# MINUTES

## MONTANA SENATE
## 53rd LEGISLATURE - REGULAR SESSION

## COMMITTEE ON PUBLIC HEALTH, WELFARE & SAFETY

**Call to Order:** By Senator Dorothy Eck, Chair, on March 10, 1993, at 3:00 p.m.

## ROLL CALL

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

**Members Excused:** Sen. Tom Hager

**Members Absent:** None.

**Staff Present:** 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: HB 168, HB 220, HB 118
Executive Action: HB 241, SB 305

## EXECUTIVE ACTION ON HB 241

**Discussion:**

Mona Jamison, Laboratorians for Licensure, went over the amendments proposed by Rep. Strizich. (Exhibit #1)

**Motion/Vote:**

Sen. Franklin moved the amendments to HB 241. The motion carried UNANIMOUSLY.

**Motion/Vote:**

Sen. Franklin moved HB 241 BE CONCURRED IN. The motion carried UNANIMOUSLY. Sen. Franklin will carry HB 241 on the Floor of the Senate.

## EXECUTIVE ACTION ON SB 305

**Discussion:**

Sen. Klampe went over the amendments he requested to SB 305. (Exhibit #2) He said that these amendments assured that the tax for tobacco products other than cigarettes do not go to the General Fund.

**Motion:**

Sen. Klampe moved those amendments to SB 305. The motion carried UNANIMOUSLY.

**Discussion:**

Sen. Rye asked for Jerome Anderson's comments concerning these amendments.

Chairman Eck requested that there not be a discussion about the bill, just a comment about whether the amendments were technically correct.

Jerome Anderson said regarding the technical application of the amendments with respect to the funds and the long-range building program, there is no assurance that the amendments will make the long-range building program viable if a reduction in sales occurs.

Sen. Klampe said that there will never be a "sure thing" concerning SB 305 and the long-range building program.

Chairman Eck said the amendments provide that the money from tobacco taxes on products other than cigarettes does not go to the General Fund, but to the State Special Revenue Account.

**Vote:**

The motion carried UNANIMOUSLY.

**Discussion:**

Sen. Klampe went over the second set of amendments to SB 305, numbers 5, 6, and 8. (Exhibit #3) These "good faith" amendments increase the percentage to fund the long-range building program for the biennium. Sen. Klampe said these amendments were prepared with the help of the Department of Revenue.

**Motion/Vote:**

Sen. Klampe moved amendments 5, 6, and 8. The motion carried UNANIMOUSLY.

**Discussion:**

Chairman Eck said the changes in the title affect the rest of the amendments. She suggested Sen. Klampe go over the amendments which relate to SB 177.

**Motion:**

Sen. Klampe moved amendments 2, 7, and 9. (Exhibit #3)

**Discussion:**

Sen. Klampe said amendments 2, 7, and 9 put the Medicaid provisions from SB 177 into SB 305.

Sen. Mesaros asked Chairman Eck to describe these amendments. Chairman Eck said the amendments expand Medicaid eligibility for pregnant women, infants and children.

Tom Gomez, Legislative Council, said on Page 3 of the amendments, it could be seen where the changes were made. For example, in Subsection 5, there is existing language in the Code which is stricken. This language relates to the income eligibility requirements for infants and pregnant women. The underscored language following that expands the income eligibility requirements for the Medicaid program.

Sen. Christiaens asked Chairman Eck how broad this language makes eligibility as to the numbers of individuals now eligible. Sen. Christiaens asked if the Committee would be putting a program into place that would request money from the General Fund in the future.

Chairman Eck asked Sen. Christiaens if he were referring to Medicaid money "drying up." Sen. Christiaens said he was.

Chairman Eck said that if Medicaid funds dried up, it would affect much more than just SB 305.

Sen. Christiaens said he was wondering what the numbers of individuals eligible for Medicaid would be if the eligibility were expanded.

Tom Gomez referred to the Fiscal Note for SB 177, specifically the funding for the Department of Social and Rehabilitation Services.

Chairman Eck said there was a good indication that adding

pregnant women saves money in the long run, because it provides prenatal care resulting in fewer low birth weight babies. These babies use up more than half of Medicaid money expended for pregnant women and children. There is also information showing that children, already on Medicaid, who take advantage of the early screening program have a much smaller overall cost of health care than children who do not have the screening. Chairman Eck said there would be a plan providing universal health care for Montanans, and the cheapest care available is Medicaid because the federal government pays a share of it.

Sen. Christiaens said he had concerns about "expanding the nets", especially long-term effects, when funds are being cut.

Sen. Mesaros said the amendments broaden the scope of coverage and rely on a decreasing income base to cover it.

Chairman Eck asked Sen. Mesaros what he meant by a "decreasing income base". Sen. Mesaros said decreased Medicaid coverage and decreased income from other sources could be anticipated.

Sen. Klampe said the Medicaid costs are $3 million. The revenues from SB 305 will be in the neighborhood of $12 million. The expected decrease (in sales) is about 4% the first year and about 2.6% the following years. Sen. Klampe said there was no need to worry about having enough money to cover this program.

**Vote:**

The motion to accept amendments 2, 7, and 9 CARRIED, with Sen. Rye and Sen. Mesaros voting "no".

**Discussion:**

Sen. Klampe went over amendments 1, 3, and 4 to SB 305. (Exhibit #3) He reminded Sen. Mesaros that none of the allocations were "set in stone."

**Motion/Vote:**

Sen. Klampe moved these amendments. The motion CARRIED with Sen. Mesaros voting "no".

**Discussion:**

Sen. Christiaens asked Sen. Klampe why there was an increase in the Department of Revenue's operating expenses, specifically regarding the audit to prevent stock piling. Sen. Klampe said this would be a new tax, and people will want to stock pile low-tax cigarettes in inventory to sell. This has been taken to court, and the Department of Revenue won because it is illegal to

stock pile. Detecting it saves a lot of money.

**Motion:**

Sen. Klampe moved SB 305 as amended DO PASS.

**Discussion:**

Sen. Rye said this tax, if passed, would be the most regressive tax in the history of the Montana Legislature. Polls indicate that smokers are overwhelmingly low-income individuals, and every tax increase on cigarettes has not resulted in a decrease in smoking among low-income people. It is one of the few pleasures they have. Sen. Rye said worse than the regressiveness of the tax is the "elitism" which is the philosophical base for the tax. Sen. Rye said it was "social engineering". He said he appreciated Sen. Klampe's enthusiasm for the bill, and he had never seen a bill lobbied so hard by a single legislator. With all good intentions, however, Sen. Rye said Sen. Klampe is "flat wrong" about the philosophical base of the bill, the regressivity of it, and the bill deals much more with "personal freedom" than who gets to keep the money. He urged the Committee to reject SB 305.

Chairman Eck said the reason she agreed to have SB 177 melded into SB 305 was Sen. Klampe's strong feelings about taxing smoking. Chairman Eck said she sees Montana as being in dire circumstances financially, spending substantial amounts of money to pay for the ills of the individuals who smoke, those who are around individuals who smoke, and the children born to mothers who smoke. These people should "pay their own way."

