Communication Disorders
1201 Behavioral Science Building
Salt Lake City, UT 84112
(810)581-6725
Attention: Marilyn Stevenson

Western Washington University
Department of Speech Pathology and Audiology
Parks Hall 17
Bellingham, WA 98225
(206)676-3885
Attention: Joan Cannon

Washington State University
Department of Speech
218 Doggy Hall
Pullman, WA 99164-2420
(509)335-1509
Attention: Ruth

University of Washington
Department of Speech and Hearing Services
Seattle, WA 98195
Attention: Opal Hicks

University of Wyoming
Department of Speech Pathology and Audiology
PO Box 3311
University Station
Laramie, WY 82071
(307)766-5710
Attention: Janis Yelinek

CONSIDER MONTANA

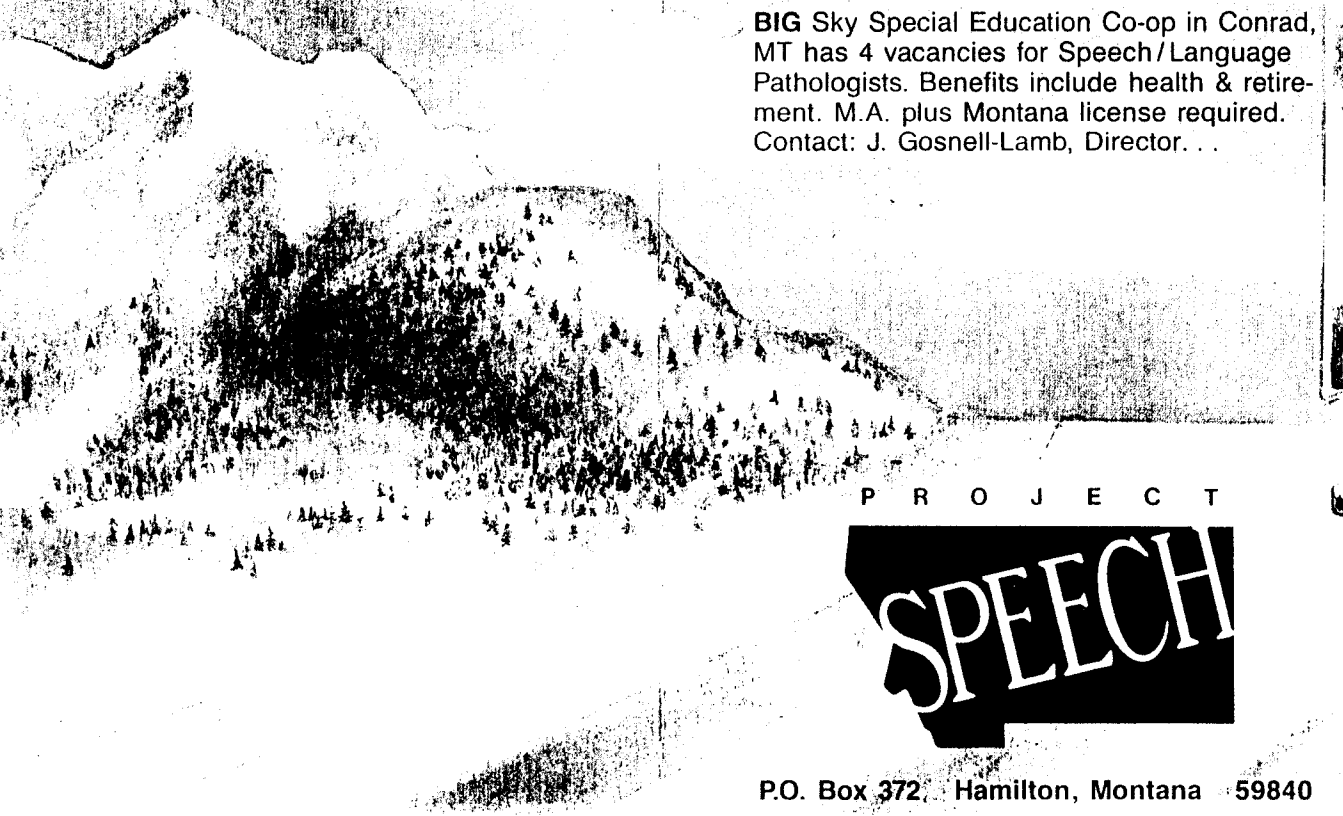
A state known for its quality lifestyle and wide-open potential, Montana ranks as one of America's most desirable places to live and work. Welcomed newcomers experience promising opportunities in a pleasant, unencumbered atmosphere, and choose to remain here.

Speech/Language Pathologists working in the public schools are seriously considered and carefully chosen. We need your skills, and are willing to provide travel reimbursement (up to $300) if you will give Montana your own time and consideration. A knowledgeable speech and hearing professional will provide you with assistance during your interview process.

For more information contact:

Jeanette S. McKee
MSHA Administrative Assistant
P.O. Box 372
Hamilton, MT 59840

Or call:
(406) 363-2228



MONTANA JOB OPPORTUNITIES IN SPEECH/LANGUAGE PATHOLOGY

SPEECH/Language Pathologists needed for Special Education Co-op in Poplar, MT. Masters degree required. Exc. benefits. Contact: Kathy Buckles. . .

MALTA Public Schools are seeking a Speech/Language Pathologist for the 1990-91 school year. M.A. plus Montana license a must. Contact Superintendent's Office. . .

SPECIAL Services position open for Speech/Language Pathologist in Kalispell, MT. Health & retirement benefits plus beautiful country living. Contact Evergreen School District #50. . .

SPEECH/Language Pathologist for Education Co-op serving 3 schools in Thompson Falls, MT, near beautiful Glacier Park. Salary negotiable. Send resume with salary schedule to.

BIG Sky Special Education Co-op in Conrad, MT has 4 vacancies for Speech/Language Pathologists. Benefits include health & retirement. M.A. plus Montana license required. Contact: J. Gosnell-Lamb, Director. . .

P R O J E C T

SPEECH

P.O. Box 372, Hamilton, Montana 59840

SPEAKING OF YOUR FUTURE...

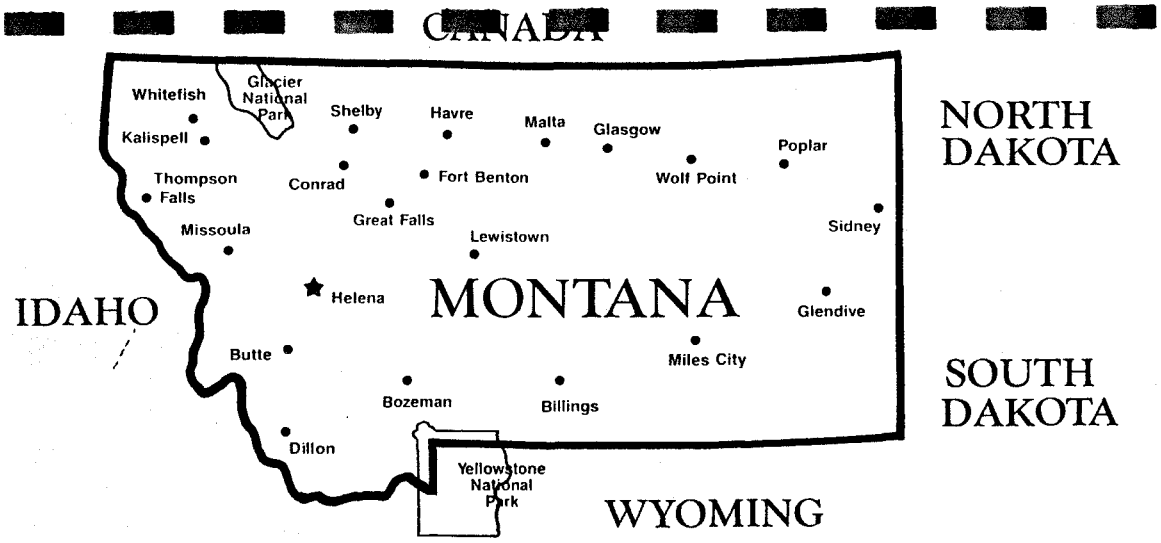
Exhibit #9
2-17-93
SB-366

...CONSIDER THIS ALTERNATIVE

Project SPEECH is a combined recruitment effort by the Office of Public Instruction and the Montana Speech, Language and Hearing Association aimed at attracting Speech/Language Pathologists to rewarding careers within the State of Montana public school system.

Montana, one of the nation's highest-rated educational environments, currently has several positions available in rural ranching areas, Indian reservations, plus urban and mountain communities throughout the state.

Speech/Language Pathologists, who seek unique opportunities in the field of public education, are advised that professional support is provided by the Office of Public Instruction, an active Montana Speech & Hearing Association, the Public School Administration and a strong state licensure law.

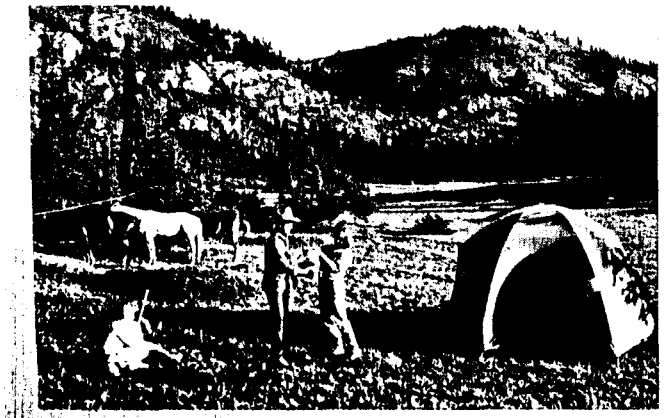


A VACATION PARADISE YOU CAN CALL HOME

Recreationally, Montana has no peers. Two national parks, Glacier and Yellowstone, plus scenic recreation and vacation spots within a day's drive provide an abundance of outdoor activities and entertainment. Hiking, whitewater rafting, hunting and fishing, winter skiing and snowmobiling plus a preserved, colorful old West heritage are here to experience and enjoy. Nationally recognized artists and museums, fairs and festivals plus music and live theatre emphasize Montana's diversity as a cultural and performing arts center.

Montana ranks as the fourth largest state with an estimated population of 809,000. There are currently 19 colleges and universities, plus 544 public school districts offering an enormous wealth of educational opportunity per student. And Montana currently ranks 3rd nationally in ACT scores.

A quality health care industry attracts over 15,000 doctors, nurses, practitioners and researchers to our many hospitals, clinics and labs. And professionals in virtually every field have discovered a rich resource of work and demand for their skills, ideas and techniques.



The Great Burn, a proposed wilderness area in western Montana, provides an ideal campsite for weekend travelers. (*Photo:* Roger Wade Studio)

Glacier National Park boasts majestic scenery including this view of Wild Goose Island in mirror-like St. Mary's Lake. (*Photo:* Paul Dostert)

Modern-day fur trappers pose with their horse before Father Ravalli's home in Stevensville. . . Montana's first settlement. (*Photo:* Paul Dostert)

Speech-Language Professional Group

Contact Person: Pamela Wedum

Speech Language Professional Group
Flathead Region
Kalispell, Montana 59901
February 12, 1993

Senate Bill 366

Senate Committee for Public Health, Welfare, and Safety
Dorothy Eck, Chair

Committee Members,

As a professional group consisting of Speech-Language Pathologists in public schools, hospitals, rehabilitation centers, and private practice, we would like to express our deep concern regarding Senate Bill 366. We firmly believe that a masters degree is the minimum requirement for a Speech-Language Pathologist in this state regardless of the service delivery model. Should public school children receive services from less qualified personnel than a patient in a hospital or private practice clinic?

