

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON PUBLIC HEALTH, WELFARE & SAFETY

Call to Order: By ACTING CHAIRMAN ARNIE MOHL, on February 13,
1995, at 12:05

ROLL CALL

Members Present:

Sen. James H. "Jim" Burnett, Chairman (R)
Sen. Steve Benedict, Vice Chairman (R)
Sen. Larry L. Baer (R)
Sen. Sharon Estrada (R)
Sen. Arnie A. Mohl (R)
Sen. Mike Sprague (R)
Sen. Dorothy Eck (D)
Sen. Eve Franklin (D)
Sen. Terry Klampe (D)

Members Excused: None

Members Absent: None

Staff Present: Susan Fox, Legislative Council
Karolyn Simpson, Committee Secretary

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

Committee Business Summary:

Hearing: SB 158, SB 236, SB 248, SB 339
Executive Action: None

{Tape: 1; Side: 1}

HEARING ON SB 158

Opening Statement by Sponsor:

SENATOR MIGNON WATERMAN, SD 26, Helena, said SB 158 deals with long-term care. She said, they have been working in the area of long-term care for a couple of years because the cost of long-term care, in Montana, is one of the fastest growing and most expensive sections of the Medicaid budget. In the last Legislative session, language was added to HB 2 asking the Department to consider community based long-term care services that are appropriate and cost effective. The result of that language is SB 158.

SB 158 is a policy statement implementing long-term care reform in the state and makes it a policy of the state to develop a system allowing people to stay in their own home, or least restrictive setting in their community, for both the elderly and the disabled; develop state programs to help people coordinate services within the community, and develop a state program of assistance for elderly persons with disabilities, which allows them to remain as independent as possible. It also requires the state to develop cost-effective private financing of insurance programs that are affordable for elderly for long-term care. Oregon has been very aggressive in developing community-based services. In Montana, about 1/5 of our long-term care budget goes to community-based services, with the bulk of the funding going to nursing home services, which are the most expensive for the elderly and the disabled. Oregon has been able to direct about 20% of their long-term care budget to community-based services, with an estimated savings of over \$1 million in Medicaid long-term care costs, and at the same time providing better services, even with a 40% increase in the number of elderly.

Proponents' Testimony:

Peter Blouke, spoke briefly from his written testimony in support of SB 158. **EXHIBIT 1.**

Evelyn Havskjold, representing Hill County Area 10 Agency on Aging, read her written testimony in support of SB 158. **EXHIBIT 2**

Hank Hudson, Director, Department of Family Services, spoke in support of SB 158. He said his department has been working towards a strategy for long-term care, and all issues dealing with long-term care and aging. SB 158 is the next step in getting together the best plan for long-term care in Montana.

Bill Olson, with AARP, testified in support of SB 158 and urged its passage.

Charles Briggs, Director, Rocky Mountain Agency on Aging in Helena, said he supports SB 158 and the language of this bill is the result of a study by SRS involving consumers and providers, the Governor's Council on Aging, and state agency representation, looking at the whole issue of long-term care delivery system reform.

Ed Caplis, Executive Director, Montana Senior Citizens Association, said they support SB 158.

Mary Allen, representing Montana Area Agencies on Aging Association, spoke in support of SB 158. She said it will provide the state and community to effect change and meet the increasing needs of Montanan's long-term care. **EXHIBIT 3.**

Kate Cholewa, representing the Human Services Foundation, urged the Committee's support of SB 158.

Charles Rehbein, Coordinator on Aging, Department of Family Services, said he supports SB 158. The aging population in Montana is growing and, in the past 5 years, the senior population, 85 and older group, has doubled. It went from 10,800 to its present over 20,000. The need for long-term care planning is essential.

Mike Bellows, representing Montana Coalition on Insurance Reform, said they support SB 158. There is a need for services to be provided at a reasonable cost and provide services to those who don't necessarily need skilled nursing care in their own home or personal care home.

Opponents' Testimony: None

Questions From Committee Members and Responses: None

Closing by Sponsor:

SENATOR WATERMAN said SB 158 has truly been a collaborative effort of numerous state department and senior citizens groups. Referring to an article, (**EXHIBIT 4**) she said it sums up the problems that have been created as the Medicaid system evolved over the years. Several states are looking at a fundamental systemic change in how services are provided, and that's what SB 158 intends to do.

HEARING ON SB 236

Opening Statement by Sponsor:

SENATOR MIGNON WATERMAN, SD 26, Helena, said SB 236 is a more complex bill than SB 158. Although SB 236 bill addresses the same subject, it is a very different bill than she carried during the special Session in 1993. It was a controversial bill and was a more aggressive bill, by which the state would have seen more financial benefits. She said SB 236 will bring Montana law in compliance with new federal standards, but more importantly, will insure, even in difficult economic times, the Medicaid program in Montana for long-term care will be preserved for the truly needy. We need to keep in mind as long-term care and the Medicaid program, is Medicaid is a welfare program for needy.

Congress enacted Medicaid in 1965 to insure access to health care for poor women and children. It quickly became the first major third-party financing source for long-term care in this nation. Over several years, estate planners devised ways to help people divest in sheltered assets so virtually anyone could qualify for Medicaid long-term service coverage. As an example, people could divest themselves of all their income and become Medicaid eligible. Medicaid was not designed for people with large assets to be sheltered to pass them on to their children.

Our elderly population is projected to increase by over 25% in the next 4-5 years, the fastest growing segment of that population is individuals who are over 85 years of age, and 1/3 of those individuals are now in institutional care. SB 236 restricts the sheltering and divestiture of assets to become eligible for benefits under Medicaid, allows the state, if there is no surviving spouse living in the home, to place a lien on the real property of people who have assets to pay for their care, but instead have chosen to use Medicaid benefits. It expands the state's ability to recover from those estates, once the Medicaid recipient is deceased, provides for exemptions, for hardship, agreements and appeals procedure.

Because Medicaid is a very expensive program, only the benefit needs of low-income Montanans can be continued to be addressed if we come up with a program that allows those of us who can afford to pay for our own care opportunities to do that. Medicaid long-term care benefits account for approximately 1/3 of our total Medicaid budget. About 4% of seniors have purchased long-term care insurance, and 25% of those individuals over 65 will be in nursing home care. Unless something is done to curtail the shifting of assets in the Medicaid nursing home program, the program that was meant for the poor will fail to exist. It is essential that Medicaid long-term care growth be restricted and SB 236 will do that.

Proponents' Testimony:

Peter Blouke, Director, Department of Social and Rehabilitation Services, said SB 236 is a vital piece of legislation to keep Medicaid for the needy. **EXHIBIT 5.**

Ed Caplis, representing the Montana Senior Citizens Association, said they strongly support SB 236. They originally opposed the bill in the special session, but feel SB 236 is about fairness and so they support it.

Kate Cholewa, Human Services Foundation, representing aging services, people with disabilities, low income housing, job training programs, and concerned individuals. She said they support SB 236 because it puts the resources to those who need them most.

Rose Hughes, Executive Director, Montana Health Care Association, representing Nursing Homes throughout Montana, said they have seen first hand that the Medicaid program, which is supposed to be a program to pay for services for the poor, ends up, in the case of nursing homes, sometimes paying for services through Medicaid for individuals who have divested assets and could have provided for their own care, were it not for the current loopholes in the law. If the money is going to be available to pay for the individuals who are poor and need nursing home care, these loopholes need to be closed, so Medicaid will be used for what it was intended, the poor.

John Cobb, Rep, HD 50, spoke in support of SB 236. He said nobody likes to crack down on senior citizens, but the money will be used to provide alternative services. The senior citizen budget for Medicaid keeps growing with less money available for children and young mothers. This bill will help keep people out of nursing homes and provide alternative services which will lower the growth rates on those higher costs services which will free money for children and mothers in the communities.

Charles Briggs, Director, Rocky Mountain Agency on Aging in Helena, said he and the Association support SB 236. He said this bill does bring Montana into compliance with federal law and that has been an issue since fall 1993. There was a lot of concern with the earlier version of this bill in the Special Session in the fall of 1993, particularly focused on the needs of the surviving spouse. Those issues now have been satisfactorily addressed. We hear so much about people taking advantage of the welfare system and how people shelter their assets so they can take advantage of the public resource.

Evelyn Havskjold, representing Hill County Aging Services, read her written testimony in support of SB 236. **EXHIBIT 6.**

Michael Griffith, representing AARP, spoke briefly from his written testimony in support of SB 236. **EXHIBIT 7.**

Hank Hudson, Director, Department of Family Services, spoke in support of SB 236. He said, because the Department of Family Services includes the Adult Protective Service Program, Ombudsman Program, Aging Services Network, and Administration Program, they are vitally interested in SB 236. They recognize this bill is an emotional and difficult issue, but they support the resolution and balance in the bill. His first job in state government was advising people about the rules, eligibility for various services, and whether there is something between going on welfare or losing everything and spending everything saved because of nursing home costs. People said they were willing to pay their fair share, but didn't want to spend everything to be in a nursing home. He said SB 236 represents a balance and people want to pay their fair share. Middle class individuals don't want to be a part of public assistance system, but they want to preserve some safety net for their spouse.

Opponents' Testimony:

Bob Bachini, Havre, spoke in opposition to SB 236. This bill is in the same form as was the bill presented in the Special Session and there are a lot of questions still left unanswered. He said he would not argue with the intent of the bill, preventing the rich from sheltering their assets so they wouldn't have to pay anything for their nursing home care, but several attorneys who he contacted said this bill will not prevent the rich from sheltering their assets. This bill narrows the scope down to a

certain group of people with few assets, other than a home and a small savings account.