Sen. Klampe said because it was the people who smoke who cost middle income tax payers millions of dollars, it is not a regressive tax. In 1993, the average tax paid on a pack of cigarettes was 26 cents. In the 1950's-60's, the tax was over 50 cents. The issue is not a debate about regressivity, it is about keeping up with the "obscene" profits of the tobacco industry. Sen. Klampe said the low-income smokers are hurting the middle income people, as well as themselves, and price elasticity studies show that it is young poor people who will quit. If 4% quit in the first year, Sen. Klampe said he would be happy.

Chairman Eck said she doubted that anyone's opinion regarding the cigarette tax would be changed at this point.

Sen. Mesaros said the original intent of the tax was to fund the long-rang building fund. He said he saw that the funding for the Glendive project was cancelled, and if the tax is to be increased, those types of projects should be taken into consideration. The precedent of diversion should not be set.

**Vote:**

The motion to PASS SB 305 AS AMENDED CARRIED, with Sen. Mesaros and Sen. Rye voting "no". Chairman Eck said the vote would remain open until Sen. Towe could vote on the bill.

## HEARING ON HB 168

**Opening Statement by Sponsor:**

Rep. Bill Rehbein, House District 21, said HB 168 was a bill requested by the Department of Family Services (DFS), because they had been advised that 43-3-102 must be amended as in HB 168, or risk losing $122,512 in grant money. This grant money requires no state matching. HB 168 eliminates two words, "non-medical remedial" in current statute. Rep. Rehbein said it was his understanding there was an amendment to HB 168.

**Proponents' Testimony:**

Ann Gilkey, Department of Family Services, provided written testimony. (Exhibit #4)

**Opponents' Testimony:**

Les Conger, Christian Science Committee on Publication for Montana, provided written testimony. (Exhibit #5)

**Questions From Committee Members and Responses:**

Sen. Franklin asked Ann Gilkey what has been the position of the state regarding non-mainstream treatment and the vulnerability of children. Ms. Gilkey said the Department was very sensitive to the religious freedom of Montanans, however, if they receive a referral that a child is not receiving medical treatment for a potentially permanently life-damaging or life-threatening illness, then it will be taken to court. With existing "non-medical remedial" language, courts have a difficult time finding child neglect. If HB 168 passes, a judge could make it binding for a child to receive medical treatment.

Sen. Franklin asked Ms. Gilkey if she had seen the amendment. (Exhibit #6) Ms. Gilkey said she had, and it is the language accepted by the federal government.

Sen. Christiaens asked Ms. Gilkey if a review had been done to see how other states with Christian Science Practitioners deal with this problem. Ms. Gilkey said it was her understanding from the opponent's testimony that three states had chosen not to

amend their statutes to be consistent with federal requirements.

Sen. Christiaens asked Ms. Gilkey if this were a situation that could have a waiver from the federal government. Ms. Gilkey said that option had not been offered.

Sen. Klampe asked Les Conger if Christian Scientists ever went to the doctor. Mr. Conger said yes, it was up to each family.

Sen. Klampe asked Mr. Conger for what kinds of cases would a Christian Scientist go to the doctor. Mr. Conger said it was common to go to a surgeon for a broken bone, to a dentist, or to an optometrist, but other than that, he could not give a general answer. The Church does not set forth a doctrine, but they try to rely on prayers for healing for themselves and their children. The services of a full-time Christian Science Practitioner are called upon when needed. Mr. Conger said there were also Christian Science nurses who were not engaged in the business of medical nursing, but are there to help comfort those who need it. Medicare does recognize Christian Science care.

Sen. Franklin asked Mr. Conger if the amendment moved in the right direction. Mr. Conger said it did because it intends to protect parents to a certain extent. However, a contradiction is left in the law. Mr. Conger said California, Pennsylvania and Maryland had chosen not to change the language in their codes.

Sen. Rye pointed out to the Committee that this situation would also apply to Jehovah's Witnesses who will not allow blood transfusions, and they will not have anything to do with secular government, so they are not testifying.

Sen. Christiaens asked Ms. Gilkey to what she was referring by the term "self-limiting illness." Ms. Gilkey said it would be any illness that passes, and the individual gets better whether or not medical care is received. Diabetes or cancer are not self-limiting illnesses, but require medical care, and for these cases the state might want to get involved.

Sen. Christiaens said that because it was mentioned in testimony that this type of care is covered by Medicare, there is the opportunity for a waiver, and this should be addressed.

Ms. Gilkey said Medicaid pays for some Christian Science Nurse Practitioner bills, but this is not in the area of a Medicaid or Medicare waiver.

Sen. Christiaens said that there were 27 different options, and therefore what Ms. Gilkey is describing is one of the options. The state is not required to offer any of these, but they do.

Ms. Gilkey said she was not well versed in the Medicare/Medicaid areas, and could not address the waiver issue.

Chairman Eck asked Ms. Gilkey if she would provide the Committee with information about specific federal offices which provide grants, and their requirements. Also, any information regarding attempts to change rule or to change law. Chairman Eck asked Ms. Gilkey if she knew if naturopathic or other non-traditional practices were considered medical. Ms. Gilkey said she was not sure, and that she was not aware of a case where acupuncture was used to try and cure cancer or other life-threatening illnesses.

**Closing by Sponsor:**

Rep. Rehbein said this was the most discussion there had been on HB 168. The passage of HB 168 will keep the Department of Family Services in compliance with federal law, and it was his understanding that the amendment addressed Mr. Conger's concerns with the bill.

## HEARING ON HB 220

**Opening Statement by Sponsor:**

Rep. Bruce Simon, House District 91, said he feels very passionate about HB 220. The bill states that the health care facility caring for a patient with an infectious disease shall notify the emergency care provider of possible exposure. Rep. Simon said emergency care providers, fire fighters for example, work under strenuous conditions, sometimes involving broken glass or twisted metal, in the dark, and they are required to provide medical assistance. HB 220 does not require the name of the patient, because the incidents are recorded by number. The bill does not require mandatory testing of anybody, but allows for emergency care providers who may have been exposed to know about it. Rep. Simon urged the Committee's support of HB 220.

**Proponents' Testimony:**

Tim Bergstrom, Montana State Firemen's Association, said in 1992, Billings fire fighters responded to 6000 incidents, and 60% of those were emergency medical in nature. The issue of communicable and infectious disease has taken on a new urgency in recent years. The International Association of Fire Fighters 1991 survey reported that 1 out of 27 fire fighters were exposed to infectious diseases in 1991. 14.7% exposed to tuberculosis, 17.2% exposed to hepatitis-b, 36.9% exposed to HIV, and 31.2 exposed to other forms of communicable diseases. Mr. Bergstrom said barrier protections have mandatory use in Montana, and failure to comply with this results in strict disciplinary action. Ongoing training programs are available to fire fighters. They routinely respond to emergency medical calls involving bleeding individuals under poor conditions. Under these strenuous conditions, the mandatory use of barrier protections is often breached. In addition, if a victim is

bleeding profusely, emergency care providers act in great haste with disregard for his or her own personal safety. All of these factors place emergency care providers at risk for blood-born contagious diseases, and these providers never have the controlled atmosphere of a hospital in which to work. Many times the victim is combative, and care providers almost never have information regarding the victim's infectious disease status. Although many care providers are vaccinated, a significant number do not develop necessary antibodies necessary for immunization. Mr. Bergstrom said the provisions of HB 220 are necessary for the well being of those who provide emergency care. There is a provision in the bill to maintain the victim's confidentiality. There was no opposition to the bill during the House Committee hearing, and the bill came through as is with a 96-1 vote. He urged the Committee to concur.

