#### MINUTES

MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON HUMAN SERVICES & AGING

**Call to Order:** By CHAIRMAN DUANE GRIMES, on February 8, 1995, at 3:30 p.m.

#### ROLL CALL

#### Members Present:

Rep. Duane Grimes, Chairman (R) Rep. Carolyn M. Squires, Vice Chairman (Minority) (D) Rep. Chris Ahner (R) Rep. Ellen Bergman (R) Rep. Bill Carey (D) Rep. Dick Green (R) Rep. Antoinette R. Hagener (D) Rep. Deb Kottel (D) Rep. Bonnie Martinez (R) Rep. Brad Molnar (R) Rep. Bruce T. Simon (R) Rep. Liz Smith (R) Rep. Loren L. Soft (R) Rep. Kenneth Wennemar (D)

Members Excused: Rep. John C. Bohlinger, Vice Chairman (R)

Members Absent: None

- Staff Present: David Niss, Legislative Council Patti Borneman, Substitute Secretary
- **Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

#### Committee Business Summary:

Hearing:	HB	407,	HB	436,	$_{\mathrm{HB}}$	435	
Executive Action:	HB	335	DO	PASS	AS	AMENDED	
	HB	245	DO	PASS			
	HB	89	DO	PASS	AS	AMENDED	

{Tape: 1; Side: A; Approx. Counter: 000; Comments: This meeting was recorded on four 60-minute cassette tapes.}

#### HEARING ON HB 407

#### Opening Statement by Sponsor:

**REP. JOHN COBB** said this bill is an act requiring the Board of Nursing to delegate certain nursing tasks to unlicensed persons.

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In 1993, the legislature passed SB 121 providing for delegation of nursing tasks to unlicensed persons. The Board of Nursing adopted administrative rules which pertained only to the giving of medicines. Many groups felt a broader delegation of authority was needed, which proved to be a controversial issue when they got together to discuss it.

He cited pages 2 and 3 of the bill where it asks the Board to provide for delegation of those instances where nursing tasks can be performed by unlicensed persons in a manner that does not endanger the health and safety of the public. Supervision by a licensed nurse would not be required in order for a nursing task to be delegated, and this could take place in a hospital, nursing home, doctor's office, or other settings where on-site supervision by a nurse is available.

{Tape: 1; Side: A; Approx. Counter: 60; Comments: n/a.}

#### Proponents' Testimony:

Rose Hughes, Executive Director, Montana Health Care Association (MCHA), submitted written testimony. EXHIBIT 1 After reading her testimony, she referred to the rules on delegation and assignment for nursing, and proposed changes to the rules which are included in this exhibit.

{Tape: 1; Side: A; Approx. Counter: 310; Comments: n/a.}

Jim Ahrens, President, Montana Hospital Association, said they support the passage of HB 407. Changes are occurring in the health care delivery field and since many communities are not able to keep their hospitals, they passed a legislation known as Medical Assistance Facilities to create changes that were needed. They support HB 407 because it would help hospital meet staffing requirements, which is especially important to rural hospital. Montana's hospitals are working hard to deliver high quality and appropriate health care services in a more cost effective manner.

The second reason they support this bill is because nursing shortages have been a problem in the past, and while that isn't the case today, but if a shortage should recur, this bill could provide an important tool in ensuring that people who need hospital care will be able to get it. They support the bill because they believe it's inappropriate to regulate the delegation by setting. If nursing task are delegated, that should be in a hospital where physician and nursing supervision is guaranteed. They urged the committee to support the bill.

Jerome Loendorf, Montana Medical Association, expressed their concern for the regulation that allows nurses to delegate to unlicensed personnel in prisons, schools and similar facilities, but does not allow them to make the same delegations in hospitals, physician's offices or nursing homes, where most health care services are performed. He said the safest place for HOUSE HUMAN SERVICES & AGING COMMITTEE February 8, 1995 Page 3 of 26

such delegations of services are in hospitals, physician's offices and nursing homes, so for that reason they support the bill.

Kelly Williams, Medicaid Services Division, Department of Social and Rehabilitative Services (SRS), stated their support for the bill as they believe it will provide some cost savings if nursing tasks can be delegated in many instances. (Without objection from the committee, Ms. Williams made this very brief statement at the end of the opponents' testimony. It is placed here to be included in the record as a proponent of this bill.)

{Tape: 1; Side: A; Approx. Counter: 450; Comments: n/a.}

#### **Opponents' Testimony:**

Nancy Heyer, President, Montana State Board of Nursing, said that the Board of Nursing voted unanimously that morning to oppose HB 407 for the following reasons. This bill was drafted without the knowledge or involvement of the Board of Nursing in any kind of informal, collaborative, or negotiated way. She said when the bill was first introduced, the title was called to change nursing rules to reduce health care costs. She said board members read about it in the newspaper and no effort was made to work with them on current existing rules, in fact, their inquiries were actually ignored. This concerned her because any legislation that impacts the practice of nursing ought to involve nurses. She said the proponents probably have good reasons, but they're talking about a nurse's license.

Ms. Heyer explained the meaning of delegation. As a licensed nurse, if she's in a situation where she's going to be delegating a nursing task to someone, her job to make the correct assessment puts her license on the line. They supported SB 121 in 1993, because they wanted the ability to delegate, so they could respond to the ever-increasing need for some nursing involvement, but not necessary by a licensed nurse. Nurses should be available in nursing homes. During the process of getting SB 121, they replied to many inquiries from nursing homes, personal care homes, Medicaid programs, Hospices, home care programs, schools and prisons, that have people in good shape and are ambulatory, but still need to have someone nearby to administer medication. When they responded to this need, they thought they were being very cautious in the development of the rules.

Her second point is that the current statute is adequate and that the rules, if inadequate, can be changed. However, they feel this legislation is unnecessary. Furthermore, the Board didn't like the underhanded way that the legislation was drafted without their involvement. She said the rules are open and flexible and can be changed. They have desired to worked collaboratively with other groups and feel strongly that what this piece of legislation does is allow facilities to put licensed nurses in higher jeopardy because the people to whom tasks are delegated HOUSE HUMAN SERVICES & AGING COMMITTEE February 8, 1995 Page 4 of 26

are working under that nurse's license. Currently, the rules in the statute protect nurses from having to do that if they feel it could be a problem. She said the Board has given permission to Colleen Graham, their counsel, and Diane Wickham, executive director, to answer any questions they may have.

{Tape: 1; Side: A; Approx. Counter: 700; Comments: n/a.}

Steven Shapiro, Montana Nurses Association, submitted written testimony. EXHIBIT 2

{Tape: 1; Side: B; Approx. Counter: 000; Comments: n/a.}

Barbara Booher, Executive Director, Montana Nurses Association, stated they are opposed to HB 407 because they believe every patient deserves a nurse. She submitted written testimony. EXHIBIT 3

{Tape: 1; Side: B; Approx. Counter: 108; Comments: n/a.}

Marion H. Nelson, Executive Director, Montana LPN Association, submitted written testimony. EXHIBIT 4

Linda Henderson, R.N., Commission on Nursing Practice, submitted written testimony. EXHIBIT 5

Informational Testimony: None

Questions From Committee Members and Responses:

**REP. ELLEN BERGMAN** asked **REP. COBB** if the Board of Nursing didn't know anything about it, who drafted the bill? **REP. COBB** said he got some calls from some doctors, a nurse, and once the draft bill was issued, he heard from SRS, Rose Hughes, and others. After the rules are changed, the authority would be with the Board of Nursing. **REP. BERGMAN** asked why the Board of Nursing weren't consulted. **REP. COBB** replied that the bill kept getting drafted, but the Board of Nursing refused to agree to the change in settings. He said it was hard to keep negotiating when they didn't want to change the rules. That's why the bill was introduced, because they'd made it clear they wouldn't cooperate.

CHAIRMAN GRIMES asked Ms. Hughes if her group was involved in the administrative rules that were written by the Board of Nursing. Ms. Hughes said they were, and showed a file folder to the committee with correspondence with the Board of Nursing as part of the administrative process. They asked many times for their cooperation, and they kept getting no answers. That's why the proponents are there trying to pass this bill, because there was no negotiating or dealing with this issue.

CHAIRMAN GRIMES asked if they considered bringing it before the administrative codes committee or other legislators about what was happening the rulemaking process. Ms. Hughes said they did

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consider going to the code committee, but given that they don't have ability to stop a rule from being adopted, and because they didn't know until after the rule was adopted what it was going to say. She described the process they participated in to get SB 121 passed and hoped when the rule was adopted, these issues would be dealt with. Even though the rule was adopted, the issues were not dealt with, and they didn't feel the administrative code committee could provide assistance.

{Tape: 1; Side: B; Approx. Counter: 317; Comments: n/a.}

**REP. BRUCE SIMON** asked **Colleen Graham, Legal Counsel, Board of Nursing, Department of Commerce**, asked her about the legislative intent of SB 121, to which she stated she was not the legal counsel at that time. The rule changes took place prior to her employment. **Ms. Heyer** offered to answer the question.

REP. SIMON said he remembered serving on this committee in 1993 and her involvement in the SB 121 legislation, and has been reviewing minutes from those hearings to learn what the intent was in regard to the delegation process. Ms. Heyer said she was involved in the delegation issue as a non-member of the board in 1989 as a home care and hospice provider. She served on a task force of 23 providers of care including representatives of the Medicaid Division, nursing homes, prison, school boards, office of public instruction. Six or seven drafts of the rules were experimented and sent out before SB 121 was passed, because they wanted to allow lots of time for people to look at this legislation. She said the setting never changed in all copies of the drafts. She could not recall any "terrific argument other than coming from the nursing home industry itself, that said we want to have fewer nurses." The Board of Nursing, at that point felt it was such a new concept, currently in effect for only a year, and wanted to experiment with the rules being as narrow as possible, with the possibility to expand the tasks and the setting. They have never been adverse to it.

**REP. SIMON** wanted to understand the Board's thinking about the adoption of the rules. On one hand, there is the concern about licensure and nurses' responsibilities and on the other hand, the issue of the setting being the least supervised setting of all. He asked for an explanation why they chose to go that path. **Ms.** Heyer said there were two reasons. The first was because it was not an economic issue in the Board's view, but was an access to care issue and was their belief that in those settings, such as the prisons and schools. She said 300 children in Billings need to have a Ritalin pill at 11:00 a.m. every morning. The school district cannot afford to pay a nurse to administer that medication. This was an access problem.

The second reason they were concerned about expanding delegation into an institutional setting is because they have statistic supporting the disciplinary action they have taken, a large percentage is in practice violations in nursing homes by licensed

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nurses. In comparing the settings, they found nursing home to be an area of risk, and other areas not as much at risk. They intended for the rulemaking process to open as they demonstrate that it works. They felt it would have been irresponsible on their part to open it up to any nursing task in any setting under any circumstance.