Questions that should be asked are: what effect will this bill have on a Living Trust, on the Homestead Act, and on wills. He said, after talking with several attorneys, SB 236 makes these items null and void, and doesn't think it's the intent to take away the last possessions of senior citizens. This bill allows the Department to place a lien on both real and personal property, which means they can take whatever they wish. The validity of this was asked of the Department during the Special Session, and the answer was yes, there wasn't anything that is exempt and they could take anything.

He has other problems with this bill. It grants the Department full rule-making authority, which scares him. As a former Legislator, he said when full rule-making authority is granted to any Department, they are given such broad authority that the bill can be interpreted any way they please. As long as there is legislation like this on the books, there is no incentive for nursing homes to control costs for seniors, because they know the state will place a lien on an individual's property. He said many people in AARP and Senior Citizens groups are still opposed to this bill.

SB 236 is really an unfair bill. He said he doesn't think it's intended to prevent having a Living Trust, a will, or to affect the Homestead Act. It's hard enough getting a start in this world, and if our grandparents were able to save a few dollars, whether equity in a home or other things, and pass these on to their children or grandchildren so they can get a head start, this bill will take it all away. He had a question about the \$100,000 exemption in this bill, whether it's really that amount.

He read portions of a newspaper article titled "Doing Hard Times," by Bob Anez, AP writer. Three-fourths of the prisoners at Deer Lodge are working and receiving an hourly wage ranging from .60 to \$1.00. He said, people are in prison by their own choice by breaking the law, and then there are people in nursing homes, not by their choice because of age or an illness, on whose property the state will place a lien, then asked why isn't a lien placed on prisoners and make them pay back to the state what they owe, because they are fed, clothed, and receive health care at taxpayer expense. He said SB 236 is very unfair, and when the government brings a bill to address this, maybe he'll support a bill that addresses the seniors. While people are confined in a nursing home, they are still paying taxes, property and income tax. He said this picks on working class people.

Joe Brand, Montana State Legislative Chairman for Veterans of Foreign Wars, said they oppose SB 236. He read a statement about an individual confined to a nursing home. If this person were to go on Medicaid, their home had to be sold at market value plus other assets, except funeral expenses which was put into another account. The undertaker will get their money, the nursing home will receive the remainder plus the Social Security this person receives. When the estate is gone, Medicaid will pick up the

difference that Social Security does not pay, less \$40 for personal needs. He said health care costs have increased 10-fold and the general public has no choice, but to pay. About 10 years ago, people who were put in nursing homes could leave their estates to whomever they chose, and 1 year before they were admitted, they were allowed to sign-over their estates and go on Medicaid. Three years ago, it was changed from 1-year to 3 years, and now it's zero. Now, Living Trust, houses, farms, stocks, bonds, and any other property can be taken. No one has done anything about health care costs. It seems that people have children, in or out of wedlock, mothers and children can go on welfare and the boyfriend or husband pays little or nothing to pay for their needs, and who pays? The taxpayer. A person can commit a crime, go to prison and receive all the health care, education, food, lodging, and court costs, including many appeals, all for nothing. And who pays? The taxpayer. But a person who works their entire life, pays their taxes, pays Social Security, pays for medical care, pays education costs for their children, and pays into the system all their life. Then when the time comes to be placed in a nursing home, then they are asked to place the rest of their assets into the system again. It's the same people who have been asked to pay time and time again. If this continues, the middle class will no longer exist. There will only be the very rich, who won't pay, and the poor, who can't. We're supposed to be a compassionate nation, but when it comes to the middle class, that's all forgotten.

Nick Baumberger said he sees a lot of gray areas in SB 236. One of the concerns in Sections 6 and 7, Mortuary. Under current law, \$5,000-\$7,000 is allowed to be put aside for burial. If that amount is not sufficient, the family picks up the difference. Under present law, if there is money left over, it is returned to the family. Setting up a trust is not feasible for the many people in nursing homes who don't have a lot property or money. Protecting their assets is not feasible. Under this new law, if everything has to be returned, they are required to die at zero. When people work for 45-50 years and pay taxes, they've helped pay for some of their own expenses in the system.

Questions From Committee Members and Responses:

SENATOR BENEDICT asked if there would be a problem with the Living Trust, Homestead Act, or wills in relation to SB 236.

Greg Gould, Attorney, Department SRS, said this bill isn't anything new, parts of the bill are new, but the estate recovery program has been in effect for many years in Montana. SB 236 makes some changes, but under current law, if Medicaid has a claim against the estate, {Tape: 1; Side: 2} like other creditors against the estate, those claims are paid prior to payment to those named in the will. This is not a new concept. He doesn't think this bill makes any change, in respect to the effect of the will in one of these circumstances. In regard to a Living Trust, there's a portion of the bill, which is federal law and the

provision has been there for sometime, that says, if you give away assets without being compensated for those assets within a certain period of time prior to applying for Medicaid, then a person is ineligible for a certain period of time. The changes made in SB 236, is that it follows new federal law, extending the look-back period, before applying for Medicaid. It will be changed from 30 months to 36 months, or if it's to a trust, it's 60 months. Even though there has been the estate recovery program, people could put property into various types of ownership that would pass the property outside the probate estate. A Living Trust is one of the ways this can be done. If Medicaid had a claim against the estate, there was no property in the estate to recover. He said, he didn't think a Living Trust would be affected by SB 236. The Homestead exemption could come up in some of the situations involving real property. A new provision, property can be transferred before or after a person becomes eligible. Under Medicaid law, when a person goes into a nursing home, if they own a home, the value of that home will not be counted against them, for purposes of eligibility. The law provides that home be exempt as long as they say they intend to come back home. It doesn't matter whether there's any possibility of that happening. That home could be transferred away and Medicaid would not be paid back. With SB 236, if that person is permanently institutionalized and there's no possibility of their going back home, and at that time no spouse is living in the home, don't have any children under the age of 21, and don't have any blind or disabled children, only then, could a lien be placed on the home and it would preserve that property until after that person died. He didn't think the Homestead Act would even come into play, because it protects, up to \$40,000 value, from a creditor taking the home. SRS would only be able to recover under the lien if the person died or was voluntarily selling the home.

SENATOR BENEDICT asked about real and personal property, and the effect SB 236 would have.

Greg Gould said, under current law, any assets that are part of the probate estate are subject to creditors claims, including family heirlooms. This bill makes no change in that, but there are exemptions in the probate code.

SENATOR BENEDICT interrupted **Greg Gould** to ask, if this bill is putting Medicaid into the current law formula, and, if there were no creditors other than Medicaid, without SB 236, Medicaid would not be able to go after family heirlooms.

Greg Gould said, under present law, Medicaid has a right to file a claim against the decedents estate to recover Medicaid benefits paid on behalf of that person after they reach 65 years of age. This applies to all assets in the estate, with no distinction made for personal property. There are some exemptions in the probate code that give certain values up to \$10,000 to \$20,000 for individual's children, but doesn't go so far as to protect for every relative.

SENATOR ECK asked about gifts from an estate during the 36 or 60 months, prior to entering a nursing home, and if all other assets, including the home, stocks, bonds, etc. are given away, how would this situation be handled.

Greg Gould said, at the time the person applies, they are asked about their resources and income. If they reported those items at that time were over a certain amount, the individual would not be eligible.

SENATOR ECK ask what would happen if the individual had given all assets away the year before.

Greg Gould said, if these items were given away during the look-back period, which is not 36 months for this type of give away, under federal law, the Department would be required to report the value of those assets given away during an appropriate period of eligibility.

SENATOR SPRAGUE asked about the application to inter-state and intra-state, and if a person's assets were out-of state and they came into the state to be in a nursing home. The heirs live in Montana, which makes it applicable to look-back, but the person's assets are out-of state.

Greg Gould said, if the person from out-of state who is going to go apply for Montana Medicaid, they would be asked about their resources and income. Even if their assets were located elsewhere, it would still be considered.

SENATOR SPRAGUE asked if the Department would be able to recover assets from another state.

Greg Gould said this gets into a question of recovering the assets later on. If the real property is not located in Montana, he doesn't think a lien could be placed on this property in another state, under SB 236.

SENATOR KLAMPE asked whether assets transferred to a Living Trust would be unavailable for recovery.

Greg Gould said, under the bill, the date the transfer of assets to the Trust was made and whether it fell within the transfer provision. If it's found the transfer was made within the 60 months period, there would be a period of time of ineligibility. If a period of ineligibility was imposed because of that transfer to that trust, the bill specifically states, they cannot go after the assets in that trust.

SENATOR ESTRADA asked if a will is made, 25 years ago, leaving 75% of the estate to one child, another gets 5%, then goes into a nursing home and uses up about 50% of her assets before passing away, how are the assets distributed to her heirs, and who would do that.

Greg Gould said SRS doesn't handle the distribution of the estate, but SRS would file a claim against the estate, as would other creditors. Costs, such as personal representative, attorney for the estate, costs of administration, then creditors claims would come out of the estate, then the remainder would go to the heirs.

SENATOR ESTRADA asked, if this bill passes and SRS files a claim, would the SRS claim come off the top.

Greg Gould said, under current law, SRS would file a claim, and it would be ahead of what goes to the heirs.