Mike Foster, Assistant Fire Chief for the Helena Fire Department, related a recent incident involving exposure with one of the fire fighters. An Exposure Control Form was filled out at the emergency room of the hospital which has to track the patient. The emergency room nurse refused to receive the form, which is required by law. The emergency room physician also refused to receive the form. After a 20-minute conversation, the emergency room nurse finally agreed to sign for the form. A report of exposure to the fire fighter was never received. Mr. Foster said his Emergency Medical Technicians (EMT) do not want to work because they feel it is unsafe. One fire fighter has resigned for this reason, and others are considering resignation. He urged the Committee to support HB 220.

Wayne Yankoff, line fire fighter for the city of Great Falls, related a personal experience of his exposure to a violent victim who had discovered his partner had been diagnosed with HIV. This happened in the summer of 1991. Mr. Yankoff still does not know for sure if he has HIV even though he has been tested, and the victim tested negative for HIV. He supports HB 220 for his family's protection. He asked when the victim's right to protection superseded the care provider's right to protection.

Vern Erickson, Montana State Firemen's Association, said he would be available to answer questions from the Committee.

Ed Flies, State Council of Professional Fire Fighters, said he was a fire fighter in Helena.

**Opponents' Testimony**:

Judith Gedrose, Department of Health and Environmental Sciences, provided written testimony. (Exhibit #7)

Greg Oliver, Health Education Director of the Missoula City-County Health Department, provided written testimony. (Exhibit #8)

Ken Freemont-Smith, Board member of the American Civil Liberties Union of Montana, provided written testimony. (Exhibit #9)

**Questions From Committee Members and Responses:**

Sen. Christiaens said he would like Mike Foster to return with a copy of an Exposure Control Form for Executive Action on HB 220. More questions could be asked during Executive Action.

Sen. Klampe asked Greg Oliver about HIV being a "handicap" to a dentist. Mr. Oliver said HIV is clearly an infectious disease, and there may be a misunderstanding. A dentist has the same right to information if an exposure occurs.

Sen. Klampe said he couldn't tell anyone about possible exposure.

Mr. Oliver asked Sen. Klampe who he couldn't tell and who he would need to tell. Sen. Klampe said as a dentist he couldn't tell anybody.

Mr. Oliver said that as a health care provider, if there is a significant risk that he was aware of, it is in the statutes that you would have the ability to tell other health care providers.

Sen. Klampe said he did not see any consistency in this area.

**Closing by Sponsor:**

Rep. Simon asked to be present during Executive Action on HB 220. He pointed out areas that had been taken out of current statutes, specifically on Page 4, Part C, the language regarding physicians and exposure. Rep. Simon said this was taken out because a physician in a hospital could not know what happened fifty miles away. The physician, who was not there, should not be responsible for determining if there was an unprotected exposure. HB 220 clarifies the definition of "unprotected exposure." There must be a laundry list of diseases that are contagious and important, because the list the Department of Health has isn't adequate. In a hospital, personnel dealing with patients having infectious diseases know about it whereas in emergency medical situations, the providers do not know about infectious diseases. Rep. Simon asked the Committee to give HB 220 a Do Pass recommendation, and asked that one of the Committee members carry the bill on the Floor of the Senate.

## HEARING ON HB 118

**Opening Statement by Sponsor:**

Rep. Vicki Cocchiarella said HB 118 allows for regulation of sick care facilities that take care of children when they are ill. The bill also provides for licensure of child care providers for in-home children.

**Proponents' Testimony:**

John Melcher, Jr., Staff Attorney for the Department of Family Services, provided written testimony. (Exhibit #10)

Marylis Filipovich, provided written testimony. (Exhibit #11)

Kay Frey, Nurse Practitioner in Missoula, provided written testimony. (Exhibit #12)

**Opponents' Testimony:**

None.

**Questions From Committee Members and Responses:**

Chairman Eck asked Kay Frey to further discuss the section of the bill with which Ms. Frey had problems. Ms. Frey said the amendment offered prior to this hearing addresses her concerns. She said she hoped the bill could move forward without many language changes.

Sen. Klampe asked Rep. Cocchiarella to address the issue of sick children in day care. Rep. Cocchiarella said HB 118 licenses sick care facilities, so that parents who take their children there can participate in state-offered programs. This keeps parents from missing work to stay with a sick child, or from leaving the child at home alone, or taking them to an unregulated day care center.

Sen. Klampe asked Rep. Cocchiarella if there were any connection if the child were blood related to the child care provider. Rep. Cocchiarella said that had nothing to do with the bill. Rep. Cocchiarella said a relative who did not live with the child could be licensed to care for that child.

Boyce Fowler, Department of Family Services, said Page 2, Line 7 addresses sick care facilities. In the past, individuals could not be licensed who were caring for children on an irregular basis. In regard to sick care, that will be on an irregular basis in most cases. Therefore, HB 118 changes the law to allow the Department to license, on an irregular basis, sick care facilities. The intention is to license sick care facilities to give parents the option to take their sick children to a sick care facility.

**Closing by Sponsor:**

Rep. Cocchiarella said HB 118 is important for working parents, and she encouraged the Committee to give the bill a Do Pass recommendation. She said she would leave it up to the Committee to find a senator to carry the bill on the Floor of the Senate.

## EXECUTIVE ACTION ON SB 305

**Vote:**

Sen. Towe said he voted yes on the motion to PASS SB 305 AS AMENDED. The motion carried 5-2 with Sen. Mesaros and Sen. Rye voting no.

## ADJOURNMENT

**Adjournment:** Chairman Eck adjourned the hearing.

SENATOR DOROTHY ECK, Chair

LAURA TURMAN, Secretary

DE/LT

# ROLL CALL

SENATE COMMITTEE Public Health DATE 3-10-93

| NAME | PRESENT | ABSENT | EXCUSED |
|---|---|---|---|
| Eck | ✓ | | |
| Franklin | ✓ | | |
| Klampe | ✓ | | |
| Hager | | | ✓ |
| Towe | ✓ | | |
| Mesaros | ✓ | | |
| Rye | ✓ | | |
| Christiaens | ✓ | | |
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FC8

Attach to each day's minutes

# SENATE STANDING COMMITTEE REPORT


March 11, 1993

MR. PRESIDENT:
We, your committee on Public Health, Welfare, and Safety having had under consideration Senate Bill No. 305 (first reading copy -- white), respectfully report that Senate Bill No. 305 be amended as follows and as so amended do pass.