In rural areas, a Speech-Language Pathologist should be required to possess the minimum qualifications demanded by this state, especially if they are the only service provider in a large area. Most bachelors level programs do not require direct service provided to clients. Clinical practicum is not addressed until the masters level. Due to least restrictive programming, the public school Speech-Language Pathologist requires specialized skills in order to work with a more challenging caseload (i.e. severly involved cerebral palsy, autism, cleft palate, traumatic brain injury, severe language impairment, and multiply handicapped children).

Montana was the first state to establish licensure laws that followed the guidelines set up by the American-Speech-Language-Hearing Association. Our national association requires a masters degree for a Certificate of Clinical Competence. We believe these requirements are necessary to provide appropriate services to our clients. The quality of our services will be in jeopardy with Senate Bill 366.

2/17/93
SB-366

Speech-Language Professional Group

Contact Person: Pamela Wedum

Without a training program in the state of Montana producing professionals who desire to stay in the state, we acknowledge and regret the hardships of some areas in securing the speech services needed. However, lowering our standards is not the answer to this situation. Where were school administrators and other health officials when the University of Montana Speech-Language-Audiology program was threatened with extinction? Unsupervised bachelors degree professionals is not the solution.

We are grateful for your careful consideration of the impact of this legislation.

Kathy Law, M.S., CCC-SLP,School District #44
Glenda Schauer, M.S., CCC-SLP, Evergreen Public Schools/Private Practice
Robin Krogstad, M.S.,CCC-SLP, School District #5
Rhea M. Hatfield, M.S., CCC-SLP, Kalispell Regional Hsopital
Pamela Wedum, M.S.,CCC-SLP, Flathead Rural Special Ed. Cooperative
Ann Swanson, M.A.,CCC-SLP, School District #6
Julie Crandell, M.A., CFY-SLP, Flathead Rural Special Ed. Cooperative
Linda M. Solem, Mt #460-SLP, Flathead Rural Special Ed. Cooperative
Karen C. Gray, M.A.,CCC-SLP, Flathead Rural Special Ed. Cooperative

Kathy Law, M.S. CCC-SLP
Glenda Schauer, M.S. CCC-SLP
Robin Krogstad M.S. CCC-SLP
Rhea M. Hatfield M.S., CCC-SLP
Pamela Wedum, M.S. CCC-SLP
Ann Swanson, M.A., CCC-SLP
Julie D. Crandell M.A., CFY-SLP
Linda M. Solem, Mt #460-SLP

Karen C. Gray, M.A. - CC
SLP

TO BE READ INTO PUBLIC RECORD

11000 Lolo Creek Road
Lolo, MT 59847
February 16, 1993

Dear Members of the Senate Committee on Public Health, Welfare and Safety:

I wish to make my views know in regard to SB 366. As a licensed speech-language pathologist working in a public school system, I have several observations to make:

1. I do not believe a person with a B.A. in Speech Pathology is adequately prepared to provide speech therapy services. Working in Missoula, in past years I have supervised practicum experiences with a number of individuals completing their Bachelor's degrees or beginning a Master's program at the University of Montana. The great majority of these individuals had great gaps in their knowledge of communication disorders. The B.A. candidates typically had quite limited experiences with actually working with clients and often needed a great deal of guidance and supervision. They seemed totally unprepared to make the decisions required to write Individual Educational Programs (IEP's) and to diagnose a true communication disorder, primary requirements in school work. The Master's degree candidates I have supervised were better prepared in their knowledge of how and when to provide therapy, and had had training in what to do in a therapy session. Even then, they typically needed help in making the transition from a training clinic to a school therapy setting.

   I currently am supervising a B.A. candidate from Washington State University. She will be an outstanding speech pathologist, but readily admits she needs more training and would not want to try to work at this point in her training.

2. At present, I supervise a registered speech aide, who has a BA in Communication Sciences and Disorders. She is invaluable and allows me to deal with a caseload that is larger than I would like. After working with her for two and one-half years, however, I am quite aware that she is not prepared to take on the job of an unsupervised speech pathologist. She plans to go on for her master's degree, and with more knowledge and supervised practice therapy will be quite capable. At this point, she is just not prepared.

3. The issue of requiring no supervision as proposed by this bill is totally inappropriate. Even teachers working in the schools have supervision in the form of a principal, superintendent, head

Exhibit #7
2-17-93
SB-366

teacher, or even peers. All of these individuals have specific training in the teacher's field. The speech pathologist, on the other hand, likely has no one available. A Special Education Director might have some background, but unless he/she is a Speech Pathologist, probably has inadequate knowledge to determine if the speech person is providing appropriate services.

4. Although the proposed bill allows four years for these BA people to get further training, you can't ask a person to perform a job based on what they will learn next year or the year after. This is unfair to the therapist and to the child he/she is serving.

5. I am concerned about violation of federal laws for special education. These laws mandate a free and appropriate education for all children. Having an inadequately trained person provide services is not appropriate, regardless of any legislation the state might enact. Along with this inappropriateness comes liability. The school utilizing an inadequately trained speech person is open to law-suits by parents who feel their child is being inappropriately served or even damaged by an unskilled person.

6. If the committee should decide to recommend this bill be passed, I suggest an amendment. Teachers now are required to pass the National Teachers Exam (NTE) to get a BA in Montana. Perhaps aspiring speech therapists should be required to pass the NTE in Speech Pathology before they can work.

I URGE THE COMMITTEE TO GIVE THIS BILL A NO-PASS RECOMMENDATION. Allowing it to continue in the legislative process will be a great disservice to the speech-impaired children of Montana.

Sincerely,

Suzanne Bobowiec

Suzanne Bobowiec, M.Ed., CCC-Sp

111 Silverwood Ct
Great Falls, MT
Feb 15, 1993

To:

Dear Committee Members,

I am a licensed speech pathologist and I am strongly opposed to any attempt to weaken the current licensure law. This law and its requirements were implemented for the protection of the speech and language disabled population of Montana. If the requirements are reduced to allow practitioners to provide service who do not have the academic or clinical background mandated by law, in my opinion, extremely detrimental to the consumer protection.

Sincerely,

Betsey Ellis M.A. /CCC/SLP

Exhibit # 1
2-17-93
SB-366

GREAT FALLS SCOTTISH RITE
CHILDHOOD LANGUAGE DISORDERS CLINIC
1304 Thirteenth Street South
Great Falls, Montana 59405
Telephone: (406) 727-1088

Montana's speech pathology licensure law is one of the most respected in the nation. We are a well-trained profession that competently serves the needs of Montana's speech and language handicapped individuals. When I received my undergraduate degree from the University of Washington I had 9 supervised clinical clock hours in articulation therapy. When I completed my Masters' degree I had nearly 400 clinical clock hours in articulation and phonology, stuttering, language disorders, and voice disorders. Still, before the American Speech and Hearing Association considered me to be minimally qualified to work unsupervised, I had to pass a national examination and spend 9 months in a clinical fellowship. Today I am responsible for diagnosing and treating a variety of disorders which I did not even hear of until my graduate program. You must understand that our training institutions are not set up to graduate field-ready speech pathologists at the Bachelors' level.

We have a nationwide shortage of speech pathologists. My national journal advertises hundreds of positions each month with incentives like sign-on bonuses, liberal benefits, and warm climate. I can empathize with the frustrations of rural Montana when their students are not being fully served. However, I feel our licensure board has provided for adequate service by offering the speech aide license. The licensure law spells out how many hours of supervision are required each month. Several speech pathologists in Great Falls travel to outlying areas to supervise aides.

I don't know how to solve the problem of our underserved areas. Our national association has a task force to study rural service delivery. I know there is also a shortage of doctors, nurses, occupational therapists, and physical therapists. However, the children in these areas do not deserve a service that is less than adequate. We may not always be able to offer a Cadillac program, but we can do much better than an Edsel.

The shortage of Masters' level speech pathologists in Montana is exacerbated by the closure of the Communication Disorders Department at the University of Montana a few years ago. At that time there was plenty of testimony as to what the closure would mean to the supply of speech pathologists in Montana. The children of Montana cannot be asked to bear the consequences. Our rural areas must be creative in the way they recruit professionals in all areas. There are qualified speech pathologists who will travel to our rural areas if the working conditions are competitive.

Sincerely,

Jane E. Grosfield

Jane E. Grosfield, M.A., CCC-SLP
Speech Pathologist/Clinic Director

SB 366 PROVISIONAL LICENSING OF SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

TESTIMONY OF CYNTHIA BARNES
FEBRUARY 17, 1993

INTRODUCTION

Madam Chair, members of the Committee, my name is Cynthia Barnes. I am the Public member of the Board of Speech-Language Pathologists and Audiologists.

The public member of this board must meet the requirements of Section 2-15-1849 (3) MCA, which states..."a public member who is a consumer of speech - language pathology or audiology services..."

My child is a consumer of such services.

OPPOSITION

The Board of Speech-Language Pathologists and Audiologists is OPPOSED to Senate Bill 366.

SCHOOL-BASED SPEECH THERAPY SERVICES LOWERED

I was disappointed to see introduction of SB 366 which bill considers reducing the licensure standards for school-based speech therapy services from the master's level degree to the bachelor's degree.

After a careful analysis of the needs of children with communication disorders and a review of the need to have comprehensive services provided by qualified personnel, no state has permanently reduced its personnel standards for school-based employment.

At a time when the nation's education system and competency of educators is being questioned, I am surprised that Montana may consider reducing qualifications for providers of one of the most important elements of success in school and life--communication.

In 1975, Montana recognized the importance of having adequately and appropriately prepared speech-language pathologists to serve children with communication disorders in schools and adopted the MA as the minimum level of professional education required for employment as a speech-language pathologist in the Montana schools.

To assume that a person with minimal training can provide adequate and appropriate services for children with communication disorders indicates a lack of understanding of the nature of communication disorders and services provided by speech-language pathologists.

Rural schools need to have qualified professionals.

Exhibit # 7
2-17-93
SB-366

The question can be asked: "If you had a child with a severe communicative disorder enrolled in the Montana public schools, would you want your child served by an individual who may not have had professional education in diagnostics, course work on disorders of language and articulation, and has had minimum practicum experience? "

At a point in time when the quality of education in the nations schools is being questioned, it is inappropriate for Montana to consider any proposal that would allow less than qualified persons to work in schools.

CLOSING

On behalf of children with communication disorders in Montana, I urge the state to maintain its requirement that only Master Level individuals may provide speech-language pathology services to children and youth in schools and in the private sector. Allowing employment of less than fully-qualified personnel would be a disservice to the children with communication disorders in Montana.

I urge the committee to vote NO on Senate Bill 366.

I am available to answer any questions concerning the Board's OPPOSITION to Senate Bill 366.

Carol Grell, Legal counsel for the Board and Helena Lee, Administrative Assistant for the Board, are also available to answer any questions you might have.

The fiscal note attached to this bill can be addressed by Steve Meloy, Bureau Chief.

February 17, 1993

Public Health, Welfare and Safety Committee Members
Montana Senate
Helena, Montana 59624

SB 366

I wish to thank the members of your committee for the opportunity to share my concerns regarding SB 366.

I worked with Rep. Francis Bardanouve in the 1975 legislature when he sponsored the original Montana licensure bill for Speech-Language Pathologists and Audiologists. His sponsorship was contingent on two issues: (l) if we, as professionals would agree to accepting a limited grandfather clause and (2) continuing education. It was the intent of that legislation to protect the welfare of all communicatively handicapped in the state - not differentiating the importance and needs of school-age children from others.

As a school administrator, I recognize there is a shortage of speech/language pathologists in the United States and more specifically in Montana. I also realize there are shortages of other health professionals as well. I do not see legislation proposed to lower our educational standards for physicians to one year advanced training versus four. Or maybe lessor qualified physicians could work in underserved "rural" areas of the state or with school-age children. We would be appalled at such a suggestion.

I urge you to table this legislation and request school administrators, speech/language and audiology professionals in the state, the Office of Public Instruction, and the licensure board discuss and provide leadership and direction in working to meet staffing needs in the state.