**REP. SIMON** said Mr. Shapiro mentioned that someone may be sitting in an office somewhere delegating authority to people doing certain tasks, but he noticed in the rules that the nurse responsible for the nursing care of patients, shall make a supervisory visit once a month. He didn't think that was very much supervision over someone who is not trained and providing medication to a patient in a rural setting. He said he was trouble by that and was trying to understand the different between patient safety and different setting requirements. Ms. If she were a school Heyer compared the two kinds of settings. nurse in Chester, for instance, and have ten children in the school that have routine medication. She described the training and oversight that she, as a nurse, could provide. On the other hand, the passing of medications in an institution as a licensed nurse, she has to do a "mini-assessment" each time. The sickness level of people in hospitals is much higher than the general population for which SB 121 was intended. They originally wanted the frequency of supervision to be every two weeks, but it was a compromise, because it would be a hardship to someone to travel that often across the state.

REP. SIMON referred to the statement about children in a school needing daily medication and said he missed her comment about the one-on-one situation, because in schools, it may not be one-onone, but would be a multiple dosage by an untrained person within a school setting. Ms. Heyer said she could only respond to their desire to find a reasonable place to stop in order to assess whether or not it works. She couldn't say that the rules are perfect, because they are not. They had hoped to limit the number of potential problems to increase the success of delegation. She said it's too early in the process to determine whether or not it is succeeding, and stated that there are very few nurses in Montana who are willing to delegate under the current statute's limited circumstances, so opening it up is unlikely to increase their willingness to delegate. Who they are administering the medication to makes "all the difference in the world."

**REP. SIMON** referred to Montana State Prison and the statute's application to only the Deer Lodge facility, and not the other corrections facilities. **Ms. Heyer** said they could be included through the rulemaking process. In response to **Ms. Hughes** statement that they refused to cooperate, she said they made a prudent decision and asked for more time to work it out. If the prison had asked the Board to expand the rules to the Swan River Boot Camp or other places, they would consider it. **REP. SIMON** asked if it was the view of the board that the delegation of

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authority was to bring down health care costs or provide access, to which Ms. Heyer replied that the Board always presented this bill, which they sponsored, as a way to increase access to licensed involvement. It was a way to address the administering of medication by school secretaries, prison guards, and hospice volunteers who were violating the law. The intent was always an access issue. The cost aspect had to be considered, but was not their primary purpose as a board.

#### {Tape: 1; Side: B; Approx. Counter: 866; Comments: n/a.}

CHAIRMAN GRIMES asked Mr. Ahrens if the board's understanding of the legislation as well as the statement of intent was to draft rules based on the access issue as well as the economic issue. Mr. Ahrens said when they got into the delegation issue, cost was always a consideration. CHAIRMAN GRIMES asked what his feeling was about the intent of SB 121 last session. Mr. Ahrens said they were not involved in the bill at that time.

CHAIRMAN GRIMES asked Mr. Booher if it was her intention with the rules to further expand those rules as described by Ms. Heyer, and asked if they intended to review them and expand them further. Ms. Booher said the rules are the Board of Nursing's rules, not the Montana Nurses Association's rules, but her belief is that they intended to go slowly and to be conservative.

# {Tape: 2; Side: A; Approx. Counter: 000; Comments: Part of Ms. Booher's testimony was lost while tape was being turned over.}

Ms. Booher said they wanted to proceed cautiously because they saw the potential for substitution of unlicensed personnel for LPNs and RNs, and were very concerned about it, not only from a professional standpoint, but from the patient safety standpoint. She said patient safety should never be compromised and they concur with the Board of Nursing's management of this process.

**REP. LIZ SMITH** asked **REP. COBB** with regard to the fiscal note that assumes costs associated with the rule changes will be absorbed in the executive budget and asked how he perceived this happening. **REP. COBB** replied that the fiscal note says that the board of nursing would need to make their rule changes and would absorb the cost into their existing budget. **REP. SMITH** then asked if he ever needed nursing care. **REP. COBB** said he had, in a hospital. **REP. SMITH** asked if the people caring for him had training and he said they were nurses. **REP. SMITH** said that the bill stated that the Board will specify training and supervisory requirements for the delegation of nursing tasks. She referred to the administration of medication and why isn't current law adequate. **REP. COBB** clarified what the bill would do and defined the health and safety aspect of providing trained personnel in all settings.

**REP. LIZ SMITH** said if there was one specific task that they are delegating, and the person goes beyond that task, the nurse is no

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longer liable. She asked if that was correct and why isn't the existing law appropriate. **REP. COBB** said the issue is how far they want to go besides medication. The access issue is one they keep asking; if they're going to give access to schools and prisons, why can't they do the same in hospitals and other facilities. In their rules, when they were asked, the Board disagreed that there's no rationale for limiting delegation to specific settings. He said the delegation was proposed for settings where there is a lack of trained personnel to undertake nursing tasks.

**REP. LIZ SMITH** asked about the invasive procedures that are mentioned in the bill, and wondered if untrained personnel would know how to access the situation and solve potential problems that could arise. **REP. COBB** replied that the Board shall adopt the rules and have the final say as to who would be allowed to do certain procedures. He reiterated the issue is whether, if schools have it, why can't hospitals and other facilities do it as well.

{Tape: 2; Side: A; Approx. Counter: 237; Comments: n/a.}

#### Closing by Sponsor:

**REP. COBB** said it was interesting that both sides were seeing reality from a different point, and wouldn't it be nice, with all the groups that are present at the hearing, if they could get together and negotiate a settlement. He mentioned a study on the rules that would be done anyway, and said it would be nice if they had a timetable to work out some of these issues. If they don't and can't agree, it rests with the committee to decide if they should tell the Board to go back to the rules, and consider expanding the settings to include hospitals, physician's offices and nursing homes for delegation of nursing tasks.

{Tape: 2; Side: A; Approx. Counter: 287; Comments: n/a.}

#### HEARING ON HB 436

#### Opening Remarks by Sponsor:

**REP. DEB KOTTEL, HD 45, Great Falls,** said this bill pertains to standards for certification of chemical dependency counselors. She is principal investigator of the Montana Addiction Training Center for the state of Montana, and sits on the Chemical Dependency Counselor Certification Task Force Committee. As a member of this committee, she discovered there were problems arising due to legislation. **REP. KOTTEL** said there were proponents and representatives of the Department of Corrections and Human Services who could explain exactly what this bill would attempt to do.

#### Proponents' Testimony:

Darryl Bruno, Administrator, ALCON Drug Abuse Division, Department of Corrections and Human Services (DCHS), said this bill is strongly supported by the Department. He read written testimony and submitted it for the record. EXHIBIT 6

{Tape: 2; Side: A; Approx. Counter: 448; Comments: n/a.}

**Pat Melby, Rimrock Foundation, Billings,** said they are very much in support of HB 436. They felt it was very important for the DCHS to have the flexibility to adopt the standards and guidelines and the evaluation of techniques to be used in certifying chemical dependency counselors. They urged a do pass vote.

John Brekke, Director/Owner, Wilderness Treatment Center, Marion, Montana, encouraged the committee to pass this bill. He believed this bill would enable them to hire qualified staff and to attract people to work in Montana.

Kathy McGowan, Chemical Dependency Programs of Montana, said another program operator is present who will give more specific reasons for passage of this bill. She emphasized that it was endorsed by all the programs belonging to her organization, because it would enhance their programs.

Mike Ruppert, Boyd Andrew Chemical Dependency Care Center, Helena, said the key issue of certification that the bill would resolve is the issue of reciprocity. He said a national consortium of 20+ states have a reciprocity agreement regarding certification. Members of the consortium do not need to become recertified in states belonging to the consortium. Montana does not belong to the consortium at this time because the requirements for certification are in state law vs. rules. What this bill would do is take it out of the law and puts in into rulemaking.

Mr. Ruppert said they have a hard time recruiting counselors from out of state, because of the necessity for them to go through the certification process. This means two things for someone considering employment in the state: if they are not certified, they would have to accept a lower salary and it would requirement them to take written and oral tests and submit examples of their work. The bill would not eliminate the requirements, but would allow them to recruit from all over the country. He strongly urged the committee to pass the bill.

#### **Opponents' Testimony:** None

#### Questions from Committee Members and Responses:

**REP. SIMON** asked **Mr. Bruno** if this bill would wipe out every requirement to be a chemical dependency counselor and let the

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Department do what they want to do. He said he'd never seen a bill like this one. He could understand them wanting to alter some things and give them for flexibility, but he wondered why they are eliminating every requirement and giving the Department the total authority to make decisions about the requirements.

Mr. Bruno replied that they believe this will enhance their system with this process, rather than revising all the requirements in the bill. They still intend to have a very high level of educational requirements and that will not be changed. They want to go to a testing process that would include an oral and case work samples in a presentation model. Currently, the law is very specific about the minimum qualifications to be a chemical dependency counselor. He deferred to **Phyllis MacMillan** who is working on the task force that came up with the legislation.

**Phyllis MacMillan, Manager, Certification and Training, DCHS,** said everything in the bill is already in rules: the qualifications, requirements, work experience, and education. When the task force started working on this, they realized that there were restrictions in the law that caused obstacles. For instance, they've been using the same tests since 1978 and since they are in law, they can't be changed and updated.

**REP. SIMON** said he couldn't see in the law where they are striking specific exams. The exams are adopted by rule at this time. The language being struck is that they would have to successfully complete a competency examination that must include a written exam, oral exam, and review of work samples. He thought they could change a specific exam if they wished under the current rules. He asked where it said that a specific exam was in the law.

Ms. MacMillan responded that there are three different exams. She explained that oral exams and tapes are reviewed by the Department. A national exam called Case Presentation Methods that would combine the orals and tapes in a more extensive exam, where they make a presentation. The task force is considering using that exam and using that Case Presentation Method, rather than the old oral exam that they put together, and then the applicant submits tapes of a counseling session which they all have to listen to and evaluate. She said it is more a matter of being able to consider the National Association's testing process.

**REP. SIMON** asked if the person being certified would have earned a bachelor's degree in alcohol and drug studies, psychology and sociology, social work counseling or a relating field from an accredited college or university. **Ms. MacMillan** said one of the three that he listed, which is in rules, and would not be changed. **REP. SIMON** said they may be in rule, but are also in statute. What she is asking them to do is basically throw out the statute, don't worry about it, and give the DCHS full HOUSE HUMAN SERVICES & AGING COMMITTEE February 8, 1995 Page 11 of 26

authority to establish all the criteria, while eliminating all the requirements. He was trying to understand why they want to throw out the entire statute, and just replace it with "legislation by the bureaucracy." He said she was asking them to turn the entire legislative process over to the Department and wanted to know why. Ms. MacMillan said it wasn't up to them and she submitted a list of task force members. EXHIBIT 7 This task force represents a vast array of people who worked to change the certification standards and methods, and she asked them the same questions. "Are you willing to trust this bureaucracy to develop this?" They recommended that it be in rules and she expressed surprise that they would trust the Department.

{Tape: 2; Side: A; Approx. Counter: 940; Comments: n/a.}

**REP. LOREN SOFT** asked **Ms. MacMillan** referred to the changing and upgrading of tests, he asked if the proposed language in the bill would restrict them from using NDAC testing. **Ms. MacMillan** said the part that states "written, oral and taped" would be restrictive. She said this process takes one to two years to complete and rural programs cannot hire anyone unless they are fully certified.12

{Tape: 2; Side: B; Approx. Counter: 003; Comments: n/a.}

**REP. SOFT** said he could understand the reciprocity issue, but had a difficult time understanding why they would wipe out the statutes that are there and return to rulemaking, when it appeared they already had a fair amount of flexibility to do what they needed to do.

