

MINUTES

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

COMMITTEE ON PUBLIC HEALTH, WELFARE & SAFETY

Call to Order: By Senator Dorothy Eck, Chair, on March 17, 1993,
at 3:10 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. 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 107, HB 610, HJR 4
Executive Action: SB 177, HB 118, HB 168

EXECUTIVE ACTION ON SB 177

Discussion:

Chairman Eck said SB 177 had been amended into SB 305.

Motion/Vote:

Sen. Christiaens moved to TABLE SB 177. The motion carried
UNANIMOUSLY.

EXECUTIVE ACTION ON HB 168

Discussion:

Chairman Eck said there were amendments to HB 168, and a vote would wait until Sen. Towe could be present.

EXECUTIVE ACTION ON HB 220

Discussion:

Chairman Eck said that Executive Action would be postponed until March 26, 1993. Amendments were being worked on.

Sen. Christiaens said he had received information regarding other states' laws concerning exposure notification. This information will be made available for Committee members during Executive Action on the bill.

Chairman Eck said Rep. Simon would be out of town until later next week.

HEARING ON HB 107

Opening Statement by Sponsor:

Rep. John Cobb, House District 42, said HB 107 addressed Sunrise audits which are currently done by the Legislative Auditor's office. Rep. Cobb said there is a hearing, and the bill is "cleaned up" before being sent to administrative committees in Legislature. The Legislative Auditor's office does not want to continue to do the Sunrise audits nor do they want to have hearings. The Legislative Auditor's office has tried to give the job to the Administrative Code Committee. The Code Committee does not want the job either, so the House State Administration Committee suggested the job be abolished all together. The Sunrise audit was formed to avoid long discussions and subcommittees in the legislature. The Auditor's office is currently paid \$1000.00 to do the audits, and they think this may be illegal. Sunrise audits started in the Senate. Rep. Cobb said it does provide a service, but it not proper to charge \$1000.00.

Proponents' Testimony:

None.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

Sen. Christiaens asked Rep. Cobb if HB 107 would save money. Rep. Cobb said there would not because they return the \$1000.00. They do not think it is appropriate for the Legislative Audit Committee to do the Sunrise audits.

Chairman Eck said she would hesitate to act on HB 107 while Sen. Hager is not present. Chairman Eck asked Rep. Cobb if he had discussed the bill with Sen. Hager. Rep. Cobb said he hadn't. He is trying to keep the bill quiet.

Chairman Eck said the Public Health Committee did not want to do the Sunrise audits either. Chairman Eck asked Tom Gomez if the audits had made a difference in the number of licensing bills that come through. Mr. Gomez said he had staffed the Public Health Committee since 1987, and there has been a significant change in terms of proposed bills subject to a Sunrise audit. In prior sessions, bills would come to this Committee and some members of the Committee tabled bills on the grounds that they had not had a Sunrise audit. The purpose of the Sunrise audit was to deal with the numerous applications of different groups for licensure.

Closing by Sponsor:

Rep. Cobb said the audits clean up bills which go to the House and the Senate anyway. The Legislative Audit Committee does not want to do the Sunrise audits, and they feel it is illegal to charge \$1000.00. They will keep doing it if they have to.

HEARING ON HB 610

Opening Statement by Sponsor:

Rep. Tim Whalen, House District 93, said HB 610 stems from an effort from the Nursing Home Coalition and the Department of Health and Environmental Sciences (DHES). Amendments were added in the House Judiciary Committee to satisfy concerns from the Montana Hospital Association, and the Montana Health Care Association. HB 610 gives the Department of Health enforcement capabilities for civil penalties and criminal penalties. It also provides criteria for receivership of a facility, and it sets up a patient account for a source of funds to enforce the bill. Rep. Whalen called the Committee's attention to Section 6 of HB 610 which covers inspections of facilities.

Proponents' Testimony:

Katherine Orr, Chief Council for the Department of Health, said the purpose of HB 610 is to consolidate the remedies available to the Department in the regulation of health care facilities. Some current remedies are in conflict with existing law. HB 610

clarifies what "prohibited acts" are for the purpose of criminal penalties and civil penalties. The Department would have administrative order authority which would allow them to expediently respond to a violation. In addition, the Department would have receivership authority for serious conditions. Ms. Orr provided amendments prepared with Rep. Whalen. (Exhibit #1) Ms. Orr went over the amendments.

Denzel Davis, Administrator of the Health Facilities Division, DHES, pointed out the current statues allow for only "all or nothing" situations. If a facility is found to be out of compliance, the Department can deny, suspend or revoke. These actions are costly and not very expedient. Mr. Davis said HB 610 gives DHES the authority to go into facilities that are not licensed. Currently, they may not go in without a court order. He said the administrative action portion of HB 610 is the most important part of the bill. Mr. Davis said he was "quite disturbed" when the patient protection fund was amended out of the bill. The fund would not be a large fund. The funds will be used for receivership and moving residents out of the facility. These are good uses for the funds. He urged the Committee to concur with HB 610.

Rose Hughes, Executive Director of the Montana Health Care Association, said the Association represents nursing homes throughout the state of Montana. Ms. Hughes said the Association supports the ability of the Agency to do their job, and there is a need for a range of enforcement activities. The bill was extensively amended in the House to address the concerns of the Association. Ms. Hughes said she had no problems with the amendments.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

Sen. Klampe asked Denzel Davis what was the size of fines collected. Mr. Davis said \$1000.00 could be collected per violation. Prior to HB 610, no fines were collected. Only one action has been taken against a facility during the last six years.

Sen. Klampe asked Mr. Davis if, with the passage of HB 610, more actions are expected. Mr. Davis said no, there will be no change in operation.

Sen. Mesaros asked Mr. Davis if a \$1000.00 fine would help a facility come into compliance. Mr. Davis said the first steps in dealing with a facility are on the administrative level. If a facility refuses to comply, civil and criminal charges come into

place.

Chairman Eck asked Mr. Davis if the stricken language on Pages 5 and 6 would weaken the bill. Mr. Davis said no, the new enforcement section is the best part of HB 610. The stricken language took out administrative penalties.

Chairman Eck asked Mr. Davis which of the House amendments would limit the enforcement capabilities. Mr. Davis said the original amendments pertained to language that needed to be worked out, and that was done. There was an amendment to take out the patient protection account, so that fines would go to the general fund.

Sen. Mesaros asked Mr. Davis if there were presently a patient protection account. Mr. Davis said they currently did not have that type of account.

Sen. Christiaens asked Mr. Davis how receivership had been paid for in the past. Mr. Davis said they have not taken receivership of a facility. They did not have the funds to do it. Their only option was to close facilities. HB 610 gives additional remedies.

Sen. Towe asked Rose Hughes if she had seen the amendments. Ms. Hughes said she had.

Sen. Towe asked Ms. Hughes if she "reluctantly" accepted the amendments. Ms. Hughes said she did not have a problem with the amendments.

Sen. Towe asked Ms. Hughes if she had any comments about the patient protection account versus fines going to the general fund. Ms. Hughes said this is not a unique concept. Federal law specifically states, in respect with nursing facilities, that fines collected will go to a patient protection account. Aside from this, she said there are no strong feelings about whether the fines collected would go to a patient protection account or to the general fund.

Sen. Towe asked Mr. Davis if the amendments (Exhibit #1) reversed some of the action taken on HB 610 in the House. Mr. Davis said that was correct. Essentially, the two big issues were putting back in the patient protection account, and reworking the language regarding attorney's fees in Section 2.

Sen. Towe asked Mr. Davis if there would be no attorney's fees. Mr. Davis said that was correct.

Chairman Eck asked Mr. Davis to describe the kinds inspections of the facilities, and if the Department of Health has the funds to do the inspections. Mr. Davis said funding is always an issue, and he does not know if HB 610 will reduce the Department's ability to enforce, because they currently have no enforcement

abilities.