SENATOR SPRAGUE asked if this is modeled after other states, and if there is provision for reciprocity between states.

Greg Gould said there is no provision for reciprocity.

SENATOR ECK asked about a person being in a nursing home in another state, and is getting Medicaid in that state, then wants to move to a nursing home in Montana, whether Montana picks up the Medicaid or whether the other state continues.

Greg Gould said it's a matter of residency and it's possible to come into Montana and become Montana Medicaid eligible.

SENATOR MOHL asked what was in Section 27 that was repealed.

Greg Gould said Sections 5 and 2 replace existing sections of law. 53-2-601 in current law is being replaced by Section 2, and Section 5 replaces 53-2-611. 53-2-401 is recovery of old-age assistance and hasn't been done for years.

Closing by Sponsor:

SENATOR WATERMAN said it's easier to pass policy that mandates the state to do something, but when it begins to affect each of us and what we do, it becomes more difficult. This is a policy decision and is difficult because it's an area that we don't think about, what's going to happen if we end up in a nursing home or how we will take care of long-term care. If SB 236 passes, it will force us to plan for our own long-term care and if we want to pass our estate to our kids, then our kids will have to take care of us or buy long-term care insurance. There isn't enough money available for the state to take care of everyone's long-term care. It's a question of who are we protecting. Are we protecting those who have assets and could plan for the future, at the expense of the low-income elderly, or will it force everyone to plan for the future as well as possible.

Some parts of SB 236 need to be implemented to meet federal requirements to retain federal Medicaid funding of more than \$3 million per year for long-term care. Montana pays \$85-90 million per year. She advocates expanding community-based services, which

will cost more money, but serve more people appropriately. Presently there are about 400 people in community-based services funded with \$1 million federal money plus matching state money. She said it's important to do some public education about the alternatives to long-term care, which is part of SB 236. If this bill is not implemented, additional funding for community-based services must be found or community-based services will not be expanded.

HEARING ON SB 248

Opening Statement by Sponsor:

SENATOR BILL CRISMORE, SD 41, Lincoln County, said SB 248 eliminates the state's licensure program for cesspool, septic tank, and privy cleaners by the Department of Health and Environmental Science. It transfers the regulation and licensing authority to local governments because it primarily uses local government to review, inspect, and improve waste disposal sites and investigate waste disposal complaints. Currently local governments receive \$20.00 from each \$25.00 license issued by the state. Under this proposal, local government are authorized to increase license fees to cover their costs. There are continuing public health reasons for regulating where and how waste from septic tanks, cesspools, and privies is disposed, and control the method and location of disposal sites. The majority of the review concerning how and where these wastes are disposed is done by local public health agency staff. SB 248 would transfer this public health function to the local government level and allow them to recover their costs.

Currently, there are 130 licensed septic tank pumpers in the state, with more than half of them operating in counties other than where their business is located. This bill seeks to make public health regulation of septic waste more effective by removing the state license requirement and provide local health agencies the authority and financial ability to review and approve waste disposal methods and sites.

Proponents' Testimony:

Dale Taliaferro, Administrator of Health Services, Department of Health and Environmental Sciences, spoke from his written testimony in support of SB 248. **EXHIBIT 8.**

Bob Robinson, Director, Department of Health and Environmental Sciences, said this bill is a product of directives given to them by the 1993 and 1995 Legislatures. The Appropriations Committee asked them to identify those portions of the Department that are really obsolete or of little consequence. This is a license issued that really doesn't have any substance behind it. There are no standards to be met, at the state level, by the applicant before being issued a license - it's just paper processing at state government level. They receive \$25.00, stamp out a license, send the license to the applicant, and send \$20.00 to the county. There are standards to be met at the local level. For those who

want to be licensed as septic tank pumpers, SB 248 will have them deal with the local health department for licensing rather than with state government.

Joan Miles, Director, Lewis and Clark County Health Department, said she is speaking for only one local health department and they would be willing to take on the issuance of licenses, but wants to be sure they can recover their costs. Under existing law, the \$20.00 received by the county often does not cover their costs. If they need to check 4 or 5 sites used for disposal of wastes, this \$20.00 does not cover the costs.

Opponents' Testimony:

SENATOR SCOTT ORR said he is the owner of SG Services, a septic tank pumping business. Septic tank pumpers have problems with the statement of intent in this bill, talking about additional rule-making and regulation. There is no need for more rule-making and regulations. If there was a significant problem with septic tank pumping, they would agree to it, but there is no overwhelming evidence of problems because there are standards at the local level. Local sanitarians watch over septic tank pumping businesses, and with the passage of federal regulations, inspecting the trucks, weighing, and disposal.

The intent of the bill to move licensing to the local government level will put more of a burden on these businesses. He said septage is not a hazardous substance, but needs to be handled right. They are trained to properly handle the septage, and attend continuing education courses on proper and safe handling.

If the state's problem is only receiving \$5.00 for issuing a license and they are losing money, he suggests the fee be raised. They don't need additional rule-making and regulations. Most are small, one truck businesses and the large companies would like to see additional regulations imposed because they can afford to spread out the costs to their customers.

John Ward, Little John's Septic Service, Helena, said he maintains septic systems and portable toilets. He is opposed to the bill because, if it passes, he will have to get 5 licenses, one for each county in which he works. If the issue is cost, he has no objection of the state charging more to issue a license. Administratively, the state files his application and copies of the disposal sites. Each year, disposal sites must re-approved, and because it was previously approved, the county sanitarian signs it off, but if it's a new site, the county sanitarian must go to the site and inspect it for suitability.

There are new federal regulations, EPA 503, which are very restrictive as to what they can do. He's not opposed to putting in a mechanism for the county to recover its cost, such as fee for each new site, but is opposed to having to deal with more than one agency for his license and more regulations. The problem is, each county can take the state regulations and modify them to be more restrictive, so there would be different regulations in

each county. To him, dealing with local government is dealing with the state because he works in more than one county.

Don Heimbigner, Don's Septic Service, said he is a one-man business, has been in business for 30 years, and there have been no complaints against him regarding his handling of septic sewage. He agrees with John Ward. If he had to get his license from local health departments, he'd have to drive 60 miles to Havre, then 40 miles in the opposite direction in Toole County. He said, if the state fee isn't sufficient, it should be raised.
EXHIBIT 9.

Gary Turney, BT Construction, Townsend, said he is a one-owner, one-truck business. He said there are federal regulations that he must follow and dumps in sites approved by the county health officer. If it costs more money to process permits, the rates should be raised, but small businesses should not be put out of business. The present system is working and why mess with something that's working.

Gary Arno, Arno's Septic Service, Darby, said he agrees with the previous testimony in opposition to SB 248.

Jim Carpenter, Carp's Drain Cleaning, Great Falls, said he is opposed to SB 248 for reasons basically the same as those who have testified. He does business occasionally in surrounding counties, and getting his disposal sites approved, many times, the same sanitarian handles the approval for 2 or 3 counties. Under the SB 248, he'd be required to obtain a license in each county, go through each county's regulations, and that would make it very difficult for him to do business. He likes the present state licensing system and disposal site approval by the local sanitarian, and applying for his annual license by mail without having to deal with a possible 7 or 8 different counties for licensing.

Connie Eckert, Eckert's Septic Service, Bitterroot Valley, said she agreed with previous testimony, and if the price needs to be raised, that would be OK.

Questions From Committee Members and Responses:

SENATOR BENEDICT asked **SCOTT ORR** to explain EPA 503 and the possible consequences if SB 248 is not passed.

SENATOR ORR said EPA 503 regulations would not be affected whether SB 248 is passed or not. EPA 503 are federal regulations dealing primarily with disposal of septage. For example, if its land applied, lime must be put on within a certain period of time, and if that doesn't happen, it must be tilled into the ground within 12 or 24 hours.

SENATOR BENEDICT asked about the possibility of having to dump lime in the trucks, under SB 248.

SENATOR ORR said that is one of their fears. Right now, the system is working without a lot of additional rules. SB 248 states that counties will adopt rules, at least as stringent as those set by the state. Their fear is that each county sanitarian and board of health could interpret it differently, and have myriad of regulations for no good reason - the system is not broken.

SENATOR FRANKLIN asked if the original intent was to increase regulation or transfer a function.

Bob Robinson said the original intent was to eliminate the function at the state level, transfer it to the local level, and not increase regulation. They are proposing to scale down the regulation to provide a floor.

SENATOR FRANKLIN asked about this coming out of a Legislative request for less oversight of the state, and whether this was a formal request.

Bob Robinson said the Appropriations Committee specifically told them, over the last 2 years, to find those functions that are obsolete, inconsequential from the state level, and from which they derived no real benefit resulting, and they identified several areas within the Department of Health that were old, obsolete, and of no benefit to the Department. He said the septic pumper licensing was an example of this, where it's rubber stamped, filed, and sent with no benefit to the Department because all the contact and work is done at the local level. \$5.00 does not cover all the costs of processing, filing and mailing.

SENATOR BURNETT asked about eliminating the process completely and leave it up to the State Sanitarian.

Bob Robinson said there will be none at the state level if SB 248 passes, and may not be necessary at the local level.

SENATOR BURNETT asked about not having any registration, even at the local level.

Bob Robinson said that's an option, because it's optional for the county to issue licenses.

SENATOR SPRAGUE asked how this process would work from county to county.

SENATOR ORR said it would give the county sanitarian more authority.

