

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON HUMAN SERVICES & AGING

Call to Order: By CHAIRMAN DUANE GRIMES, on January 13, 1995, at 3:00 p.m.

ROLL CALL

Members Present:

Rep. Duane Grimes, Chairman (R)
Rep. John C. Bohlinger, Vice Chairman (Majority) (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. Susan L. Smith (R)
Rep. Loren L. Soft (R)
Rep. Kenneth Wennemar (D)

Members Excused: None

Members Absent: None

Staff Present: David Niss, Legislative Council
Jacki Sherman, Committee Secretary

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

Committee Business Summary:

Hearing: HB 109
Executive Action: None

HEARING ON HB 109

Opening Statement by Sponsor:

REP. JOHN COBB, HD 50, Chairman, Human Services Joint Appropriations Subcommittee said HB 109 places a three-year moratorium on the approval of additional long-term care facility beds by the certificate of need process. This bill will mean

less operating expenses than using the certificate of need. There are 731 nursing homes in Montana. These nursing homes have a 92 percent occupancy rate. Sixty-two percent of those beds are occupied by Medicaid patients. A one percent addition per year is added to nursing homes. Nursing home costs go up about four percent per year. If less than ten beds are requested (or less than a ten percent increase) they are still allowed to proceed without a certificate of need. The reasoning behind this bill is to control health care costs. The budget in this area will grow to \$182 million in the next two years. Nursing home costs for Medicaid in 1994 was \$85 million. Estimated costs in 1996 are \$102 million and in 1997, \$112 million. Two-thirds of the Medicaid budget is now being taken care of by senior citizens. **REP. COBB** stressed that they can't keep expanding nursing homes. This bill is a way to find alternatives to nursing homes. He said they need to come up with ways to keep health costs down.

Proponents' Testimony: None

Opponents' Testimony:

Rose Hughes, Executive Director, Montana Health Care Association, said this bill places a restriction on the availability of nursing home care for people who need it. **EXHIBIT 1**

Peter Blouke, Department of Social and Rehabilitation Services (SRS), said a more effective method would be to use the current certificate of need to control the growth rate. He said they are trying to develop appropriate alternatives to nursing home care; although nursing homes will always play a major part in the health care system. Medicaid clients will be faced with an access problem to nursing homes and he agreed with the comments of **Rose Hughes**.

Keith Wilson, President of Wilson and Company, said they rely heavily on the utilization of the tool of the certificate of need for long range planning. They feel the state should do the same. The utilization of the moratorium is zero growth and zero planning. **EXHIBIT 2**

Joe Rude, President of Health and Marketing West, stated they understand how the certificate of need is used as a management tool and feel this bill is bad public policy. It would deny access to care for the elderly. He said their Laurel facility has been short on beds every since it was built seven years ago. They have 22 beds under construction and 50 people on the waiting list. This bill may save money on Medicaid costs, however, hospital and family costs would rise.

Jim Ahrens, President of the Montana Hospital Association, said 43 out of 55 of their hospitals are involved in the long term care business. They feel the moratorium only increases prices and will cause more shortages. **EXHIBIT 3**

Carl Hanson, Administrator, Ponderosa Medical Center. EXHIBIT 4

Tom Ebzery, ST. Vincents Hospital, Billings. EXHIBIT 5

H. Ray Gibbons, Holy Rosary Hospital, Miles City. EXHIBIT 6

Kay Jennings, Administrator, Village Health Care Center, Missoula. EXHIBIT 7

DAVID C. HENRY, PRESIDENT/CEO of Northern Montana Health Care, Inc. EXHIBIT 8

Deeann Small, Administrator, Valley View Estates, Hamilton, said Valley View is a 98-bed facility. At the present, operations are at a 95%-100% capacity. Plans are being made to expand and upgrade the facility to accommodate the needs from the growth of the Bitterroot Valley. She said people in Bitterroot Valley want to remain there, close to their own physicians and their families. To allow them this privilege they have to be able to provide them beds. There is a 20 bed Alzheimer's unit which is at full capacity. These are patients who can't be cared for at home. If beds aren't available; people will have to stay at the hospital which can cost \$400 per day and up. The same care in rehabilitation would cost approximately \$80 per day. Home health care is expensive. An RN may cost up to \$35 per hour to visit the elderly in their homes. For this reason patients are admitted malnourished and with skin breakdown because of lack of proper care. HB 109 may result in these above-mentioned side effects. The certificate of need enabled responsible control in growth of nursing homes.