Shirley DeVoe

Shirley DeVoe
2211 Gold
Helena, Montana 59601

SENATE HEALTH & WELFARE
EXHIBIT NO. 10
DATE 2-17-93
BILL NO. SB 366

My name is Nickie Eck and I am appearing in opposition to SB366. My husband and I have a son, Evan, who is 6 1/2 years old. Evan is a first level student in the Helena School District No. 1 Montessori program. As a severely, bilateral hearing impaired child, approximately 90% deaf, Evan is eligible for special services through the school district. This includes his interpreter, speech therapy and audiology services.

My husband and I strongly oppose someone performing speech therapy or audiology services on our child who is not a **fully** accredited, licensed professional. If these "provisionally" licensed professionals can only receive that standing, one must ask why? If they are not fully trained and knowledgeable and able to receive unrestricted license, they should not be turned loose on a vulnerable segment of our population.

Speech therapy is a highly involved and evolved science that deals with a lot more than just helping a child pronounce a letter properly. To allow someone who is not fully accredited and licensed to work in this area under what no doubt would be long distance and irregular supervision would be a mistake.

Audiology services are equally complex. The equipment used by our son is very expensive. The district owned auditory trainer was an expense to the district and is a delicate piece of electronic equipment. Only a fully trained professional should be working on that unit and deciding the appropriate settings for it use. The same for hearing aids. Evan's are five years old and when we bought them they cost in excess of $600 each.

In my mind you would not be comfortable taking your child to a person who has almost completed the requirements to be a doctor so why should be all right for your child to be seen by someone who is almost a licensed speech therapist or audiologist.

Thank you for allowing me to voice my opinion.

SENATE HEALTH & WELFARE
EXHIBIT NO. 11
DATE 2-17-93
BILL NO. SB 366

February 17, 1993

Senate Health Committee
Capitol Station
Helena, MT 59620

To Whom It May Concern:

My name is Sherri Maxwell and I am a licensed speech-language pathologist for the Laurel Public Schools and the Yellowstone West/Carbon County Special Services Cooperative. I am requesting that you oppose SB 366 which would enable a Bachelor level speech aide to provide services without the supervision of a licensed speech pathologist.

I worked in the capacity of a Bachelor level speech aide under supervision for eleven years. In 1990, I took a leave of absence to complete my Masters degree at Northern Arizona University. As a Bachelor level speech aide I realized I did not have the course work, content knowledge and clinical experience that would enable me to provide the type of quality services that was needed to meet the needs of my clients.

Currently, most undergraduate speech pathology programs are typically overviews and introductions to speech and language disorders. This is partially due to the fact that most programs expect their undergraduate students to continue immediately into a Masters program. This philosophy is based on the standards recommended by the American Speech and Hearing Association. Most programs vary from none to a maximum of 50 to 100 observation hours in which students observe master level clinicians delivering services. In many programs, students have not been able to participate in the delivery of any type of therapy. Therefore, a minimum of supervised clinical experiences occur at the undergraduate level.

It is at the graduate level that students receive the course work and clinical experiences necessary to evaluate, diagnose and implement appropriate intervention for speech-language impaired clients. Diagnostic and evaluation course work is emphasized at this level. Master level students are required to accumulate 350 diagnostic and therapy hours related to a number of disorders such as voice, fluency, articulation, phonological impairments, language delays and neurological impairments including traumatic brain injury, aphasia, dysarthria, apraxia, and dysphagia. In addition to the course work and clinical experience, graduate students are required to participate in a three month internship program in various settings which may include hospitals, clinics and/or schools. Upon completion of the Masters program, speech pathologist take a national exam and complete a Clinical Fellowship Year under supervision in order to obtain a certificate of clinical competence.

SB 366 does no address the shortage of speech pathologist in this state. It only eliminates the accountability of a qualified speech pathologist. Who will accept that accountability when a speech aide fails to recognize deficits or disorders which are beyond their scope of experience at the bachelor level? Do we allow a Bachelor level aide without supervision to perform evaluations, diagnose and make recommendations for treatment in which they have no experience? Shouldn't public school speech and language impaired students have the same right to qualified therapy intervention as those clients who receive services outside the public school setting? The type of language from this bill can only discriminate against the children in our public schools. Current licensure law already allows for the BA level and the speech aide without a degree to work with supervision ensuring the accountability and protection of the rights of the handicapped child to receive appropriate intervention.

Again I would ask you to please oppose SB 366.

Sincerely,

Sherri Maxwell

Sherri Maxwell
3011 S. 54th St. W.
Billings, MT 59106

SB#366
February 17, 1993

Testimony given by: Kay Carrier, M.S., CFY-SLP
531 Wigwam Trail
Billings, Montana 59105

Mr. Chairman and members of the Senate Health Committee:

I strongly urge you to defeat Senate Bill 366 because it calls for the elimination of supervision. A BA level speech-aide is currently allowed to work in our state under the supervision of a licensed speech-language pathologist. This guarantees that appropriate assessment, evaluation, and therapy will be provided.

I have been employed by the Yellowstone-West/Carbon County Special Services Cooperative in Laurel for the past 5 years. During the first four years, I worked as a speech-aide under the supervision of Patti DuBray, a Montana licensed speech-language pathologist. I encountered many of the following disorders: cleft palate, hearing problems, cerebral palsy, neurological impairments, voice disorders, stuttering, oral motor problems (s.a. oral apraxia and dysarthria) and phonological impairments. I could not have delivered qualified therapy without supervision. It was during my graduate coursework that I received most of the training in these areas as well as the majority of my required clinical experience and internship.

I am very concerned about the shortage of licensed speech-language pathologists in Montana and it may be that this shortage has been compounded by the closure of the only training program that was in our state.

This bill singles out services delivered in the public schools. Yet we encounter the same disorders that are found in the hospital setting or private practice.

I appeal to you to protect the rights of Montana's children who have speech-language handicaps. These children deserve qualified, appropriate therapy and I urge you to defeat this bill.

Thank you,

Kay Carrier

Sept. 21, 1992

Representative Ray Peck
729 4th Ave.
Havre, MT 59501

Dear Ray,

The American Speech/Language/Hearing Association has written us a letter concerning Montana's speech licensure laws. We would like to share this with you to hopefully better inform you and your group about our profession.

Montana was one of the first states to have a comprehensive licensure law for speech and hearing individuals. It is unique because it includes all work situations: schools, hospitals and private practice. Our law is the envy of many states and especially now with the U.S. Dept. of Education mandating that other states upgrade their school speech pathologists training levels to what we now have in Montana.

We understand the frustration hiring agencies are experiencing at not being able to recruit licensed speech pathologists in Montana school systems. Rather than reducing our requirements we have chosen to take a proactive role in addressing our personnel shortage problems. We are now in the early stages of proposing the establishment of a paraprofessional training program and also proposing the re-establishment of a graduate level training program in Montana.

If you or your group are interested in becoming part of a task force to establish these training programs we would like to hear from you.

Sincerely,

Sandy Meech, M.A.;CCC/SLP
President, MSHA
612 40th St. N.
Great Falls, MT 59401
(406) 727-3430
(406) 791-2245

OFFICE OF PUBLIC INSTRUCTION

STATE CAPITOL
HELENA, MONTANA 59620
(406) 444-3095

Nancy Keenan
Superintendent

September 2, 1992

Sandy Meech
President
Montana Speech-Language Hearing Association
612 40th Street N
Great Falls, Montana 59401

Dear Sandy:

This letter is a follow-up to our telephone conversation last week in which you asked me to provide you with suggestions for representatives on a Task Force MSLHA is considering convening to address the issues of personnel shortages, utilization and training of paraprofessionals and the re-establishment of a training program in Montana.

Following, I have identified organizations/agencies which are in some way involved with the delivery of speech/language services and contacts for each and the names of other individuals who may be helpful to your Task Force.

ORGANIZATION/AGENCY AND CONTACT PERSON

1. School Administrators of Montana (SAM)

   Contact: Jim Turner
   Executive Director
   One S. Montana Avenue
   Helena, Montana 59601-5197
   Phone # 442-2510
   * You may wish to call Jim to find out if you should address a letter to him or to "Pep" Jewell, the President of Sam.

2. Montana University System

   Contact: Dr. John Hutchinson
   Commissioner of Higher Education
   33 S. Last Chance Gulch
   Helena, Montana 59620

Exhibit #13
2-17-93
SB- 366

8. Parent Let's Unite for Kids (PLUK)

Contact: Katharine Kelker
Director
Eastern Montana College
Billings 59107
Phone # 657-2312

* Kathy would be an excellent resource to your committee. She directs the largest parent support group in the state for parents of children with disabilities. She is knowledgable of children's needs and is acutely aware of issues related to personnel shortages and service delivery.

9. Legislator

Contact: Representative Ray Peck

* Representative Peck serves on the Commission on Special Education Finance. He also serves on the Education Sub-Committee for the Legislature. He is extremely knowledgeable of education issues and concerned about the provision of speech/language services in the schools.

10. A speech/language pathologist utilizing speech aides in a service delivery model to rural schools

* Marilyn Thaden, Sharon Dinstel or one of the speech/language pathologists currently serving in the Bear Paw Special Education Cooperative. These individuals are most impacted by personnel shortages and have excellent insight into training needs and possible resources.

10. A Non B.A. Paraprofessional

* Since MSLHA is considering proposing the establishment of a paraprofessional training program, you may want to include a person on the Task Force who is already serving in this capacity (a speech aide who does not hold a B.A. in speech pathology). A speech aide from the Bear Paw Cooperative could possibly fill this role.

* Bob Runkel, Nancy Keenan and myself met with John early this summer to discuss the need for a training program and some potential approaches.

3. Great Falls Vocational-Technical Center

*You mentioned that you had already been in contact with them to discuss the development of a paraprofessional program.

4. Council of Administrators of Special Education

Contact: Gail Cleveland
President
Great Falls Public Schools
3300 3rd St NE
Great Falls, MT 59401
Phone: # 791-2270

5. Board of Speech/Language Pathologists and Audiologists

6. Montana Office of Public Instruction

Contact: Robert Runkel
Director of Special Education
Office of Public Instruction
State Capitol
Helena, Montana 59620
Phone # 444-4429

7. Representative From Previous Training Program

Contact: Richard Boehmler, Ph.D.
3125 Old Pond Road
Missoula, Montana 59802
Phone # 549-3421

* I have suggested Dick because he served as the department head for the U. of Mt. program for a number of years and also has had years of teaching experience in the program on-site as well as providing off-site credit courses. Dick has served as one of Montana's legislative councilors to ASHA and has had years of experience serving in a consultative role to schools. He is familiar with school based services, training needs and standards.

Exhibit #13
2-17-93
SB-366

I enjoyed talking with you and thank you again for sharing the letter you received from ASHA. I have shared it with Bob Runkel our Director. If you have questions on any of the above, please feel free to call me at 444-4428. I will be happy to assist you.

It is exciting to hear that MSLHA is taking a proactive role in addressing our personnel shortage problems. Our office is looking forward to working with you for positive outcomes for our students with speech-language disabilities.

Sincerely,

Marilyn Pearson

cc: Robert Runkel

AMERICAN
SPEECH-LANGUAGE-
HEARING
ASSOCIATION

August 6, 1992

Sandy Meech, President
Montana Speech-Language-Hearing
Association
612 40th Street N
Great Falls, MT 59401

Dear Sandy:

I was disappointed to hear that Montana may consider reducing the licensure standards for school-based speech-language pathologists from the master's degree (MA) to the bachelor's degree (BA). During the past seven years, nine states have attempted to reduce their personnel standards to work in schools. After a careful analysis of the needs of children with communication disorders and a review of the need to have comprehensive services provided by qualified personnel, no state, however, has permanently reduced its personnel standards for school-based employment.

At a time when the nation's education system and, particularly, the competence of educators, is being questioned, I am surprised that Montana may consider reducing qualifications for providers of one of the most important elements of success in school and life -- communication. In many states, excellence in education means increasing personnel requirements.