Signed: Dorothy Eck
Senator Dorothy Eck, Chair

That such amendments read:

1. Title, line 7.
Following: "MEDICAID"
Strike: "PROGRAMS,"
Insert: "AND PREVENTIVE HEALTH CARE SERVICES, AND THE"

2. Title, line 8.
Following: "SERVICE FUND
Strike: ", AND GENERAL FUND;"
Insert: "; EXPANDING MEDICAID ELIGIBILITY FOR PREGNANT WOMEN, INFANTS, AND CHILDREN;"

3. Title, line 9.
Following: "16-11-206,"
Strike: "AND"

4. Title, line 10.
Following: "17-5-408,"
Insert: "AND 53-6-131,"
Following: "PROVIDING"
Strike: "AN EFFECTIVE DATE"
Insert: "EFFECTIVE DATES"

5. Page 3, line 7.
Strike: "35.44%"
Insert: "36.77%"

6. Page 3, line 9.
Strike: "14.56%"
Insert: "15.10%"

7. Page 3, line 15.
Strike: "to medicaid programs under Title 53"
Insert: "provided for in [section 7]"

8. Page 6, line 5
Strike: "general fund"
Insert: "state special revenue account provided for in [section 7]"

M- Amd. Coord.
Sec. of Senate

9. Page 7, line 1.
Strike: "35.44%"
Insert: "36.77%"

10. Page 7, lines 19 through 20.
Strike: section 6 in its entirety
Insert: "**Section 6.** Section 53-6-131, MCA, is amended to read:

"**53-6-131. Eligibility requirements.** (1) Medical assistance under the Montana medicaid program may be granted to a person who is determined by the department of social and rehabilitation services to be eligible as follows:

(a) The person receives or is considered to be receiving supplemental security income benefits under Title XVI of the federal Social Security Act (42 U.S.C. 1381, et seq.) or aid to families with dependent children under Title IV of the federal Social Security Act (42 U.S.C. 601, et seq.).

(b) The person would be eligible for assistance under a program described in subsection (1)(a) if ~~he~~ the person were to apply for such assistance.

(c) The person is in a medical facility that is a medicaid provider and, but for residence in the facility, ~~he~~ the person would be receiving assistance under one of the programs in subsection (1)(a).

(d) The person is under 19 years of age and meets the conditions of eligibility in the state plan for aid to families with dependent children, other than with respect to school attendance.

(e) The person is under 21 years of age and in foster care under the supervision of the state or was in foster care under the supervision of the state and has been adopted as a hard-to-place child.

(f) The person meets the nonfinancial criteria of the categories in subsections (1)(a) through (1)(e) and:

(i) the person's income does not exceed the medically needy income level specified for federally aided categories of assistance and ~~his~~ the person's resources are within the resource standards of the federal supplemental security income program; or

(ii) the person, while having income greater than the medically needy income level specified for federally aided categories of assistance, has an adjusted income level, after incurring medical expenses, that does not exceed the medically needy income level specified for federally aided categories of assistance and ~~his~~ the person's resources are within the resource standards of the federal supplemental security income program.

(g) The person is a qualified pregnant woman or child as defined in 42 U.S.C. 1396d(n).

(2) The Montana medicaid program shall pay for the premiums necessary for participation in the medicare program and may, within the discretion of the department, pay all or a portion of the medicare deductibles and coinsurance for a medicare-eligible person or for a qualified disabled and working individual, as defined in section 6408(d)(2) of the federal Omnibus Budget Reconciliation Act of 1989, Public Law 101-239, who:

(a) has income that does not exceed income standards as may be required by the federal Social Security Act; and

(b) has resources that do not exceed standards the department determines reasonable for purposes of the program.

(3) The department may pay a medicaid-eligible person's expenses for premiums, coinsurance, and similar costs for health insurance or other available health coverage, as provided in 42 U.S.C. 1396b(a)(1).

(4) The department, under the Montana medicaid program, may provide, if a waiver is not available from the federal government, medicaid and other assistance mandated by Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.), as may be amended, and not specifically listed in this part to categories of persons that may be designated by the act for receipt of assistance.

(5) Notwithstanding any other provision of this chapter, medical assistance must be provided to ~~infants and pregnant women whose family income does not exceed 133% of the federal poverty threshold, as provided~~ the following individuals, as authorized in 42 U.S.C. 1396a(a)(10)(A)(ii)(IX) and 42 U.S.C. 1396a~~(1)(2)(A)(i)~~(1)(2)(A) through a(1)(2)(C):

(a) a pregnant woman or an infant under 1 year of age whose family income:

(i) on or after July 1, 1993, does not exceed 150% of the federal poverty threshold; or

(ii) on or after July 1, 1994, does not exceed 185% of the federal poverty threshold;

(b) a child who is 1 year of age or older but under 6 years of age and whose family income does not exceed 133% of the federal poverty threshold; and

(c) a child who is 6 years of age or older but under 19 years of age and whose family income does not exceed 100% of the federal poverty threshold.

(6) A person described in subsection (5) must be provided continuous eligibility for medical assistance, as authorized in 42 U.S.C. 1396a(e)(5) through a(e)(7)."

NEW SECTION. **Section 7. Special revenue account.** There is an account in the state special revenue fund in the state treasury. Money in the account must be appropriated to:

(1) provide medicaid eligibility for pregnant women, infants, and children, as mandated in 53-6-131(5); and

(2) enhance access to existing preventive health care services.

NEW SECTION. **Section 8. Effective dates.** (1) [Section 6 and this section] are effective July 1, 1993.

(2) [Sections 1 through 5 and 7] are effective August 15, 1993."

-END-

# SENATE STANDING COMMITTEE REPORT


March 11, 1993

MR. PRESIDENT:
We, your committee on Public Health, Welfare, and Safety having had under consideration House Bill No. 241 (first reading copy -- blue), respectfully report that House Bill No. 241 be amended as follows and as so amended be concurred in.

Signed: Dorothy Eck
Senator Dorothy Eck, Chair

That such amendments read:

1. Page 4, line 17.
Following: "performs"
Strike: "LOW AND MEDIUM COMPLEXITY"

2. Page 7, line 5.
Strike: "or"

3. Page 7, line 8.
Following: "493"
Insert: ";
(f) a perfusionist or cardiopulmonary technician who, as part of a surgical team, performs laboratory tests in an operating room during surgery or during the perioperative and immediate postoperative period; or
(g) clinical laboratory science practitioners, employed by certified rural health clinics, who perform only those basic laboratory services required under federal regulations set forth in 42 CFR 491.9(c)(2)"

4. Page 11, lines 15 and 20.
Strike: "act"
Insert: "section"

5. Page 11, line 18.
Following: "years."
Insert: "The applicant's level of practice on [the effective date of this section] determines the type of license issued."

-END-

M- Amd. Coord.
-H- Sec. of Senate

Sen. Eve Franklin
Senator Carrying Bill

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SENATE HEALTH & WELFARE
EXHIBIT NO. 1
DATE 3-10-93
BILL NO. HB241

Amendments to House Bill No. 241
Third Reading Copy

Requested by Representative Bill Strizich
For the Senate Public Health, Welfare, and Safety Committee

Prepared by Tom Gomez
March 9, 1993

1. Page 4, line 17.
Following: "performs"
Strike: "LOW AND MEDIUM COMPLEXITY"

2. Page 7, line 5.
Strike: "or"

3. Page 7, line 8.
Following: "493"
Insert: ";
(f) a perfusionist or cardiopulmonary technician who, as part of a surgical team, performs laboratory tests in an operating room during surgery or during the perioperative and immediate postoperative period; or
(g) clinical laboratory science practitioners, employed by certified rural health clinics, who perform only those basic laboratory services required under federal regulations set forth in 42 CFR 491.9(c)(2)"

4. Page 11, lines 15 and 20.
Strike: "act"
Insert: "section"

5. Page 11, line 18.
Following: "years."
Insert: "The applicant's level of practice on [the effective date of this section] determines the type of license issued."