{Tape: 2; Side 1; Comments: lost about 30 seconds turning tape over.}

SENATOR SPRAGUE asked how this would work in the Polson area, on or crossing the reservation.

SENATOR ORR said he can't answer that question. He said, giving this to the county sanitarians, whether they use it or not, they are given the ability to create more regulations.

SENATOR SPRAGUE asked whether the septic pumping industry has been consulted about possible future problems created by increasing populations, and if industry is organized to participate in the formulation of future legislation.

SENATOR ORR said they currently do not have a state organization, but many do belong to national organizations which sends out new and changing regulations. They have all dealt with that at the local level and worked with their sanitarians.

SENATOR KLAMPE asked how stringent are the state regulations.

Joan Miles said they are basic regarding suitable sites, in terms of ground water.

SENATOR KLAMPE asked if the present regulations are working.

Joan Miles said they are adequate.

SENATOR KLAMPE asked if the system is broken.

Joan Miles said the system is not broken.

SENATOR KLAMPE asked about anticipated increased regulations at the local level.

Joan Miles said she did not anticipate any more regulations at the local level, such as requiring lime in trucks, but that possibility does exist in the future. She agreed that it would be difficult for those who work in several counties to obtain licenses in those counties.

SENATOR KLAMPE asked if there are any changes that are necessary.

Joan Miles said when the same sites are used each year, so the forms are signed. If there are new sites, it would require a lot of staff time, for which they are not presently compensated, but that really isn't a problem now.

SENATOR KLAMPE asked about additional money being necessary.

Joan Miles said it would be helpful if there were new sites, but there is no problem with renewal because they are adequately compensated for that.

SENATOR ECK said this bill only addresses those who clean and service cesspools and septic tanks, then asked about associated areas where the state or the county has control. She said the main complaint she has gotten through the years is, why do they have to jump through hoops to use solar or composting.

Dale Taliaferro deferred to **Bob Robinson**.

Bob Robinson said the question refers to discharge into aquifers and that would be a water quality standard, under subdivision regulations operated statewide under the Montana Degradation and Water Quality Acts as well as local county health departments approving those subdivisions under the state law.

SENATOR ECK asked if the Department is just eliminating just one function dealing with local sanitarians.

Bob Robinson said they deal with sanitarians throughout the state on a daily basis, on consumer safety, health, air quality, solid waste disposal, and water quality standards. Issuing these licenses is just a perfunctory responsibility of processing a piece of paper which makes no sense at the state level, and they want to get rid of it and give it to the county who deals with these people. They will continue with their air quality work, degradation work with regard to septic tanks.

Closing by Sponsor:

SENATOR CRISMORE said there are a lot of concerns, but he doesn't think the concerns are what the bill sets out to do. Counties are given the option whether to charge for the license or not. He said this bill is an attempt to get government off our back, and shifts the responsibility to those who are doing the work, the county health departments. If there is a complaint, the county sanitarian will take care of it.

HEARING ON SB 339

Opening Statement by Sponsor:

SENATOR CHRIS CHRISTIAENS, SD 23, Cascade Co., said SB 339 revises mental illness, alcoholism, and drug addiction types of hospitalization. He serves on state Mental Health Advisory Council, the state Alcohol and Drug Advisory Council, has worked in small group reform, working with insurance carriers and looking at the levels benefits for different kinds of service, and has worked with the Midland Conference that works with national health care reform and benefits. He said there will be to be some amendments to this bill.

Under the managed care organizations coming into Montana, this is extremely important legislation because it expands services to the mental health client, and is a compromise between a lot of different parties.

Proponents' Testimony:

Tanya Ask, representing Blue Cross and Blue Shield of Montana, said they have been working on this particular concept for several years, and recognize the change that mental health is

being treated differently than it was 5 years ago, and differently than when the mandated benefit was first passed. This proposal recognizes that mental health services be provided on a continuum of care. She discussed the amendments. Line 11, (b) add "operated by a hospital," because these types of services are provided by a hospital in a hospital setting on an in- or out-patient basis. She said out-patient benefits have been expanded.
EXHIBIT 10.

Tom Hopgood, representing the Health Insurance Association of America, said they helped with the amendments to SB 339, and he hopes this will solve the adversarial situation that has existed for so long.

Jack Casey, Chairman, Montana Hospital Association, said they support SB 339 with the proposed amendments.

Joy McGrath, Executive Director, Mental Health Association of Montana, said they support SB 339 with the amendments as presented, and agree with increasing out-patient, adding partial hospitalization and still allowing an in-patient benefit. She said this represents a significant improvement in mental health benefits.

Mary McCue, representing Montana Clinical Mental Health Counselors Association, said they support SB 339 and the amendments.

Katy McGowan, representing Montana Council of Mental Health Centers, said the Mental Health Centers provide public mental health services. She said they support SB 339.

Marty Onishuk, Vice President, Montana Alliance for the Mentally Ill, said they support increasing coverage for their members and hope, in the future, people with chronic and serious mental illnesses will be moved from this type of coverage over to other physical illnesses and treated like other brain diseases.

Claudia Clifford, State Auditors's Office, which serves as the Commissioner of Insurance, said they support this legislation. A need for a change in the mental health statute came to their attention during the implementation of the Small Group Reform. They especially support the amendments to this bill. There is legislation that makes changes to the Small Group Law, other pieces of legislation that discuss mental health benefits, and all these bills contain different levels of benefits. With the amendments, this bill would be consistent with a House Bill that makes changes in the Small Group, so the Small Group policies would have the same mental health benefits as this mandated benefit. The Commissioner likes this bill because it's a more appropriate level of benefit for consumer and keeping pace with the ideas of managed care by allowing the use of partial hospitalization.

Bob Torres, representing the National Association of Social Workers, Montana Chapter, said they support SB 399 with the amendments.

Opponents' Testimony: None

Questions From Committee Members and Responses:

SENATOR BURNETT asked about the absence of a fiscal note.

SENATOR CHRISTIAENS said there is no fiscal note because there is no fiscal impact, and may be a cost saving. People will be able to have a continuum of care, going from the highest priced to a lower priced service.

SENATOR BENEDICT said, in the past, he has been skeptical of mandated benefits, and asked if the provisions in this bill will bring some services down, while allowing other services to come in so it will be relatively revenue neutral, and doesn't create an additional load on the insurance policies of the consumers in Montana.


SENATOR CHRISTIAENS said, he thinks it does.

Closing by Sponsor:

SENATOR CHRISTIAENS said this bill brings mental health services into the continuum of care which allows people to get the appropriate services in the least restrictive environment.

ADJOURNMENT

Adjournment: 2:30 PM



ARNIE MOHL, Acting Chairman



KAROLYN SIMPSON, Secretary

AM/ks

MONTANA SENATE
1995 LEGISLATURE
PUBLIC HEALTH, WELFARE AND SAFETY COMMITTEE

ROLL CALL

DATE 2/13/95

NAME	PRESENT	ABSENT	EXCUSED
LARRY BAER	X		
SHARON ESTRADA	X		
ARNIE MOHL	X		
MIKE SPRAUGE	X		
DOROTHY ECK	X		
EVE FRANKLIN	X		
TERRY KLAMPE	X		
STEVE BENEDICT, VICE CHAIRMAN	X		
JIM BURNETT, CHAIRMAN	X		

DEPARTMENT OF
SOCIAL AND REHABILITATION SERVICES

HEALTH & WELFARE
EXHIBIT NO. 1
DATE 2/13/95
BILL NO. SB 158
PETERS, BLOUKE, P.D.
DIRECTOR



MARC RACICOT
GOVERNOR

STATE OF MONTANA

P.O. BOX 4210
HELENA, MONTANA 59604-4210

TESTIMONY OF THE DEPARTMENT OF SOCIAL AND
REHABILITATION SERVICES BEFORE THE
SENATE PUBLIC HEALTH & SAFETY COMMITTEE
(Re: SB 158 - Montana Long-Term Care Reform Act)

Senate Bill 158 has three components. First, it sets forth a policy for Montana's long term care system and declares the guiding principles for the development and implementation of services within the system. Second, the bill mandates that various state agencies cooperate in developing, implementing and coordinating state long term care programs. Finally, SB 158 requires a report to the 55th Legislature on the progress of long term care reform.

In 1993, the Legislature mandated the department of social and rehabilitation services to develop a continuum of care designed to limit the growth of state expenditures for long-term care services to people who are elderly or disabled. As the department worked to carry out this mandate, the need for a system of coordinated long term care services became apparent.

Montana offers a variety of programs and services within several agencies which support and assist those people who are elderly or have disabilities and need long term care. Those programs and services, however, are frequently not well coordinated; the result is a structure which is fragmented and confusing for both those seeking services and those providing services. Thus, the lack of a system means that people seeking services must respond to requests for the same information by different agencies. Conversely, because state agencies currently do not have a common intake process nor a shared information database, the agencies cannot serve people in a coordinated manner nor can they determine whether an individual has been served in the most efficient manner.

This bill proposes to remedy these problems by setting forth principles and policies to guide the development of Montana's long term care system. These principles and policies have developed from discussions carried out in several forums. The directors of the departments of family services, health and environmental services, corrections and human services, and social and rehabilitation services have been meeting regularly over the last several months to discuss and move toward coordinated long term care policies and programs. Additionally, members of the long term care subcommittee of the Governor's Council on Aging have considered these issues in depth.