Since 1965, the master's degree has been the minimum accepted level of preparation for employment as a speech-language pathologist promoted by ASHA and its 52 recognized state associations. The decision to establish the MA as the minimum level of preparation for employment as a speech-language pathologist was made following a national two-year Office of Education funded study completed in 1961 of speech-language and hearing programs in public schools. The results of the study (which included responses from ASHA members and nonmembers) showed that 98% of 1,800 respondents indicated that graduate education was desirable if not essential in providing services in the schools. The majority of the respondents favored a five-year minimum education requirement.

In 1963, a national conference on the issue of graduate education in speech-language pathology and audiology was held. The 105 experts in the profession attending the conference overwhelmingly agreed that the minimum educational level for speech-language pathologists should be the MA degree or equivalent. Currently, the nationally accepted level of

professional education for providing services as a speech-language pathologist includes the following:

- A graduate degree with specific study in human communication. The course of study includes psychology, anatomy, physiology, sociology, neurology, acoustics, linguistics, psycholinguistics, speech reading, clinical psychology, and education and training in diagnosis, appraisal, and remediation of speech, language, and hearing disorders.
- 300 clock hours of supervised clinical experience.
- Nine months of full-time professional experience under supervision of an individual who holds the Certificate of Clinical Competence.
- A passing score on a national examination in speech-language pathology.

In 1975, Montana recognized the importance of having adequately and appropriately prepared speech-language pathologists serve children with communication disorders in schools and adopted the MA as the minimum level of professional education required for employment as a speech-language pathologist in the Montana schools. The state is to be commended for establishing standards that ensure children with communication disabilities in Montana have access to and receive services provided by individuals who meet minimum accepted standards for professional education -- the master's degree. It is unfortunate that after 17 years of employing speech-language pathologists at the master's level, the state may entertain a proposal to allow less than qualified individuals to work in schools. ASHA believes that any action allowing individuals who do not meet the MA requirement to provide speech-language pathology services in the schools will be detrimental to the services provided children with communication disorders in the Montana schools.

The question typically asked in discussions related to personnel qualifications is: "Is a master's degree really better than a bachelor's?" In a review of 50 randomly selected transcripts and practicum records submitted to ASHA by students seeking the Certificate of Clinical Competence (CCC), the data clearly showed that individuals who would have terminated their professional education at the BA level would not have been qualified to provide services. For example, only 24% of the BA level students had taken a course in diagnostics. Only 40% had taken a course in language disorders and only 46% in articulation. These are the two major disorders found in school age children. Forty-two percent of the BA level individuals had less than 100 hours of practicum. Twenty-four percent had no practicum hours. In an ASHA study of terminal baccalaureate programs in speech-language pathology, data indicate the average number of practicum hours obtained was 152, nearly 50% less than that required for the CCC.

In an ASHA study of the competencies of bachelor and master level speech-language pathologists, respondents were asked to rate their competency on 38 skills necessary to conduct a comprehensive speech-language pathology program. Seventy-six and three-tenths percent of a randomly selected population of 2,554 BA and MA speech-language pathologists responded. On 34 of the 38 skills, individuals with BA degrees rated themselves lower than individuals with a MA degree. Bachelor's level persons rated themselves as having high competence in only five of 38 skills:

1. Treat persons with articulation disorders
2. Evaluate persons with articulation disorders
3. Select individuals for caseload
4. Establish treatment plans based on assessment data
5. Use assessment data to terminate services

I suggest that Montana does not want persons with minimal qualifications providing services for children in its schools.

State and federal laws require that local education agencies provide comprehensive special education and related services for all children with disabilities. The role of the speech-language pathologist in carrying out state and federal special education and related services mandates requires the use of qualified personnel. To assume that a person with minimal training can provide adequate and appropriate services for children with communication disorder indicates a lack of understanding of the nature of communication disorders and services provided by speech-language pathologists.

In the school setting, speech-language pathologists plan, direct, and participate in many habilitative and instructional programs for children and youth who have communication disorders. They also try to prevent language, speech, and hearing disorders through pupil and public education, early identification of problems, and active work with children, often involving parents, educators, and health professionals. They engage in research activities to increase understanding of the nature of communication problems and to develop improved methods for evaluation and treatment of children with communication disorders.

Speech-language pathologists serve as administrators, supervisors, or coordinators of programs. They supervise staff and plan, develop, manage, and evaluate the total language, speech, and hearing program. Speech-language pathologists implement public information programs to inform the community of children's communication needs and the availability and range of special services offered as part of the total educational process.

Although most school-based speech-language pathologists provide services primarily to children with language and speech disorders, some work more exclusively with children who have hearing disorders. Speech-language

EXHIBIT 415
2-17-93
SB-366

pathologists in the schools provide direct services for children and youth who have a variety of communication disorders, including:

- Identifying children with communication problems by means of screening, survey, or referral programs;
- Assessing and diagnosing children's communication needs and behaviors;
- Providing goal-based remediation in individual and/or group sessions; and
- Conducting periodic reassessment and evaluation of children's progress in achieving structured, clinical goals and objectives.

Direct intervention services are given to children who have:

- Language handicaps that often are the basis for academic learning disabilities;
- Chronic voice disorders;
- Disfluencies (stuttering);
- Hearing impairments;
- Moderate to severe articulation disorders; and
- Language, speech and hearing disorders associated with cleft palate, cerebral palsy, intellectual impairment, emotional or behavioral disturbance, visual impairment, autistic behavior, aphasia, and other conditions.

Direct services often are provided to:

- High-risk infants enrolled in school operated child development centers;
- Preschoolers in school-based head start programs;
- Elementary, middle, and secondary school children and youth;
- Students with multiple disabilities in regional, local district, or state schools, and
- Children with severe disabilities in local district special schools, centers, classes, or home settings.

The role of the speech-language pathologist in the schools has changed considerably in the past two decades, especially since implementation of P.L. 94-142. The role is varied and includes working with children of various ages whose disorders range from mild to severe. Increased emphasis has been placed on the needs of children with severe disabilities, and well qualified professionals are necessary to provide appropriate services for these children.

The question can be asked: "If you had a child with a severe communicative disorder enrolled in the Montana public schools, would you want your child served by an individual who may not have had professional education in diagnostics, course work on disorders of language and articulation, and has had minimum practicum experience?" Clearly, anyone concerned with the quality of services for children with communication disorders would have to answer "NO."

One of the unfortunate assumptions held by individuals who are not familiar with the nature of communication disorders and the services provided by speech-language pathologists is that individuals who are employed in rural school districts do not need to be as well educated as their colleagues in clinic and hospital programs. This is an erroneous assumption and an assumption that should not be made by the state of Montana.

Speech-language pathologists providing services in rural schools, such as those in many areas of Montana, need to be the most qualified professionals. As discussed previously, speech-language pathologists are required to provide services to a diverse population of children and youth of different ages and disabilities. They must be excellent diagnosticians to ensure appropriate placement of children with disabilities. They typically do not have access to the support services made available to speech-language pathologists working in clinics and hospitals. Frequently, they are the only speech-language pathologist in the district. They must be able to work on multidisciplinary teams and provide consultation to a variety of teachers and specialists. Because the speech-language pathologist serving the rural school district must "do it all," it is logical that they should at least meet the minimum accepted professional level of education and training -- the master's degree in speech-language pathology. Providing mandated special education and related services is difficult enough for a well-trained person with a master's degree. For a person with minimal qualifications, it is clear that service delivery would be less than appropriate. Local education agencies could spend considerable time and money on due process hearings and litigation trying to justify services provided by less than qualified individuals. Certainly, allowing individuals with less than an MA to be employed as a speech-language pathologist in Montana schools is an open invitation for the concerned parent to question through legal avenues why persons who do not meet the highest state standards for licensure are allowed to provide services.

Exhibit 13
2-17-93
SB-366

Before trying to solve personnel shortage problems by allowing less than qualified individuals to be employed in Montana schools, I encourage the state of Montana to answer the following questions:

1. What is the magnitude of the problem? Is it a statewide problem or localized in a few isolated areas that would have difficulty recruiting and employing staff even if allowed to hire bachelor's level personnel?

2. How extensively have districts in need of personnel recruited? Have they exhausted all sources on a national level or have they contacted only regional universities, found no one available, and then given up?

3. Have districts made adjustments in working conditions, support for programs, and salary and fringe benefits necessary to attract qualified personnel? It is unrealistic to expect qualified professionals to seek employment in areas that have inadequate working conditions, minimal program support and a low salary and fringe benefit package.

4. Have districts experiencing personnel shortages implemented alternative programs that would allow for the provision of services by qualified professionals? Some of these alternatives include:

   a. Contracting for services from public or private agencies that employ qualified professionals.

   b. Employing part-time personnel, thereby using qualified individuals in the area who cannot work full-time.

Clearly, the state and local education agencies should explore all possibilities for ensuring that services for the children with communication disorders are provided by qualified speech-language pathologists before considering any proposal that could reduce the quality of services received by children with disabilities in Montana schools. Also, there is no assurance that allowing employment of BA level persons will solve the personnel shortage. Currently, many states that allow individuals with BA degrees to be employed in the schools also report vacancy rates.

What if after allowing BA level persons to be employed, the personnel shortage continues to exist? Is the next step to cut back to two or three years of professional education? Reducing standards is <u>not</u> the solution to the personnel shortage. In fact, it is worse because it misleads parents into thinking their children are receiving appropriate professional services. Better working conditions, adequate program support, and salary and fringe benefits appropriate for individuals with specialized education will do more

to alleviate personnel shortages than reducing personnel standards and the quality of services provided children with disabilities in Montana schools.

At a point in time when the quality of education in the nation's schools is being questioned, it is inappropriate for Montana to consider any proposal that would allow less than qualified persons work in schools. It also is ironic that at a time when the federal government is trying to give the states more responsibility in establishing policy in education and is assuring advocates that states can be trusted to maintain and provide quality programs, the State of Montana may consider a proposal that could result in programs of less quality. I question if this is the kind of trust that will encourage advocates to support the elimination of federal involvement in education.

It is the position of the American Speech-Language-Hearing Association and its 67,000 members that all speech-language pathology and audiology services provided children with communication disorders and youth in schools must be provided or supervised by a professional holding the master's degree in speech-language pathology or audiology. The rationale used by Montana to require the master's degree in 1975 is still valid today. The needs of children with communication disorders in Montana, whether served in public or private settings, have not changed. In fact, the role of the speech-language pathologist has expanded and the need for qualified personnel is even greater.

Therefore, on behalf of children with communication disorders in Montana, I urge the state to maintain its requirement that only fully qualified individuals may provide speech-language pathology services to children and youth in schools. Allowing employment of less than fully qualified personnel would be a disservice to children with communication disorders in Montana schools. We urge the state to maintain its certification standards at the master's degree level.

ASHA joins the Montana Speech-Language Hearing Association in its concerns about the quality of services provided children with communication disorders. If ASHA can be of assistance to the state if and when it deliberates this issue, please contact me at the ASHA National Office, 301-897-5700.

Sincerely,

Connie Lynch

Constance E. Lynch
Director
State Policy Division

SENATE HEALTH & WELFARE
EXHIBIT NO. 14
DATE 2-17-93
BILL NO. SB 352

AMENDMENTS TO SB 372
Prepared by Mary McCue
Lobbyist for Montana Clinical Mental Health
Counselors Association

1. Page 4, line 11.
Following: "disease,"
Insert: "counselling service,"

2. Page 5, line 3.
Following: "dentistry"
Insert: "counselling"

3. Page 5, line 10.
Following "dentistry,"
Insert: "psychologist, licensed social worker, licensed professional counselor"

SENATE HEALTH & WELFARE
EXHIBIT NO. 15
DATE 2-17-93
BILL NO. SB 403

MAY 1991

#65

RECEIVED
JUN 18 1991
DHES LEGAL DIVISION

MONTANA FOURTH JUDICIAL DISTRICT COURT, MINERAL COUNTY

COLEEN I. IRGENS, individually and as Personal Representative of the Estate of COLEEN CLAIRE MACMASTER,

Plaintiff,

v.