Informational Testimony: None

Questions From Committee Members and Responses:

REP. JOHN BOHLINGER asked REP. JOHN COBB what they are going to do for these elderly people. REP. COBB replied that the certificate of need obviously isn't working to help the elderly. In three or four years they "are going to have a crash." They are going to be pulling people out of nursing homes, because they don't have the money.

REP. BOHLINGER said that no one in the city of Billings had applied for the certificate of need. Joe Rude answered that the Laurel Care Center went through a two-year struggle to get a certificate of need approved. The certificate of need formula that is used doesn't respond to need. It responds to historical utilization of nursing homes. Laurel Care Center ran 99.9% occupancy for four years, yet the health department said they didn't need any more beds. The certificate of need process has broken down and a moratorium process is not going to fix it. The only way to show a need is if all the beds are full for a period of two years.

REP. ELLEN BERGMAN asked **REP. COBB** if Medicaid is running out of money. **REP. COBB** replied that they must pay to nursing homes and hospitals or they will be sued. He said they could cut all that is optional, but there is "going to be a wreck soon." The legislature cannot raise enough taxes next session if the growth rate continues to clean up this wreck. There will be some tough decisions to be made and people need to think ahead. It's money, people and values. Not only who gets the money, but who has to pay.

REP. LOREN SOFT asked **Nancy Ellery, Administrator, Medicaid Division** to explain what the bed tax is. **Ms. Ellery** replied that the bed tax has been in place since 1992 and allows additional revenue to fund increases and costs of providing nursing home services. They have not used general fund to increase costs to provide nursing home services because of the bed tax since it was implemented. When first started, the bed tax was applied only to the Medicaid beds. In the last year, the bed tax allows them to draw down additional federal dollars to help cover more of the costs of providing nursing home services.

REP. SOFT asked **Ms. Ellery** how much the bed tax is and how much of the bed tax covers the 4% cost of utilization growth. **Ms. Ellery** replied the bed tax is \$2.80 and it covers the expansion of utilization and rate increase.

REP. SOFT said that a number of figures were supplied for the last three decades and asked **Mr. Wilson** how the certificate of need process controlled the growth of nursing home beds. **Mr. Wilson** replied in the decade of 1980-1990, the population growth was 26%, nursing home growth was 19%. Currently Montana has 52 or 53 beds per 1,000 persons over age 65. In the last four years the certificate of need process has allowed about 450 new beds in Montana or about 100 per year. About 90% of those beds have been in Billings or the surrounding area.

REP. SOFT asked **Mr. Blouke** "With the nursing home beds filled with 62% Medicaid patients, would the cost to upgrade the building to meet the standards be added to the Medicaid patients costs as well as private?" **Mr. Blouke** replied they do reimburse some of the cost, but not 100% of the renovation costs.

REP. SOFT asked **Mr. Rude** if the nursing homes they operate or manage are for profit or not-for-profit and are monies set aside for remodeling costs, separate from surplus costs. **Mr. Rude** answered that most nursing homes are for profit and all in Montana are for profit. He said they attempt to separate monies. All the profits made from the nursing home in Laurel, have been set aside in order to afford remodeling costs. If they can't expand a facility and replace old beds with new beds the reimbursement formula will not work.

REP. SOFT asked **Mr. Rude** why, in his opinion, it takes two years to get a certificate of need. **Mr. Rude** replied that the health

department won't look at the data for need until the end of the calendar year, then they look backwards at that. The data they look at is not the population base need, but what the historical utilization was. They have delayed projects for three years now and these are reasonable projects that need to occur.

REP. SQUIRES asked **Mr. Blouke** if they did not put this bed tax in place to aid nursing homes. He replied that in a sense she was correct and for them to provide a rate increase to the nursing homes to accomplish their objectives. There were no general funds available at that time. **REP. SQUIRES** then asked how many times they increased this rate and if it has done any good. **Mr. Blouke** responded that there have been three rate increases that were set by a formula, not just a number picked out of the air.

REP. SQUIRES asked **Mr. Rude** where the funds are going that were allocated by the state. **Mr. Rude** replied that SRS makes up the rules for gaining access to the money to do the remodeling.