Amendments to Senate Bill No. 305
First Reading Copy

Requested by Senator Terry Klampe
For the Senate Public Health, Welfare, and Safety Committee

Prepared by Tom Gomez
March 5, 1993

1. Title, line 7.
Following: "PROGRAMS,"
Insert: "AND THE"

2. Title, line 8.
Following: "SERVICE FUND"
Strike: ", AND GENERAL FUND"

3. Page 6, line 2.
Strike: ":"

4. Page 6, line 5
Strike: "general fund"
Insert: "the state special revenue account provided for in [section 7]"

SENATE HEALTH & WELFARE
EXHIBIT NO. 3
DATE 3-10-93
BILL NO. SB 305

Amendments to Senate Bill No. 305
First Reading Copy

Requested by Senator Terry Klampe
For the Senate Public Health, Welfare, and Safety Committee

Prepared by Tom Gomez
March 2, 1993

1. Title, line 7.
Following: "MEDICAID"
Strike: "PROGRAMS"
Insert: "AND PREVENTIVE HEALTH CARE SERVICES"

2. Title, line 8.
Following: "FUND;"
Insert: "EXPANDING MEDICAID ELIGIBILITY FOR PREGNANT WOMEN, INFANTS, AND CHILDREN;"

3. Title, line 9.
Following: "16-11-206,"
Strike: "AND"

4. Title, line 10.
Following: "17-5-408,"
Insert: "AND 53-6-131,"
Following: "PROVIDING"
Strike: "AN EFFECTIVE DATE"
Insert: "EFFECTIVE DATES"

5. Page 3, line 7.
Strike: "35.44%"
Insert: "36.77%"

6. Page 3, line 9.
Strike: "14.56%"
Insert: "15.10%"

7. Page 3, line 15.
Strike: "to medicaid programs under Title 53"
Insert: "provided for in [section 7]"

8. Page 7, line 1.
Strike: "35.44%"
Insert: "36.77%"

9. Page 7, lines 19 through 20.
Strike: section 6 in its entirety
Insert: "**Section 6.** Section 53-6-131, MCA, is amended to read:
"**53-6-131. Eligibility requirements.** (1) Medical assistance under the Montana medicaid program may be granted to a person who is determined by the department of social and rehabilitation services to be eligible as follows:

(a) The person receives or is considered to be receiving supplemental security income benefits under Title XVI of the federal Social Security Act (42 U.S.C. 1381, et seq.) or aid to families with dependent children under Title IV of the federal Social Security Act (42 U.S.C. 601, et seq.).

(b) The person would be eligible for assistance under a program described in subsection (1)(a) if ~~he~~ the person were to apply for such assistance.

(c) The person is in a medical facility that is a medicaid provider and, but for residence in the facility, ~~he~~ the person would be receiving assistance under one of the programs in subsection (1)(a).

(d) The person is under 19 years of age and meets the conditions of eligibility in the state plan for aid to families with dependent children, other than with respect to school attendance.

(e) The person is under 21 years of age and in foster care under the supervision of the state or was in foster care under the supervision of the state and has been adopted as a hard-to-place child.

(f) The person meets the nonfinancial criteria of the categories in subsections (1)(a) through (1)(e) and:

(i) the person's income does not exceed the medically needy income level specified for federally aided categories of assistance and ~~his~~ the person's resources are within the resource standards of the federal supplemental security income program; or

(ii) the person, while having income greater than the medically needy income level specified for federally aided categories of assistance, has an adjusted income level, after incurring medical expenses, that does not exceed the medically needy income level specified for federally aided categories of assistance and ~~his~~ the person's resources are within the resource standards of the federal supplemental security income program.

(g) The person is a qualified pregnant woman or child as defined in 42 U.S.C. 1396d(n).

(2) The Montana medicaid program shall pay for the premiums necessary for participation in the medicare program and may, within the discretion of the department, pay all or a portion of the medicare deductibles and coinsurance for a medicare-eligible person or for a qualified disabled and working individual, as defined in section 6408(d)(2) of the federal Omnibus Budget Reconciliation Act of 1989, Public Law 101-239, who:

(a) has income that does not exceed income standards as may be required by the federal Social Security Act; and

(b) has resources that do not exceed standards the department determines reasonable for purposes of the program.

(3) The department may pay a medicaid-eligible person's expenses for premiums, coinsurance, and similar costs for health insurance or other available health coverage, as provided in 42 U.S.C. 1396b(a)(1).

(4) The department, under the Montana medicaid program, may provide, if a waiver is not available from the federal government, medicaid and other assistance mandated by Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.), as may be amended, and not specifically listed in this part to

categories of persons that may be designated by the act for receipt of assistance.

(5) Notwithstanding any other provision of this chapter, medical assistance must be provided to ~~infants and pregnant women whose family income does not exceed 133% of the federal poverty threshold, as provided~~ the following individuals, as authorized in 42 U.S.C. 1396a(a)(10)(A)(ii)(IX) and 42 U.S.C. 1396a~~(l)(2)(A)(i)~~(l)(2)(A) through a(l)(2)(C):

(a) a pregnant woman or an infant under 1 year of age whose family income:

(i) on or after July 1, 1993, does not exceed 150% of the federal poverty threshold; or

(ii) on or after July 1, 1994, does not exceed 185% of the federal poverty threshold;

(b) a child who is 1 year of age or older but under 6 years of age and whose family income does not exceed 133% of the federal poverty threshold; and

(c) a child who is 6 years of age or older but under 19 years of age and whose family income does not exceed 100% of the federal poverty threshold.

(6) A person described in subsection (5) must be provided continuous eligibility for medical assistance, as authorized in 42 U.S.C. 1396a(e)(5) through a(e)(7)."

NEW SECTION. **Section 7. Special revenue account.** There is an account in the state special revenue fund in the state treasury. Money in the account must be appropriated to:

(1) provide medicaid eligibility for pregnant women, infants, and children, as mandated in 53-6-131(5); and

(2) enhance access to existing preventive health care services.

NEW SECTION. **Section 8. {standard} Effective dates.** (1) [Section 6 and this section] are effective July 1, 1993.

(2) [Sections 1 through 5 and section 7] are effective August 15, 1993."

# DEPARTMENT OF FAMILY SERVICES

MARC RACICOT, GOVERNOR

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STATE OF MONTANA

HANK HUDSON, DIRECTOR
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March 10, 1993

## DEPARTMENT OF FAMILY SERVICES TESTIMONY IN SUPPORT OF HB 168

The Department of Family Services received notice from the federal Department of Health and Human Services (HHS) that the state risks losing its Basic Child Abuse and Neglect Grant money, amounting to $122,512, if the agency does not succeed in amending the statutory definition of "adequate health care" as it pertains to child abuse and neglect. In its original form, HB 168 simply removed "nonmedical remedial" care from the definition of "adequate health care". Legislative Council has drafted amendments to HB 168. The department has reviewed these and has no objection to them.

The intent of the bill as amended is to ensure that mandatory reporters of child abuse or neglect will report a parent's failure to seek conventional medical treatment for their ill child. HHS has stated that financial sanctions will not be imposed against the state if referrals of failure to seek traditional medical care are made to DFS staff who must investigate these referrals. There is no requirement that DFS find that the withholding of traditional medical treatment for religious reasons is neglectful. The federal government is just concerned that the potential neglect be referred to the agency for investigation, so that risk to the child can be assessed and action taken if deemed necessary.