CHAIRMAN GRIMES asked REP. KOTTEL to address the issue about the language that would be removed and why they'd be getting rid of the minimum standards, in a sense. REP. KOTTEL said it's a timing issue. She said the task force (which is made up of people from a wide variety of backgrounds) discovered that there is a crisis related to people trying to get through the process to become certified chemical dependency counselors. She said if they looked at the statute, it says a bachelor's degree is required, but while a master's degree can be obtained in the same field, the statute does not mention it.

She referred to the 2,000 hours of supervised work experience that is currently in the statute. She thought when the legislature first put that in, they probably didn't know it would be a burden, but it happens to be very burdensome for someone to earn such experience prior to receiving their certification. "It is a huge barrier for getting in-state people certified." The task force looked at how that language reads, so it's not an issue whether or not the person had paid work experience or if it was through an internship, for instance. The task force identified 20-25 major issues, such as scope of practice and rating systems. HOUSE HUMAN SERVICES & AGING COMMITTEE February 8, 1995 Page 12 of 26

The timing was a problem because they only had five months prior to the legislative session to reach a consensus on the type of critical changes that had to be made if Montana was going to have enough chemical dependency counselors, that were educated and trained in Montana. Due to the time constraints, they made this request which is a "leap of faith" that in the next two years, that the task force recommend to the Department, who, with their rulemaking authority, publishes rules, get's public comment on the rules and makes the type of cohesive changes that have to be made "so Rimrock doesn't have to hire out-of-state people."

**REP. SIMON** told **REP. KOTTEL** that it seemed as if the problem is more in the rules than in the statutes. The rules were adopted to implement the law, and this bill would basically say to abandon the law, they'll do it all by rules. He said they probably need to change the rules, more than the law. He wondered why the rules would be any better under this bill.

**REP. KOTTEL** responded that the Department has never put a task force together to address this issue and that's why she was willing to trust the Department to do the right thing.

#### Closing by Sponsor:

**REP. KOTTEL** stated she made her closing remarks in response to **REP. SIMON'S** questions and waived her right to close.

{Tape: 2; Side: B; Approx. Counter: 188; Comments: n/a.}

#### HEARING ON HB 435

#### Opening Remarks by Sponsor:

**REP. DEB KOTTEL, HD 45, Great Falls,** said this bill was part of a package, and the reason she was late to this meeting is because she was introducing a bill to the Education Committee on fingerprinting and background checks of teachers prior to certification. HB 435 would require the following individuals to have fingerprinting and background checks: applicants for licensure for daycare facilities, employees and volunteers of daycare facilities prior to permanent hiring; employees in youth care facilities; and employees of community homes.

The reason this is important is because of the children and the elderly, and because of high-risk populations such as the developmentally disabled (DD). A confidential relationship develops between a caregiver and an individual who is vulnerable because of age and/or medical condition. Because of that vulnerability, those individuals who would seek to be caregivers should receive the "highest, strongest scrutiny." She further defined the three vulnerable groups that need protection: children in daycare, elderly in nursing homes, and developmentally disabled in group homes. She referred to a Judiciary Committee hearing on the Eastmont facility where they discussed the assimilation of people into the community. They become isolated and more vulnerable to victimization. It is important to make sure that people who are in close contact with the vulnerable population do not have a criminal background, for instance, in arson, physical violence, or sexual abuse.

The fiscal note for this bill would not be ready for a few days, but said that the fiscal note on the teacher education bill has a \$700 impact in the first year, and none in following years. The reason is because the applicant bears the cost for the fingerprinting and background check. Currently, in Montana it costs \$8.00 for the background check and approximately another \$24 to complete that with the FBI. An employer could reimburse the employee for this cost after they successfully complete their probationary period.

REP. KOTTEL mentioned that the results of the background check would go into a database that could be used by other counties, so if the person leaves a job in one county and applies for one in another, they do not have to get another test. She described why this made sense, in terms of communities knowing people and in the event something negative happened, the media, for instance, would make it public. The first time a person applies for a job in a high-risk area, they would be required to undertake a background check. The fingerprints would not stay on file as though they are a criminal. Presently, the Department of Justice does fingerprint searches for the Girl Scouts, Boy Scouts and Department of Family Services. The fingerprint card is sent to the FBI for the search, and once it's done, returns the card to the Department of Justice who, in turn, returns the card to the applicant. The Department of Justice releases the information to the employer to aid in making hiring decisions.

She said they could hire people without the check being done, so a period of time is allowed for the employer to make a determination. She addressed the inclusion of volunteers in daycare centers in this process. She believed that babies and children are the most vulnerable and cited cases where the children or spouses of providers have molested children in daycare facilities. They were not employees, but were volunteers. She said there should be absolutely no room for error where children are concerned. She thought a responsible person would gladly pay the \$34 to have the background check to alleviate any anxiety that parents might have.

{Tape: 2; Side: B; Approx. Counter: 519; Comments: n/a.}

#### Proponents' Testimony:

Henry Hibbard, substitute teacher, Great Falls, said he also worked in Arizona as a substitute teacher. One of the reasons he left was because of the horror stories he heard from first HOUSE HUMAN SERVICES & AGING COMMITTEE February 8, 1995 Page 14 of 26

graders when he substituted. He strongly supported this bill and agreed with the sponsor that children should be protected as much as they can. He also wanted to be assured that his mother and father are being well-cared for in a good facility and not neglected.

Rose Hughes, Executive Director, Montana Health Care Association (MCHA), submitted written testimony in support of HB 435. EXHIBIT 8

Susan Hunter, Big Sky Girl Scout Council, Great Falls, submitted a witness statement urging the committee not to amend the bill to include youth groups because of the cost ramifications involved. EXHIBIT 9

{Tape: 2; Side: B; Approx. Counter: 797; Comments: n/a.}

#### Informational Testimony:

Beth Baker, Attorney, Department of Justice, said the Department's role would be as the conductor of background checks and was present to explain how that is done and how the bill would change that. The Department houses the state's identification bureau, which is the state repository for criminal history information. She said they provide background checks on request for law enforcement as well as non-law enforcement agencies. Currently, they can only provide information to nonlaw enforcement agencies that is restricted to Montana convictions. This is partially due to federal requirements. Federal law prohibits the FBI from conducting background checks for non-criminal licensing and professional purposes unless it is required by state law.

They have received inquiries from organizations that would like to engage in "one-stop shopping," for instance the Yellowstone County Head Start and the Western Montana Comprehensive Developmental Center in Missoula, require background checks now, but since they can only get Montana information, they have to inquire in each state where the person has resided. This proves to be cumbersome and costly. They've been encouraged to develop a service in Helena, and the only way they can do that is through this bill. It will allow them to request the FBI to do a nationwide background check, and tap into information allowed by each state for dissemination.

{Tape: 3; Side: A; Approx. Counter: 002; Comments: Mr. Myers' first name was stated while the tape was being changed and was not recorded.}

Mr. Myers, private citizen, Billings, said he supported this bill for security reasons.

#### Opponents' Testimony:

Scott Crichton, Executive Director, American Civil Liberties Union of Montana, said he was there to express opposition to HB 435 as they did on HB 373 which would ask teachers to submit to fingerprinting and background checks. He said he believed this bill is a affront rooted in fear and distrust of the American tradition and the explicit Montana birthright of individual privacy. He asked if they should assume that everyone who wishes to work in these places should be suspected of having a criminal background and then carries the burden or responsibility to prove their innocence. He said that is a scary notion and sets a bad precedent.

The ACLU's national board, 57 years ago, established a policy on fingerprinting which states that "fingerprinting is an invasion of an individual's privacy and the right of anonymity. While it may be an aid in the enforcement of criminal law in certain situations, the areas in which the taking of fingerprints is permissible should be strictly limited." He said they were concerned that fingerprint information could be used to blackmail or frame people or expanding certain searches without warrants. He defended the ACLU's role in having to stand up time and again to address the government's control over privacy issues in the name of security and safety. He is not disrespectful of the concerns that people have, but is concerned about the proposed remedies. He described other kinds of tracking, such as genetic, that the government will be able to conduct.

He said people are outraged by the Brady bill which is asking the government to do background checks on people who are innocent, and the burden that is placed on law enforcement is more than they can handle. He said the Bill of Rights was established to protect the citizens from the government becoming more intrusive into privacy areas of their lives. He expressed reservations about this bill and hope they would see it as yet a further expansion of government with a compelling state interest.

Jack Chambers, Executive Director, Opportunity Resources, Missoula, said they provide services to people with disabilities and currently have four group homes and some apartment complexes. He had mixed emotions on the bill because he could have given as much and as strong a testimony as a proponent, because he believes that background checks are necessary. They currently do background checks through the Department of Justice. He was testifying as an opponent to tell the committee what financial impact the bill would have.

Mr. Chambers listed several aspects of running this business that put financial and regulatory burdens on them, without assistance in meeting the costs. The cost of doing background checks on 700 employees in group homes would cost \$25,000. He said given the rate of turnover in group homes, the annual cost is likely to be \$12,000 - \$15,000 per year. His concern is to not put another burden on an already stressed system.

Rick Thompson, represented Hi-line Home Programs, a nonprofit corporation that provides referral services for five counties in northeastern Montana. He is a parent of child in a daycare facility and has a parent in a long term care facility, and wholly support the concept. His concern is that as a member of an organization working in child care issues, is the registration and licensure would add another layer of reasons for people to go further underground and not become licensed or registered. He believed they would lose more control over the people who are caring for young children. He said the concept of educating parents on how to choose quality daycare would better serve the state.

{Tape: 3; Side: A; Approx. Counter: 330; Comments: n/a.}

#### Questions from Committee Members and Responses:

**REP. SOFT** told **REP. KOTTEL** that he supported the concept, since he employs 200-300 employees every year who work with 120+ kids; however, he had some concerns. He said they have attempted to do background checks through the local police or sheriff department, and with time constraints and the cost of using the Department of Justice, how feasible would the process be.

**REP. KOTTEL** said the local law enforcement would be involved in producing the fingerprinting card. The card would be sent to the Department of Justice who would then run the search, using the FBI's facilities. She described a recent tour of the facilities where she learned that optical scanners will be used more frequently. She said an option they have is to pass the bill now, but have an effective date a year from now, which would give agencies time to come up to speed and do some cost planning.

**REP. SOFT** asked about the cost being borne by the prospective employee. **REP. KOTTEL** said it was put in the bill, so it was clear that the employer had the right to make the applicant bear that cost. **REP. SOFT** said he was concerned about the timing of the process, and thought there could be wrongful discharge suits resulting. **REP. KOTTEL** said this bill would help the employer in that respect. If a background check should reveal a criminal background, this would be their protection from a wrongful termination lawful. All they have now is their gut instinct. This bill would give them the "teeth" to terminate employees who are unsuitable for this work.