ADDISON PRODUCTS CORP., a Michigan corporation; and the STATE OF MONTANA,

Defendants.

Cause No. 3573 & 3574 -141

Filed this 18th day of April A.D. 19 91
Audrey Leben
Clerk

OPINION AND ORDER

J. BRUCE MacMASTER, SR. and ANITA FEKETE, individually and as the co-personal representatives of the Estate of JOSEPH B. "JAY" MacMASTER, JR.,

Plaintiffs,

v.

ADDISON PRODUCTS CORPORATION and THE STATE OF MONTANA;

Defendants.

This matter comes before the Court on motions for summary judgment by the plaintiffs and the Defendant State of Montana, which have been fully briefed by the parties, with oral

argument having been held before this Court on March 13, 1991. The Court being fully advised in the premises, enters the following Opinion and Order on such motions.

OPINION

This action involves the deaths of Jay and Coleen MacMaster by carbon monoxide poisoning while they were staying in Unit No. 8 of the 4 D's Motel, Saltese, Montana.

The parties agree that the issue of whether the State of Montana owed a duty of care to inspect the 4 D's Motel in the case at bar is a legal issue, and not a factual issue.

Rule 56 Mont. R. Civ. P. allows entry of summary judgment on legal issues prior to trial, when there are no genuine issues of material fact. It appears to this Court that entry of partial summary judgment on the issue of duty is appropriate. Based upon the grounds and reasons expressed below, this Court hereby grants plaintiffs' motions for summary judgment, and denies the motion for summary judgment by the State of Montana. The State owed a legal duty to inspect the 4 D's Motel, which applies in this action.

The State has admitted in responses to written discovery, as well as during oral argument, that certain statutory duties are imposed upon the State to inspect motels, including the 4 D's Motel in Saltese, Montana. Plaintiffs argue that such duties apply in this action, and run to decedents as tenants in a motel. The State argues that although statutory duties are imposed upon the State, such duties do not apply to individual plaintiffs, and the State urges this Court to apply

Exhibit 15
2-17-93
SB-403

what has been characterized as the "Public Duty Doctrine". Under that doctrine the State urges that where a general duty is owed to the public at large, no specific duty is owed to individual plaintiffs.

Montana law requires inspection of motels to be conducted by the State. The State Fire Marshal is required to inspect motels and to require conformity to law and promulgated rules. The rules of the State Fire Marshal shall be reasonable and calculated to effect the purposes of applicable law and shall include requirements for design, construction, installation, operation, maintenance or use of heating devices. Agents of the State Fire Marshal are required to enter motels to inspect for violation of statutes, rules and uniform codes incorporated therein, at least once every 18 months. See, MCA §§ 50-3-102(1)(c), 50-3-103, 50-61-114, Defendant State of Montana's Response to Plaintiff Irgens' Request for Admission No. 1, and Answer to Interrogatory No. 16 of Plaintiff MacMasters' First Set of Interrogatories to Defendant State of Montana.

The administrative rules at the State Fire Marshal Bureau include the adoption and incorporation of the Uniform Fire Code. As to heating appliances, the Uniform Fire Code provides that gas appliances shall be vented in accordance with the Uniform Mechanical Code. This requires a venting system to have a positive flow adequate to convey all combustion products to the outside, and to terminate a specified distance above the roof. A.R.M. 23.7.111, Uniform Fire Code Section 11.404(c), Uniform Mechanical Code Sections 901 and 906(d).

Plaintiff Irgens also argues that the Department of Health and Environmental Sciences (DHES) and its agents are required to inspect motels. The expressed purpose of regulation of motels is to prevent or eliminate unsanitary and unhealthful conditions which may endanger public health, and such regulations are in the interest of the social well being and the health and safety of the State and all of its people. § 50-51-101, MCA. Montana law requires agents of the DHES to inspect motels at least once every 12 months. Local health officers are charged with carrying out DHES duties and receive certain amounts from the DHES for the purpose of carrying out such inspections.

A duty to inspect motels is imposed on the State of Montana through the offices of the State Fire Marshal and the DHES.

The State's argument that requiring it to inspect public accommodations in order to require compliance with the statutes and administrative rules would make the State an insurer of all buildings in the State of Montana is without merit. The Legislature has imposed specific statutory duties to inspect motels, and the State's agencies have promulgated specific rules to carry out the intent and purpose of the law. The argument that State agents should not be required to enforce the statutes, rules, and Uniform Codes incorporated therein due to the voluminous nature of such provisions in not well taken by this Court. The State has a duty to inspect motels, including the 4 D's Motel, as a matter of law.

As to whether such duties to inspect run to the plaintiffs' decedents in the case at bar, the facts and circumstances in this action do not fall within the "Public Duty Doctrine". Separate and independent statutory duties are imposed upon the State, unlike in Phillips v. City of Billings, ___ Mont. ___, 758 P.2d 772 (1988), which is distinguishable. The Public Duty Doctrine has not been adopted in its entirety by the Montana Supreme Court, but rather the general duty - special duty distinction was applied only as to the facts presented in Phillips. 758 P.2d at 775. In Phillips, there was no other source of legal duty to the injured party.

The deaths of the MacMasters occurred while they were tenants in a motel which the State was required to inspect. The State's argument that a duty is owed to the general public, but not to a specific individual upon registration in a motel is not the law in Montana and totally ignores the expressed intent and purpose of the inspection laws. The purpose of state regulation of motels, and the mandated inspections, is to protect motel guests. If they are not protected there is no purpose to the regulation. The MacMasters, as tenants in a motel, are within an identifiable class to whom the State owed independent duties imposed by statute and promulgated rules.

The concepts of foreseeability are not stretched by requiring the State to comply with the applicable statutes, rules, and Uniform Codes incorporated therein. The duty to inspect motels, including the 4 D's Motel, applies to individual

Exhibit #10
2-17-93
SB-403

tenants in the motel as a matter of law, and the trial of this action will be conducted accordingly.

ORDER

Based upon the foregoing Opinion,

IT IS HEREBY ORDERED, that plaintiffs' motions for partial summary judgment is granted, and defendant State of Montana's motion for summary judgment is denied. The trial of the above-captioned actions will be conducted accordingly.

DATED this 26th day of August, 1991.

Ed McLean, District Judge

c: Garlington, Lohn & Robinson
Rosscup & Kragh
Chronister, Driscoll & Moreen
Milodragovich, Dale & Dye, P.C.

SENATE HEALTH & WELFARE
EXHIBIT NO. 16
DATE 2-17-93
BILL NO. SB 266

EXECUTIVE SECRETARY
BONNIE TIPPY
1245 11th Avenue
P.O. Box 6276
Helena, MT 59604
406/442-7275

TREASURER
DR. NOEL HOKLIN
1643 24th St. W
Billings, MT 59102
406/252-0241

February 17, 1993

Senator Terry Klampe
Helena, Montana

Dear Senator:

This letter is in regards to the legislation that will loosen requirements for licensure in acupuncture for M.D.s and D..O.s . The Montana Chiropractic Association believes that chiropractors have more training in this area through their education in chiropractic college than M.D.s are offered in medical school, and thus chiropractors should be included in the bill. In fact, chiropractic colleges offer 100 hours in acupuncture, and many chiropractors have taken advantage of those hours. We agree that there should be some educational requirements before doctors can be allowed to take the board examinations from the Medical Examiners, and that any potential licensee should be tested.

We appreciate your help in this area, and given more time can provide additional documentation of the hours in acupuncture that chiropractors are offered in their college curriculum.

Thank you for interest and consideration.

Sincerely,

Bonnie

Bonnie L. Tippy

Amendments to Senate Bill No. 285
First Reading Copy

Requested by Sen. Eck
For the Committee on Public Health, Welfare, and Safety

Prepared by Susan B. Fox
February 12, 1993

1. Title, line 15.
Following: "PROVIDING"
Strike: "FOR"
Insert: "A SMALL EMPLOYER"

2. Title, line 16.
Strike: "REFORM"
Insert: "ACT"

3. Page 3, line 3.
Strike: "section"
Insert: "sections"

4. Page 3, line 4.
Strike: "13"
Insert: "14, 17, 18, 21, and 25 through 27"

5. Page 3, line 9.
Following: "cost-effective"
Insert: "pursuant to the Small Employer Health Insurance Availability Act. The commissioner may adopt rules providing for a transition period to allow small employer carriers to comply with certain provisions of the act. The commissioner may approve the establishment of additional classes of businesses only if the commissioner determines that the additional classes would enhance the efficiency and fairness of the small employer health insurance market. The commissioner is required under the act to adopt rules to implement and administer the act"

6. Page 5, line 2.
Following: "sciences"
Insert: "and the commissioner of insurance"

7. Page 5, line 5.
Page 7, lines 2 and 6.
Strike: "13"
Insert: "12"

8. Page 5, line 21.
Following: "company"
Insert: "health service corporation,"

9. Page 18, line 4 through page 20, line 19.
Strike: section 13 in its entirety

Insert: "NEW SECTION. **Section 13. Short title.** [Sections 13 through 27] may be cited as the "Small Employer Health Insurance Availability Act".

NEW SECTION. **Section 14. Purpose.** (1) [Sections 13 through 27] must be interpreted and construed to effectuate the following express legislative purposes:

(a) to promote the availability of health insurance coverage to small employers regardless of health status or claims experience;

(b) to prevent abusive rating practices;

(c) to require disclosure of rating practices to purchasers;

(d) to establish rules regarding renewability of coverage;

(e) to establish limitations on the use of preexisting condition exclusions;

(f) to provide for the development of basic and standard health benefit plans to be offered to all small employers;

(g) to provide for the establishment of a reinsurance program; and

(h) to improve the overall fairness and efficiency of the small employer health insurance market.

(2) [Sections 13 through 27] are not intended to provide a comprehensive solution to the problem of affordability of health care or health insurance.

NEW SECTION. **Section 15. Definitions.** As used in [sections 13 through 27], the following definitions apply:

(1) "Actuarial certification" means a written statement by a member of the American academy of actuaries or other individual acceptable to the commissioner that a small employer carrier is in compliance with the provisions of [section 18], based upon the person's examination, including a review of the appropriate records and of the actuarial assumptions and methods used by the small employer carrier in establishing premium rates for applicable health benefit plans.

(2) "Affiliate" or "affiliated" means any entity or person who directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with a specified entity or person.

(3) "Base premium rate" means, for each class of business as to a rating period, the lowest premium rate charged or that could have been charged under the rating system for that class of business by the small employer carrier to small employers with similar case characteristics for health benefit plans with the same or similar coverage.

(4) "Basic health benefit plan" means a lower cost health benefit plan developed pursuant to [section 22].

(5) "Board" means the board of directors of the program established pursuant to [section 21].

(6) "Carrier" means any person who provides a health benefit plan in this state subject to state insurance regulation. The term includes but is not limited to an insurance company, a fraternal benefit society, a health service corporation, a health maintenance organization, and, to the extent permitted by the

Exhibit D
2-17-93
SB-285

Employee Retirement Income Security Act of 1974, a multiple-employer welfare arrangement. For purposes of [section 13 through 27], companies that are affiliated companies or that are eligible to file a consolidated tax return must be treated as one carrier, except that the following may be considered as separate carriers:

(a) an insurance company or health service corporation that is an affiliate of a health maintenance organization located in this state;

(b) a health maintenance organization located in this state that is an affiliate of an insurance company or health service corporation; or

(c) a health maintenance organization that operates only one health maintenance organization in an established geographic service area of this state.

(7) "Case characteristics" means demographic or other objective characteristics of a small employer that are considered by the small employer carrier in the determination of premium rates for the small employer, provided that claims experience, health status, and duration of coverage are not case characteristics for purposes of [sections 13 through 27].