The CAN Grant is critical to DFS operations and community programs. In addition to the Basic CAN Grant that is directly affected, DFS's eligibility for funding of the Children's Justice Act Grant of $71,060 is contingent upon the agency's eligibility for the CAN Grant. Theses grants are used to fund mini grants for many community programs such as: good touch/bad touch programs; local prevention programs; counseling for abused children in battered woman's shelter; fetal alcohol syndrome training in high schools and junior highs; and parenting classes for adults and teenagers.

Both Grants are used to fund training for social workers and other professionals, including: training for new social workers; sexual abuse training; training regarding abuse issues for native americans; and a child abuse hot line. The remainder of the Grants go to other programs, travel, resource materials and administrative costs. The agency would have a difficult, if not impossible task in providing funding for these programs and training without the CAN Grant and Children's Justice Act Grant.

Christian Science Committee on Publication
for Montana

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SENATE HEALTH & WELFARE
EXHIBIT NO. 5
DATE 3-10-93
BILL NO. HB 168

March 10, 1993

Senate Committee on Public Health, Welfare, and Safety
Capitol Station
Helena, MT 59620

Chairman Eck and Members of the Committee:

My name is Les Conger. I am Christian Science Committee on Publication for Montana.

First, I would like to express my gratitude for the opportunity to participate in our state's legislative process. I appreciate the committee's openess to citizen concerns and your standards of fairness and sensitivity to the rights of all Montanans under our state constitution.

House Bill 168 may appear to some to make only a minor change in the law pertaining to child abuse and neglect. The primary change is the deletion of two words from the definition of "adequate health." But the potential impact of the change would be to restrict the rights of all Montana families who rely on spiritual healing or any form of health care outside of conventional medical treatment.

I'm not sure why the Federal Health and Human Services Department wants this change in Montana law, but they did recognize that it would be "a complex issue that may be difficult to resolve..." (Second page, fourth paragraph of DHHS letter dated Dec 4, 1992) In fact, three other states so far have decided not to make this change in their laws, even though they stand to lose Federal money as a result. I believe Montana should do so as well.

For many generations now, Christian Science families throughout the state have relied on their worship of God as their primary method of health care. Until now, our laws have not denied them that right and Christian Science parents have been conscientious in obeying laws that are designed to protect public health, such as the requirement to report contagious disease. I remember when I was a first-grader and had whooping cough, as well as some of the other so-called children's diseases, our

house was quarantined. My mother had engaged a Christian Science Practitioner to provide the treatment for me, and my main memory of this time was that I had to stay home from school for what seemed like weeks. I'm sure it couldn't have been an enjoyable experience, but I don't remember any serious discomfort. I must have recovered from each of the diseases pretty quickly because my main concern, in the case of the whooping cough, and later even more when I was home with measles and chicken pox, was all the school work I was missing. I was concerned that I might not "pass" into second grade, I guess, and I tried to do all the work sent home by the teacher. One thing I do remember clearly is the name of the Christian Science practitioner. I remember how kind and loving she was when she talked to me. And I am sure that I was well enough to go back to school well before the quarantine time was up.

My point here is not nostalgia, it is that if House Bill 168 had been Montana law when I was under Christian Science care as a child, I would have been considered to have inadequate health care and a social worker could have removed me from my home even though my parents were taking care of me in the best way they could. Today we are all concerned about family values, about the family as the basic institution in society. Another piece of legislation introduced during this session states it this way: "because our entire society benefits when families function well, it is in society's best interest to ensure that public policies and programs support and strengthen family life:"

Christian Science families make up only a small minority of Montana's population, but their contribution to the strength of the state goes beyond their number. They tend to be fully functional families. The parents take their responsibilities seriously. They take good care of their children. They respect the law. They have high standards. Minorities, including Christian Scientists, are in a special position in a democracy. In a sense, they are dependent on the will of the majority. But special measures to protect the religious practice of religious minorities have enriched the legislative history of our nation. Specific practices of Quakers, Jews, Amish, Catholics, Mennonites, Seventh Day Adventists have long been protected in the laws of our land.

To Montana's Christian Science families, reliance upon God's protective and healing power is a very natural aspect of everyday life. They find it to be the best health care they could ever hope for. They depend on it. It is more than adequate to meet the needs of the children who are already learning to pray for themselves and for their friends, their brothers and sisters. How can this legislature tell these parents, grandparents, and children that their way of life is outside the law of Montana?

The Montana code that would be changed by this bill is the one whose purpose is to protect minors and children from harm. Quoting from MCA 41-3-101: "It is hereby declared to be the policy of the state of Montana to: (a) insure that all youth are afforded an adequate physical and emotional environment to promote normal development; (b) compel in proper cases the parent or guardian of a youth to perform the moral and legal duty owed to the youth; (c) achieve these purposes in a family environment whenever possible; and (d) preserve the unity and welfare of the family whenever possible.

One question, then, has to be this: How could the purpose of this law be strengthened or improved by this bill? Will children's welfare be better served, and the unity and welfare of the family be better preserved, by allowing only conventional medical treatment for these children? In other words, does this bill solve a current problem in our state? If it does I'm not aware of it.

I had hoped there would be a way to amend this bill that would satisfy the Federal request and still preserve the rights of families to utilize the proven health care they trust.

I believe the research analyst who supports this committee has recommended changes that include an amendment that would be a step in the right direction. However, as long as "adequate health care" for a child is defined only as "any medical health care", the bill would in effect direct a social worker to remove a child from the home any time the child is receiving care that the social worker does not recognize as traditional medical treatment. I don't believe Montana should be that narrow in its tolerance of religious freedom and alternative methods of health care.

Exhibit #5
3-10-93
HB- 168



I respectfully ask that this committee not pass House Bill 168.

Sincerely,

Leslie R. Conger
Committee on Publication

SENATE HEALTH & WELFARE
EXHIBIT NO. 6
DATE 3-10-93
BILL NO. HB168

Amendments to House Bill No. 168
Third Reading Copy

For the Senate Public Health, Welfare, and Safety Committee

Prepared by Tom Gomez
February 26, 1993

1. Page 1, line 24.
Following: "(3)"
Insert: "(a)"

2. Page 2, line 4.
Following: line 3
Insert: "(b) Nothing in this chapter may be construed to require a finding of child abuse or neglect when a parent, due to religious beliefs, does not provide medical care for a child. However, nothing in this chapter may be construed to limit the administrative or judicial authority of the state to ensure that medical care is provided to the child when the child's health requires it."

Testimony Regarding HB 220
from
DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES
Judith Gedrose, Preventive Health Services Division
to
SENATE PUBLIC HEALTH COMMITTEE
March 10, 1993

HB220 contains proposed changes to an existing statute and administrative rules, 16.30.801-805, authorized by the statute. Much work and thought was put into development of the original law and rules. DHES has no data indicating problems exist with the method prescribed in the law or rules.

Section 1 of HB220 adds a definition for a "Designated Officer". DHES has a concern about adding another person to the process. The person knowing whether or not an exposure has occurred is the Emergency Services worker who took part in the transport. Neither, the health care facility to which the patient was transported or the "Designated Officer" can determine what occurred during the transport as accurately as the emergency provider. The mechanism now in place was developed so the individual emergency worker has the right and responsibility for requesting followup.