Chairman Eck asked Mr. Davis what was done when the Department received a complaint about a facility. Mr. Davis said there are quite a few complaints, and many of those are handled by the Medicaid/Medicare Certification Division. Complaints are investigated and followed up.

Chairman Eck asked Mr. Davis if the Department had adequate staff for the inspections. Mr. Davis said the "real" answer was no. SB 403 sponsored by Sen. Rye identifies the array of licensed facilities under the category of "out-patient" facilities. The Department does not have the staff to take care of out-patient facilities, but they have the staff needed for HB 610.

Closing by Sponsor:

Sen. Rye closed for Rep. Whalen.

HEARING ON HJR 4

Opening Statement by Sponsor:

Rep. Beverly Barnhart said HJR encourages the citizens of Montana say it is a good idea for Montana State University to adopt a nurse practitioner program. The program will not cost the state of Montana any money. Currently, MSU has a nursing degree program, but there is no place in Montana that provides nurse practitioner training.

Proponents' Testimony:

Verner Bertelsen, Legacy Legislature, said they strongly support HJR 4. Mr. Bertelsen discussed the last mock legislative session put on by the Legacy Legislature, where HJR 4 was a priority piece of legislation. HJR 4 will help improve medical services in Montana's rural areas.

Kip Smith, Director of Development of the Montana Primary Care Association, said the Association represents rural health clinics in Montana. These clinics use extensively mid-level practitioners, and they strongly support HJR 4. Most of the state of Montana is considered "frontier" and the rest, "rural." Mr. Smith said recruiting mid-level practitioners in rural areas is challenging. In Montana, primary care providers include nurse practitioners, physician assistants, mid-wives and physicians. It is important to identify those who are willing to take additional training and return to the rural areas of the state. To be the most successful, the programs must be available in the state. Mr. Smith encouraged the Committee to Concur in HJR 4.

Pat Abelin, Bozeman Area Chamber of Commerce, said the program will help provide needed care in rural areas and will keep health costs down. Montana State University is a logical site for the program.

Kelly Woodward, Montana Senior Citizens Association, said the Association supports HJR 4 because family nurse practitioners provide quality health care to Montanans and help reduce the cost of health care to senior citizens.

Dan Shea, concerned citizen, said he has concerns about health care. Mr. Shea said he has spent many hours in the Human Services Subcommittee, and health care should be put into the people's hands again. Otherwise, the health care system will never be reformed. HJR 4 is "one step in the right direction" because it is a low-technology approach to health care, and an alternative to high-tech health care offered in doctors' offices and hospitals.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

Sen. Christiaens asked Kip Smith what kind of support there was for nurse practitioners from the medical profession. Mr. Smith said nurse practitioners have protocols, and many work closely with physicians. However, they are free to practice independently.

Sen. Christiaens asked Mr. Smith how many practicing nurse practitioners there are in Montana. Mr. Smith said he did not know.

Rep. Barnhart said there were approximately 49 in the rural areas.

Sen. Christiaens said he had attempted to work with nurse practitioners in Great Falls with no success because the physicians are closed to allowing it. Sen. Christiaens said, after listening to testimony, nurse practitioners are a solution to rural health care, but there may be problems getting it going. He has concerns about the success of the program.

Mr. Smith said there are a variety of opinions held by physicians across the state. Some are extremely supportive towards mid-level practitioners, and others want nothing to do with them. In areas where there is a cooperative effort, the quality of care provided has been extremely high.

Sen. Christiaens asked Rep. Barnhart what kind of education was required to become a nurse practitioner beyond the master's

degree. Rep. Barnhart said education goes beyond graduate training, and there currently is a graduate program at MSU. In addition, there will be a lot of field work.

Sen. Rye asked Rep. Barnhart if opinions had been expressed by the Montana Hospital Association or the Montana Medical Association. Rep. Barnhart said they were not present at the hearing in the house, nor were they present today. Rep. Barnhart said it has been her experience that they are supportive of this.

Rep. Barnhart said to Sen. Christiaens that she was surprised to find so few nurse practitioners when she moved to Bozeman in 1974. There was a resistance to it as well. Rep. Barnhart said she had sensed a change during the last five years in Bozeman, and nurse practitioners are beginning to be utilized.

Chairman Eck said in the past she had carried a bill to license nurse practitioners, and the Montana Medical Association did not oppose it. Chairman Eck said this was one reason that the bill passed.

Sen. Rye asked Rep. Barnhart if she agreed with Justice Shea that this Resolution was the first step in taking control of the medical establishment. Rep. Barnhart said she did not think this was the case.

Chairman Eck said it would be useful for the Committee to know what obstacles face MSU, and what funding is available for the nurse practitioner program.

Rep. Barnhart said MSU is seeking funding from private sources and grants.

Sen. Christiaens said that four years ago there was talk of closing a branch of nursing at Montana State University. He said he was glad to see there was another funding source.

Closing by Sponsor:

Rep. Barnhart provided three letters regarding the nurse practitioner program. (Exhibit #2) Physicians that use the services of nurse practitioners learn that they can serve more people. She urged the Committee to Concur with HJR 4.

EXECUTIVE ACTION ON SB 389

Discussion:

Sen. Towe said he had been in contact with all the major contributors to air pollution in Billings, and has asked them

what parts of SB 389 they agree to. There have been some good responses, and he is hopeful that favorable responses will continue once the amendments are finished. Sen. Towe said he was encouraged.

Sen. Christiaens asked Sen. Towe if he had received amendments from Susan Callahan at the Montana Power Company. Sen. Towe said he had.

Sen. Christiaens asked Sen. Towe if he had received a letter from Cenex. Sen. Towe said he had, but that he hadn't been able to reach them. This was one of his concerns.

Chairman Eck suggested that Committee members speak with Tom Gomez if they have questions regarding the amendments to SB 389.

Sen. Rye said he appreciated Sen. Towe's "conciliatory" approach to SB 389. He thanked Sen. Towe for his "wise and mature" approach to working out differences with Billings industries.

EXECUTIVE ACTION ON HB 168

Discussion:

Chairman Eck said the first set of amendments to HB 168 cleaned up many technical problems with the bill. (Exhibit #3) Chairman Eck said the second set of amendments were developed in cooperation with Les Conger of Christian Science Publications. (Exhibit #4) The amendment doesn't completely satisfy their concerns, but it makes the bill more acceptable. Chairman Eck said that Ann Gilkey of the Department of Family Services had provided the Committee with a packet of information. (Exhibit #5) This information covers other states' decisions concerning Medicaid reimbursement.

Sen. Towe said there were no amendments in the information packet.

Sen. Christiaens said Social and Rehabilitation Services (SRS) is putting together a package of Medicaid options and waivers. Sen. Christiaens said that perhaps this could be included as one option.

Chairman Eck said the Medicaid option was not needed to adopt the amendments offered.

Tom Gomez said HB 168 does not relate to Medicaid, but to grants provided to the Department of Family Services under different provisions of the law. The most noted law is the Child Abuse and Neglect Prevention Act, which is referenced in the material provided by Ann Gilkey. The issue is the requirement for receiving the grant, specifically a definition of adequate health

care to a child. HB 168 really only involves striking on Page 1, Line 25, the words "or non-medical remedial". The bill relates to the Child Abuse and Neglect Prevention Program which is funded with federal grants, and the conditions to receive the federal money.

Chairman Eck asked Tom Gomez if the second amendment (Exhibit #4) is adopted, is the Department still able to receive the grant. Mr. Gomez went over the second amendment. The language was based upon a code of federal regulations that allows a state to either prohibit a finding of child abuse or require a finding based upon providing religious healing in lieu of traditional medical care. This language states that it would not be necessary to find a case of child abuse or neglect in the instance where religious healing is provided to a child. However, nothing in HB 168 would prevent the state or a court from taking action to insure that medical care is provided in circumstances where it is shown the child's health requires it.