(8) "Class of business" means all or a separate grouping of small employers established pursuant to [section 17].

(9) "Committee" means the health benefit plan committee created pursuant to [section 22].

(10) "Dependent" means:

(a) a spouse or an unmarried child under 19 years of age;

(b) an unmarried child, under 23 years of age, who is a full-time student and who is financially dependent on the insured;

(c) a child of any age who is disabled and dependent upon the parent as provided in 33-22-506 and 33-30-1003; or

(d) any other individual defined to be a dependent in the health benefit plan covering the employee.

(11) "Eligible employee" means an employee who works on a full-time basis and who has a normal workweek of 30 hours or more. The term includes a sole proprietor, a partner of a partnership, and an independent contractor if the sole proprietor, partner, or independent contractor is included as an employee under a health benefit plan of a small employer. The term does not include an employee who works on a part-time, temporary, or substitute basis.

(12) "Established geographic service area" means a geographic area, as approved by the commissioner and based on the carrier's certificate of authority to transact insurance in this state, within which the carrier is authorized to provide coverage.

(13) "Health benefit plan" means any hospital or medical policy or certificate issued by an insurance company, a fraternal benefit society, or a health service corporation or issued under a health maintenance organization subscriber contract. Health benefit plan does not include:

(a) accident-only, credit, dental, vision, specified disease, medicare supplement, long-term care, or disability income insurance;

(b) coverage issued as a supplement to liability insurance, workers' compensation insurance, or similar insurance; or

(c) automobile medical payment insurance.

(14) "Index rate" means, for each class of business for a rating period for small employers with similar case characteristics, the average of the applicable base premium rate and the corresponding highest premium rate.

(15) "Late enrollee" means an eligible employee or dependent who requests enrollment in a health benefit plan of a small employer following the initial enrollment period during which the individual was entitled to enroll under the terms of the health benefit plan, provided that the initial enrollment period was a period of at least 30 days. However, an eligible employee or dependent may not be considered a late enrollee if:

(a) the individual meets each of the following conditions:

(i) the individual was covered under qualifying previous coverage at the time of the initial enrollment;

(ii) the individual lost coverage under qualifying previous coverage as a result of termination of employment or eligibility, the involuntary termination of the qualifying previous coverage, the death of a spouse, or divorce; and

(iii) the individual requests enrollment within 30 days after termination of the qualifying previous coverage;

(b) the individual is employed by an employer that offers multiple health benefit plans and the individual elects a different plan during an open enrollment period; or

(c) a court has ordered that coverage be provided for a spouse, minor, or dependent child under a covered employee's health benefit plan and a request for enrollment is made within 30 days after issuance of the court order.

(16) "New business premium rate" means, for each class of business for a rating period, the lowest premium rate charged or offered or that could have been charged or offered by the small employer carrier to small employers with similar case characteristics for newly issued health benefit plans with the same or similar coverage.

(17) "Plan of operation" means the operation of the program established pursuant to [section 21].

(18) "Premium" means all money paid by a small employer and eligible employees as a condition of receiving coverage from a small employer carrier, including any fees or other contributions associated with the health benefit plan.

(19) "Program" means the Montana small employer health reinsurance program created by [section 21].

(20) "Qualifying previous coverage" means benefits or coverage provided under:

(a) medicare or medicaid;

(b) an employer-based health insurance or health benefit arrangement that provides benefits similar to or exceeding benefits provided under the basic health benefit plan; or

(c) an individual health insurance policy, including coverage issued by an insurance company, a fraternal benefit society, a health service corporation, or a health maintenance organization that provides benefits similar to or exceeding the benefits provided under the basic health benefit plan, provided

that the policy has been in effect for a period of at least 1 year.

(21) "Rating period" means the calendar period for which premium rates established by a small employer carrier are assumed to be in effect.

(22) "Reinsuring carrier" means a small employer carrier participating in the reinsurance program pursuant to [section 21].

(23) "Restricted network provision" means a provision of a health benefit plan that conditions the payment of benefits, in whole or in part, on the use of health care providers that have entered into a contractual arrangement with the carrier pursuant to Title 33, chapter 22, part 17, or Title 33, chapter 31, to provide health care services to covered individuals.

(24) "Small employer" means a person, firm, corporation, partnership, or association that is actively engaged in business and that, on at least 50% of its working days during the preceding calendar quarter, employed at least 3 but not more than 25 eligible employees, the majority of whom were employed within this state or were residents of this state. In determining the number of eligible employees, companies that are affiliated companies or that are eligible to file a combined tax return for purposes of state taxation are considered one employer.

(25) "Small employer carrier" means a carrier that offers health benefit plans that cover eligible employees of one or more small employers in this state.

(26) "Standard health benefit plan" means a health benefit plan developed pursuant to [section 22].

NEW SECTION. **Section 16. Applicability and scope.** [Sections 13 through 26] apply to a health benefit plan marketed through a small employer that provides coverage to the employees of a small employer in this state if any of the following conditions are met:

(1) a portion of the premium or benefits is paid by or on behalf of the small employer;

(2) an eligible employee or dependent is reimbursed, whether through wage adjustments or otherwise, by or on behalf of the small employer for any portion of the premium; or

(3) the health benefit plan is treated by the employer or any of the eligible employees or dependents as part of a plan or program for the purposes of section 106, 125, or 162 of the Internal Revenue Code.

NEW SECTION. **Section 17. Establishment of classes of business.** (1) A small employer carrier may establish a separate class of business only to reflect substantial differences in expected claims experience or administrative costs that are related to the following reasons:

(a) The small employer carrier uses more than one type of system for the marketing and sale of health benefit plans to small employers.

(b) The small employer carrier has acquired a class of business from another small employer carrier.

(c) The small employer carrier provides coverage to one or

more association groups that meet the requirements of 33-22-501(2).

(2) A small employer carrier may establish up to nine separate classes of business under subsection (1).

(3) The commissioner may adopt rules to provide for a period of transition in order for a small employer carrier to come into compliance with subsection (2) in the case of acquisition of an additional class of business from another small employer carrier.

(4) The commissioner may approve the establishment of additional classes of business upon application to the commissioner and a finding by the commissioner that the action would enhance the fairness and efficiency of the small employer health insurance market.

NEW SECTION. **Section 18. Restrictions relating to premium rates.** (1) Premium rates for health benefit plans under [sections 13 through 27] are subject to the following provisions:

(a) The index rate for a rating period for any class of business may not exceed the index rate for any other class of business by more than 20%.

(b) For each class of business:

(i) the premium rates charged during a rating period to small employers with similar case characteristics for the same or similar coverage or the rates that could be charged to the employer under the rating system for that class of business may not vary from the index rate by more than 25% of the index rate; or

(ii) if the Montana health care authority established by [section 1] certifies to the commissioner that the cost containment goal set forth in [section 5] is met on or before January 1, 1999, the premium rates charged during a rating period to small employers with similar case characteristics for the same or similar coverage may not vary from the index by more than 20% of the index rate.

(c) The percentage increase in the premium rate charged to a small employer for a new rating period may not exceed the sum of the following:

(i) the percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period. In the case of a health benefit plan into which the small employer carrier is no longer enrolling new small employers, the small employer carrier shall use the percentage change in the base premium rate, provided that the change does not exceed, on a percentage basis, the change in the new business premium rate for the most similar health benefit plan into which the small employer carrier is actively enrolling new small employers.

(ii) any adjustment, not to exceed 15% annually and adjusted pro rata for rating periods of less than 1 year, because of the claims experience, health status, or duration of coverage of the employees or dependents of the small employer, as determined from the small employer carrier's rate manual for the class of business; and

(iii) any adjustment because of a change in coverage or a

change in the case characteristics of the small employer, as determined from the small employer carrier's rate manual for the class of business.

(d) Adjustments in rates for claims experience, health status, and duration of coverage may not be charged to individual employees or dependents. Any adjustment must be applied uniformly to the rates charged for all employees and dependents of the small employer.

(e) Premium rates for health benefit plans must comply with the requirements of this section, notwithstanding any assessments paid or payable by small employer carriers pursuant to [section 21].

(f) If a small employer carrier uses industry as a case characteristic in establishing premium rates, the rate factor associated with any industry classification may not vary from the average of the rate factors associated with all industry classifications by more than 15% of that coverage.

(g) In the case of health benefit plans delivered or issued for delivery prior to January 1, 1994, a premium rate for a rating period may exceed the ranges set forth in subsections (1)(a) and (1)(b) until January 1, 1997. In that case, the percentage increase in the premium rate charged to a small employer for a new rating period may not exceed the sum of the following:

(i) the percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period. In the case of a health benefit plan into which the small employer carrier is no longer enrolling new small employers, the small employer carrier shall use the percentage change in the base premium rate, provided that the change does not exceed, on a percentage basis, the change in the new business premium rate for the most similar health benefit plan into which the small employer carrier is actively enrolling new small employers.

(ii) any adjustment because of a change in coverage or a change in the case characteristics of the small employer, as determined from the small employer carrier's rate manual for the class of business.

(h) A small employer carrier shall:

(i) apply rating factors, including case characteristics, consistently with respect to all small employers in a class of business. Rating factors must produce premiums for identical groups that differ only by the amounts attributable to plan design and that do not reflect differences because of the nature of the groups.

(ii) treat all health benefit plans issued or renewed in the same calendar month as having the same rating period.

(i) For the purposes of this subsection (1), a health benefit plan that includes a restricted network provision may not be considered similar coverage to a health benefit plan that does not include a restricted network provision.

(j) The small employer carrier may not use case characteristics, other than age, without prior approval of the commissioner.

(k) The commissioner may adopt rules to implement the

provisions of this section and to ensure that rating practices used by small employer carriers are consistent with the purposes of [sections 13 through 27], including rules that ensure that differences in rates charged for health benefit plans by small employer carriers are reasonable and reflect objective differences in plan design, not including differences because of the nature of the groups.

(2) A small employer carrier may not transfer a small employer involuntarily into or out of a class of business. A small employer carrier may not offer to transfer a small employer into or out of a class of business unless the offer is made to transfer all small employers in the class of business without regard to case characteristics, claims experience, health status, or duration of coverage since the insurance was issued.

(3) The commissioner may suspend for a specified period the application of subsection (1)(a) for the premium rates applicable to one or more small employers included within a class of business of a small employer carrier for one or more rating periods upon a filing by the small employer carrier and a finding by the commissioner either that the suspension is reasonable in light of the financial condition of the small employer carrier or that the suspension would enhance the fairness and efficiency of the small employer health insurance market.

(4) In connection with the offering for sale of any health benefit plan to a small employer, a small employer carrier shall make a reasonable disclosure, as part of its solicitation and sales materials, of each of the following:

(a) the extent to which premium rates for a specified small employer are established or adjusted based upon the actual or expected variation in claims costs or upon the actual or expected variation in health status of the employees of small employers and the employees' dependents;

(b) the provisions of the health benefit plan concerning the small employer carrier's right to change premium rates and the factors, other than claims experience, that affect changes in premium rates;

(c) the provisions relating to renewability of policies and contracts; and

(d) the provisions relating to any preexisting condition.

(5) (a) Each small employer carrier shall maintain at its principal place of business a complete and detailed description of its rating practices and renewal underwriting practices, including information and documentation that demonstrate that its rating methods and practices are based upon commonly accepted actuarial assumptions and are in accordance with sound actuarial principles.

(b) Each small employer carrier shall file with the commissioner annually, on or before March 15, an actuarial certification certifying that the carrier is in compliance with [sections 13 through 27] and that the rating methods of the small employer carrier are actuarially sound. The actuarial certification must be in a form and manner and must contain information as specified by the commissioner. A copy of the actuarial certification must be retained by the small employer carrier at its principal place of business.