The ARM promulgated after passage of the original statute defines the communicable diseases which may be of concern. Various diseases have various routes of transmission and they are addressed properly in the ARM. Section 1, 2 and 3 of HB220 has altered the statute to include parts of the ARM but fails to do it in a manner which distinguishes the various modes of transmission for the various diseases. Addition of two diseases has occurred. Tetanus is not transmitted person to person so has no relevance here. Herpes simplex is a ubiquitous organism and nearly everyone has the potential to transmit it so its inclusion would require extensive needless followup.

Section 3 of HB220 has been altered to read in such a way it appears that every person involved in the transport of a person with a communicable disease is exposed to the disease. This is not the case and could lead to much wasted effort on the part of all involved.

DHES would like the committee to consider the notification process for emergency services providers as it exists as a complete package. If ARM changes are needed, we in the Department would be more than happy to work with those feeling a need for the change. Please give HB220 a do not pass recommendation.

MISSOULA COUNTY
MISSOULA

CITY-COUNTY HEALTH DEPARTMENT
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March 9, 1993

TO: Honorable Dorothy Eck, Chairperson
Public Health, Welfare, and Safety Committee
Montana Senate

FROM: Greg Oliver, M.S., Health Education Director
Missoula City-County Health Dept.

RE: TESTIMONY IN OPPOSITION TO HB 220

For several years, I have coordinated communicable disease response in Missoula County. This work includes working with the community to contend with the many challenges of the AIDS epidemic. I have had considerable experience doing followup to all the diseases listed in House Bill 220, with the possible exception of hepatitis D.

My first question as I review this bill is do we currently have a problem, and if so, what exactly is it? This is not a bill that is being proposed or supported by public health experts. No one I know who is responsible for public health response to reportable diseases has identified a problem in safeguarding the health of emergency services responders that isn't already addressed in OSHA mandates, CDC recommendations, or state law and administrative rules. Are we missing something? Are emergency responders getting ill with unreported cases? I think not.

Those people who respond to emergency situations, whether they are paid or volunteer, provide an invaluable service and deserve our gratitude, as well as every possible protection from incurring unnecessary risk. I have given presentations about communicable diseases and relative risk to groups providing these services, and have fielded many questions from my audiences. From my experience, it's safe to say that many emergency responders are not well informed about communicable diseases in general and that there are many rumors and fears as a result. And this is the problem that has brought HB220 before you.

The proposed legislation is confused, and suggests a lack of background about infectious diseases. Infectious diseases are all different. They pose different types of risks, different degrees of relative infectiousness, different modes of transmission, different routes of entry into the body, different reservoirs of infection, and different periods of communicability. Glance through Control of Communicable Diseases in Man, a public health bible codified in A.R.M., and notice that there are 532 pages devoted to talking about all these differences.

Some examples follow. Grouping HIV with TB, for instance,

is like grouping giraffes with oranges. You will never get HIV by sitting 4 hours in close, unventilated quarters with someone who is HIV positive, but you could become infected with TB in the same situation. You will never get TB by jabbing yourself with a needle that has been in a vein of a person with active tuberculosis, but you could become infected with HIV in the same situation. Tetanus is a common organism in the soil but is not communicable person to person. The bacteria that causes meningococcal meningitis is so common it could probably be isolated from one in five of us in this room. But that doesn't mean we are at risk, or that we have been exposed.

Which brings us to the word "exposure". When an epidemiologist uses this word, it means someone came in contact with a specific organism in such a manner that the person could develop an infection. "Unprotected exposure" seems redundant. If you feel compelled to pass HB 220, at the minimum, please leave the existing definition of exposure in tact, (50-16-701(5)) and do not make the changes recommended by this bill's authors. It is confusing gobbleygook. It suggests all these possible routes of exposure are pertinent for all diseases. It makes no sense to support legislation that asserts a blood borne pathogen is the same as an airborne pathogen.

There is certainly no reason to notify anyone if an exposure, in the epidemiologist's usage, has not occurred. This bill asks for us to tell a responder that he/she has been essentially "near" a disease when there is no risk. Why in the world do we want to do that? Who wants to be led to believe that they might be at risk for HIV and carry that burden around for at least 6 months until a blood test could confirm that h/she was not infected, when they aren't at risk? In my experience, no one does.

At this point, we should remember not to lose sight of the fact that the most effective way that emergency responders can protect themselves, is before, not after, exposure. Emergency providers must be vigilant about attending regular trainings and taking essential precautions, at all times, to avoid exposure to frightening pathogens like HIV and Hepatitis B.

As required by existing laws, if an emergency responder is exposed to any reportable disease, the case followup by a public health professional will identify that responder and notify h/she of the risk. This person has expertise to determine if an actual exposure has occurred, and to map out an appropriate response. Also, when there is a risk, or when a responder feels h/she has been exposed, there are currently solid, practical steps and safeguards in place that work. There is no evidence in Montana or nationally that these strategies are not working. Nothing more is needed. Why pass HB220 when it is not needed, and will only create more inappropriate fear and trample on confidentiality and individual rights to privacy?

Please oppose this bill.

ACLU OF MONTANA
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SENATE HEALTH & WELFARE
EXHIBIT NO. 9
DATE 3-10-93
BILL NO. HB 220

**Testimony in Opposition to HB 220**
**K. Fremont-Smith, M.D.**
**The Senate Committee on Public Health, Welfare and Safety**
**March, 10, 1992, Helena, Montana**

Senator Eck, Members of the Committee, my name is Ken Fremont-Smith. I am here to represent the American Civil Liberties Union of Montana, of which I am a Board member. I am a retired MD; I am currently the HIV Medical Advisor for the Missoula Health Department.

I speak in opposition to HB 220. The purpose of this bill would appear, on the surface, to be to decrease the risk of emergency service providers to exposure to certain infectious diseases, including HIV. Although no one can quarrel with this goal, I will argue that the present law is adequate and there is no need for this bill; that HB 220 would lead to an unacceptable invasion of individual privacy rights; and that its result, and probably its true purpose, would be to provide privileged information to persons who have no need to know.

But first I must emphasize that, despite appearances, this bill relates only to HIV. Although several other "infectious diseases" have been added to Definitions (Section 1), there is no further mention of any of them in the body of the bill. On the other hand, HIV is the sole subject of Notification of Exposure (Section 2), Notification of Precautions (Section 3), Confidentiality (Section 4), and Testing, Counseling and Informed Consent (Section 5). It would appear that the other diseases have been added only for camouflage. As passed by the House, this bill concerns only HIV and persons infected with HIV.

HB 220 is completely unnecessary; the risk of transmission of HIV from patient to emergency worker is essentially zero. According to the CDC[1], there has not been a single case of documented transmission of HIV from a patient to an emergency care provider in the United States during the 12 years of the epidemic ending September 30, 1992. None. In the same time period there have been 7 instances of possible HIV transmission to an emergency worker; none of these were proven. That's seven possible instances in 12 years in the entire country! In the same period, hundreds of people have been killed in the United States by being hit by lightening. Since the risk of HIV transmission from patient to emergency service provider is essentially zero, there is no need for additional special legislation to protect them.

HB 220, if enacted, will result in an unconstitutional invasion of privacy of those emergency service clients who are infected with HIV. The health care facility to which such a patient is delivered by an emergency service vehicle will be required to report the diagnosis of HIV-infection to the emergency service's Designated Officer, whether or not any exposure has been suspected by anyone. Although name identification of the infected patient is forbidden by the bill, it will be impossible for the Designated Officer to notify the actual service provider, as he is required to do, without information which will inevitably lead to patient identification. Information such as date, time and destination of the emergency vehicle, which the Designated Officer will have to learn in order to carry out his duty, will make the patient's identity obvious. It strains credulity to believe that the actual service provider, his co-workers, and then others will not also become aware of the patient's identity. This bill, if enacted, will thus result in the names of HIV-infected individuals becoming widely known, notwithstanding the confidentiality provision.