REP. BRAD MOLNAR asked **Mr. Wilson** if there are any states that currently do not have certificates of need. **Mr. Wilson** replied that there are nine states that have discontinued certificates of need, six of which were in the Rocky Mountain region. Montana and Nevada were the only two states in the Rocky Mountain region that kept the certificate of need. Montana spends \$74,000 per 1,000 population on Medicaid expenditures. A study has shown Medicaid expenditures in Wyoming from 1970-1990 increased 106.2%. Wyoming has no control on their bed growth. Idaho has no certificate of need and no moratorium. Idaho had a 130.8% increase in Medicaid expenditures in the same time span. In the Rocky Mountain region, Montana has the least increase in Medicaid expenditures.

REP. SUSAN SMITH asked **Mr. Blouke** when there is no money left in Medicaid, what will happen to the elderly. He answered that they are working on alternatives to nursing homes. Hopefully, this will keep the growth in nursing homes down. The rate of increase in Medicaid far exceeds the rate of growth in the state's economy.

REP. LIZ SMITH asked **Mr. Blouke** how much money is being provided by the federal government. He replied that the reimbursement is 70% federal and 30% state funded.

REP. LIZ SMITH asked **Ms. Ellery** if the alternatives to nursing homes would compete for the Medicaid funding. **Ms. Ellery** responded that it would shift the amount of money going into nursing homes.

Tape 2 - Side A

REP. SIMON asked **Mr. Rude** if it was correct that it took two years to get a certificate of need. The increase in construction costs were \$200,000. He asked what the application costs were.

Mr. Rude replied that it took one year from the time they applied for an application to get approval. The cost of the application was \$10,000. The fee actually paid to the state was approximately \$3,000 - \$5,000. The increase in construction costs were due to the delays. They built during the peak construction time, which was in August, so costs were higher than originally anticipated.

REP. SIMON then asked **Mr. Rude** if he could operate his facility on 80%. **Mr. Rude** replied that he could not.

REP. SIMON asked **Charles Aagenes, Programming Manager, Health Planning Program**, what his budget was and how much they spend on the certificate of need in the health department. **Mr. Aagenes** replied in the general fund about \$39,000 is appropriated. Then they have \$39,000 spending authority if they can collect that much in fees. Last year's collection on fees was \$28,500. The biennial budget is about \$100,000.

REP. SIMON asked **Mr. Wilson** what the occupancy level was in the bed study. **Wilson** answered 91.9%. Commercial nursing homes run about 95%.

REP. SIMON asked **Carl Hanson** to describe the remodeling project being considered that may get put on hold due to this bill. **Mr. Hanson** replied that they are exempt from the certificate of need on this project because it is a reduction in the number of beds. Prior to this bill being brought forth, their intent was to remodel or rebuild the nursing home.

REP. SIMON asked **Mr. Hanson** if they would be subject to the moratorium if remodeling a facility is not changing capacity. **Mr. Hanson** replied that they split the hospital costs and the nursing home costs and are not going through a certificate of need process.

REP. SIMON asked **Mr. Wilson** for whom does the certificate of need process work well. **Mr. Wilson** answered, "The state of Montana, the consumer, the provider. ... It is a planning process."

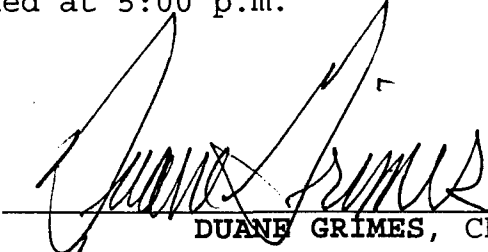
REP. SIMON asked **REP. COBB** if the certificate of need process has failed. He said it has not done the job it was intended to do and asked if he agreed. **REP. COBB** answered that the bill could be amended and said, "We need to do something radical. We need to shake up the system, and that's what this bill is intended to do."

Closing by Sponsor:

REP. JOHN COBB said this bill does not have to be liked. He said, "Look at the alternatives down the road. We need to do something now."

ADJOURNMENT

Adjournment: The meeting adjourned at 5:00 p.m.


DUANE GRIMES, Chairman


JACKI SHERMAN, Secretary

DG/js

HOUSE OF REPRESENTATIVES

Human Services and Aging

ROLL CALL

DATE 1/13/95

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	✓		



EXHIBIT 1
DATE 1-13-95
HB 109

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

HOUSE HUMAN SERVICES & AGING COMMITTEE

January 13, 1995

HOUSE BILL 109

Nursing Home Bed Moratorium

For the record, I am Rose Hughes, Executive Director of the Montana Health Care Association, an association representing approximately 80 nursing homes throughout the state of Montana. Our membership includes freestanding for-profit facilities, freestanding non-profit facilities such as those run by counties and religious-affiliated organizations, and hospital-based facilities.