**REP. SOFT** said if the employee is on board for 20-30 days, and the background check could take as long as 15 days, a whole lot could happen in just the first few days on the job. He said they may have invested hundreds of dollars in training in this employee, so if they terminate, they've wasted resources. He said timing is critical and possibly should be done up front before a person is put on the job.

**REP. KOTTEL** said the employer would have the right to do that, but asked how if differs from the current situation. When they don't know the person is a pedophile and keep him on longer than 20 days. **REP. SOFT** said that was exactly right, and said it is difficult to get information from former employers. He agreed that this process might benefit employers having trouble getting information through references.

{Tape: 3; Side: A; Approx. Counter: 560; Comments: n/a.}

**REP. SIMON** described the bill as he understood it. He felt there were inconsistencies in the requirement that in some instances volunteers and the applicants for licensure don't need to have background checks, but employees do. **REP. KOTTEL** said the only group put into the bill that required background checks for volunteers had to do with daycare facilities, for the reason that they handle the very youngest of children. All the other facilities involve adults or teenagers. She defended the need for volunteers in daycare centers to be checked because the children are so young, the facilities are small and often located in homes, and there are others, such as family members, who are not employees who clearly have contact with the children.

**REP. KOTTEL** said if the bill is inconsistent, she is ready for any amendment that would make it consistent; and is aware they may wish to delete the volunteer from the daycare facility.

{Tape: 3; Side: A; Approx. Counter: 737; Comments: n/a.}

**REP. SIMON** said it was common for daycare centers to have volunteers, the people there are vulnerable to sexual abuse, and the facility is vulnerable to an arsonist; yet, it was left out. **REP. KOTTEL** said she not opposed to that. **REP. SIMON** said that is another inconsistency that he did not understand, because it isn't just the vulnerability of children to sexual abuse, but residents of nursing homes and DD homes are also vulnerable. **REP. KOTTEL** said the language she would like to see is that any of these entities "may" require employees to go through a background check. The reason she wanted to see that in statute is because, as **Beth Baker** stated, if it's not in statute, then only Montana information can be provided, not information she may have on someone who has a criminal record in another state.

**REP. SIMON** said the Billings Police Department has the AFIS system which allows them to check fingerprints across the nation; they're not sending a card around, but doing it electronically.

**REP. KOTTEL** deferred the question to Mike Baptista, Administrator of Law Enforcement Services Division, ID Bureau, who said he wished to clarify REP. SIMON'S remark about the Billings Police Station. They do not have an AFIS system, but have access to one HOUSE HUMAN SERVICES & AGING COMMITTEE February 8, 1995 Page 18 of 26

through the Law Enforcement Services Division. They have an AFIS terminal through which they can make inquiries on criminal history records in eight different states. However, they are attempting to acquire a direct AFIS system. **REP. SIMON** reiterated his question and asked if a person was plugged into an AFIS type system, what's to keep that information from being stored in the system. They heard that a card would be sent around and not retained by a law enforcement agency, and assumed that once the fingerprints were put into the system, they stayed there.

{Tape: 3; Side: B; Approx. Counter: 000; Comments: n/a.}

Mr. Baptista explained how the AFIS works. The FBI is designing a system called IAFIS, which would be a national fingerprinting system. He assured him that the FBI is not going to maintain fingerprint cards on people who are non-criminal suspects.

**REP. BRAD MOLNAR** listed several crimes that are listed in the bill as those to look out for when doing background checks. **REP. KOTTEL** thought they could explore this issue during executive action, and said her decision-making process had to do with the consideration of status-crimes, or victimless crimes. The issue of substance abuse or felony possession could be further clarified. **REP. MOLNAR** asked how the background check would work and **REP. KOTTEL** reiterated how it would proceed, in particular the fact that once the person has had a background check in one county, they do not need to have it done again when they move to a different county.

**REP. MOLNAR** referred to child abuse cases in California daycare facilities, and said he wasn't aware of that problem existing in Montana. REP. KOTTEL said she could think of many cases of children, developmentally disabled, and elders being abused, neglected or victimized in some way. REP. MOLNAR asked if she had any statistics on this. REP. KOTTEL said she could get him information on the number of people convicted of those crimes. REP. MOLNAR asked REP. KOTTEL if she knew the rule that defines child abuse in Montana. **REP. KOTTEL** replied that she was aware of the statutes. REP. MOLNAR asked if she would be surprised if any new mark on a child appeared or any reddening of the skin if the child is spanked once, the provider could be investigated, and the results of that investigation could show up on their background check. REP. MOLNAR said she was not, and said she was very careful to use the word "convicted" and the second is her amendment to delete the word "adjudicated." EXHIBIT 10

{Tape: 3; Side: B; Approx. Counter: 216; Comments: n/a.}

**REP. SOFT** cited page 5 of the bill, and assuming he would do a background check before the prospective employee is hired. He asked if the applicant would pay the fee when they go to the sheriff's department to have the background check. **REP. KOTTEL** said this was correct. **REP. SOFT** said then the fingerprints

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would go to the Department of Justice, whereupon they begin the background check. He cited line 26 referring to a form provided by the department, he assumed was the Department of Justice, which must be notarized. He asked if the form was provided to the employee. **REP. KOTTEL** said she meant the employee of the department. She agreed it was terrible wording and thanked him to pointing that out.

**REP. LIZ SMITH** stated that footprints and handprints are often on birth certificates. Would having thumbprints on a driver's license be worthy of consideration? **REP. KOTTEL** said she would consider this in a future legislative session if it came up. She related a story about having to endorse her checks with her thumbprint when she lived in Chicago.

CHAIRMAN GRIMES asked Beth Baker if they were to make any part of this discretionary or voluntary, would they still accomplish the intent of accessing the information available to the FBI from the other states. Ms. Baker said they would provide that information for Montana-based convictions, however the FBI wouldn't recognize if it were voluntary. She asked someone at the FBI if the state would comply with federal standards, if they permitted but did not require background checks, they believed that law would not provide clear enough standards to be satisfactory to the FBI.

CHAIRMAN GRIMES asked if she could describe the rationale for that. Ms. Baker said under public law 544, mentioned in the bill, the FBI has set out standards for when they will conduct a record check for non-criminal justice licensing or employment purposes. Those standards are as follows: the authorization must exist as the result of legislative enactment or its functional equivalent. The authorization must require fingerprinting of the applicant. The authorization must expressly or by implications authorize use of FBI records for screening of the applicant. The authorization must not be against public policy and the authorization must not be overly broad in its scope and must identify the specific category of applicants or licensees addressed. The FBI feels there has to be enough specifics for each of those five categories, so that the FBI isn't using its resources for something the state hasn't expressly required.

Ms. Baker said the other option may be an effort to introduce a interstate compact in the U.S. Congress to allow states to join the compact to disclose information from other states. They don't know what the status of that is going to be, but was introduced but didn't get through. She said this would help them save time and money. CHAIRMAN GRIMES asked for a summary and said for any of the employees, applicants or volunteers, it could be either mandatory or nothing at all. Ms. Baker said yes.

**CHAIRMAN GRIMES** said he was concerned about the application of this law, especially to smaller daycare centers and asked if the sponsor had spoken to those who would be impacted by the bill.

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**REP. KOTTEL** said she attended a meeting in Great Falls that had to do with the issue of background checks, and among the 35-40 people present, she received much feedback at that meeting. She said she didn't think it would affect small daycare businesses as much as he might think. Small daycare centers do not have a "revolving door."

#### <u>Closing by Sponsor:</u>

**REP. KOTTEL** said the opponents talked about two things: cost and inconvenience. On the matter of cost, she said it would cost money, "but what is the cost to a child whose had their innocence and their youth taken away from them. What is the cost as we put people in the hospital or pay for the psychological services to individuals who have been abused or harmed?" On the matter of inconvenience, she said it would be inconvenient, but she wanted to know "what the inconvenience is when you have to listen to angry people who put their mother in your care and come back and find her bruised and battered. What is the inconvenience to an institution that finds a developmentally disabled woman raped and pregnant? What is the inconvenience to a mother and father who have to go through the rest of their lives what happened to their child?"

In response to the testimony from Scott Crichton, she referred to a paper she read called "The Delicate Balance." She stated her belief in civil liberties and privacy rights, but said some of the most dangerous rights in Society are rights that have no She said they could talk about their privacy rights all balance. day long, "but what are the rights of children? What are the rights of the elderly? What are the rights of the developmentally disabled?" She said it is a delicate balance, and stated the analogy, "I don't think it's an accident that justice in America is represented by scales. And scales represent the delicate balance of the line we walk between the rights of people to be free from being battered and abused and molested, and the rights of those individuals who choose to go into that profession and say they have a right to keep private the voracity of statements they make on an application regarding their criminal background." She said no one is forced to apply for jobs in this field, they choose it themselves, so they must be above reproach and must be willing to verify the accuracy of information on their application.

{Tape: 3; Side: B; Approx. Counter: 665; Comments: n/a.}

#### EXECUTIVE ACTION ON HB 335

CHAIRMAN GRIMES reminded the committee this bill pertains to a wheelchair warranty act.

<u>Motion/Vote</u>: REP. CAROLYN SQUIRES MOVED THAT HB 335 DO PASS. SHE THEN MOVED THE AMENDMENTS.

#### **Discussion**:

**REP. SQUIRES** said the people who testified for the bill and the Durable Medical Equipment providers and SRS are helping in constructing amendments and addressing the issues, particularly those that **REP. SIMON** expressed, which had to do with the term "performance" and also conditions of the warranty. She said these concerns were addressed in Amendment 5 that deals with the length of the warranty.

{Tape: 3; Side: B; Approx. Counter: 753; Comments: n/a.}

Mr. Myers (no last name provided) described the amendments and the rationale for the change in language so it would be consistent. REP. SQUIRES asked if Durable Medical Equipment Providers were happy with the amendment and he responded that they were. Mr. Myers described the meaning of the other amendments and clarified wording that was changed.

Linda Iverson, President, Big Sky AMES Association, said the majority of members on their board supported the amendments.

Terry Krantz, Social and Rehabilitative Services, support the bill as amended.

**REP. SQUIRES** expressed appreciation to **David Niss** for working on the amendments as well.

<u>Vote</u>: Voice vote to adopt the amendments carried unanimously.

Motion/Vote: REP. SQUIRES MOVED THAT HB 335 DO PASS AS AMENDED.

{Tape: 4; Side: A; Approx. Counter: 000; Comments: n/a.}

#### **Discussion**:

**REP. SIMON** thanked **REP. SQUIRES** and the people present to answer questions for working to revise the bill. During the hearing he had a lot of concerns about it and thought it had many serious flaws. The amendments address many of his concerns and he appreciated it.

**REP. SOFT** mentioned concern that perhaps part of the problem is that the Department is only using one vendor.

CHAIRMAN GRIMES said that has been addressed.

**REP. SQUIRES** explained that she worked with **Nancy Ellery, SRS**, about that concern and found that it was not true; they currently let contracts statewide.

CHAIRMAN GRIMES asked REP. SQUIRES if that has proved to lessen the incidence of problems. REP. SQUIRES said they should ask Mr. HOUSE HUMAN SERVICES & AGING COMMITTEE February 8, 1995 Page 22 of 26

Krantz, and upon CHAIRMAN GRIMES' asking if there was no objection, there was an objection.