Sen. Klampe said the language in the second amendment was "perfect."

Motion:

Sen. Klampe moved the Committee adopt that amendment. (Exhibit #4)

Discussion:

Sen. Christiaens said he did not feel comfortable with the language in that amendment.

Sen. Towe asked Tom Gomez if the amendment ought to be satisfactory as far as the federal government is concerned. Mr. Gomez said the Denver regional office informed him that the language was satisfactory.

Sen. Towe asked if the language had been agreed to by Mr. Conger. Chairman Eck said Mr. Conger thinks the language helps the bill, but he would rather have the Committee not pass the bill.

Tom Gomez said there were technical amendments. (Exhibit #3)

Chairman Eck said there are concerns about the removal of a child from his home if medical care was not being provided. This is not in the amendment.

Sen. Christiaens said this issue has got to have come up in other states, and the Committee must be able to find compatible language that will work.

Sen. Klampe said the language in question is fine, and leaves room for Christian Scientists.

Sen. Rye asked Sen. Klampe what would happen if a Jehovah's Witness family has a child that needs a blood transfusion, but their religion prohibits. Sen. Rye asked if the language gives the state the authority to remove the child from that home. Sen. Klampe said it would.

Tom Gomez added that the parents could not be charged with child abuse or neglect. However, reports of children being denied medical care must be investigated, even in the case of religious beliefs. If the child's life is found to be in jeopardy, the state would request medical care for that child.

Sen. Christiaens said there must be other state's codes regarding religious exemptions that could be included in this instance.

Sen. Mesaros said the amendment in question can be interpreted in many different ways, and the Committee should go beyond the language here for clarification.

Sen. Towe said his concerns were the last seven words of the amendment, "when the child's health requires it." Many cases require medical treatment, and the language is vague. Sen. Towe said he would like to see if there is other language that could be used, for example, "when the child's life is in danger."

Sen. Klampe said the amendment cannot be written any more clearly than it already is. The first sentence makes room for Christian Scientists, and he does not see Christian Scientists as "unreasonable people" who never go to see a doctor.

Sen. Mesaros said that the Committee only heard one individual's testimony.

Chairman Eck asked the Committee members if they had been receiving a lot of mail about HB 168. The Committee members said they had.

Chairman Eck said some Christian Scientists feel that broken bones can be repaired through prayer.

Sen. Franklin said the difficult thing about this bill is the theological decision being made compared to medical science.

Sen. Rye said the argument could be made that physicians do not heal people, but they merely allow the body to heal itself through a "divinely inspired" process. Sen. Franklin said she did not disagree.

Sen. Rye said the theological and the medical arguments are not necessarily mutually exclusive. Sen. Rye suggested that Sen. Klampe withdraw his motion because Sen. Towe believes he can improve the language.

Tom Gomez said the amendment he offered was a very conservative

effort.

Sen. Christiaens said he had some concerns about HB 168, and about a letter he'd received from Rita Swanson. Conclusions are being drawn that support judiciously taking children from their homes for health purposes.

Sen. Towe suggested, "Nothing in this chapter may be construed to require or justify a finding of child abuse or neglect..." Sen. Towe said this language may be too strong. Sen. Towe continued "However, nothing in this chapter may be construed to limit the administrative or judicial authority of the state to insure that medical care is provided to the child when there is a substantial risk of harm to the child's health." That language came out of the regulations, but this may still be too weak.

Sen. Klampe said he didn't think this suggested language changed the meaning of the amendment.

Sen. Christiaens asked if Tom Gomez could continue to work on the amendment, so it could be discussed at the next meeting of the Committee.

Sen. Towe asked Sen. Christiaens what his concerns were so they could be addressed. Sen. Christiaens said he wanted to know what the 38 other states had done in terms of religious exemptions, because there must be language that could be adopted.

Sen. Towe said there were substantive questions that were still not clear in his mind. He asked if the Committee wanted to say that, under no circumstances, could parents be accused of child abuse if there is a religious belief involved. Or, are there circumstances under which the Committee would want to allow the accusation of child abuse, even where religious belief are involved.

Chairman Eck said a child can be removed without charges of child abuse.

Sen. Towe said that is the other part of the argument, and he is inclined to say that if the religious beliefs are genuine, and the lack of medical care is attributed to genuinely held religious beliefs, then there should be no prosecution for child abuse. Sen. Christiaens said he agreed with Sen. Towe.

Sen. Rye said he agreed as well, but he said the language could justify satanic abuses of children if the Committee is not careful.

Sen. Franklin asked if the Committee would have to take into consideration what qualifies as a religious belief. Sen. Towe said that all revolves around the words "ceremony", "rite" or "ritual." Sen. Towe said the topic now is not providing medical health care, not harmful abuses.

Sen. Franklin said she had concerns about people claiming divine inspiration for really neglecting a child's health, which would be inappropriate.

Sen. Towe said that was a good argument.

Sen. Klampe said it seemed that the discussion was going beyond the title of the bill, and it was necessary to stay within the scope of the bill.

Chairman Eck asked Tom Gomez to ask the legislative librarian for information from other states about this issue.

Motion:

Sen. Klampe withdrew his motion to adopt the amendment. (Exhibit #4)

Discussion:

Chairman Eck said executive action on HB 168 would be postponed.

EXECUTIVE ACTION ON HB 220

Discussion:

Chairman Eck said the medical technicians have met with the Department of Health, and amendments are being discussed. They do not want to have executive action on the bill until after March 24, 1993.

EXECUTIVE ACTION ON HB 118

Discussion:

Chairman Eck said the bill defined day care so that sick children could be cared for. There were no opponents to the bill during the hearing.

Sen. Christiaens asked Chairman Eck what HB 118 did. Chairman Eck said the bill excludes care provided by a parent or other individual who lives with the child in the definition of day care. If a relative does not live with the child and cares for that child, they are included. The bill also licenses small facilities that provide day care for sick children.

Motion:

Sen. Rye moved HB 118 BE CONCURRED IN .

Discussion:

Sen. Towe said he missed a good portion of the hearing. Sen. Rye said the bill had three proponents, no opponents, and was a very quick hearing.

Sen. Towe said the language in the bill is unclear, for example, the definition of "day care" on Page 1.

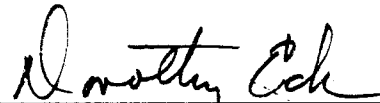
Chairman Eck pointed out that "day care" means less than 24-hour out of home care for children. Tom Gomez said otherwise it would be residential care.

Motion:

Sen. Rye withdrew his motion that HB 118 BE CONCURRED IN.

ADJOURNMENT

Adjournment: Chairman Eck adjourned the hearing at 5:15.