The bill states that Montana's long term care system must:

- *respect the dignity of the individual;
- *seek to encourage a maximum level of individual independence;
- *include community services which allow the person to continue to live at home;
- *encourage services which are affordable to all Montanans;
- *foster private financing of services; and
- *be a system of coordinated services and programs which are accessible and cost-effective.

To ensure the coordination of services, the bill also directs the departments of social and rehabilitation services, family services, health and environmental sciences, and corrections and human services to cooperate in the development and implementation of state programs. Through joint planning and delivery systems, Montana can build a system of cost-effective, accessible programs to assist the elderly and persons with disabilities. Such elements as a common intake and assessment process will provide easy entry of the individual into the system of services and also allow for efficient program management and accountability.

Finally, the bill requires a report to the 55th Legislature which presents progress from these efforts and recommends further changes needed to establish Montana's long term care system.

On behalf of the Department of Social and Rehabilitation Services, I urge you to pass SB 158. Thank you for holding this hearing and listening to my comments.

Submitted by:



Peter Blouke, Director
Department of Social and
Rehabilitation Services

EXHIBIT NO. 2

DATE 2/13/95

BILL NO. SB 158

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE: FOR THE RECORD, MY NAME IS EVELYN HAVSKJOLD. I REPRESENT HILL COUNTY AREA X AGENCY ON AGING. I AM TESTIFYING AS A PROPONENT OF SENATE BILL #158.

I BELIEVE LONG TERM CARE PLANNING IS A KEY ISSUE WE MUST FACE IN OUR STATE IF WE ARE GOING TO MEET THE EVER INCREASING NEED FOR SERVICES TO OUR ELDERLY AND DISABLED CITIZENS. AND THIS BILL IS PART OF THAT PROCESS.

I WOULD LIKE TO POINT OUT THE UNDER THE OLDER AMERICANS ACT AS WELL AS MONTANA'S OLDER AMERICANS ACT, THE OFFICE ON AGING IN THE DEPARTMENT OF FAMILY SERVICES IS REQUIRED TO COORDINATE AND DEVELOP A COMPREHENSIVE DELIVERY SYSTEM OF SERVICES FOR MONTANA'S ELDERLY. IN THE LAST YEAR AND A HALF, THE OFFICE ON AGING THROUGH THE GOVERNOR'S ADVISORY COUNCIL ON AGING HAS TAKEN AN ACTIVE ROLE IN BEGINNING TO ADDRESS THIS ISSUE. THROUGH THEIR ACTIONS, THE OFFICE ON AGING HAS REVISED THE AREA PLAN FORMAT TO ADDRESS LONG TERM CARE ISSUES AND CONCERNS IN EACH COUNTY IN MONTANA. BUT, THIS IS ONLY A START. WE NEED TO DEVELOP LONG TERM CARE PLANS FOR EACH AND EVERY COMMUNITY IN MONTANA IF WE ARE REALLY GOING TO IDENTIFY THE SERVICES AVAILABLE, THE NEEDS AND THE UNMET NEEDS OF OUR CITIZENS AND THEN LAY OUT A FRAMEWORK FOR THE NEXT TEN TO TWENTY YEARS WHEN EVERYONE IN THIS ROOM WILL MOST LIKELY BE IN THEIR SIXTIES, SEVENTIES OR EVEN OLDER.

AS A PROPONENT FOR THIS BILL, I ASK FOR YOUR SUPPORT AND RECOMMEND THAT THE OFFICE ON AGING AS WELL AS THE ENTIRE AGING NETWORK HAVE MORE OF A MAJOR ROLE IN DEVELOPING LONG TERM CARE SERVICES, COORDINATION AND DELIVERY.

THANK YOU.

TESTIMONY ON BEHALF OF THE
MONTANA AREA AGENCIES ON AGING ASSOCIATION
ON SB 158, FEBRUARY 13, 1995

SENATE HEALTH & WELFARE
EXHIBIT NO. 3
DATE 2/13/95
BILL NO. SB 158

My name is Mary Allen and I rise on behalf of Montana Area Agencies on Aging Association in support of SB 158.

Montana's Area Agencies on Aging are public or non profit agencies, designated by the State Office on Aging, to address the needs and concerns of older Montanans at the local level. Each of the eleven Area Agency on Aging in the State is required to have an advisory council, comprised primarily of older persons, to review and comment on all programs affecting the elderly at the community level.

With the definition of "long term care" now including home and community based (care) as well as institutional care, the concept of a "continuum of care stresses the need of the chronically ill elderly for different levels of care as health conditions and degree of illness varies and this continuum of care then implies a choice of the most appropriate services. Increased provision of community alternatives helps the impaired, less than fully sufficient elderly function at the highest possible level of well being in the least restrictive setting. The idea is to foster as much self sufficiency and independence as possible while allowing the family to carry part of the responsibility for care. In home services such as home delivered meals, home health agencies, homemaker or home chore services, friendly visiting telephone reassurance programs and respite care to assist caregivers of the elderly help individuals stay in their own homes and with their families for as long as possible.

Community based services such as adult day care, senior center programs, meals in group settings, and legal and employment services are provided at local locations and provide an important part of the long term care continuum.

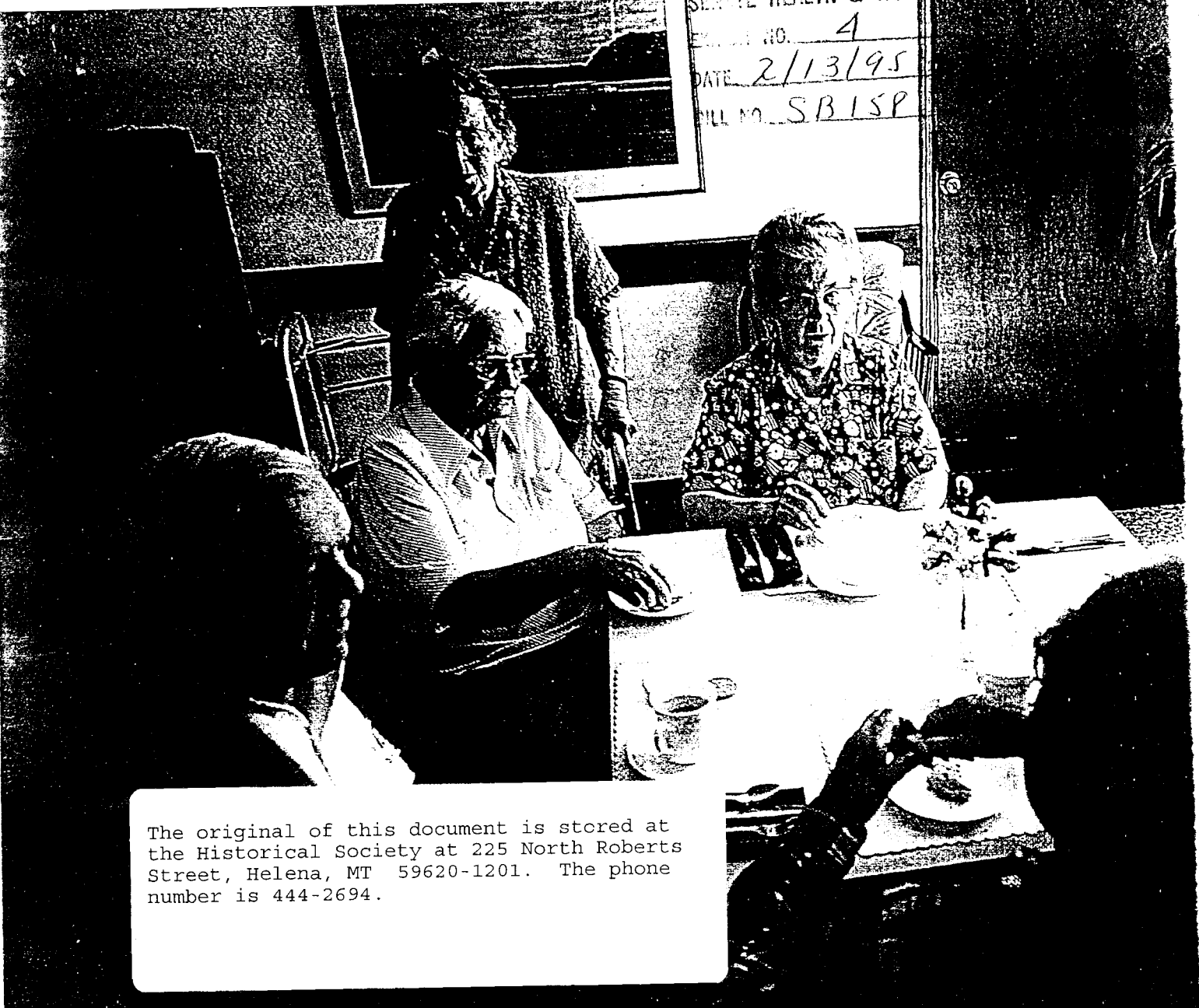
Access services assist an elderly person or family member locate and connect with transport information and referral services which best meet their care needs.

Long Term Care Reform is essential when you consider the changing demographics as Montana's population ages and the need for services for older Montanan's increases.

- 17.6 percent of Montana's population is over 60 years of age and each day another 23 people turn 60 years of age.
- In 35 of the 56 Montana Counties (where statistics are available) 20 percent of each county's population is over 60 years of age.
- The fastest growing age group in Montana is the group 85 years of age and older.