**REP. MOLNAR** told **REP. SQUIRES** that he didn't see an effective date and asked if there was concern that some manufacturers might not like the June 30th effective date. **REP. SQUIRES** said they are letting it go to the October 1 date, as requested by the Durable Medical Equipment Company.

<u>Vote</u>: The motion carried unanimously.

{Tape: 4; Side: A; Approx. Counter: 090; Comments: n/a.}

#### EXECUTIVE ACTION ON HB 245

<u>Motion</u>: REP. CHRIS AHNER MOVED TO RECONSIDER HB 245. The motion carried unanimously.

Motion: REP. AHNER MOVED THAT HB 245 DO PASS.

#### <u>Discussion</u>:

**REP.** AHNER explains concerns that were expressed at the last executive action pertaining to eligibility for people on AFDC to participate in daycare programs. She mentioned handouts distributed to the committee. **EXHIBIT 11** 

**CHAIRMAN GRIMES** asked **REP. AHNER** if she was proposing an amendment. She replied that she was not.

#### Discussion:

In answer to a question [slightly inaudible] that **REP. MOLNAR** asked, **REP. AHNER** explained that due to the concerns expressed earlier, they thought they needed more information from the Department, and because she received the answers, thought she'd share them with the committee.

**REP. SUSAN SMITH** asked if there was a fiscal impact. **REP. AHNER** said no, there was none. The money has already been allocated and nothing is being added or subtracted from the program. The program is already in effect. Thirty-two families and 57 children are currently being served.

**CHAIRMAN GRIMES** indicated that the number of families served may not be correct. He asked if the Department could supply them with how many families are being served by the program, and what the budget is for those families.

Linda Fillinger, Child Care Specialist, SRS, said there are close to a thousand families being served in this program and the budget has been appropriated close to \$400,000 general fund. It has been in operation for many years. This amount is matched at the FMET rate with available federal funds, which results in 30% state and 70% federal funds totaling over \$1 million.

{Tape: 4; Side: A; Approx. Counter: 303; Comments: .}

**REP. SUSAN SMITH** asked what the percentage above poverty level in which a person would qualify for this program. She wondered if it was 175% and were they hoping to get it down to 133%.

**REP. DICK GREEN** said his notes said it was 185% of poverty, resulting in \$179 per month. **REP. SMITH** then asked if a person who makes that amount automatically qualify for the program. **CHAIRMAN GRIMES** asked the Department to answer the question if everybody at 185% qualify.

Ms. Fillinger responded that everyone who is below the guidelines of the sliding fee scale could qualify for the program, however it has limited funding and there is a waiting list. The rule designates that the lowest income families, full-time working families, are served first, before the upper income families can participate, and are then placed on a waiting list.

**REP. ELLEN BERGMAN** asked how someone qualifies for the program. **Ms. Fillinger** said an application would need to be completed with income information, their name placed on a waiting list, and if money was available, they would take the first family with the highest priority and the lowest income level.

**REP. ELLEN BERGMAN** assumed that there are many people who apply and asked if they take the lower income families first. **Ms. Fillinger** replied that they serve the lowest income families first. The average income of the families they are serving is below 100% of poverty level. **REP. BERGMAN** asked how far below, and if the parent has to be single. **Ms. Fillinger** said they do not have to be single.

**REP.** AHNER said the concern she had with the bill, and those expressed during the committee hearing, is that they did not realize that this was not a new program. If these people do not receive this assistance to pay for childcare, then they will be unable to work, and will be forced to receive further assistance and fall back on AFDC. That would cost a lot more money than approving a program such as this one.

**REP. BERGMAN** asked if they discussed putting a time limit on this program during the last executive action. **REP. AHNER** said the at-risk childcare program can be time limited, but the Department would rather that not happen. Under the welfare reform, the Department is lowering the income limit in the at-risk program from 185% to 133%. If families are still under the poverty income at the end of two years, if they lose the child care subsidy, the family is at-risk of returning to the AFDC program. The committee could put a time limit on it if they feel it is necessary.

# <u>Motion</u>: REP. BERGMAN MOVED TO INCLUDE A TWO-YEAR SUNSET ON THIS PROGRAM.

#### **Discussion**:

Mr. Niss asked if the time limit applied to the program or on each recipient. She replied that it would apply to each recipient.

**REP. LIZ SMITH** said to her the eligibility criteria is 100% of poverty and if they stay in the work force, they should have increased wages, and would gradually move themselves off the program. She asked if there should be a limit.

**REP. BERGMAN** stated they would then remain on welfare forever.

<u>Vote</u>: Voice vote on the Bergman amendment was taken. The motion failed 6-7.

<u>Vote</u>: A roll call vote was taken. The motion carried 9-6 with REP. BERGMAN, GREEN, MARTINEZ, MOLNAR, S. SMITH, and SOFT voting no.

{Tape: 4; Side: A; Approx. Counter: 668; Comments: n/a.}

#### EXECUTIVE ACTION ON HB 89

#### **Discussion**:

**REP. SOFT** said he received calls from people in genealogical research who had concerns about the availability of records and he was provided with information as he entered the meeting. He asked for more time to review the materials.

**REP. SIMON** stated he was acting as temporary chair since **CHAIRMAN GRIMES** and both vice chairmen are absent.

**REP. MOLNAR** asked if he would be presenting the amendments from the Department.

<u>Motion/Vote</u>: REP. MOLNAR MOVED TO RECONSIDER HB 89. Voice vote was taken. The motion carried.

#### **Discussion**:

**REP. MOLNAR** explained the amendments for HB 89. He stated this was a vital statistics bill, not a social setting policy bill. He said the abortion issue is something else, the statistics that are kept are just numbers. He said the babies who died due to spontaneous abortion would each be issued a certificate of death. He discussed some issues dealing with appropriations, the forms, and data that would be collected, including information on the alleged father.

{Tape: 4; Side: B; Approx. Counter: 000; Comments: n/a.}

**REP. MOLNAR** said the bill did not have a bogeyman. He described the second amendment. He said currently doctors have the right to deny the distribution of medical records to individuals, and the amendments address that issue.

**REP. SIMON** asked **REP. MOLNAR** to clarify if his subcommittee was recommending these amendments and he responded that was correct.

<u>Motion</u>: REP. SIMON MOVED TO ADOPT THE CONCEPTUAL AMENDMENTS DRAFTED BY THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES.

#### Discussion:

**REP. SIMON** told the committee that because these are conceptual amendments, and need to be properly worded and edited by the Legislative Council, they would not be substantially changed in substance, but only in form.

<u>Vote</u>: Voice vote to adopt the amendments was taken. The motion carried unanimously.

**REP. MOLNAR** referred to **REP. SOFT'S** earlier statement about the reference materials, and said he had read the materials, and wondered if there was something more substantive that he wished to address, if it could be amended on the floor. **REP. SOFT** said that would be his recommendation.

Motion: REP. MOLNAR MOVED THAT HB 89 DO PASS AS AMENDED.

#### Discussion:

**REP. SUSAN SMITH** cited page 11, line 12, and asked why a court would be able to specify who the mother was; it says nothing about adoption and leaves it open. **REP. MOLNAR** said there are reasons why that might happen; they might give the baby up for adoption and want to remain anonymous, for instance. There might be a question as to who the child belongs to, in the cases of kidnapped babies, surrogate mothers, etc.

<u>Vote</u>: Voice vote was taken. The motion carried 12 - 5 with REPS. SOFT, LIZ SMITH, SUSAN SMITH, MARTINEZ, and GREEN voting no.

CHAIRMAN GRIMES returned to the meeting and assumed the chair. He thanked REP. MOLNAR, REP. KOTTEL, and REP. BERGMAN for their work on the subcommittee for HB 89.

{Tape: 4; Side: B; Approx. Counter: 297; Comments: Meeting adjourned.}

HOUSE HUMAN SERVICES & AGING COMMITTEE February 8, 1995 Page 26 of 26

#### ADJOURNMENT

Adjournment: The meeting adjourned at 7:10 p.m. GRÍM Chairman Man

PATTI BORNEMAN, Recording Secretary

DG\pb

### HOUSE OF REPRESENTATIVES

# Human Services and Aging

### ROLL CALL

DATE 2/8/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Duane Grimes, Chairman			
Rep. John Bohlinger, Vice Chairman, Majority			~
Rep. Carolyn Squires, Vice Chair, Minority	~		
Rep. Chris Ahner	~		
Rep. Ellen Bergman			
Rep. Bill Carey			
Rep. Dick Green			
Rep. Toni Hagener			
Rep. Deb Kottel			
Rep. Bonnie Martinez			
Rep. Brad Molnar			
Rep. Bruce Simon			
Rep. Liz Smith			
Rep. Susan Smith	~		
Rep. Loren Soft			
Rep. Ken Wennemar			



### HOUSE STANDING COMMITTEE REPORT

February 9, 1995

Page 1 of 3

Mr. Speaker: We, the committee on Human Services and Aging report that House Bill 335 (first reading copy -- white) do pass as amended.

Signed: 'Grimes.

And, that such amendments read:

1. Title, line 6. Following: "RIGHTS" Insert: "; AND PROVIDING AN APPLICABILITY DATE"

2. Page 1, line 25.
Strike: "distributor,"
Strike: "distributor branch,"

3. Page 1, line 27. Strike: "condition or"

4. Page 1, line 29. Strike: "or defect"

5. Page 2, lines 8 through 10. Strike: "for the parts" on line 8 through "wheelchair" on line 10 Insert: "against nonconformity"

6. Page 2, line 14.
Following: "consumer"
Insert: "under subsection (1)"

Committee Vote: Yes <u>15</u>, No <u>0</u>.

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7. Page 2, lines 14 through 16. Strike: "This implied" on line 14 through "wheelchair." on line 16

8. Page 2, line 16. Strike: "4" Insert: "2"

1

1 1 9. Page 2, lines 21 and 22. Strike: "a defect" on line 21 through "wheelchair" on line 22 Insert: "the nonconformity"

10. Page 3. Following: line 4 Insert: "(2) A manufacturer who replaces a wheelchair in accordance with subsection (1)(a) or refunds the purchase price of a wheelchair in accordance with subsection (1)(b) shall also refund to the dealer the dealer's reasonable costs of the exchange or refund."

Renumber: subsequent subsection

11. Page 3, line 14.
Following: "of"
Strike: "the"
Insert: "a"

12. Page 3, line 14 and 15. Strike: "30 or more business" Insert: "45"

13. Page 3, line 27. Strike: "In addition to pursuing any other remedy" Insert: "If the manufacturer fails to comply with [section 4(1)(a) or (1)(b)]"

 sold to a consumer as defined by [section 2] before October 1, 1995."

-END-



### HOUSE STANDING COMMITTEE REPORT

February 10, 1995

Page 1 of 4

Mr. Speaker: We, the committee on Human Services and Aging report that House Bill 89 (first reading copy -- white) do pass as amended.