Exhibit # 17
2-17-93
SB-285

(c) A small employer carrier shall make the information and documentation described in subsection (5)(a) available to the commissioner upon request. Except in cases of violations of the provisions of [sections 13 through 27] and except as agreed to by the small employer carrier or as ordered by a court of competent jurisdiction, the information must be considered proprietary and trade secret information and is not subject to disclosure by the commissioner to persons outside of the department.

NEW SECTION. **Section 19. Renewability of coverage.** (1) A health benefit plan subject to the provisions of [sections 13 through 27] is renewable with respect to all eligible employees or their dependents, at the option of the small employer, except in any of the following cases:

(a) nonpayment of the required premium;

(b) fraud or misrepresentation of the small employer or with respect to coverage of individual insureds or their representatives;

(c) noncompliance with the carrier's minimum participation requirements;

(d) noncompliance with the carrier's employer contribution requirements;

(e) repeated misuse of a restricted network provision;

(f) election by the small employer carrier to not renew all of its health benefit plans delivered or issued for delivery to small employers in this state, in which case the small employer carrier shall:

(i) provide advance notice of this decision under this subsection (1) (f) to the commissioner in each state in which it is licensed; and

(ii) at least 180 days prior to the nonrenewal of any health benefit plans by the carrier, provide notice of the decision not to renew coverage to all affected small employers and to the commissioner in each state in which an affected insured individual is known to reside. Notice to the commissioner under this subsection (1)(f) must be provided at least 3 working days prior to the notice to the affected small employers.

(g) the commissioner finds that the continuation of the coverage would:

(i) not be in the best interests of the policyholders or certificate holders; or

(ii) impair the carrier's ability to meet its contractual obligations.

(2) If the commissioner makes a finding under subsection (1)(g), the commissioner shall assist affected small employers in finding replacement coverage.

(3) A small employer carrier that elects not to renew a health benefit plan under subsection (1)(f) is prohibited from writing new business in the small employer market in this state for a period of 5 years from the date of notice to the commissioner.

(4) In the case of a small employer carrier doing business in one established geographic service area of the state, the rules set forth in this section apply only to the carrier's operations in that service area.

NEW SECTION. **Section 20. Availability of coverage -- required plans.** (1) (a) As a condition of transacting business in this state with small employers, each small employer carrier shall offer to small employers at least two health benefit plans. One plan must be a basic health benefit plan, and one plan must be a standard health benefit plan.

(b) (i) A small employer carrier shall issue a basic health benefit plan or a standard health benefit plan to any eligible small employer that applies for either plan and agrees to make the required premium payments and to satisfy the other reasonable provisions of the health benefit plan not inconsistent with [sections 13 through 27].

(ii) In the case of a small employer carrier that establishes more than one class of business pursuant to [section 17], the small employer carrier shall maintain and offer to eligible small employers at least one basic health benefit plan and at least one standard health benefit plan in each established class of business. A small employer carrier may apply reasonable criteria in determining whether to accept a small employer into a class of business, provided that:

(A) the criteria are not intended to discourage or prevent acceptance of small employers applying for a basic or standard health benefit plan;

(B) the criteria are not related to the health status or claims experience of the small employers' employees;

(C) the criteria are applied consistently to all small employers that apply for coverage in that class of business; and

(D) the small employer carrier provides for the acceptance of all eligible small employers into one or more classes of business.

(iii) The provisions of subsection (1)(b)(ii) may not be applied to a class of business into which the small employer carrier is no longer enrolling new small businesses.

(c) The provisions of this section are effective 180 days after the commissioner's approval of the basic health benefit plan and the standard health benefit plan developed pursuant to [section 22], provided that if the program created pursuant to [section 21] is not yet operative on that date, the provisions of this section are effective on the date that the program begins operation.

(2) (a) A small employer carrier shall, pursuant to 33-1-501, file the basic health benefit plans and the standard health benefit plans to be used by the small employer carrier.

(b) The commissioner may at any time, after providing notice and an opportunity for a hearing to the small employer carrier, disapprove the continued use by a small employer carrier of a basic or standard health benefit plan on the grounds that the plan does not meet the requirements of [sections 13 through 27].

(3) Health benefit plans covering small employers must comply with the following provisions:

(a) A health benefit plan may not, because of a preexisting condition, deny, exclude, or limit benefits for a covered individual for losses incurred more than 12 months following the effective date of the individual's coverage. A health benefit

plan may not define a preexisting condition more restrictively than 33-22-216, except that the condition may be excluded for a maximum of 12 months.

(b) A health benefit plan must waive any time period applicable to a preexisting condition exclusion or limitation period with respect to particular services for the period of time an individual was previously covered by qualifying previous coverage that provided benefits with respect to those services if the qualifying previous coverage was continuous to a date not less than 30 days prior to the submission of an application for new coverage. This subsection (3)(b) does not preclude application of any waiting period applicable to all new enrollees under the health benefit plan.

(c) A health benefit plan may exclude coverage for late enrollees for 18 months or for an 18-month preexisting condition exclusion, provided that if both a period of exclusion from coverage and a preexisting condition exclusion are applicable to a late enrollee, the combined period may not exceed 18 months from the date the individual enrolls for coverage under the health benefit plan.

(d) (i) Requirements used by a small employer carrier in determining whether to provide coverage to a small employer, including requirements for minimum participation of eligible employees and minimum employer contributions, must be applied uniformly among all small employers that have the same number of eligible employees and that apply for coverage or receive coverage from the small employer carrier.

(ii) A small employer carrier may vary the application of minimum participation requirements and minimum employer contribution requirements only by the size of the small employer group.

(e) (i) If a small employer carrier offers coverage to a small employer, the small employer carrier shall offer coverage to all of the eligible employees of a small employer and their dependents. A small employer carrier may not offer coverage only to certain individuals in a small employer group or only to part of the group, except in the case of late enrollees as provided in subsection (3)(c).

(ii) A small employer carrier may not modify a basic or standard health benefit plan with respect to a small employer or any eligible employee or dependent, through riders, endorsements, or otherwise, to restrict or exclude coverage for certain diseases or medical conditions otherwise covered by the health benefit plan.

(4) (a) A small employer carrier may not be required to offer coverage or accept applications pursuant to subsection (1) in the case of the following:

(i) to a small employer when the small employer is not physically located in the carrier's established geographic service area;

(ii) to an employee when the employee does not work or reside within the carrier's established geographic service area; or

(iii) within an area where the small employer carrier reasonably anticipates and demonstrates to the satisfaction of

the commissioner that it will not have the capacity within its established geographic service area to deliver service adequately to the members of a group because of its obligations to existing group policyholders and enrollees.

(b) A small employer carrier may not be required to provide coverage to small employers pursuant to subsection (1) for any period of time for which the commissioner determines that requiring the acceptance of small employers in accordance with the provisions of subsection (1) would place the small employer carrier in a financially impaired condition.

NEW SECTION. **Section 21. Small employer carrier reinsurance program -- board membership -- plan of operation -- criteria -- exemption from taxation.** (1) There is a nonprofit entity to be known as the Montana small employer health reinsurance program.

(2) (a) The program must operate subject to the supervision and control of the board. The board consists of nine members appointed by the commissioner plus the commissioner or the commissioner's designated representative, who shall serve as an ex officio member of the board.

(b) (i) In selecting the members of the board, the commissioner shall include representatives of small employers, small employer carriers, and other qualified individuals, as determined by the commissioner. At least six of the members of the board must be representatives of small employer carriers, one from each of the five small employer carriers with the highest annual premium volume derived from health benefit plans issued to small employers in Montana in the previous calendar year and one from the remaining small employer carriers. One member of the board must be a person licensed, certified, or otherwise authorized by the laws of Montana to provide health care in the ordinary course of business or in the practice of a profession. One member of the board must be a small employer who is not active in the health care or insurance fields. One member of the board must be a representative of the general public who is employed by a small employer and is not employed in the health care or insurance fields.

(ii) The initial board members' terms are as follows: one-third of the members shall serve a term of 1 year; one-third of the members shall serve a term of 2 years; and one-third of the members shall serve a term of 3 years. Subsequent board members shall serve for a term of 3 years. A board member's term continues until that member's successor is appointed.

(iii) A vacancy on the board must be filled by the commissioner. The commissioner may remove a board member for cause.

(3) Within [60 days of the effective date of this section], each small employer carrier shall file with the commissioner the carrier's net health insurance premium derived from health benefit plans issued to small employers in this state in the previous calendar year.

(4) Within 180 days after the appointment of the initial board, the board shall submit to the commissioner a plan of operation and may at any time submit amendments to the plan

Exhibit #1
2-17-93
SB-285

necessary or suitable to ensure the fair, reasonable, and equitable administration of the program. The commissioner may, after notice and hearing, approve the plan of operation if the commissioner determines it to be suitable to ensure the fair, reasonable, and equitable administration of the program and if the plan of operation provides for the sharing of program gains or losses on an equitable and proportionate basis in accordance with the provisions of this section. The plan of operation is effective upon written approval by the commissioner.

(5) If the board fails to submit a suitable plan of operation within 180 days after its appointment, the commissioner shall, after notice and hearing, promulgate and adopt a temporary plan of operation. The commissioner shall amend or rescind any temporary plan adopted under this subsection at the time a plan of operation is submitted by the board and approved by the commissioner.

(6) The plan of operation must:

(a) establish procedures for the handling and accounting of program assets and money and for an annual fiscal reporting to the commissioner;

(b) establish procedures for selecting an administering carrier and setting forth the powers and duties of the administering carrier;

(c) establish procedures for reinsuring risks in accordance with the provisions of this section;

(d) establish procedures for collecting assessments from reinsuring carriers to fund claims and administrative expenses incurred or estimated to be incurred by the program; and

(e) provide for any additional matters necessary for the implementation and administration of the program.

(7) The program must have the general powers and authority granted under the laws of this state to insurance companies and health maintenance organizations licensed to transact business, except the power to issue health benefit plans directly to either groups or individuals. In addition, the program must have the specific authority to:

(a) enter into contracts as are necessary or proper to carry out the provisions and purposes of [sections 13 through 27], including the authority, with the approval of the commissioner, to enter into contracts with similar programs of other states for the joint performance of common functions or with persons or other organizations for the performance of administrative functions;

(b) sue or be sued, including taking any legal actions necessary or proper to recover any assessments and penalties for, on behalf of, or against the program or any reinsuring carriers;

(c) take any legal action necessary to avoid the payment of improper claims against the program;

(d) define the health benefit plans for which reinsurance will be provided and to issue reinsurance policies in accordance with the requirements of [sections 13 through 27];

(e) establish rules, conditions, and procedures for reinsuring risks under the program;

(f) establish actuarial functions as appropriate for the operation of the program;

(g) appoint appropriate legal, actuarial, and other committees as necessary to provide technical assistance in operation of the program, policy and other contract design, and any other function within the authority of the program; and

(h) borrow money to effect the purposes of the program. Any notes or other evidence of indebtedness of the program not in default are legal investments for carriers and may be carried as admitted assets.

(8) A reinsuring carrier may reinsure with the program as provided for in this subsection (8):

(a) With respect to a basic health benefit plan or a standard health benefit plan, the program shall reinsure the level of coverage provided and, with respect to other plans, the program shall reinsure up to the level of coverage provided in a basic or standard health benefit plan.

(b) A small employer carrier may reinsure an entire employer group within 60 days of the commencement of the group's coverage under a health benefit plan.

(c) A reinsuring carrier may reinsure an eligible employee or dependent within a period of 60 days following the commencement of coverage with the small employer. A newly eligible employee or dependent of the reinsured small employer may be reinsured within 60 days of the commencement of coverage.

(d) (i) The program may not reimburse a reinsuring carrier with respect to the claims of a reinsured employee or dependent until the carrier has incurred an initial level of claims for the employee or dependent of $5,000 in a calendar year for benefits covered by the program. In addition, the reinsuring carrier is responsible for 20% of the next $100,000 of benefit payments during a calendar year and the program shall reinsure the remainder. A reinsuring carrier's liability under this subsection (d)(i) may not exceed a maximum limit of $25,000 in any calendar year with respect to any reinsured individual.