Individuals needing long term care should be able to receive that care all along the continuum from acute settings to nursing facility care to residential and home care. SB 158 will make the service system more responsive to the needs of consumers of all ages while making the delivery more cost effective.

SB 158 will provide the state and the community the authority to effect change and meet the increasing needs of Montanans for long term care.



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.

Nursing Homes And Common Sense

For decades, nursing homes have been the primary providers of long-term care.

But are states spending billions of dollars on sophisticated care that most of the elderly don't need?

Nurses are on duty. Doctors are on call. The hallways, tiled in ammonia-scrubbed linoleum, are lined with groups of elderly people sitting in wheelchairs or shuffling behind walkers. Some are making their way to the large dayroom where a television set is the focal point of their social life. Meanwhile, nursing aides check on bed-bound and coma-

BY PENELOPE LEMOV

TESTIMONY OF THE DEPARTMENT OF
SOCIAL AND REHABILITATION SERVICES
BEFORE THE SENATE PUBLIC HEALTH, WELFARE AND SAFETY COMMITTEE

RE: SB 236 - An Act Relating to Medicaid
Estate Recovery and Liens.

SB 236 will implement changes in federal law which prevent individuals from becoming eligible for Medicaid long term care benefits by giving away or sheltering substantial assets. The bill would implement changes in federal law which require expanded recovery of medicaid expenditures from estates of deceased recipients and allow recovery of Medicaid expenditures from the recipient's property passing outside the probate estate. The bill would require SRS to place a lien upon real property owned by certain medicaid recipients to preserve the property for later recovery of Medicaid expenditures. This bill will not cause benefits to be denied to any citizen who truly does not have the resources to pay for long term care.

Previous federal law required a period of medicaid eligibility for long term care services when a person disposed of resources for less than fair market value during a certain time period. However, the federal law left several gaping loopholes. These loopholes have been exploited by some individuals to intentionally impoverish themselves so that medicaid pays for their long term care. The law also failed to adequately address multiple transfers and other issues. The result was that the penalties for uncompensated transfers were not significant enough to accomplish their purpose.

The Omnibus Budget Reconciliation Act of 1993 (OBRA '93) amended the transfer of assets law to close these loopholes, to increase the "look back" period from 30 months under previous law to 36 months (or 60 months if the transfer is to a trust) under the new law and to address certain inadequacies in the penalty provisions of the law.

The proposed bill would require SRS to adopt rules which deny eligibility when a person has disposed of assets for less than fair market value. SRS has authority under existing state law to adopt rules providing for treatment of trusts as required by the new federal law. The bill allows SRS flexibility to adopt and amend its rules to respond to new eligibility planning strategies and to implement future federal changes without the need to await further state legislative action. The bill requires SRS to establish and "undue hardship" exception process and criteria as required by federal law.

SRS currently operates a program to recover medicaid expenditures from estates of deceased recipients. OBRA '93 expands the medicaid expenditures which states must recover from estates. OBRA '93 also allows the state the option of recovering property of the deceased recipient which upon death passes outside the probate estate (for example, property held in joint tenancy with right of

survivorship). This closes a significant loophole in prior law which allowed persons to avoid estate recovery by transferring assets into forms of ownership which bypass the probate estate.

The proposed bill would also implement federal law which allows the state to impose a lien upon the recipient's interest in real property for later recovery through the estate, or for recovery upon sale or transfer.

Montana Medicaid spent over \$100 million on long term care services in FY 94. This represents about one third of the entire budget. Approximately 62 percent of nursing home residents are eligible for Medicaid to pay their nursing home bill. This has placed a strain on state finances and will only get worse as more of our population becomes eligible for long term care services. This bill addresses the need for public private financing of long term care and implements a solution for Montana.

Montana can save almost one million dollars or more in the upcoming biennium and substantially more in future years by implementing and enforcing restrictions on asset transfers, imposing liens on sheltered property, and recovering benefits paid from recipients' estates. These savings derive from a combination of hard dollar recoveries and cost avoidance as more seniors choose private alternatives to long term care financing. The provisions of the bill are designed to target public welfare resources to those who need them most while providing a stronger incentive for seniors and their heirs to plan ahead for their long term care needs by purchasing long term care insurance or other private financing and avoid reliance on public funds.

You may recall that during the December, 1993 special session, similar legislation was introduced. (SB 39) The proposed bill passed the Senate and failed in the House. After the special session, the department met with representatives of over a dozen groups which had an interest in the legislation. The department has made many changes in this bill to accommodate the concerns these and other groups raised. These changes include referencing federal law when appropriate, eliminating references to establishment of trusts, providing clear protection for spouses and other dependent family members, clarifying the establishment of undue hardship provisions, as well as making the legislation less cumbersome.

At a time when the Medicaid program faces potential budget reductions in other areas which impact the access and payment of care for low-income recipients, this bill provides savings without impacting anyone except those who have the means to pay for their own care and their heirs. When many poor women and children below the poverty limit do not now qualify for Medicaid, it only makes sense that people and their heirs who can afford to pay for their own care no longer use limited public assistance dollars.

Passage of this legislation is critically important to our efforts

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SB 236

to reform long term care in Montana. Savings resulting from this bill will help finance development of home and community services as alternatives to more costly institutional care.

On behalf of the Department of Social and Rehabilitation Services I urge you to pass HB 236. Thank you for the opportunity to provide these comments.

Submitted by:

Peter Blouke, Ph.D
Department of Social
and Rehabilitation Services

CHAIRMAN AND MEMBERS OF THE COMMITTEE: FOR THE RECORD MY NAME IS EVELYN HAVSKJOLD. I REPRESENT HILL COUNTY AGING SERVICES. I AM TESTIFYING AS A PROPONENT FOR A LAW WHICH WOULD COVER THE USE AND MISUSE OF MEDICAID AND ALSO THE ESTATE RECOVERY FOR MEDICAID.

IN MY OPINION, SB236 ASKS MORE QUESTIONS THAN IT GIVES ANSWERS. I HAVE LISTED BELOW SOME TO THE POINTS WITHIN THIS BILL I FEEL NEED TO BE CLARIFIED.

STATEMENT OF INTENT:

I HAVE A CONCERN WHEN RULEMAKING AUTHORITY, TO IMPLEMENT ACTIONS WHICH WILL RESULT IN SUCH SERIOUS CONSEQUENCES, IS LEFT TO ANY ONE SINGLE STATE AGENCY.

IT IS MY OPINION THAT THE LEGISLATURE HAS THE RESPONSIBILITY TO MONTANA CITIZENS TO HAVE THE RULES SPELLED OUT BEFORE PASSING A LAW OF THIS MAGNITUDE.

SECTION 2 (NEW)

UNDUE HARDSHIP EXCEPTION IS NOT DEFINED, NEITHER IN THIS SECTION OR ANYWHERE THROUGHOUT THE PROPOSED BILL.

SECTION 3 SECTION 53-6-143 MCA

PART 4. "IF THE SRS ALREADY HAS A LEIN ON PROPERTY IT DOES NOT PRECLUDE THEM FROM PURSUING RECOVERY UNDER ANOTHER SECTION AGAINST OTHER ASSETS OF THE RECIPIENT OR ASSETS OF ANOTHER PERSON PROVIDED IN 53-6-144, (SECTIONS 1, 2, AND 5 THROUGH 261, AND THIS SECTION.)"

WHAT OTHER ASSETS ARE BEING TALKED ABOUT OTHER THAN THOSE ASSETS WHICH HAVE ALREADY BEEN DOCUMENTED TO RECEIVE MEDICAID ELIGIBILITY?

SECTION 4 SECTION 53-6-144 MCA

"THE ONLY RELATIVES THAT MAY BE HELD RESPONSIBLE FOR PAYMENT OF MEDICAL ASSISTANCE UNDER THE PROGRAM ARE THE HUSBAND OR WIFE OF THE INDIVIDUAL, THE PARENTS OF CHILDREN UNDER 18 YEARS OF AGE, AND PARENTS OF BLIND OR DISABLED PERSONS OVER 18 YEARS OF AGE."

THE KEY WORDS ARE "MAY BE HELD RESPONSIBLE." LET ME GIVE YOU 2 EXAMPLES. I PERSONALLY HAVE A 11 YEAR OLD GRANDSON, JAKE, WHO HAS A CANCEROUS BRAIN TUMOR, WHO WOULD BE INVOLVED IN THIS AREA. JAKE HAS BEEN GOING THROUGH SURGERIES, RADIATION, CHEMOTHERAPY, WHEEL CHAIRS, ETC. FOR THE PAST 9 YEARS. HIS PARENTS HAVE HAD EXCELLENT HOSPITAL INSURANCE DURING THIS WHOLE TIME. THEY HAVE SPENT MANY OTHER DOLLARS, AS HAVE MY HUSBAND AND I, TO TRY TO RESOLVE THESE PROBLEMS. THE HIGH COST OF MEDICAL CARE FORCED US TO SEEK MEDICAL ASSISTANCE THROUGH MEDICAID. THERE ARE 2 YOUNGER CHILDREN IN THE FAMILY. IF SOMETHING HAPPENS TO JAKE, WHAT HAPPENS TO THE REST OF THE FAMILY? IT NEEDS TO BE DEFINED.