We oppose House Bill 109, which imposes a three-year moratorium on the availability of additional nursing home beds, whether by construction or conversion of existing facilities, and whether such beds are part of a remodeling and expansion of an existing facility or a totally new facility. The legislation would also apply retroactively to currently pending applications and would be effective on passage and approval.

We believe this proposal is an arbitrary restriction on the availability of a very necessary health service. It proposes to control growth in Medicaid spending by restricting Montana citizens' access to an important, necessary health service.

Certificate of Need. Nursing homes in Montana have generally agreed that the state has a legitimate interest in controlling the growth of health services, including nursing homes--because of the state's large financial commitment to the Medicaid program. We believe the state has in place a reasonable process for controlling nursing

home bed growth--the certificate of need process. New nursing home beds cannot come on line in Montana without a "certificate of need" from the state indicating that additional beds are needed in the area where the proposed expansion is to take place. The need for the beds is determined by a formula, the key component of which is the occupancy of currently-existing facilities in the area. If there are significant numbers of empty beds in an area, a certificate of need will not be granted. This process clearly enables the state of Montana to control the growth of nursing home beds. However, this process also allows for orderly growth in areas where occupancy is high and there is a demand for nursing home services. We believe this is a reasonable approach since it allows the state to control unnecessary growth while allowing Montana citizens access to needed services.

Medicaid Implications. While this legislation is offered at least in part for purposes of Medicaid cost containment, we are somewhat puzzled by it since nursing home utilization is not growing at anywhere near the rate of growth of other Medicaid services. SRS anticipates only a 1% per year growth in Medicaid bed days over the next biennium. If all other Medicaid services grew at that small a pace, the Medicaid budget would be well under control. Also, the daily rate Medicaid pays nursing homes is also projected to grow at a modest rate of about 4% per year. The nursing home program is simply not where the run-away growth is in the Medicaid budget. In addition, a moratorium could actually increase Medicaid expenditures because of the difficulty of placing heavy care patients which is one likely unwanted side effect of creating a shortage of nursing home beds.

Alternative Services. It has also been suggested that this legislation will foster the development of alternatives to nursing home care such as personal care, assisted living, and adult foster care. It is believed by some that these are more desirable services and cost less. Again, there is some thought that Medicaid can save money by forcing people into these alternatives. The fact is that these services are not necessarily more desirable or less costly than nursing home care and they realistically are not able to serve individuals who need the level of care provided in nursing homes. Our residents are very old, very frail, and suffer from a variety of serious chronic illnesses that require intensive nursing, rehabilitative and social services. It is also important to note that in communities such as Billings, in which a full complement of alternative services are available--home health care, assisted living, personal care, adult day care, respite care, and home and community based waiver services--nursing home beds are still in short supply. The alternatives provide excellent choices for those who do not

MONTANA DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES
 RUN ON 30 DEC. 1994

CERTIFICATE OF NEED MONTHLY REPORT
 PERIOD OF FISCAL YEAR 1995 (OCT.1 - DEC.31)