Signed:

And, that such amendments read:

1. Page 3, line 18. Strike: "<u>human</u>"

2. Page 3, lines 27 and 28. Strike: subsection 8 in its entirety

Renumber: subsequent subsections

3. Page 3, line 30. Strike: "<u>human</u>"

4. Page 4, line 7. Following: "person" Insert: "person who places or causes to be placed a dead body or the ashes after cremation in a grave, vault, urn, or other receptacle or otherwise disposes of the body or fetus and who is a"

5. Page 4, lines 9 and 10. Strike: "and" on line 9 through "<u>or fetus</u>" on line 10

Committee Vote: Yes 6, No 5

7. Page 5, lines 12 and 13. Strike: subsection (4) in its entirety

Renumber: subsequent subsections

8. Page 6, line 6.
Strike: "modernization and automation"
Insert: "administration"

9. Page 6, line 10. Following: "copy" Insert: "or copies"

10. Page 7, lines 10 and 11. Strike: "and is" on line 10 through "the original" on line 11

11. Page 8, line 3.
Strike: the first ","
Insert: "or"

12. Page 8, line 4. Strike: "or copy of a vital record,"

13. Page 9, line 14. Following: "duties."

Insert: "The department shall, upon request by the department of social and rehabilitation services, the department of family services, or a licensed adoption agency, provide a birth certificate and related records for purposes of adoption, termination of parental rights, custody actions, paternity actions, child support actions, social security eligibility determinations, or Indian tribal enrollment determinations."

 intact and in their original form on file at the department"

15. Page 10, line 27. Strike: "(4)(f)" Insert: "(4)(e)"

16. Page 10, line 28.
Following: "designee"
Insert: "or a midwife licensed pursuant to Title 37, chapter 27,"

17. Page 11, line 2. Following: ";" Insert: "or"

18. Page 11, line 3.
Strike: subsection (f) in its entirety

Renumber: subsequent subsection

19. Page 13, line 6. Strike: "A person" Insert: "The department or its designee"

20. Page 13. Following: line 7 Insert: "(3) The department shall adopt rules establishing the circumstances under which vital records may be corrected or amended and the procedure to correct or amend those records."

Renumber: subsequent subsections

21. Page 14, line 20. Strike: subsection (i) in its entirety

Renumber: subsequent subsections

22. Page 15, line 5.
Following: "acknowledgment"
Insert: "and other credible evidence"

23. Page 16, lines 11 and 12. Strike: "the" on line 11 through "adopted" on line 12 Insert: "the date and place of birth of the adopted person"

24. Page 16, line 13.
Following: "by"
Insert: "the patient's spouse, adult children, parents, or"

-END-



# HOUSE STANDING COMMITTEE REPORT

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February 9, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Human Services and Aging report that House Bill 245 (first reading copy -- white) do pass.

Signed: Duane Grimes, Chair

### HOUSE OF REPRESENTATIVES

## **ROLL CALL VOTE**

# Human Services and Aging Committee

DATE	2/8/9	<u>5</u> 1	BILL NO. <u>HB</u>	245 N	UMBER _		
MOTION: _	Do	PA45	moved	by	Rep.	Ahner	

NAME	AYE	NO	
Rep. Duane Grimes, Chairman			
Rep. John Bohlinger, Vice Chairman, Majority			Excused by proxy
Rep. Carolyn Squires, Vice Chairman, Minority			by proxy
Rep. Chris Ahner			
Rep. Ellen Bergman			
Rep. Bill Carey			
Rep. Dick Green		~	
Rep. Toni Hagener			
Rep. Deb Kottel	~		
Rep. Bonnie Martinez			
Rep. Brad Molnar		~	
Rep. Bruce Simon			
Rep. Liz Smith			
Rep. Susan Smith			
Rep. Loren Soft			
Rep. Ken Wennemar			
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36 S. Last Chance Gulch, Suite A · Helena, Montana 59601 Telephone (406) 443-2876 · FAX (406) 443-4614

### HOUSE HUMAN SERVICES AND AGING COMMITTEE

### February 8, 1995

### **HOUSE BILL 407 - NURSE DELEGATION**

For the record, I am Rose Hughes, Executive Director of the Montana Health Care Association, an association representing nursing homes throughout the state of Montana.

We support House Bill 407 as a much-needed improvement to Montana's current nurse delegation statute. We believe this legislation is a reasonable approach to dealing with problems that have arisen in the two years since the original legislation was passed.

Problems with Current Law

1. The current law is so vague as to run the risk of being deemed an unconstitutional delegation of legislative authority to the Board of Nursing. There simply are not sufficient standards or guidelines to enable the Board of Nursing to know its rights and obligations under the act. A legal opinion is attached dealing with this issue.

2. Because of the current law's vagueness, the Board of Nursing has been able to adopt rules dealing with delegation that we believe are arbitrary and bear no relationship to the public health or safety.

a. To date, the Board has adopted a lengthy set of rules to delegate only one task-administration of certain types of medications.

b. The rules adopted are cumbersome and make it difficult for delegation of even this one task to take place.

c. The rule The original of this document is stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone supervision by lice number is 444-2694.



TESTIMONY OF MONTANA NURSES ASSOCIATION OPPOSING HOUSE BILL 407 REGARDING DELEGATION OF NURSING TASKS TO UNLICENSED PERSONS

I am Steven Shapiro appearing for the Montana Nurses Association which represents 1400 registered professional nurses in the State of Montana.

The Montana Nurses Association opposes HB 407 which requires the Board of Nursing to make rules to delegate nursing tasks to unlicensed persons.

The bill is simply unnecessary. The Board of Nursing already has the authority to make such rules. In the past several years, the Board has exhaustively studied the issue with many interested people and associations. The focus of these studies has been how to meet the need of providing health care in areas where nursing services are limited or unavailable in a manner which protects the public health, safety and welfare.

The result of the Board's studies was the adoption of administrative rules which do allow for the delegation of nursing tasks, such as administration of medications, collecting basic patient data such as vital signs and changes in data, personal hygiene and feeding. The Board's rules are patient specific, caregiver specific and task specific.

In order to meet the goal of nursing care available while retaining public safety, the Board limited the settings at which delegation of nursing tasks, such as the administration of medications, may be delegated to schools, prisons, personal care homes, and hospice facilities. No limit on settings was placed on assignment of basic tasks, such as monitoring vital signs and feeding, to unlicensed persons.

It appears that the proponents of this bill want to open up all nursing tasks to any unlicensed persons regardless of their skills, or the settings or needs of the patients. If onsite supervision is not required, a nurse in Billings could be the nominal supervisor of unlicensed people in hospitals, nursing homes and medical clinics across the state.

The proponents of the bill may suggest that they intend to save money by using unlicensed staff who are paid less. In fact, there will be no savings in human suffering or money when minimally educated and trained staff do not assess or care for patients properly.

The issue here is the public health, safety and welfare. We urge that the committee report that HB 407 DO NOT PASS.

**Consumer Facts** from the American Nurses Association 3 EXHIBIT. 2-8-9: In the fast-paced, DATE HB 407 high-tech world of modern health care, it's hard to know what to ask or whom to turn to. The kind of nursing care you receive while in the hospital is extremely important, and this brochure will let you know what to expect from the nurses who care for you.

\$ 1

# Every Patient Deserves a Nurse

The original of this document is stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694.

EXHIBIT DATE Montana Nurses' Association HB P.O. Box 5718 • Helena, Montana 59604 • 442-6710 TESTIMONY OPPOSING HB 407

MONTANA NURSES' ASSOCIATION FEBRUARY 8, 1995

The Montana Nurses' Association wishes to convey its concern about the degree to which HB 407 would permit Montana's health care institutions to reduce nursing staff and increase their reliance on unlicensed, cheaper, and often minimally trained workers.

The problem HB 407 would create is an attempt to use unlicensed personnel to practice as nurses, when these workers do not possess the appropriate level of education, skill, licensure, and the legal accountability to do so. Yet, the type of tasks given to non-nursing personnel appears to be growing: for example, tasks such as complex dressing changes, insertion of a broad range of tubes, catheterization, and endotracheal suctioning on adults and children. Beyond this, patients are deprived of one of the most critical services that nurses provide -- ongoing assessment and evaluation of the patient's overall condition.

This is occurring when the overall level of acuity of patient populations in hospitals and nursing homes has risen dramatically. Because of the trend today to avoid hospitalization entirely or to admit patients who are "sicker" and discharge them sooner, the patients who are hospitalized are in <u>greater</u> need of nursing care, not <u>less</u>.

At the root of these changes is the current restructuring of the health care industry. Now, for several reasons, health care institutions are seeking to cut their operating costs and have identified nursing budgets as a prime target. However, cutting nursing staff is a short-sighted and ineffective approach to cutting costs. It not only threatens patient care, but is unlikely to achieve long-term cost savings.

A growing body of research already suggests that facilities which institute excellent nursing care have lower mortality rates, lower lengths of hospital stays, lower infection rates, lower readmissions, and ultimately lower costs.

Restructuring and the reduction of nursing budgets is occurring while the hospital industry is already recording profits. In 1992, aggregate profits earned by acute-care hospitals were up nearly 19 percent from 1991. From preliminary data, it appears that aggregate profits for 1993 will rise more than 13 percent, marking the fifth consecutive year of double-digit jumps in profits for hospitals. While profit is a necessity in any business, the savings should not be carved out at the bedside of sick patients.

EVERY PATIENT DESERVES A NURSE.

The Montana Nurses' Association urges a DO NOT PASS vote on HB 407.

Montana Nurses' Association



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

### POSITION STATEMENT

#### Registered Nurse Utilization of Unlicensed Assistive Personnel

Summary: The Montana Nurses' Association (MNA) recognizes that unlicensed assistive personnel provide support services to the RN which are required for the registered nurse to provide nursing care in the health care settings of today.

The current changes in the health care environment have and will continue to alter the scope of nursing practice and its relationship to the activities delegated to unlicensed assistive personnel (UAP). The concern is that in virtually all health care settings, UAP's are inappropriately performing functions which are within the legal practice of nursing. This is a violation of the state nursing practice act and is a threat to public safety. Today, it is the nurse who must have a clear definition of what constitutes the scope of practice with the reconfiguration of practice settings, delivery sites and staff composition. Professional guidelines must be established to support the nurse in working effectively and collaboratively with other health care professionals and administrators in developing appropriate roles, job descriptions and responsibilities for UAP's.

The purpose of this position statement is to delineate MNA's beliefs about the utilization of unlicensed assistive personnel in assisting in the provision of direct and indirect patient care under the direction of a registered nurse.

#### UNLICENSED ASSISTIVE PERSONNEL

The term unlicensed assistive personnel applies to an unlicensed individual who is trained to function in an assistive role to the licensed nurse in the provision of patient/client activities as delegated by the nurse. The activities can generally be categorized as either direct or indirect care.

Direct patient care activities are delegated by the registered nurse and assist the patient/client in meeting basic human needs. This includes activities related to feeding, drinking, positioning, ambulating, grooming, toileting, dressing and socializing and may involve the collecting, reporting and documentation of data related to these activities.

Indirect patient care activities focus on maintaining the environment and the systems in which nursing care is delivered and only incidently involve direct patient contact. These activities assist in providing a clean, efficient, and safe patient care environment and typically encompass categories such as housekeeping and transporting, clerical, stocking and maintenance supplies.