THE OTHER EXAMPLE IS AN OLDER COUPLE WHO HAVE A DISABLED YOUNG ADULT, UNMARRIED, AND OVER THE AGE OF 18. SHE LIVES IN HER OWN APARTMENT, SEPARATE FROM THE FAMILY HOME, AND HER PARENTS PROVIDE CARE AND SUPPORT FOR HER. SHE IS ON MEDICAID BECAUSE OF THE HIGH COST OF CARE. DOES THIS MEAN, UPON HER DEATH BEFORE HER PARENTS, THAT THE PARENTS ARE RESPONSIBLE FOR HER MEDICAID COSTS? WOULD A LEIN BE PUT ON THE PARENTS HOME WHILE THEY ARE BOTH STILL ALIVE AND IN THIS HOME?

THESE ARE REAL CASES I HAVE LISTED. THE REAL SOLUTIONS TO THESE, AND OTHER CASES, NEED TO BE DEFINED BEFORE WE HAVE A LAW WITH NO GUIDELINES.

SECTION 5 (NEW)

(7)(C) "DENIAL DOES NOT GRANT A RIGHT TO A CONTESTED CASE HEARING OR A RIGHT TO JUDICIAL REVIEW UNDER THE MONTANA ADMINISTRATIVE PROCEDURE ACT OR THE DEPARTMENT'S RULES."

DOES THIS MEAN THE INDIVIDUAL HAS NO LEGAL RECOURSE? WHAT ARE THESE RULES?

(9) "ALL MONEY RECOVERED UNDER THIS SECTION FROM ANY SOURCE MUST BE DISTRIBUTED TO THE STATE GENERAL FUND AND TO THE UNITED STATES AS REQUIRED BY APPLICABLE STATE AND FEDERAL LAWS AND REGULATIONS."

I AM CONCERNED THAT THE FEDERAL GOVERNMENT IS GOING TO GET OVER 71 CENTS OF EACH DOLLAR RECOVERED. OF THE REMAINING 31 CENTS SRS WILL TAKE A SHARE FOR ADMINISTRATION AND THE PRIVATE CONTRACTOR WILL TAKE 10 CENTS PLUS CONTINGENCY. IF THERE ARE ANY FUNDS REMAINING, I RECOMMEND 50% SHOULD GO TO MEDICAID WAIVER AND 50% TO DFS OFFICE ON AGING FOR LONG TERM CARE PLANNING AND CASE MANAGEMENT.

ARE WE PREYING UPON MONTANA CITIZENS, WHO HAVE BEEN UNFORTUNATE TO HAVE CATASTROPHIC ILLNESS EFFECT THEIR FAMILY, FOR THE FEDERAL GOVERNMENT REIMBURSEMENT?

SECTION 19 (NEW)

(2)(B) SPOUSES LIMITED EXEMPTION FROM LEIN. I APPRECIATED THE IMPLEMENTATION OF EXEMPTIONS THAT PROTECT THE COMMUNITY SPOUSE FOR \$100,000, BUT ARE WE SURE WITH ALL THE STIPULATIONS IN THIS BILL THAT THE \$100,000 IS AN ACTUAL NUMBER?

SECTION 27 (NEW) REPEALER

SECTIONS 53-2-601, 53-2-611, 53-5-401, MCA, ARE REPEALED. WHAT WERE THEY AND WHY WERE THEY REPEALED?

SECTION 30 (NEW) RETROACTIVE APPLICABILITY

"APPLIES RETROACTIVELY TO ASSETS DISPOSED OF OR TRUSTS ESTABLISHED AFTER AUGUST 10, 1993, FOR PURPOSES OF DETERMINING ELIGIBILITY FOR MEDICAL ASSISTANCE ON OR AFTER JULY 1, 1995."

THIS BILL IS SO IN DEPTH THAT IMPLEMENTATION AND INFORMATION TO THE CITIZENS OF MONTANA IS NOT GOING TO BE INSTANTANEOUS. FOR EXAMPLE, ALL INDIVIDUALS PRESENTLY ON SERVICES WILL NEED TO BE CONTACTED, INFORMED OF THE NEW LEIN LAW, AND ASKED IF THEY WISH TO CONTINUE SERVICES. WHO WILL DO THIS CONTACTING AND WILL IT BE FACE TO FACE? MANY OF THESE PERSONS ARE FRAIL ELDERLY. ESTATE PLANNERS COULD BE GUILTY OF GIVING THEIR CLIENTS IMPROPER ADVICE BECAUSE OF THE RULES AT THE TIME AND BECAUSE THE CURRENT RULES HAD BEEN CHANGED. LEGALLY SPEAKING, IT WOULD PROBABLY BE ADVISABLE TO SET THE ELIGIBILITY CRITERIA AS OF A FUTURE DATE AND FROM THAT DATE ON.

IN CONCLUSION, I BELIEVE MOST MONTANA CITIZENS WANT TO PREVENT ABUSE OF THE MEDICAID SYSTEM BY "RICH" PERSONS BY CUTTING OFF THEIR ABILITY TO "GAME THE SYSTEM." BUT WE MUST BE CAREFUL WHEN IMPLEMENTING THIS TYPE OF LAW, THAT WE DO NOT PENALIZE MONTANA AND CITIZENS WHO HAVE BEEN HIT BY CATASTROPHIC ILLNESSES.

I HAVE DISCOVERED, IN THE PAST 22 YEARS OF WORKING WITH THE ELDERLY, THAT THEIR FIRST CHOICE TO RECEIVE DIRECT SERVICES IS IN THEIR HOME. IN ADDITION, THIS IS THE MOST EFFECTIVE AND LEAST EXPENSIVE METHOD OF DEALING WITH THEIR PROBLEMS. I HAVE A CONCERN THAT THE FRAIL ELDERLY NEEDING SERVICES WILL DISCONTINUE THESE SERVICES RATHER THAN HAVE A LEIN PUT ON THEIR HOME.

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SB 236

THE IN-HOME SERVICES THEY WOULD DISCONTINUE WOULD RESULT IN A MORE COSTLY INSTITUTIONAL SETTING. I THEREFORE RECOMMEND THAT A WAIVER FOR HOME AND COMMUNITY BASED SERVICES BE EXPLORED.

THANK YOU FOR YOUR TIME AND CONSIDERATION OF THIS TESTIMONY.

TESTIMONY BEFORE SENATE PUBLIC HEALTH AND WELFARE COMMITTEE

13 February, 1995

Montana American Association of Retired Persons Legislative Committee

Mr. Chairman:

For the record my name is Michael Griffith. I am representing the American Association of Retired Persons. Mr. Chairman, AARP is known for its supplemental medicare insurance and other national benefits.

However, I represent the 113,000 AARP members in Montana, and the hundreds of community service volunteers who are active in this state teaching drivers training, helping with income tax returns, counseling pre-retirees and helping widowed persons, among other programs. Not one member in Montana sells AARP insurance or has a paid position. We are all volunteers.

The Montana AARP state legislative committee fought SB 39 in the last Special session. Since then, we have had several working sessions with Senator Waterman and SRS concerning what we perceived as problems with that bill. We want to take this opportunity to thank Senator Waterman and the department for their patience and willingness to take our concerns into account.

Almost every concern we had has been taken into account. As a result, the Montana AARP legislative committee voted to support this bill. #236

We still have uneasy feelings about the privatization of the recovery program. 11

We also are uneasy about the rule making powers given the department in this very sensitive area. 2

Finally, we hope that the success of the recovery program is reflected in additional funds being appropriated for assisted living programs designed to keep elderly out of expensive nursing homes. 3

that is For the record, I am submitting a statement of the actions taken in this bill to address ^{our} major concerns.

We concur in this bill. #236

Thank you.

SENATE HEALTH & WELFARE
EXHIBIT NO. _____
DATE _____
BILL NO. _____

- 1 Alternatives:
 - a. Put in contract what can be done
 - b. Put in rules " " " "
 - c. SRS do it
 - d. Have a citizens review board.
- 2 Outside audit
Outside board
- 3 We realize that commercializing is favored on.

COMPARISON OF PROPOSED LIEN LAW WITH SB 39 OF SPECIAL 1994 LEGISLATURE

The law allows for recovery of the recipient and spouse's assets under certain instances,

1. Liens used prior to death only.

Allows use of liens prior to death only (a) to satisfy a court judgement, (b) to recover from third parties (such as insurance carriers, providers, etc.), and (c) in cases of institutionalized persons, including those in nursing homes longer than 6 months.

The SLC had concerns about liens on personal property of the surviving spouse. Liens are authorized only against the real property of living institutionalized recipients.

The SLC questioned the extent that the surviving spouse was liable for the debts of the deceased recipient. Clearly the surviving spouse is liable according to current law.

The SLC had concerns about impoverishment of surviving spouses, and recoveries from a large number of relatively poor individuals. A spousal exemption of up to \$100,000 from the lien on real property is possible, depending upon the value of the property and the personal assets of the surviving spouse. Since eligibility includes consideration of assets (exempting the home) and requires a spend-down, the utility of this exemption may be moot.

In addition, the department can't collect on a lien so long as a surviving spouse or minor or disabled children are alive. This has been expanded beyond the original "so long as a surviving spouse lives in the home."

Furthermore, the amount, type and method of medicaid re-payment may be negotiated with the department.

The SLC had raised questions concerning dismissal from a nursing home. The lien is dissolved if and when a recipient is discharged from the facility and returns home.

The SLC wanted notices and hearings. State must give notice of intent to impose a lien and provide opportunity for a hearing.

The SLC wanted notification. Execution of the lien must be acknowledged.