SENATOR DOROTHY ECK, Chair



LAURA TURMAN, Secretary

DE/LT

ROLL CALL

SENATE COMMITTEE Public Health DATE 3-17-93

[illegible]

FC8

Attach to each day's minutes

AMENDMENTS TO HOUSE BILL 610
FOR SENATE PUBLIC HEALTH
(Introduced by Tim Whalen)

SENATE HEALTH & WELFARE
EXHIBIT NO. 1
DATE 3-17-93
BILL NO. HB #610

1. Page 1, line 8.
Strike: "AND ADMINISTRATIVE"
2. Page 2, lines 5 through 7.
Following: "[section 1]" on line 5
Strike: "THAT" on line 5 through "PERSON" on line 7.
3. Page 2, line 21.
Strike: "GENERAL FUND"
Insert: "patient protection account provided for in [section 7]"
4. Page 2, line 19.
Following: line 18
Insert: "(2) In determining the amount of penalty to be assessed for an alleged violation under this section, the court shall consider
(a) the gravity of the violation in terms of the degree of physical or mental harm to a resident or patient, the degree of harm to the health, safety, rights, security, or welfare of a resident or patient; and the degree of deviation committed by the facility from a requirement imposed by part 1 or 2 of this chapter or by a rule, license provision, or order adopted or issued pursuant to part 1 or 2;
(b) other matters as justice may require."
5. Page 2, line 19.
Strike: "(2)"
Insert: "(3)".
6. Page 3, line 5.
Following: "PERSON"
Insert: "or conceals material information about the operation of the facility".
7. Page 4, line 2.
Following: "VIOLATION" on line 2
Insert: "(3) In determining the amount of penalty to be assessed for an alleged violation under this section, the court shall consider
(a) the gravity of the violation in terms of the degree of physical or mental harm to a resident or patient, the degree of harm to the health, safety, rights, security, or welfare of a resident or patient; and the degree of deviation committed by the facility from a requirement imposed by part 1 or 2 of this chapter or by a rule, license provision, or order adopted or issued pursuant to part 1 or 2;
(b) other matters as justice may require."
and renumber

8. Page 4, line 9.
Following: "district" on line 8
Insert: "A penalty collected under this section must be deposited in the patient protection account provided for in [section 7]."
9. Page 7, line 10.
Following: "APPROPRIATE"
Strike: "AND REASONABLE METHOD"
Insert: "means".
10. Page 10, lines 23 and 24.
Following: "CHAPTER"
Insert: "penalties collected pursuant to parts 1 or 2 of this chapter".
11. Page 10, line 25.
Following: "(A)"
Insert: "(b)".
12. Page 11, line 4.
Following: "(B)"
Insert: "(C)".
13. Page 11, lines 7 through 9.
Following: "(a)"
Strike: "TO ADMINISTER" through "RECEIVERSHIP"
Insert: "to pay for the costs of a receivership".
14. Page 11, lines 12 and 13.
Strike: "(c)" to "AND"
15. Page 11, lines 14 through 17.
Strike: (D) in its entirety from "(D)" to "FACILITY".
16. Page 15, lines 16 through 25.
Strike: "(2) through FUND".

MICHAEL A. SHEETS, F.N.P.
LIBERTY COUNTY PROFESSIONAL BUILDING
P.O. BOX 508
CHESTER, MONTANA 59622
TELEPHONE 759-5194

STATE HEALTH & WELFARE
EXHIBIT NO. 2
DATE 3-17-93
BILL NO. HJ 4

01/25/93

Written Testimony on Behalf of House Senate Resolution #4

I am a Family Nurse Practitioner practicing in Chester, Montana. I practice with two family physicians. We service an emergency room, 11 bed hospital, and 45 bed nursing home. Our service area is 2000 square miles with no other health facilities. I pull call every 3rd night and every 3rd weekend. I also am the primary recruiter of Nurse Practitioners into Montana for the Montana Nurses Association.

Demand for Nurse Practitioners are at a all time high. I have placed 14 Nurse Practitioners in Montana communities in the last year and one half. I could have place 50 to 60 if they were available. Recruiting Nurse Practitioners from outside of Montana is a short term solution. We must take native Montana's with families here in the state who are RN's and train them to go back and care for their communities. They'll be there for their entire lives. They know their friends and neighbors and can lend a personal touch that outsiders may never be able to.

A native Nurse Practitioner in a community gives continuity of care and makes it easier to recruit physicians into small towns where they have a Nurse Practitioner to share call and to discuss patients. It makes sole practice bearable.

We currently have 6 Montanans in Gonzaga University, Spokane, Washington, training to be Nurse Practitioners at extreme personal energy expenditures.

I have had over 100 inquiries from nurses in Montana who want to become Nurse Practitioners. It is my belief that the single most important thing the state of Montana can do is to open a Nurse Practitioner program at Montana State University and train rural nurses to care for their neighbors. This will lower costs and improve access to care. It will also allow Montanans to live the independent sort of life they are use to and prevent closure of hospitals, clinics and nursing homes.

Please help us here in rural Montana.

Respectfully,



Michael A. Sheets, RN, MSN, FNP

TESTIMONY: HJ. 4 JOINT RESOLUTION SUPPORTING AN FAMILY NURSE
PRACTITIONER EDUCATION PROGRAM AT MONTANA STATE
UNIVERSITY. SPONSOR: Beverly Barnhart

My name is Cathy Caniparoli and I am an Adjunct Assistant Professor in the College of Nursing at Montana State University. I am here today as the Chair of the Ad-Hoc Committee on the development of a Family Nurse Practitioner tract for the Master's of Nursing at Montana State University. We are seeking your support in our efforts to develop this program at Montana State University.

For a variety of reasons, we have decided to develop funding of this program through private resources such as grants and through the development of an endowed program, through the University's endowment program. It would be very helpful in our fund-raising efforts to be able to identify that we have the support of the Montana Legislature through this resolution.

Nurse Practitioners are Registered Nurses who have further education, increasingly on the Master's level, to provide primary care services to clients. These services include physical exams, diagnosis and treatment of common health problems, care of individuals with chronic health problems, prevention care and support for families within the health care system. In Montana, they have third-party reimbursement through private insurance and through Medicaid. Nurse Practitioners have also been granted prescriptive authority. Because of the above, nurse practitioners are ideally suited to provide services to rural areas.

There is no program in Montana to educate Family Nurse Practitioners. There is evidence that to provide services in rural areas, a baccalaureate prepared registered nurse from the area is most likely to return to the area and to stay in that community. Because it is difficult to leave the state if you have a family, a program in Montana is important. We are looking at a variety of strategies to make this program "user friendly" without compromising the quality of the nurse practitioner. We recognize that the state of Montana has no money for new programs and is struggling to maintain the programs it has, so we have taken this route. I would like to urge the committee to offer a "do pass" to this resolution. Thank you.



Montana Nurses' Association

P.O. Box 5718 • Helena, Montana 59604 • 442-6710

Exhibit # 2
3-17-93
HJR- 4

January 25, 1993

Dear Members of the Committee,

After 15 years of working in the hospital setting, I felt very strongly that I wanted to be able to offer my community affordable, compassionate, wellness oriented, primary health care -- becoming a Family Nurse Practitioner (FNP) seemed to be the answer. How to reach this goal proved to be very difficult -- unless one was willing to leave the state for a minimum of 18 months. At my age (34), this would have meant uprooting an entire family -- as it would for most FNP candidates.

I am fortunate to have been accepted into Gonzaga University's FNP program and am fortunate to be able to afford it -- most cannot. Since it is geared to the needs of distance learners, I've been able to remain in Missoula and am doing my clinical here in Montana. I believe an FNP program, similar to Gonzaga's, offered through MSU would be very successful. The distance learning format enables practitioners to remain in their home communities where they will be needed and wanted. (65% of Gonzaga's FNP students come from towns of less than 25,000 and 25% from towns of less than 2,500.)

RN's in Montana have been waiting a long time for a graduate program in nursing which would allow them to serve their communities in a hands-on, practical way. Such service is THE MISSION of nursing, and the people of this state would reap the benefits of every dollar spent on this type of graduate nursing program. I welcome any call on this issue.