(ii) The board annually shall adjust the initial level of claims and maximum limit to be retained by the carrier to reflect increases in costs and utilization within the standard market for health benefit plans within the state. The adjustment may not be less than the annual change in the medical component of the consumer price index for all urban consumers of the United States department of labor, bureau of labor statistics, unless the board proposes and the commissioner approves a lower adjustment factor.

(e) A small employer carrier may terminate reinsurance with the program for one or more of the reinsured employees or dependents of a small employer on any anniversary of the health benefit plan.

(f) A small employer group business in effect before January 1, 1994, may not be reinsured by the program until January 1, 1997, and then only if the board determines that sufficient funding sources are available.

(g) A reinsuring carrier shall apply all managed care and claims-handling techniques, including utilization review, individual case management, preferred provider provisions, and other managed care provisions or methods of operation consistently with respect to reinsured and nonreinsured business.

(9) (a) As part of the plan of operation, the board shall

Exhibit #17
2-17-93
SB-285

establish a methodology for determining premium rates to be charged by the program for reinsuring small employers and individuals pursuant to this section. The methodology must include a system for classification of small employers that reflects the types of case characteristics commonly used by small employer carriers in the state. The methodology must provide for the development of base reinsurance premium rates that must be multiplied by the factors set forth in subsection (9)(b) to determine the premium rates for the program. The base reinsurance premium rates must be established by the board, subject to the approval of the commissioner, and must be set at levels that reasonably approximate gross premiums charged to small employers by small employer carriers for health benefit plans with benefits similar to the standard health benefit plan, adjusted to reflect retention levels required under [sections 13 through 27].

(b) Premiums for the program are as follows:

(i) An entire small employer group may be reinsured for a rate that is one and one-half times the base reinsurance premium rate for the group established pursuant to this subsection (9).

(ii) An eligible employee or dependent may be reinsured for a rate that is five times the base reinsurance premium rate for the individual established pursuant to this subsection (9).

(c) The board periodically shall review the methodology established under subsection (9)(a), including the system of classification and any rating factors, to ensure that it reasonably reflects the claims experience of the program. The board may propose changes to the methodology that are subject to the approval of the commissioner.

(d) The board may consider adjustments to the premium rates charged by the program to reflect the use of effective cost containment and managed care arrangements.

(10) If a health benefit plan for a small employer is entirely or partially reinsured with the program, the premium charged to the small employer for any rating period for the coverage issued must meet the requirements relating to premium rates set forth in [section 18].

(11) (a) Prior to March 1 of each year, the board shall determine and report to the commissioner the program net loss for the previous calendar year, including administrative expenses and incurred losses for the year, taking into account investment income and other appropriate gains and losses.

(b) A net loss for the year must be reimbursed by the commissioner from funds specifically appropriated for that purpose.

(12) The participation in the program as reinsuring carriers; the establishment of rates, forms, or procedures; or any other joint collective action required by [sections 13 through 27] may not be the basis of any legal action, criminal or civil liability, or penalty against the program or any of its reinsuring carriers, either jointly or separately.

(13) The board, as part of the plan of operation, shall develop standards setting forth the minimum levels of compensation to be paid to producers for the sale of basic and standard health benefit plans. In establishing the standards,

the board shall take into consideration the need to ensure the broad availability of coverages, the objectives of the program, the time and effort expended in placing the coverage, the need to provide ongoing service to small employers, the levels of compensation currently used in the industry, and the overall costs of coverage to small employers selecting these plans.

(14) The program is exempt from taxation.

NEW SECTION. **Section 22. Health benefit plan committee -- recommendations.** (1) The commissioner shall appoint a health benefit plan committee. The committee is composed of representatives of carriers, small employers and employees, health care providers, and producers.

(2) The committee shall recommend the form and level of coverages to be made by small employer carriers pursuant to [section 20].

(3) (a) The committee shall recommend benefit levels, cost-sharing levels, exclusions, and limitations for the basic health benefit plan and the standard health benefit plan. The committee shall design a basic health benefit plan and a standard health benefit plan that contain benefit and cost-sharing levels that are consistent with the basic method of operation and the benefit plans of health maintenance organizations, including any restrictions imposed by federal law.

(b) The plans recommended by the committee must include cost containment features, such as:

(i) utilization review of health care services, including review of the medical necessity of hospital and physician services;

(ii) case management;

(iii) selective contracting with hospitals, physicians, and other health care providers;

(iv) reasonable benefit differentials applicable to providers that participate or do not participate in arrangements using restricted network provisions; and

(v) other managed care provisions.

(c) The committee shall submit the health benefit plans described in subsections (3)(a) and (3)(b) to the commissioner for approval within 180 days after the appointment of the committee.

NEW SECTION. **Section 23. Periodic market evaluation -- report.** The board, in consultation with members of the committee, shall study and report at least every 3 years to the commissioner on the effectiveness of [sections 13 through 27]. The report must analyze the effectiveness of [sections 13 through 27] in promoting rate stability, product availability, and coverage affordability. The report may contain recommendations for actions to improve the overall effectiveness, efficiency, and fairness of the small employer health insurance markets. The report must address whether carriers and producers are fairly and actively marketing or issuing health benefit plans to small employers in fulfillment of the purposes of [sections 13 through 27]. The report may contain recommendations for market conduct or other regulatory standards or action.

Senate Ltr
2-17-93
SB-285

NEW SECTION. **Section 24. Waiver of certain laws.** A law that requires the inclusion of a specific category of licensed health care practitioner does not apply to a basic health benefit plan delivered or issued for delivery to small employers in this state pursuant to [sections 13 through 27].

NEW SECTION. **Section 25. Administrative procedure.** The commissioner shall adopt rules in accordance with the Montana Administrative Procedure Act to implement and administer [sections 13 through 27].

NEW SECTION. **Section 26. Standards to ensure fair marketing.** (1) Each small employer carrier shall actively market health benefit plan coverage, including the basic and standard health benefit plans, to eligible small employers in the state. If a small employer carrier denies coverage other than the basic or standard health benefit plans to a small employer on the basis of claims experience of the small employer or the health status or claims experience of its employees or dependents, the small employer carrier shall offer the small employer the opportunity to purchase a basic health benefit plan or a standard health benefit plan.

(2) (a) Except as provided in subsection (2)(b), a small employer carrier or producer may not directly or indirectly engage in the following activities:

(i) encouraging or directing small employers to refrain from filing an application for coverage with the small employer carrier because of the health status of the employer's employees or the claims experience, industry, occupation, or geographic location of the small employer;

(ii) encouraging or directing small employers to seek coverage from another carrier because of the health status of the employer's employees or the claims experience, industry, occupation, or geographic location of the small employer.

(b) The provisions of subsection (2)(a) do not apply with respect to information provided by a small employer carrier or producer to a small employer regarding the established geographic service area or a restricted network provision of a small employer carrier.

(3) (a) Except as provided in subsection (3)(b), a small employer carrier may not, directly or indirectly, enter into any contract, agreement, or arrangement with a producer that provides for or results in the compensation paid to a producer for the sale of a health benefit plan to be varied because of the health status of the employer's employees or the claims experience, industry, occupation, or geographic location of the small employer.

(b) Subsection (3)(a) does not apply with respect to a compensation arrangement that provides compensation to a producer on the basis of the percentage of a premium, provided that the percentage may not vary because of the health status of the employer's employees or the claims experience, industry, occupation, or geographic area of the small employer.

(4) A small employer carrier shall provide reasonable compensation, as provided under the plan of operation of the

program, to a producer, if any, for the sale of a basic or standard health benefit plan.

(5) A small employer carrier may not terminate, fail to renew, or limit its contract or agreement of representation with a producer for any reason related to the health status of the employer's employees or the claims experience, industry, occupation, or geographic location of the small employers placed by the producer with the small employer carrier.

(6) A small employer carrier or producer may not induce or otherwise encourage a small employer to separate or otherwise exclude an employee from health coverage or benefits provided in connection with the employee's employment.

(7) Denial by a small employer carrier of an application for coverage from a small employer must be in writing and must state the reason or reasons for the denial.

(8) The commissioner may adopt rules setting forth additional standards to provide for the fair marketing and broad availability of health benefit plans to small employers in this state.

(9) (a) A violation of this section by a small employer carrier or a producer is an unfair trade practice under 33-18-102.

(b) If a small employer carrier enters into a contract, agreement, or other arrangement with an administrator who holds a certificate of registration pursuant to 33-17-603 to provide administrative, marketing, or other services related to the offering of health benefit plans to small employers in this state, the administrator is subject to this section as if the administrator were a small employer carrier.

NEW SECTION. **Section 27. Restoration of terminated coverage.** The commissioner may promulgate rules to require small employer carriers, as a condition of transacting business with small employers in this state after [the effective date of this section], to reissue a health benefit plan to any small employer whose health benefit plan has been terminated or not renewed by the carrier after [6 months prior to the effective date of this section]. The commissioner may prescribe the terms for the reissuance of coverage that the commissioner finds are reasonable and necessary to provide continuity of coverage to small employers."

Renumber: subsequent sections

10. Page 22, line 23.
Strike: "13(10) through (12), 14, 15"
Insert: "28, 29"

11. Page 22, line 25 through page 23, line 1.
Strike: "Section 13(1)"
Insert: "Sections 13"
Strike: "(9)] is"
Insert: "27] are"
Strike: "[1 year" on page 22, line 25 through "act]" on page 23, line 1.

Amend #11
2-17-93
SB-285

Insert: "January 1, 1994"

12. Page 23, line 6.
Page 23, line 8.
Strike: "13"
Insert: "12 and 28"

13. Page 23, line 9.
Following: line 8
Insert: "(3) [Sections 13 through 27] are intended to be codified as an integral part of Title 33, and the provisions of Title 33 apply to [sections 13 through 27]."

DATE 2-17-93

SENATE COMMITTEE ON Public Health

BILLS BEING HEARD TODAY: SB 352, SB 366, SB 403

Name (please print)	Representing	Bill No.	Check One: Support	Oppose
Eric Feaver	MEA	SB366		X
JUDITH CARLSON	MT. CH. NASW	SB 352	X	
Nickie T. Eck	Concerned Parent	SB366		X
Bev Roy	Bd. Speech Path & Aud.	SB366		X
Idella Lee	Bd of Speech	SB366		X
DONALD M. PRICE	PROFESSION OF SPEECH	SB366		X
Gregory S Daneri	MSNA	SB366		X
Jim Smith	Mt. Psych Assoc.	352	+	
Allison Tailing	MSHA	366		+
Lucy Paulson	self	366		X
Robert Runkel	OPI	SB366		X
Tara Sheridan	MSHA	SB366		X
Kay Carrier	MSHA	SB366		X
Sheri Maxwell	MSHA	SB366		X
Steve Weber	Self	SB366		X
Patti DuBray	MSHA - SELF	SB366		X

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

F10

DATE 2-17-93

SENATE COMMITTEE ON Public Health

BILLS BEING HEARD TODAY: SB 366, 403

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
Jane Brosfield	Self	366		X
Beverly Pickett	MSHA- Self	366		+
Diedre J. Cranmer	MSHA - self	366		X
Sandy Meech	MSHA- Self	366		X
Steve Meloy	Information (commerce)			
Sandy Wunderlich	MSHA - self	366		X
Beth McDonough	MSHA - self	366		X
Kathy McCain	MSHA - self	366		X
Shirley Wood	self	366		X
Mike Craig	DHES	403	✓	
Judy Wright	DHES	366		
TEbzery	St Vs Hospital	352	✓	
Kay McCreath	Mental Health Assn	403		+

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

F10

DATE _____

SENATE COMMITTEE ON _____

BILLS BEING HEARD TODAY: _____

_____

Name	Representing	Bill No.	Check One Support	Oppose
Ben Bauer	MCMHCA	352	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

F10