The SLC raised the question of the order of the lien. The lien is prior to any earlier or subsequent recorded or unrecorded claim.

2. Claims against estates used after death.

AARP policy is to limit recovery only to what is included in probate. The act expands recoverable assets to those outside probate as authorized but not mandated by Federal law.

The act allows recovery after death by filing a claim. Recoverable assets include everything owned at the time of death, including revocable trusts, life-time estates, bank accounts, etc. The act also authorizes recovery from survivors and devisees through court action.

The SLC wanted the timing of claims clarified. Claims are filed during probate creditor notice period.

The SLC raised questions concerning impoverishment. Department may give hardship waivers, and must notify surviving spouse of right to a waiver.

The SLC wanted a limit on execution time. Three-year time span to collect on a claim.

The SLC was concerned that the department would build up a claims bureaucracy using recovered funds. Claims recovered go to the general fund, not back to the department.

3. Personal funds of a deceased recipient held by a nursing home are confiscated by the department.

4. Excess burial funds of a deceased recipient are confiscated by the department.

5. The Act authorizes application of the same rules to public assistance recovery, and repeals Public Assistance Recovery, Recovery from Estates, and Old Age Assistance Recovery laws.

-----END-----

Testimony on Senate Bill 248

Submitted by: Dale Taliaferro, Administrator of Health Services
Montana Department of Health & Environmental Sciences
February 13, 1995

Mr. Chairman and members of the Committee, the Department of Health & Environmental Sciences (DHES) supports passage of SB 248 as written. There continues to be public health reasons for regulating how and where wastes collected from cesspools, septic tanks, and privies are disposed. Since the DHES recognizes that the majority of review and investigative activities concerning how and where these wastes are disposed are performed by local government health agency staff, this bill would transfer this public health function to the local government level and allow them to recover their cost. Currently, there are about 130 licensed septic tank pumpers statewide of which more than half operate in more than one county.

Public health reasons for controlling the method and location of disposing of septage include bacterial and viral pathogenic diseases which utilize the septage as a growth medium, including cholera and typhoid fever and reducing the risk of contaminating surface waters and underground water aquifers through which these diseases can be spread.

Section 1 changes required licensure by the state to required regulation by local health boards.

Section 2 continues addressing the regulatory authority transfer for septic tank pumpers from the state to local health agency level. Authority is provided to require septic tank pumpers to license and make application for that license to the local health board. It also continues to provide authority to the DHES to promulgate minimum standards for regulating septic tank pumper waste disposal methodology and sites and requires their adoption by local health agencies. Setting minimum state standards for regulation is necessary to maintain a consistent minimum public health standard statewide. Local health boards can choose to adopt more stringent standards. With the state maintaining minimum septage operating and disposal standards, there should be a minimum of conflict with other federal and state regulatory authorities (U.S. Environmental Protection Agency, Montana Water Quality Act). Local health boards would be authorized to charge a license fee and a late renewal fee with the fee to be set by the local health board.

Sections 3 and 4 change authority definitions and license enforcement capabilities appropriate for transferring the regulation of septic tank pumpers licensure from the state to local level.

Section 5 removes the requirement for the state to enforce septic tank pumper regulations and expands local regulatory authority language.

Section 6 corresponds to Section 2 to require local health boards to adopt the minimum state standards for regulating septic tank pumpers with an effective date of Dec. 31, 1995.

Section 7 repealers are for the state license and revenue sections.

In conclusion, this bill seeks to make public health regulation of septic tank waste more effective and efficient by removing the state license requirement and providing local health agencies the authority and financial ability to effectively review and approve waste disposal methods and sites.

NAME Don Heimbigner

ADDRESS P.O. Box 192

HOME PHONE 75-9-5344 WORK PHONE _____

REPRESENTING _____

APPEARING ON WHICH PROPOSAL? SB 248

DO YOU: SUPPORT _____ OPPOSE X AMEND _____

COMMENTS:

would like to see stay as is
if changed

I may be forced drive to each
County Sanitation and be inspected
which would amount to 200+ miles
and each County to charge different
charges.

WITNESS STATEMENT

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

AMENDMENTS

Senate Bill 339

Submitted by Blue Cross and Blue Shield of Montana

February 13, 1995

SENATE HEALTH & WELFARE

EXHIBIT NO. 10

DATE 2/13/95

BILL NO. SB 339

Page 1

1. Line 9
Following: "RAISING THE LIMIT"
Insert: "FOR MENTAL ILLNESS"

Page 2

2. Line 29
Following: "except that"
Delete: ":"
3. Line 30, strike

Page 3

4. Lines 1-7, strike
5. Insert: inpatient treatment for mental illness, alcoholism, and drug addiction may be subject to a maximum yearly benefit of 21 days;
(a) inpatient treatment for mental illness may be traded on a two-for-one basis for a benefit for partial hospitalization through an American partial hospitalization association program;
(b) inpatient treatment for alcoholism and drug addiction may be subject to a maximum benefit of \$4,000 in any 24-month period and a maximum lifetime benefit of \$8,000;
6. Line 11
Strike through line 25
Insert: (a) inpatient treatment for mental illness, alcoholism, and drug addiction may be subject to a maximum yearly benefit of 21 days;
(b) inpatient treatment for mental illness may be traded on a two-for-one basis for a benefit for partial hospitalization through an American partial hospitalization association program;
(c) inpatient treatment for alcoholism and drug addiction may be subject to a maximum benefit of \$4,000 in any 24-month period and a maximum lifetime benefit of \$8,000;
(d) outpatient treatment for mental illness may be subject to a maximum yearly limit of not less than \$2,000; and
(e) outpatient treatment for alcoholism and drug addiction may be subject to a maximum yearly benefit of \$1,000;

Page 4

7. Line 19
Strike through line 24

DATE 2-13-95

SENATE COMMITTEE ON Public Health

BILLS BEING HEARD TODAY: SB 158 - SB 236 - SB 339
+ SB 248

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Check One

Name	Representing	Bill No.	Support	Oppose
Jocie Waldron	-	SB 158		
Donald Heimbigner	Don's Septic Service	SB 248		X
Betty Heimbigner	Don's Septic Service	SB 248		X
Bill Olson	AARP	SB 158 SB 236	✓	
Charlie Bongas	Mt. Area Aging Agencies	SB 158 SB 236	✓	
Claudia Clifford	State Auditor's Office	SB 339	✓	
Evelyn Harskjold	Hill County Aging Services	SB 158 SB 236	✓	
Charles Rehbein	DFS - Office on Aging	SB 158 236	✓	
Tanya ABK	Blue Cross Blue Shield	SB 339	✓	assumed
David Homion	Mental Health Assoc.	SB 339	✓	
ALEXE GORRETTA	AARP	" 158 " 236	✓	
Lloyd Bender	AARP	SB 158 SB 236	✓	
Kate Cholera	Human Service Fund.	158 236	✓	
MARY ALLEN	MT. AREA AGENCIES QUARTERS ASSOC.	158 236	✓ ✓	

VISITOR REGISTER

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DATE 2/13/95

SENATE COMMITTEE ON Public Health

BILLS BEING HEARD TODAY: SB 158, SB 236,
SB 339, SB 248

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Check One

Name	Representing	Bill No.	Support	Oppose
Bob Bastian	Self	SB 236		<input checked="" type="checkbox"/>
Joe Brand	VFW	SB 236		<input checked="" type="checkbox"/>
Roe Hughes	MT. Health Care Assn.	SB 236	<input checked="" type="checkbox"/>	
Dick Baumbarger	Self	SB 236		<input checked="" type="checkbox"/>
Ed Coplis	MSCA	SB 158 SB 236	<input checked="" type="checkbox"/>	
Scott Orr	STARR SERVICES	SB 248		<input checked="" type="checkbox"/>
John Ward	LT 99	SB 248		
Gary Purney Jr	BT Council	SB 248		<input checked="" type="checkbox"/>
John W. Casper	CAMP 3 Dixie Hwy	SB 248		<input checked="" type="checkbox"/>
Conrad Eckert	Eckerts Septic Service	248		<input checked="" type="checkbox"/>
Doug E. Arno	Arno's Septic Service	248		<input checked="" type="checkbox"/>
Billy EARL	Eckerts Septic Service	248		<input checked="" type="checkbox"/>
Conrad C. Eckert	Eckerts Septic Services	248		<input checked="" type="checkbox"/>
DALE HENDERSON	DHEG	248	<input checked="" type="checkbox"/>	

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DATE 2/13/95

SENATE COMMITTEE ON Public Health

BILLS BEING HEARD TODAY: SB 158, SB 236,
SB 339

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Jan Miles	L&C County Health	248	<input checked="" type="checkbox"/>	
Kathy McGowan	mcmtc	339	<input checked="" type="checkbox"/>	
Bonnie Adce	St Peter's Hospital ^{Helen}	339	<input checked="" type="checkbox"/> with memorandum	
LARRY AKEY	MT ASSOC OF LIFE WORKERS	339	AS Amended	
Bob Torres	NASW-MT chapter	339	as amended <input checked="" type="checkbox"/>	
Bob Olsen	MHA	339	AS Amended <input checked="" type="checkbox"/>	
Kay Fox	MLIC	SB 236 158	<input checked="" type="checkbox"/>	
Joey McGrath	Mental Health Assn	SB 339	Amended <input checked="" type="checkbox"/>	
Marty Onishuk	Mon AMT	SB 339	<input checked="" type="checkbox"/>	

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