Sincerely,

Beth Sirr, RN, BSN
MN candidate - FNP student

1145 Lolo Street
Missoula, MT 59802
(406) 728-3342

Amendments to House Bill No. 168
Third Reading Copy

For the Senate Health, Welfare, and Safety Committee

Prepared by Tom Gomez
February 25, 1993

1. Title, line 6.
Strike: "IN ACCORDANCE"
Insert: "AND OTHER TERMS USED UNDER MONTANA'S CHILD ABUSE AND
NEGLECT LAWS IN ORDER TO CONFORM"
2. Title, line 7.
Strike: "SECTION"
Insert: "SECTIONS 40-8-111,"
Following: "41-3-102,"
Insert: "41-3-609,"
3. Page 1, lines 19 through 23.
Following: "neglected" on line 19
Insert: ""
Strike: remainder of line 19 through "welfare" on line 23
Insert: "means the state or condition of a child who has suffered
child abuse or neglect"
4. Page 1, line 25.
Strike: "health"
5. Page 2, line 6.
Following: line 5
Insert: "(5)(a) "Child abuse or neglect" means:
(i) harm to a child's health or welfare, as defined in
subsection (8); or
(ii) threatened harm to a child's health or welfare, as
defined in subsection (15).
(b) The term includes harm or threatened harm to a child's
health or welfare by the acts or omissions of a person
responsible for the child's welfare."
Renummer: subsequent subsections
6. Page 3, line 3.
Following: "education, or"
Insert: "adequate"
7. Page 6.
Following: line 6
Insert: "Section 2. Section 40-8-111, MCA, is amended to read:
"40-8-111. Consent required for adoption. (1) An adoption
of a child may be decreed when there have been filed written
consents to adoption executed by:
(a) both parents, if living, or the surviving parent of a
child, provided that consent is not required from a father or

mother:

(i) adjudged guilty by a court of competent jurisdiction of assault on the child, as provided in 45-5-201; endangering the welfare of children, concerning the child, as provided in 45-5-622; or sexual abuse of children, toward the child, as provided in 45-5-625;

(ii) who has been judicially deprived of the custody of the child on account of cruelty or neglect toward the child;

(iii) who has, in the state of Montana or in any other state of the United States, willfully abandoned the child, as defined in 41-3-102~~(7)~~~~(d)~~(8)(d);

(iv) who has caused the child to be maintained by any public or private children's institution, charitable agency, or any licensed adoption agency or the department of family services of the state of Montana for a period of 1 year without contributing to the support of the child during said period, if able;

(v) if it is proven to the satisfaction of the court that the father or mother, if able, has not contributed to the support of the child during a period of 1 year before the filing of a petition for adoption; or

(vi) whose parental rights have been judicially terminated;

(b) the legal guardian of the child if both parents are dead or if the rights of the parents have been terminated by judicial proceedings and such guardian has authority by order of the court appointing him to consent to the adoption;

(c) the executive head of an agency if the child has been relinquished for adoption to such agency or if the rights of the parents have been judicially terminated or if both parents are dead and custody of the child has been legally vested in such agency with authority to consent to adoption of the child; or

(d) any person having legal custody of a child by court order if the parental rights of the parents have been judicially terminated, but in such case the court having jurisdiction of the custody of the child must consent to adoption and a certified copy of its order shall be attached to the petition.

(2) The consents required by subsections (1)(a) and (1)(b) shall be acknowledged before an officer authorized to take acknowledgments or witnessed by a representative of the department of family services or of an agency or witnessed by a representative of the court."

Section 3. Section 41-3-609, MCA, is amended to read:

"41-3-609. Criteria for termination. (1) The court may order a termination of the parent-child legal relationship upon a finding that any of the following circumstances exist:

(a) the parents have relinquished the child pursuant to 40-6-135;

(b) the child has been abandoned by his parents as set forth in 41-3-102~~(7)~~~~(d)~~(8)(d);

(c) the child is an adjudicated youth in need of care and both of the following exist:

(i) an appropriate treatment plan that has been approved by the court has not been complied with by the parents or has not been successful; and

(ii) the conduct or condition of the parents rendering them unfit is unlikely to change within a reasonable time; or

(d) the parent has failed to successfully complete a treatment plan approved by the court within the time periods allowed for the child to be in foster care under 41-3-410 unless it orders other permanent legal custody under 41-3-410.

(2) In determining whether the conduct or condition of the parents is unlikely to change within a reasonable time, the court must enter a finding that continuation of the parent-child legal relationship will likely result in continued abuse or neglect or that the conduct or the condition of the parents renders the parents unfit, unable, or unwilling to give the child adequate parental care. In making such determinations, the court shall consider but is not limited to the following:

(a) emotional illness, mental illness, or mental deficiency of the parent of such duration or nature as to render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child within a reasonable time;

(b) a history of violent behavior by the parent;

(c) a single incident of life-threatening or gravely disabling injury to or disfigurement of the child caused by the parent;

(d) excessive use of intoxicating liquor or of a narcotic or dangerous drug that affects the parent's ability to care and provide for the child;

(e) present judicially ordered long-term confinement of the parent;

(f) the injury or death of a sibling due to proven parental abuse or neglect; and

(g) any reasonable efforts by protective service agencies that have been unable to rehabilitate the parent.

(3) In considering any of the factors in subsection (2) in terminating the parent-child relationship, the court shall give primary consideration to the physical, mental, and emotional conditions and needs of the child. The court shall review and, if necessary, order an evaluation of the child's or the parent's physical, mental, and emotional conditions.

(4) A treatment plan is not required under this part upon a finding by the court following hearing if:

(a) two medical doctors submit testimony that the parent is so severely mentally ill that such person cannot assume the role of parent;

(b) the parent is incarcerated for more than 1 year and such treatment plan is not practical considering the incarceration; or

(c) the death of a sibling caused by abuse or neglect by the parent has occurred.""

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

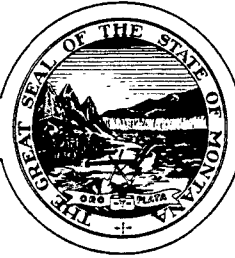
Insert: "(b) Nothing in this chapter may be construed to require a finding of child abuse or neglect when a parent, due to religious beliefs, does not provide medical care for a child. However, nothing in this chapter may be construed to limit the administrative or judicial authority of the state to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

DEPARTMENT OF FAMILY SERVICES

EXHIBIT NO. 5DATE 3-17-93BILL NO. HB 168

(406) 444-5900

FAX (406) 444-5956



MARC RACICOT, GOVERNOR

STATE OF MONTANA

HANK HUDSON, DIRECTOR
JESSE MUNRO, DEPUTY DIRECTORPO BOX 8005
HELENA, MONTANA 59604-8005

March 17, 1993

TO: Sen. Dorothy Eck, Chair
Public, Health, Welfare and Safety Committee

FROM: Ann Gilkey, Legal Counsel *AG*

RE: HB 168

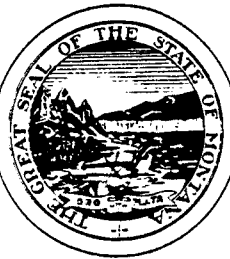
I have enclosed information that the committee requested at the hearing on HB 168 last week.

With respect to Sen. Christiaens request for information on Medicaid waiver, I spoke with Nancy Ellery, Administrator of the Medicaid Division at SRS. She informed me that Montana does not currently have a Medicaid option for Christian Scientist Nurse Practitioners. Some other state's apparently have such an option which allows for Medicaid reimbursement for services provided by the nurse practitioners, even though they are not licensed.

I hope this information is helpful to the committee. If there is anything else I can provide for you, or any questions that you or the committee feel are unanswered, please give me a call.

Thank you for consideration of HB 168. We greatly appreciate your support.

DEPARTMENT OF FAMILY SERVICES



MARC RACICOT, GOVERNOR

(406) 444-5900
FAX (406) 444-5956

STATE OF MONTANA

HANK HUDSON, DIRECTOR
JESSE MUNRO, DEPUTY DIRECTOR

PO BOX 8005
HELENA, MONTANA 59604-8005

March 17, 1993

TO: Ann Gilkey
Chief Legal Council

FR: Kandice Morse *KM*
Program Officer II

RE: Eligibility for Basic State Grant and Children's Justice Act

As you are aware, the Department of Family Services has been notified by the U.S. Department of Health and Human Services that it will lose its eligibility for the Basic State Grant if it does not change its statutory religious exemption language. If Montana loses eligibility for the Basic State Grant, it will also lose the Children's Justice Act Grant, for which eligibility for the Basic State Grant is a criterion.