#### UTILIZATION

Monitoring the regulation, education and utilization of unlicensed assistive personnel to the registered nurse has been ongoing since the early 1950's. While the time frames and environmental factors that influence policy may have changed, the underlying principles have remained consistent:

IT IS THE NURSING PROFESSION that determines the scope of nursing practice;

1801

Registered Nurse Utilization ... (cont.)

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- IT IS THE NURSING PROFESSION that defines and supervises the education, training and utilization for any unlicensed assistant roles involved in providing direct patient care;
- IT IS THE RN who is responsible and accountable for the provision of nursing practice;
- IT IS THE RN who supervises and determines the appropriate utilization of any unlicensed assistant involved in providing direct patient care; and
- IT IS THE PURPOSE of unlicensed assistive personnel to enable the professional nurse to provide nursing care for the patient.

It is the assumption of the MNA that the provision of safe, accessible and affordable nursing care for the public may include the appropriate utilization of unlicensed assistive personnel and that the changes in the health care environment have and will continue to alter the activities delegated to UAP's.

Therefore, it is the responsibility of the nursing profession to establish and the individual nurse to implement the standards for the practice and utilization of unlicensed assistive personnel involved in assisting the nurse in the direct patient care activities. This is accomplished through national standards of practice and the definitions of nursing in state nursing practice acts.

In order to understand the roles and responsibilities between the RN and the UAP the MNA recognizes that the key to understanding is the clarification of professional nursing care delivery and the activities that can be delegated within the domain of nursing. The act of delegation is:

the transfer of responsibility for the performance of an activity from one person to another while retaining accountability for the outcome.

In delegating, it is the RN who uses professional judgement to determine the appropriate activities to delegate. The determination is based on the concept of protection of the public and includes consideration of the needs of the patients, the education and training of the nursing and assistive staff, the extent of supervision required, and the staff workload. Any nursing intervention that requires independent, specialized, nursing knowledge, skill or judgement cannot be delegated.

Effective Date:	May 1, 1994
Status:	New Position Statement
Originated by:	Congress on Nursing Economics
	Congress of Nursing Practice
Adopted by:	MNA Board of Directors
Related Past Action:	1. Scope of Nursing Practice, House of Delegates, 1987 2. ANA Opposition to the AMA Proposal to Create Registered Care Technologists, House of Delegates, 1988

EXHIBIT <u>3</u> DATE <u>3-8-95</u> HB 407

1801

Registered Nurse Utilization ... (cont.)

#### Attachment I

#### Definitions Related to ANA 1992 Position Statement On Unlicensed Assistive Personnel

The ANA Task Force on Unlicensed Assistive Personnel developed the following definitions to clarify the MNA position statements on the role of the Registered Nurse working with unlicensed assistive personnel. These definitions reflect a review of current regulatory, legal practice and professional terminology and are intended to be used only in the context of these position statements.

#### 1. UNLICENSED ASSISTIVE PERSONNEL:

An unlicensed individual who is trained to function in an assistive role to the licensed registered nurse in the provision of patient/client care activities as delegated by the nurse. The term includes, but is not limited to nurses aides, orderlies, assistants, attendants, or technicians.

#### 2. TECHNICIAN:

A technician is a skilled worker who has specialized training or education in a specific area, preferably with a technological interface. If the role provides direct care or supports the provision of direct care (Monitor tech, ER tech, GI tech) it should be under the supervision of a Registered Nurse.

#### 3. DIRECT PATIENT CARE ACTIVITIES:

Direct patient care activities assist the patient/client in meeting basic human needs within the institution, at home or other health care settings. This includes activities such as assisting the patient with feeding, drinking, ambulating, grooming, toileting, dressing, and socializing. It may involve the collecting reporting, and documentation of data related to the above activities. This data is reported to the RN who uses the information to make a clinical judgement about patient care. Delegated activities to the UAP do not include health counseling, teaching or require independent, specialized nursing knowledge, skill or judgment'.

#### 4. INDIRECT PATIENT CARE ACTIVITIES:

Indirect patient care activities are necessary to support the patient and their environment, and only incidentally involve direct patient contact. These activities assist in providing a clean, efficient, and safe patient care milieu and typically encompass chore services, companion care, housekeeping, transporting, clerical, stocking, and maintenance tasks.

#### 5. DELEGATION

The transfer of responsibility for the performance of an activity from one individual to another while retaining accountability for the outcome. Example: the nurse, in delegating an activity to an unlicensed individual, transfers the responsibility for the performance of the activity but retains professional accountability for the overall care.

#### Registered Nurse Utilization ...(cont.)

Attachment I: Definitions...Unlicensed Assistive Personnel (cont.)

#### 6. ASSIGNMENT:

The downward or lateral transfer of both the responsibility and accountability of an activity from one individual to another. The lateral or downward transfer must be made to an individual of skill, knowledge and judgement. The activity must be within the individuals scope of practice.

#### 7 SUPERVISION:

The active process of directing, guiding and influencing the outcome of an individual's performance of an activity. Supervision is generally categorized as on-site (the nurse being physically present or immediately available while the activity is being performed) or off-site (the nurse has the ability to provide direction through various means of written and verbal communications).

Judgement as it relates to the above definitions is defined as the intellectual process that a nurse exercises in forming an opinion and reaching a clinical decision based upon an analysis of the evidence or data.

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EXHIBIT	1
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# Montana LPN Association

P.O. Box 6964 Great Falls, MT 59406

Marion H. Nelson, Executive Director

(406) 453-6029 (<del>406) 454-314</del>1

February 8, 1995

House of Representatives Human Services Committee Montana State Capitol Helena, MT 1995

Dear Committee Members:

In the interest of public safety and adequate physical care, the Montana Licensed Practical Nurses Association opposes HB 407. Under the current Statutes and the Rules, the practice of delegation is regulated to meet the needs of clients in situations where a licensed nurse is not always available. If delegation of nursing tasks becomes a broad practice, we as LPNs will be very cautious about delegating any task that we feel will be inadequately supervised. The accountability still remains with the licensed nurse.

The LPNs of Montana are concerned with the stability of the health care worker who is to do the tasks. Since nonlicensed health care workers have a pattern of changing jobs frequently, the licensed nurse delegating the task will be faced with teaching the procedure repeatedly, leaving less time for actual patient care.

We urge you to consider the side of patient care in this issue. Do you wish this quality of care when you are ill or a member of your family is ill? This may appear to be a cost-saving proposal, but cost is less important than care when needed.

Thank you for your time.

Sincerely,

Montana Licensed Practical Nurses Association Marion H. Nelson, Executive Director

Varion I. Nelson

not present at nearing EXHIBIT\_ DATE\_ HB\_\_\_\_ 40

#### TESTIMONY OPPOSING HB 407 MONTANA NURSES' ASSOCIATION FEBRUARY 8, 1995

This legislation puts patients, non-licensed personnel and licensed personnel at risk. The current delegation rules specify delegation by a specific nurse to a specific non-licensed person for a specific patient. The nurse remains liable for the care provided. If the intent is to save costs in licensed personnel then it is unrealistic to think that this would be used in the current manner to delegate nursing tasks in facilities. Facilities are going to pressure, if not mandate, that nurses delegate to unlicensed personnel on a much broader basis than personnel specific/patient specific.

How is the safety of the patient ensured? What control can the Board of Nursing exert? What protection will the nurse have in a facility setting when the facility mandates that the nurse delegate nursing tasks to unlicensed personnel? This legislation will effectively eliminate the nurse's control in conjunction with the Board of Nursing, over his/her license and his/her nursing judgement.

To implement nursing delegation, as the rules currently state, facilities would actually have to increase nursing staff availability because of:

• the need for task specific instruction by the nurse to the unlicensed person, and

• nurse documentation of the instruction and the individual's ability to assume the nursing task.

The cost of this would be outstanding for a facility. In a realistic world this will not happen in this manner.

This legislation seems to demonstrate a lack of trust in the public process of the Board of Nursing which consists of not only licensed members but also public members. Perhaps nursing homes and other facilities are using the legislative process to bully the Board of Nursing because they have been unable to demonstrate publicly to the Board the specific need for delegation in these settings.

Sincerely,

Linda Henderson, RN Commission on Nursing Practice Montana Nurses' Association

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EXHIBIT.	_6	
DATE	2/8/95	
HB	136	

#### Testimony HB 436

This bill, introduced by Representative Kottel, although not part of the department legislative package is strongly supported by Department of Corrections and Human Services (DCHS) Alcohol and Drug Abuse Division (ADAD) and state approved chemical dependency providers.

ADAD legislative responsibility under 53-24-204 include approving chemical dependency programs, developing standards for state approved programs, and certifying and establishing standards for the certification of chemical dependency counselors who work in these state approved programs.

In 1994 tasks forces were assembled to work on some critical issues regarding services in the chemical dependency arena. The task forces included funding, delivery of services, detoxification and **counselor certification**. The Certification Task Force, chaired by a member of the Governor's Advisory Council on Chemical Dependency is made up of individuals representing organizations and state approved treatment programs impacted by certification and also includes those who want changes in the current certification system.

The goals of the division and Task Force include revising the certification process through rule revisions over the next two years. HB 436 is instrumental in accomplishing the goals and will:

1. Improve state approved community programs ability to hire qualified, experienced counselors.

2. Permit the department to update and change test. (We are required to provide both an oral and a work sample.)

This bill will not lower standards for Chemical Dependency Counselors.

There are other individuals here who may wish to speak in support of HB 436.Phyllis MacMillan, manager of the certification system for ADAD and the ADAD staff person on the task force and I will be available to answer questions the committee may have.

Respectfully Submitted by Darryl L. Bruno

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Administrator of the Alcohol and Drug abuse Division Department of Corrections and Human Services. Department of Corrections and Human Services

Alcohol and Drug Abuse Division

2/8/95 DATE-436

CHEMICAL DEPENDENCY COUNSELOR CERTIFICATION

#### TASK FORCE MEMBERS

JO ACTON\*, Executive Director Youth Services Center 410 S. 26th Street Billings, MT 59101

CHERYL BLANK\*, Ph.D. Counseling & Psychological Services Montana State University Room 211 Swinge Building Bozemen, MT 59717

KAREN GOANS\*, Clinical Supervisor

DEBORAH KOTTEL, J.D., Director

2500 Continental Drive

Continuing Education

College of Great Falls 1301 20th Street South

Great Falls, MT 59405

Butte, MT 59701

Montana Chemical Dependency Center

PATRICK CALF LOOKING\*, Director Blackfeet CD Program PO Box 1785 Browning, MT 59417-1785

KEN INGLE\*, Director Southwest CD Services 414 East Callendar Livingston, MT 59405

ART MacDONALD, Ph.D., President Dull Knife Memorial College PO Box 98 Lame Deer, MT 59043

MARLENE O'CONNELL\*, Director Montana Addiction Training Center 1301 20th Street South Great Falls, MT 59405

MONA SUMNER\*, Chief Operations Off. Rimrock Foundation PO Box 30374 Billings, MT 59107-0374

KATHLEEN MASIS, M.D. Chemical Dependency Coordinator, Billings Area Office Indian Health Services PO Box 2143

Billings, MT 59103

PEG SHEA\*, Program Director Turning Point 500 N. Higgins - Suite A Missoula, MT 59405

LOREN WALKER\*, Ed.D. The Threshold Group 2675 Central Avenue Billings, MT 59102

Task Force Chairperson:

LORI MCGOWAN, Admin. Officer Office of Indian Affairs Room 202, State Capitol Helena, MT 59620-0503

(\*Certified Chemical Dependency Counselor)

ADAD Staff Facilitator: Phyllis MacMillan\*, Manager Certification and Training



Z EXHIBIT

36 S. Last Chance Gulch, Suite A · Helena, Montana 59601 Telephone (406) 443-2876 · FAX (406) 443-4614

## HOUSE HUMAN SERVICES AND AGING COMMITTEE

## February 8, 1995

# **HB 435 - FINGERPRINTS AND BACKGROUND CHECKS**

For the record, I am Rose Hughes, Executive Director of the Montana Health Care Association, an organization that represents nursing homes throughout the state of Montana.