The real purpose underlying HB220 now seems clear. It is to codify by statue the contention that emergency providers are exposed to HIV simply by providing their service to an HIV-positive patient; that they have a special and exclusive right to know the client's HIV diagnosis; and that this is so even when there has not been the slightest chance of HIV transmission. We reject this assertion. The safeguards built into existing laws are entirely adequate to inform the emergency service provider if he should report an exposure with the possibility of HIV transmission. The existing law does not infringe unduly upon the constitutional rights of the afflicted individual. HB220, if enacted, will.

ACLU Montana strongly urges that you vote against HB 220.

Thank You.

[1] Morbidity and Mortality Weekly Report 41, 823-5, 10/30/92.

SENATE HEALTH & WELFARE
EXHIBIT NO. 10
DATE 3-10-93
BILL NO. HB 118

# DEPARTMENT OF FAMILY SERVICES

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MARC RACICOT, GOVERNOR

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March 10, 1993

TESTIMONY IN SUPPORT OF HB 118
"AN ACT REVISING THE MONTANA CHILD CARE ACT, . . ."

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

Under the Montana Child Care Act, the definitions of "day care" and "day care facility" identify which facilities are subject to regulation, and determine, in part, eligibility for services and benefits. HB 118 will benefit Montanans by adding flexibility to these definitions so that two types of needed care may be included in the department's system of licensing and registration.

HB 118 amends the Act to include sick-child care facilities as day care facilities subject to department regulation. Currently, facilities devoted exclusively to the care of sick children are not subject to day care facility requirements because care is not provided on a "regular basis" as defined in the Act. Department personnel play no role in ensuring quality care in these facilities. The facilities and parents utilizing them cannot take advantage of department programs offered to benefit day care facilities licensed or registered by the department.

Similarly, amending the definition of day care facility under this bill will allow for the regulation of care provided in the home of the children, or by a relative, if regulation is required to receive benefits. Currently, the department pays for some care not regulated under the day care facility licensing/registration scheme. However, these unregulated providers may care for a maximum of two children. Thus, a provider caring for three children in the children's home cannot receive state payment. Similarly, a relative caring for more than two children, for example an aunt, who provides care in her home for her nephews and nieces, while not required to be registered as a day care facility, cannot receive state payment regardless of whether the family is eligible for day care benefits. Under the amendments proposed in this bill, the department will be allowed to register these types of providers if the families employing them choose to participate in programs providing for day care benefits.

SENATE HEALTH & WELFARE
EXHIBIT NO. 11
DATE 3-10-93
BILL NO. HB118

Testimony for HB 118

My name is Marylis Filipovich and I am the supervisor of the staff person who manages four federally funded, low income child care assistance programs. I am here to testify in support of this bill. One federal mandate for all four programs is that parents be given the freedom to choose their day care provider. HB 118 will aid that freedom.

Current law does not allow an in-home provider to become registered. Now in-home providers can care for two or fewer children. This bill will allow in-home providers to become registered, which will allow the provider to care for 6 or fewer children. Under current law, if you had three children, you could not choose to have an in-home provider care for all of your children in your home. One of your children would have to be taken to another provider. This bill will change this law.

This bill also allows providers who care for sick children to be reimbursed for their services. Parents who receive our services often have more barriers to employment and education than other individuals. This section of the bill helps to remove one of the barriers.

SENATE HEALTH & WELFARE
EXHIBIT NO. 12
DATE 3-10-93
BILL NO. HB 118

**PROPONENT POSITION FOR HB 118**

I am a nurse practitioner in Missoula here to support HB 118. As a child care health consultant for day care settings in my community for the past five years, and more recently at the State level, it has become increasingly evident that the provision of sick child day care services would offer a badly needed public health alternative for children in all aspects of the child care system.

Currently many families are compelled to work due to economic need. Many of these families do not have the benefit of sick leave when their children are ill. Daily, children are brought to their regular child care settings with illnesses which may be communicable to others. While this practice has never been sanctioned by existing child care regulations, a child care provider often violates these regulations because she can appreciate the family's need to work in spite of their child's illness. Ideally, it would be best for all ill children to be cared for in their own homes by a parent. This ideal is not always possible for many families, and their child care provider ends up assuming this responsibility in addition to caring for well children.

Amending the Child Care Act by the proposed legislation is a very necessary step to sanctioning and allowing regulation of existing sick child care services. Five such facilities are already operating in Montana (in Missoula, Billings, Great Falls, Kalispell, and Bozeman). None of these facilities, however, interface with State regulatory agencies. More importantly, unless the State can sanction this level of child care, the most needy families will continue to be excluded from those services. Instead they will reside in their regular day care environments. This legislation offers a much needed alternative to a common, yet dangerous, child care practice occurring on a daily basis.

I am concerned about other aspects of HB 118 impeding the sick child care component of this legislation. Specifically, attempts to alter language regarding child care group homes or in-home registration could significantly impact sick child care options. I would respectfully suggest that those issues may be more relevant in the forum of administrative rule negotiations among State agencies and child care interest groups or in other legislative actions that address broader regulatory concerns.

I will close with a resolution sent with me by the Western Regional Day Care Regulatory Group, representatives from all aspects of child care. These providers have been serving with their peers from around the State on a year-long child care regulatory study via the Montana Child Care Association. These providers are the ones who have ill children show up on their doorsteps every day. Their resolution reads: "The Western Region of the 12-Month Study accepts HB 118's sick child care component excluding any debate about group home care. The issue of group home care could instead be addressed via State agency administrative rules and/or the Towe Amendment."

Thank you for your time and attention.

Kay Frey, RN, MN,PNP

DATE 3-10-93

SENATE COMMITTEE ON Public Health

BILLS BEING HEARD TODAY: HB 168, HB 220, HB 118

| Name | Representing | Bill No. | Check One Support | Oppose | Oth |
|---|---|---|---|---|---|
| LES CONGER | Christian Science Churches | 168 | | ✓ | |
| Ann Gilkey | DFS | 168 | ✓ | | |
| Judith Gedrose | DNRC | 220 | | ✓ | |
| Kay Gray | | 118 | ✓ | | |
| Greg Oliver | Msla CC Health Dept | 220 | | ✓ | |
| John Melcher, Jr. | DFS | 118 | ✓ | | |
| W Gremaud-Smith MD | ~~DHD~~ ACLU | 220 | | ✓ | |
| Ellen Blake | Christian Science | | | ✓ | |
| Tim BERGSTROM | MT. STATE FIREMENS ASSOC | 220 | ✓ | | |
| ED FUES | STATE COUNCIL PROFFER FIRE | 220 | ✓ | | |
| Wayne Tidwell | State Coun Prof FF | 220 | — | | |
| MIKE FOSTER | HELENA F.D. | 220 | ✓ | | |
| Vern Erickson | MT St. Firemans assoc | 220 | ✓ | | |
| Dale Veritt | Mt. Red Assoc. | 220 | ✓ | | |
| | | | | | |
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## VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

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