These two grants provide essential funding for staff training and community-based programs throughout the state. The current funding level for the Basic State Grant is \$106,527. These funds support \$30,000 in mini-grants for community-based prevention and treatment programs, such as educational programs in schools, parent self-help groups, and parent education and training programs. Examples of programs currently being funded are the Positive Indian Parenting program in Hardin which provides culturally sensitive parenting classes to Native American individuals, the St. Thomas Child and Family Center's Parents Anonymous support group in Great Falls, and the Touch program in Glasgow which uses a play to teach elementary school children about "good" and "bad" touching. The remaining funds are used for basic training of DFS social workers and foster and adoptive parents.

The current level of funding for the Children's Justice Act is \$71,060. These funds are to be utilized to improve the handling of child abuse, specifically sexual abuse, cases. Currently, this money is funding the statewide child abuse hotline, training for DFS social workers on working with sexually abused children and on DFS child abuse policies, training for DFS staff and community professionals on working with Native American abused children, and the purchase of sexual abuse interviewing materials

Exhibit #5
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Gilkey memo
March 17, 1993
Page 2

for DFS county offices. Funds have also been allocated for the creation of a statewide child death review team.

If DFS loses eligibility for these funds, the effects would be felt throughout DFS and the whole child abuse prevention and treatment community. These grant funds are needed to both start new community-based programs and maintain existing programs which help treat children or prevent child abuse. DFS always has more programs apply than it can fund and many of these programs could not exist without this financial help.

Grant monies also provide essential training to DFS staff and other community professionals. DFS is currently relying heavily on federal money to provide basic staff training because of a lack of state funds for training activities. This training increases workers' ability to respond to child abuse and neglect referrals, develop treatment plans for parents, and provide services to clients, and also increases the chances that staff will act within DFS policy guidelines.

Changing this statutory language will keep DFS eligible for approximately \$200,000 in federal funds that the agency desperately needs. Let me know if there are any further questions that I can answer about these grants or programs.

CHILD ABUSE AND NEGLECT (CA/N) FEDERAL GRANTS

DESCRIPTION/GOALS OF FEDERAL CA/N GRANTS RECEIVED:

(1) Basic State Grant for Child Abuse and Neglect (CA/N):

The federal government's Basic State Grant Program for Child Abuse and Neglect is a non-competitive grant program designed to encourage states to have a model approach to child abuse and neglect. Funded by the federal Administration for Children and Families, program guidelines for this grant allow states to use these funds to improve activities for preventing and treating child abuse and neglect. The grant's guidelines are very broad, but encourage states to relate grant expenditures to their state's Title IV-B Child Welfare Services plan. In Montana DFS has the responsibility for creating the state IV-B plan.

(2) Baby Doe/Infant Medical Neglect Grant:

The Baby Doe Grant Program of the federal government's National Center for Child Abuse and Neglect awards a non-competitive "Baby Doe" grant to Montana and all other states. The amount of the award is based on a formula related to the population of a state, with each state receiving at least a base/minimum amount regardless of population. The purposes of the Baby Doe funds are (a) to assist states in responding to reports of medical neglect of infants, including the withholding of medically-indicated treatment from disabled infants with life-threatening conditions, and (b) to improve service provision to disabled infants with life-threatening conditions and their families.

SERVICES PROVIDED:

I. The Basic State CA/N Grant provides the following services:

1. CA/N mini-grants (totalling \$30,000 statewide) for small community-based prevention and treatment programs, including:
 - a. educational programs in schools,
 - b. start-up costs for parent self-help groups, and
 - c. parent education and training programs.
2. Statewide child abuse and neglect prevention activities.
3. Training for DFS staff or professionals involved with child abuse and neglect.

II. The Baby Doe Grant provides the following services:

1. Staff training to improve the state's response to "Baby Doe" infants, as defined above.

BUDGET AND FUNDING:

Both the Basic State CA/N Grant Program and the Baby Doe Grant Program are funded entirely by federal funds from the Department of Health and Human Services' National Center for Child Abuse and Neglect.

	FY 94	FY 95
Federal special revenue funds	\$122,512	\$122,512
Total funding costs	\$122,512	\$122,512

PERFORMANCE INDICATORS:

The DFS program officer monitors the quarterly financial reports sent to the Department of Health and Human Services by DFS to ensure that money is expended for the services outlined in the grant application submitted by DFS. DFS field staff and community professionals are utilized to review CA/N mini-grant proposals received by DFS to ensure (a) local input concerning which programs are funded and (b) local monitoring of program performance.

TARGETS:

Basic State CA/N Grant:

1. Continue funding CA/N mini-grants, at least at the current levels of \$30,000 statewide per year.
2. Increase public awareness of the availability of CA/N mini-grants by adding five new organizations to the mailing list for the Request for Proposals each year.
3. Provide training to 500 DFS professionals each year, including DFS protective services social workers.

Baby Doe Grant:

1. Train 100 DFS staff each year in the handling of Baby Doe cases.

CHILDREN'S JUSTICE ACT

PROGRAM DESCRIPTION AND GOAL:

The Department of Family Services receives Children's Justice Act funds under a non-competitive federal grant program with the goal of improving each state's handling of child abuse cases, particularly cases of child sexual abuse.

SERVICES PROVIDED:

1. Training of professionals in the handling of cases of child sexual abuse, in order to accomplish the following objectives:
 - a. improve the handling of victims when they appear as witnesses in court;
 - b. improve the effectiveness of prosecution;
 - c. assure that alleged abuse perpetrators' rights are not abridged; and
 - d. assure that handling of all aspects of the investigation and prosecution of child sexual abuse is done in a manner which limits additional trauma to the child victim.
2. Training for members of potential child death review teams.
3. A state-wide child abuse toll-free hotline.

BUDGET AND FUNDING:

The funding for the Children's Justice Act services provided by DFS is 100% federal funds from the Department of Health and Human Services.

	FY 94	FY 95
Federal Special Revenue Fund	\$60,074	\$60,074
Total Funding Costs	\$60,074	\$60,074

PERFORMANCE INDICATORS:

1. Training will be conducted in a manner that achieves each of the training objectives "a" through "d" listed above under "Services Provided."
2. A child death review team will be created with guidelines to regulate its operations.
3. DFS will provide funding for a Montana child abuse hotline and assure that the handling of calls follows DFS guidelines and state child abuse reporting laws and procedures.

Exhibit #5
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TARGETS:

1. Provide training in the handling of cases of child sexual abuse to 45 DFS social workers each year, including training for the social work supervisor who conducts this portion of the training for new DFS workers.
2. Establish a child death review team and guidelines for its operation by July 1993.
3. Continue the current level of funding for the Montana child abuse hotline, which will be expected to answer at least 900 calls per year.

DFS: CHILDJUS.293

Exhibit # 5
3-17-93
HB-168

Cry, the Beloved Children

by Rita Swan

1991

Children's Healthcare Is a Legal Duty
Box 2604, Sioux City IA 51106
712-948-3500

FROM :

PHONE NO. :

Exhibit #5
3-17-93
HB-168
P81

Children's Healthcare Is a Legal Duty, Inc.

Rita Swan, President

Box 2804 • Sioux City, Iowa 51108 • Phone or FAX 712-948-3500

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Sioux City, Iowa

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UCSD Medical School
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Asst. Center for Prosecution
of Child Abuse
Alexandria, Virginia

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Santa Rosa, California

Rev. James Edwards, Ph.D.
Jamestown College
Jamestown, North Dakota

Nathan Fox, M.D.
Vice Chairman of Pediatrics
Univ. of Wisc. Medical School
Madison, Wisconsin

Elizabeth Griffith, Attorney
Bewerton, Oregon

William Jarvis, Ph.D., President
Nat. Council Against Health Fraud
Irvine, California

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Moberg, Kuehn, Kieman
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Winterhaven, Florida

Audrey Lincoln Schanier
Advocacy Liaison
Institute for Child Health Policy
Gainesville, Florida

Eva Zancow, Pediatrician
Strongsville, Ohio

March 11, 1993

JOHN MELCHER, ATTORNEY
MONTANA DEPT. OF FAMILY SERVICES
P O BOX 8005
HELENA MT 59604-8005

Dear Mr. Melcher:

The purpose of our organization is to prevent religiously-based medical neglect of children. We oppose statutory exemptions that allow parents to substitute religious rituals or quackery for the medical care that a child needs.