Because the individuals entrusted to our care are among the most vulnerable in society, we support the concept of readily available, reliable background checks with respect to potential employees. The vast majority of the people we hire are hardworking, honest and caring. Still, we would welcome any additional tools made available to us that might help us screen out the few who are not.

HB 435 could be such a tool. We do, however, have a number of questions about this legislation. Our comments are limited to new sections 10, 11, 12, and 16 which apply to long term care facilities.

1. There is no indication in this legislation of what the cost of the fingerprinting and background checks might be.

2. Section 10, subsection (3)(b) requires a long term care facility employer to "consider the results of the background check in evaluating the fitness of the employee." Some states that have adopted such laws have taken the further step of prohibiting the employment in long term care facilities of individuals who have been convicted of certain crimes. Such laws provide more protection for the facilities and their patients.

3. Section 16 does not allow the release of the complete results of the background check. Many facilities are currently obtain background checks which may provide more information than this. Will they have to continue to do what they are currently doing, plus do what is required in this legislation i

> The original of this document is stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694.

EXHIBIT	9	
-	2/8/95	
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HB	1)	

### HOUSE OF REPRESENTATIVES 54TH LEGISLATURE

House Human Services COMMITTEE

### WITNESS STATEMENT

**Please Print** 

767 R. Huntes NAME BILL NO re S, ADDRESS 4930 - DATE 4 Sig WHOM DO YO SUPPORT **OPPOSE** AMEND 1 am Nere today COMMENTS: Cost low of the omiti hard ships on the volue and is amended + o incl roups and there is no a trai Sor tinger ects for individuals work mon tan Nould like Gee this bill ically exclude 501

EXHIBIT.	10	-
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HB	135	

#### Amendments to House Bill No. 435 First Reading Copy

Requested by Representative Kottel For the House Committee on Human Services and Aging

Prepared by Connie Erickson

February 6, 1995

1. Page 2, lines 7 and 29.
Page 4, lines 9 and 29.
Page 5, line 27.
Page 6, line 26.
Strike: "or adjudicated"

2. Page 2, lines 9 and 10. Following: "convicted" on line 9 Strike: "or" on line 9 through "adjudicated" on line 10

3. Page 3, lines 1 and 2. Following: "convicted" on line 1 Strike: "or" on line 1 through "adjudicated" on line 2

4. Page 4, lines 11 and 12. Following: "convicted" on line 11 Strike: "or" on line 11 through "adjudicated" on line 12

5. Page 5, lines 1 and 2. Following: "convicted" on line 1 Strike: "or" on line 1 through "adjudicated" on line 2

6. Page 5, lines 29 and 30.
Following: "convicted" on line 29
Strike: "or" on line 29 through "adjudicated" on line 30

7. Page 6, lines 28 and 29. Following: "convicted" on line 28 Strike: "or" on line 28 through "adjudicated" on line 29

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EXHIBIT	11
DATE2	2/8/95
HB2	AFDC 005
Department of Social and	SECTION:
Rehabilitation Services	TABLES OF STANDARDS
AID TO FAMILIES WITH DEPENDENT CHILDREN	SUBJECT: Poverty Level Standards (Poverty Six)

AFDC 005 (04/01/93)

References:

Supersedes:

ARM 46.12.3401 and FR Vol. 59, #28 (02/10/94)

<u>General Rule</u>--Children born on or after October 1, 1983, who have attained at least age 6 may qualify for Medicaid if:

 They meet all the nonfinancial criteria for AFDC; and

2. Family gross income does not exceed 100 percent of the poverty level standard.

There is no resource test for these families. They may have unlimited resources.

Deprivation is not required for eligibility.

<u>NOTE</u>: This program covers children through the month of their 19th birthday.

Computation:

Use the following tables to determine income eligibility. AFDC deeming procedures may apply (AFDC 503-1, page 2). If an individual is a required member of the filing unit, their income is counted in full.

POVERTY LEVEL INCOME STANDARDS FOR POVERTY SIX CHILDREN (100 PERCENT) --

Family Size	Monthly Standard
1	\$ 613
2	820
3	1,027
4	1,233
5	1,440
6	1,647
7	1,853
8	2,060

AFDC 004

Department of Social and	SECTION:
Rehabilitation Services	TABLES OF STANDARDS
AID TO FAMILIES WITH DEPENDENT CHILDREN	SUBJECT: Poverty Level Standards (Children Under Age 6 and Preg- nant Women)

Supersedes:

AFDC 004 (04/01/93)

References:

ARM 46.12.3401 and FR Vol. 59, #28 (2/10/94)

<u>GENERAL RULE</u>--Pregnant women and children may qualify for Medicaid if:

- They meet all the nonfinancial criteria for AFDC; and
- 2. Family gross income does not exceed 133 percent of the poverty level standard.

There is no resource test for these families. They may have <u>unlimited</u> resources.

Deprivation is <u>not</u> required for eligibility for poverty level coverage. (See also AFDC 1201-2 and 1201-3).

COMPUTATION:

Use the following tables to determine income eligibility. AFDC deeming procedures may apply (AFDC 503-1, page 2). If an individual is a required member of the filing unit, their income is counted in full. If there is an individual in the family who is in the \$30 disregard cycle, continue to extend this disregard even though not used to determine eligibility or benefits.

POVERTY LEVEL INCOME STANDARDS FOR POVERTY LEVEL PREGNANT WOMEN AND CHILDREN (133 PERCENT) --

Rev	Family Size	Monthly Standard
	1	\$ 815
	2	1,091
	3	1,366
	4	1,640
	5	1,915
	6	2,191
	7	2,464
	8	2,740

April 1, 1994

EXHIBIT_ DATE A L	11 2-8-95 18245	AFDC 006
Department of Social and Rehabilitation Services	SECTION: TABLES OF STAND	DARDS
AID TO FAMILIES WITH DEPENDENT CHILDREN	SUBJECT: Poverty Level S (Transitional M	

#### Supersedes:

AFDC 006 (04/01/93)

References:

ARM 46.12.3401; FR Vol. 59, #28, (2/10/94)

<u>GENERAL RULE</u>--During the second six months of Transitional Medicaid, the family's average gross income (less necessary child care costs) cannot exceed 185 percent of the poverty level standard. (See AFDC 1301-1).

#### COMPUTION:

Use the following tables to determine income eligibility. AFDC deeming procedures may apply (AFDC 503-1, page 2). If an individual is a required member of the filing unit, their income is counted in full. If there is an individual in the family who is in the \$30 disregard cycle, continue to extend this disregard even though not used to determine eligibility or benefits.

#### POVERTY LEVEL INCOME STANDARDS FOR TRANSITIONAL MEDICAID (185 PERCENT) --

Family Size	<u>Monthly Standard</u>
1	\$ 1,134
2	1,517
3	1,900
4	2,281
5	2,664
6	3,047
7	3,428
8	3,811
9	4,194
10	4,575
11	4,958
12	5,341
13	5,722
14	6,105
15	6,488
16	6,869

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HOUSE	OF	REP	RESENTATIVES
VI	SIT	ORS	REGISTER

Human Services	3 aging_
BILL NO. HB 435	SPONSOR (S) Rep. Kottel

DATE 2/8/95

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NAME AND ADDRESS	REPRESENTING	Support	Oppose
Darvell Holzer	AFL-CIO		X
Stor Curthe	NOLU		X
Ricethon	Hi- Lone Ame Prog-um	2	<u>K</u> .
•			
PLEASE LEAVE PREPARED TESTIMONY ARE AVAILABLE IF YOU CARE TO SUB		STATEMEN	F FORMS

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HOUSE	OF	REP	RESENTATIVES
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BILL NO. HB 434	· —	Rep.	Kotte	

DATE 2/8/95

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NAME AND ADDRESS	REPRESENTING	Support	Oppose
DANY BRUND	DCHS/AINH#	X	
Pruseis MacMielan	DCHS ADAD		
Rat Methy	Rimvock Foundation		
KATTHY Mc Gowan	CDPM	~	
at smilling	Lot connection	~	
Mile Juger	Boyd andraw CDCC	$\searrow$	
Energy hugit		L	
Sy Ellet	Private Citizen- Pinno Cotizen		
Rick Alm	0		
PLEASE LEAVE PREPARED TESTIMONY ARE AVAILABLE IF YOU CARE TO SU		STATEMEN	T FORMS

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		REPRESENT				
	······································		_	DATE_	2-8-95	
BILL NO. <u>HB 245</u>	SPONSOR (S)	Rop.	Ahne		· ·	

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NAME AND ADDRESS	REPRESENTING	Support	Oppose
Reger La Voie	SRS	J	
Linda Fillinger	SRS	$\smile$	
Beck Fleming-Siebence	DFS		
Raymond K Class	Boy Scouts A Am	<b>1</b>	
Jach Chamber	Opportunity Res,		
Marion Helson	MTLPN assoc.		$\checkmark$
Bonno Atala			
Dayle Evell GIASgone MT SSZ30	MIIK RWER INC		X
Rick than	Ac-hine Kine Programs	-	X
Dichtartacle	000		· · · ·
Mante Brochway	Easter Mt Ind.		
MARY ENGLAND	BigSKy Ginh Sevids		
	· · ·		
PLEASE LEAVE PREPARED TESTIMONY		STATEMEN	F FORMS
ARE AVAILABLE IF YOU CARE TO SUP	BMIT WRITTEN TESTIMONY.		

PLEASE PRINT	PLEASE PRINT	PLEASE	E PRII
NAME AND ADDRESS	REPRESENTING	Support	Oppos
Steven Shapiro	MT NULSOS ASSA		4
Jern Loendock	Mr. per au		
Band Broken	M.F. Nurses A.	Soc.	
Rise Highes	mt zleth Care 1	Josh V	
Fund Hunter	My Shy filsun	+ Curenie	
man theman	Kalimit Matrice	Nour	
Rosanta Voice	SRS	20	
Mancy Heyer	MT Bel of Thurse	ng	~
	Dept. of Commerce	e Info	Only
Colleen A. Graham Barburn Racen	pelf		
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