You have asked for information on the status of exemptions in other states for faith-healing or non-medical remedial treatment. We are happy to provide it. Thirty-eight states have religious exemptions in their civil codes, while an additional six states have exemptions for "non-medical remedial treatment." The six are Montana, Nebraska, Maryland, North Carolina, South Carolina, and Tennessee.

The states that have no exemption either for religion or non-medical remedial treatment in their civil codes are West Virginia, Massachusetts, New York, Ohio, South Dakota, and Hawaii.

To our knowledge, 21 states have religious exemptions in their criminal codes: Alabama, Alaska, Arkansas, California, Colorado, Delaware, Florida, Idaho, Indiana, Iowa, Kansas, Louisiana, Massachusetts, Minnesota, Nevada, New Hampshire, New York, Ohio, Oregon, Texas, and West Virginia.

Only two states have no exemption either for religion or non-medical remedial treatment in either the criminal or civil codes. They are South Dakota and Hawaii.

These exemptions have contributed to hundreds of preventable deaths of children nationwide. They encourage parents to believe that the state has endorsed prayer as a legal substitute for the medical care that the child needs. The parents do not comprehend the risk they are taking with their child's life when they believe the state has endorsed their behavior. The exemptions also discourage would-be reporters from reporting their knowledge of a sick child to Child Protection Services. In some cases they have prevented investigation and court ordering of

QUESTIONS AND ANSWERS ON RELIGIOUS EXEMPTIONS FROM PARENTAL DUTIES OF CARE

Prepared by CHILD, Inc., Box 2604, Sioux City IA 51106

1. Are these religious exemptions mandated by the First Amendment?

No. The courts have never ruled that freedom of religion gives anyone the right to cause or allow injury to a child. Courts have consistently ruled that freedom of belief is absolute, but freedom to act out religious beliefs can be limited by vital state interests. The issue here is not an adult's freedom of religion, but whether an adult can impose his or her religion on a child to the child's detriment.

2. Will repeal of these exemptions cause excessive state intrusion in families?

Repeal should not cause harassment of parents by the state. Repeal would simply establish a uniform standard. All parents would be required to provide necessary medical care. The state has no right to investigate parents because of community prejudice against their religion. The state must have reason to believe that a specific threat to the welfare of a child exists before it can investigate an allegation of child abuse.

3. Are court orders adequate to protect children associated with faith-healing sects?

No. Court orders have worked fairly well to protect children of Jehovah's Witnesses because the Witnesses object only to blood transfusions. They take their children regularly to doctors, who know when a transfusion is needed and quickly get the courts to order the procedure.

Several sects, however, object to nearly all medical treatment and diagnosis. When their children are ill, parents and fellow church members are usually the only ones who know about it. The courts have no reliable way to learn the illnesses of these children in time to save their lives.

Children are helpless. They cannot assert rights for themselves. Someone must have a legal responsibility to care for them. Parents have custody of children and should therefore have a duty to provide needed medical care. The state cannot monitor children's health continuously.

4. Should the state punish loving parents who are acting out sincere religious beliefs?

To establish a legal duty, the state has to spell out a penalty for failure to obey. That is the only way laws establish a duty, and that is true for everything from running a red light to murder.

Religious exemptions put the state in the position of announcing in advance that parents have the right to withhold lifesaving medical care on religious grounds. This is a death sentence for children. The state must have the option of prosecution available to create a parental duty to care for the child.

5. Can the state set a clear standard on when to seek medical care?

The state should not require anyone to seek medical treatment for trivial, self-limiting illnesses. Many child protection laws require parents to provide "*adequate* food, clothing, shelter, and medical care." There are variations in what is considered adequate in each of these areas; the state allows a range of behavior. But there is also a point at which a reasonable, prudent parent would recognize that a child might be seriously ill or injured. At that point the state should require the parent to seek medical attention.

6. Should medicine have "a monopoly" on treating children? Does repeal of religious exemptions outlaw spiritual healing?

The Christian Science church publishes data on the failures of medicine and then asks if medicine should be the only legal health care. But who is being narrow-minded? No one is trying to outlaw prayer. Doctors are willing for people of any denomination to pray for their patients. It is the Christian Science church that says medicine and prayer cannot be combined.

Religious exemptions make prayer a legal *substitute* for the medical care needed by a sick child. Parents should not be allowed to deprive a sick child of all the vast resources of twentieth-century medicine. The only health care that the state should recognize for seriously ill children is state-licensed, secular health care.

7. Can the law change behavior motivated by religious belief?

From our observation, laws can change behavior motivated by religious belief. We believe many parents would be relieved to obey state laws if the state would make its standards clear. Having a clear legal duty relieves the parents of breaking moral laws of the church. But even if clear laws cannot always prevent a tragedy, we would still say that the state has a moral obligation to set forth a standard in defense of a child's right to live.

8. Doesn't faith healing have evidence that it works?

Faith healing has thousands of anecdotal accounts of healing. The body has a rich array of processes for healing itself. Also, the mind and spirit do impact upon disease and health. But religious healing does not have controlled studies or statistical data to indicate that it can heal diseases that ordinarily require medical intervention. It usually lacks appropriate documentation for its anecdotal accounts.

9. Hasn't Christian Science won a lot of recognition as a health care system?

Most insurance companies will reimburse for the bills that Christian Science practitioners send for their prayers. The Internal Revenue Service allows deductions for these bills as a medical care expense. Medicare/Medicaid reimburses for care given by unlicensed church nurses in Christian Science nursing homes.

The Christian Science church uses such recognitions as evidence that Christian Science deserves legal status as health care for children. But they were not given because of any evidence that Christian Science heals disease. The state has a moral and legal obligation to safeguard the lives of minor children. It should not allow unlicensed methods to substitute for medical care of seriously ill children.

10. The number of children dying from religious beliefs against medical care is a tiny fraction of total child abuse. Is it worth the effort to repeal religious exemptions?

Repeatedly, one hears that religious exemptions enter state codes because legislators do not want larger issues jeopardized. To be sure, only a small number of children are injured by religious beliefs against medical care, but they still have rights. Our form of government is supposed to stand up for the rights of the individual. These children have a Fourteenth Amendment right to equal protection of the laws.

CALLS FOR REPEAL OF RELIGIOUS EXEMPTIONS

American Academy of Pediatrics:

The Committee on Bioethics asserts that (1) the opportunity to grow and develop safe from physical harm with the protection of our society is a fundamental right of every child; (2) the basic moral principles of justice and of protection of children as vulnerable citizens require that *all* parents and caretakers must be treated equally by the laws and regulations that have been enacted by state and federal governments to protect children; (3) all child abuse, neglect, and medical neglect statutes should be applied without potential or actual exemption for religious beliefs; (4) no statute should exist that permits or implies that denial of medical care necessary to prevent death or serious impairment to children can be supported on religious grounds; (5) state legislatures and regulatory agencies with interests in children should be urged to remove religious exemption clauses from statutes and regulations. . . .

Claims of exemption from responsibility for care—as defined above—should not be honored on religious or philosophical grounds, and offending parents or caretakers should not be treated more or less stringently than those who make no such claims. The Academy must unequivocally defend the rights of *all* children to the protection and benefits of the law and medicine when physical harm—or life itself—is in the balance.

Pediatrics 81(Jan 1988): 169-71

American Medical Association:

The Board recognizes that the constitutional guarantee of freedom is a cherished right, but. . . that its preservation does not sanction harm to others. In these cases helpless children become the innocent victims. State statutes should not expand the ability of persons claiming freedom of religion to deprive children in their control of necessary medical care.

Report JJ (I-86)

National Committee for Prevention of Child Abuse:

NCPCA reaffirms its position that children have a right to a healthy and nurturing environment. When the denial by parents due to religious beliefs of available necessary medical care is life threatening or may be disabling, then the child's rights and interests take precedence over the rights and interests of the parents or caregivers. Therefore all child abuse, neglect, and medical neglect statutes should be applied to provide equal protection to all children without potential or actual exemption for religious belief of their parent or caretaker.

NCPCA Memorandum Dec 1990/Jan 1991

National District Attorneys Association:

WHEREAS, all children are entitled to equal access to all available health care, and
WHEREAS, all parents shall be held to the same standard of care in providing for their children, and all parents shall enjoy both equal protection and equal responsibilities under law, regardless of their religious beliefs,

BE IT THEREFORE RESOLVED that the National District Attorneys Association shall join with other child advocacy organizations to support legislation to repeal exemptions from prosecution for child abuse and neglect.

NDAAs policy position adopted 14 July 1991

Iowa Conference of the United Methodist Church:

WHEREAS: We acknowledge that spirit and flesh are not enemies but are both blessed by God. Thus, medical care is a gift of God, a miracle of research and love brought through God's grace and love and human compassion and dedication to doing good, and

WHEREAS: Several children have died in recent years because of religious beliefs against medical care, and

WHEREAS: Our courts have consistently ruled that freedom of religion does not extend to allowing harm to come to others;

THEREFORE, BE IT RESOLVED: That the Iowa Annual Conference affirms prayer as an important factor in holistic healing, but should not serve as a legal substitute for medical care when the life of a minor is at stake;

FURTHER, BE IT RESOLVED: that the Iowa Annual Conference supports changes in Iowa law to maintain that children are entitled to life-saving medical care along with food, clothing and shelter regardless of their parents' religious beliefs.

Resolution 8304 adopted June 1991

References on Injuries to Children from Religiously-based Medical Neglect

Distributed by CHILD Inc., Box 2604, Sioux City IA 51106, Ph. 712-948-3500

- American Academy of Pediatrics. "Religious exemptions from child abuse statutes." *Pediatrics* 81 (Jan. 1988): 169-71.
- Barrett, Stephen. *The New Health Robbers*. Philadelphia: George Stickney, 1981.
- Battin, Margaret. *Ethics in the Sanctuary: Examining the Practices of Organized Religion*. New Haven: Yale University Press, 1990.
- Brenneman, Richard. *Deadly Blessings: Faith Healing on Trial*. Buffalo: Prometheus Books, 1990.
- Cass, Ramona. "We let our son die." *Journal of Christian Nursing* Spring 1987: 4-8.
- Cawley, Clifford. *The Right to Live: the Position of the Law when Religious Dogma Opposes Medicine*. New York: A. S. Barnes and Co., 1969.
- Cohn, Jordan. "When God is the doctor." *Student Lawyer* February 1987: 31-36.
- Curriden, Mark. "Blood, the Bible and the Law." *Barrister Magazine* Fall 1990: 13-15, 41-2.
- Damore, Leo. *The "Crime" of Dorothy Sheridan*. New York: Dell, 1992; Arbor Hse, 1978.
- Delaney, Kevin. "We thought our faith could save our son." *Redbook* January 1987: 104-6.
- Dodes, Ivy. "'Suffer the little children. . .': toward a judicial recognition of a duty of reasonable care owed children by religious faith healers." *Hofstra Law Review* 16 (Fall 1987): 165-90.
- Kase, Lori. "Profile: Rita Swan." *American Health* July-August 1992: 16, 18-19.
- Kaunitz, Andrew, Craig Spence et al. "Perinatal and maternal mortality in a religious group avoiding obstetrical care." *American Journal of Obstetrics and Gynecology* 150 (1 Dec. 1984): 826-31.
- Kohn, Alfie. "Mind over matter." *New England Monthly* March 1988: 58-63, 96.
- Malecha, Wayne. "Faith healing exemptions to child protection laws: keeping the faith versus medical care for children." *Journal of Legislation* 12 (Summer 1985): 243-63.
- Margolick, David. "Death and Faith, Law and Christian Science." *The New York Times* 6 Aug. 1990: sec. 1:1.
- McLaughlin, Margaret. "This too is child abuse: medical treatment denied for religious reasons." *The Counselling Interviewer* Fall 1990: 19-20.
- Monopoli, Paula. "Allocating the costs of parental free exercise: striking a new balance between sincere religious belief and a child's right to medical treatment." *Pepperdine Law Review* 18 (1991): 319-52.
- Murdock, Rosamond. *Suffer the Children*. Santa Fe: Health Press, 1992.
- Parker, Larry. *We Let Our Son Die*. Irvine CA: Harvest House, 1980.

- Randi, James. *The Faith Healers*. Buffalo: Prometheus Books, 1987.
- Simmons, Thomas. *The Unseen Shore: Memories of a Christian Science Childhood*. Boston: Beacon, 1991.
- Simpson, William. "Comparative longevity in a college cohort of Christian Scientists." *Journal of the American Medical Association* (hereafter cited as *JAMA*) 262 (22-29 Sept. 1989): 1657-8.
- Simpson, William. "Comparative mortality of two college groups, 1945-83." *Mortality and Morbidity Weekly Report* 40 (23 Aug. 1991): 579-82.
- Skolnick, Andrew. "Christian Scientists claim healing efficacy equal if not superior to that of medicine." *JAMA* 264 (19 Sept. 1990): 1379-81.
- Skolnick, Andrew. "Faith healers: how charismatic 'healers' promise miracles while picking the public's pocket." *Social Issues and Healthcare Review* Spring 1988: 46-52.
- Skolnick, Andrew. "Religious exemptions to child neglect laws still being passed despite convictions of parents." *JAMA* 264 (12 Sept. 1990): 1226, 1229, 1233.
- Swan, Rita. "Barriers to medical care of children: how you can help," *The Exchangite* Jan.-Feb. 1989: 6-7.
- Swan, Rita. "Christian Science, faith healing, and the law," *Free Inquiry* Spring 1984: 4-9.
- Swan, Rita. "Christian Science: threat to children?" *A. D.* July-August 1980: 25-6.
- Swan, Rita. "Faith healing, Christian Science, and the medical care of children," *New England Journal of Medicine* 309 (29 Dec. 1983): 1639-41.
- Swan, Rita. "Faith healing sects and children's rights to medical care," synopsis of workshop published in *Proceedings of the Fifth National Conference on Child Abuse and Neglect* (1982), pp. 174-80.
- Swan, Rita. "First Amendment does not give the right to injure children," *The Los Angeles Times* 14 July 1990: F16.
- Swan, Rita. "Fragile life: religious beliefs that kill children," *Kentucky Hospitals* Winter 1989: 8-12.
- Swan, Rita. "The law should protect all children," *Journal of Christian Nursing* Spring 1987: 40.
- Swan, Rita. "Laws protect parents who let children die," *USA Today*, opinion/editorial page on Children in Pain 17 Aug. 1983: 8A.
- Swan, Rita. *The Law's Response when Religious Beliefs against Medical Care Impact on Children*. Sioux City: CHILD Inc., 1990. Available at \$7.95.
- Swan, Rita. "Review of The Health and Wealth Gospel by Bruce Barron," *Cultic Studies Journal* 5. 1 (1988): 136-9.
- Swan, Rita. "'Spiritual healing' claims wither on the vine of investigation," *New York City Tribune* 28 Jan. 1988: 8.
- Wright, Rosalind. "A matter of life and death." *Good Housekeeping* March 1990: 86, 88, 93.

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