TRANSLATION OF ABBREVS.		PC=PERSONAL CARE FACILITY		NH=NURSING HOME		LTC=LONG TERM CARE		FAC=FACILITY	
III=HOME HEALTH		MAF=MEDICAL ASSISTANCE FACILITY		OPSC=OUTPATIENT SURGICAL CENTER					
CNST=CONSTRUCT or CONSTRUCTION		RT=RESIDENTIAL TREATMENT FACILITY		EST=ESTABLISH					
CO=COUNTY		II=HOSPITAL		RH=REST HOME		CDU=CHEMICAL DEPENDENCY UNIT		DATES=DAY/MONTH/YEAR	
NAME	LOCATION	PROPOSAL	CAPITAL EXPENSE	L.O.I. RECEIVED	APPLCN. COMPLTD.	DHS DEC DATE	DHS DATE OF DEC CORN	EXP. OF COFN	REQ. REQ.
SENIOR HELPING HAND	BILLINGS	EST HH YELLOWSTONE	200000	19 3 93	2 11 93	9 2 94 D			Y
RENAISSANCE HH	WAYZATA, MN	EST. HH PETRO., ROSBUD., TSRE	50000	30 8 93	23 8 94	16 10 94 Y	16 10 94	15 10 95	
BIG HORN C MEM HOSP	HARDIN	EST HH B.H., ROSEBUD, TRES. CO	38760	11 1 94	23 8 94	14 10 94 Y	14 10 94	13 10 95	
MOUNTAINVIEW C C	BOZEMAN	ADD LTC & REMODELING <i>10 LTC</i>	20	1 94					
RENAISSANCE HH	BILLINGS	EST. HH MUSSELLSHELL CO.	50000	20 1 94	23 8 94	17 10 94 Y	17 10 94	16 10 95	
HERITAGE HOME HEALTH	ANACONDA	EST HH GRAN. POW. & BEAVER.	112000	28 3 94	1 11 94				
FALLON MED COMPLEX	BAKER	EST HH CARTER CO	35000	18 3 94	23 9 94	16 12 94 Y	16 12 94	15 12 95	
WIBAUX CO NUR HOME	WIBAUX	EST HH WIBAUX	85800	18 3 94	23 12 94				
SHERIDAN MEM. HOSP.	PLENTYWOOD	EST HH DANIELS CO	1500	9 6 94					
DANIELS MEM. HOSP.	SCOBAY	EST HH SHERIDAN CO	0	13 6 94					
ROUNDUP MEM. HOSP.	ROUNDUP	ADD LTC BEDS <i>with 4 LTC</i>	230000	27 6 94					
BIG SANDY MED CTR	BIG SANDY	HH CHOUTEAU CO	17500	5 7 94	1 11 94				
MOUNTAINVIEW MED CTR	WHITE SUL SPR	HH MEAGHER CO		24 8 94					
THE EYE CLINIC	BILLINGS	EST OPSC-LEWISTOWN		13 9 94					
VALLE VISTA MANOR	LEWISTOWN	EST HH FERGUS CO		18 10 94					
IDAHO HOME HEALTH	ID FLLS, ID	EST HH BVRHD, GLLTIN & MDSN		12 10 94					
ROUNDUP MEM HOSP	ROUNDUP	EST HH MUSSELLSHELL CO		12 10 94					
FRANCES MAHON DEAC	GLASGOW	DROP LTC, ADD SWING BEDS <i>-dropping LTC to 10 per asking for 2 swing beds</i>		18 11 94					
MOUNTAINVIEW MED CTR	WHITE SUL SPR	CONVERT TO MAF		10 11 94					
TETON MED CTR	CHOTEAU	CONVERT HOSP BEDS TO LTC <i>with LTC</i>		20 12 94					
WEST MONT	HELENA	EST HH GLOR, HLL, SWGRS, TLE		22 12 94					
WEST MONT	HELENA	EST HH MADISON CO		22 12 94					
DISCOVERY CARE CENTER	HELENA	ADD LTC BEDS <i>with 3 LTC</i>		22 12 94					
GARFIELD HEALTH CENTER	HAMILTON	ADD LTC BEDS		1 12 94					
LIBBY CARE CENTER	GARFIELD	ADD MAF AND SWING BEDS <i>with LTC</i>		6 12 94	23 12 94				
	LIBBY	EST HH LINCOLN CO.	145162	4 11 93	23 8 94	23 11 94 Y	23 11 94	22 11 95 Y	

THIS IS A CATCH UP REPORT COVERING THE MONTHS
 OF OCTOBER, NOVEMBER AND DECEMBER 1994

Bozeman - 10 LTC beds
Roundup - 4 LTC beds
Glascow - dropping LTC; add 2 swing beds
Choteau - 3 LTC beds
Hamilton - 3 LTC beds
Jordan - 700 LTC - 3 swing beds

EXHIBIT

DATE 1-13-95

HB 109

NEWSFRONTS

Oregon Foster Care Loses Luster Amid Grim Stories of Resident Abuse

The Sunday Oregonian

agrees. "Oregon's adult foster care system is flawed," he says. "It's not monitored, it's not regulated, and the training has been a joke. The system is a good idea that needs to be salvaged."

Critics say the state could have avoided many of the problems through more controls on the program's growth and less of a focus on cost savings. In providing an alternative to nursing homes, foster care has saved the state \$98 million since 1981, when the program was founded. Patient care in a foster care setting costs as little as \$700 a month in Medicaid funding, compared with \$3,000 to \$4,000 for nursing homes.

"The state is trying to save money, so we've observed it using lots of arm-twisting and coercion to get people to choose foster care instead of nursing homes," says Tim Eide, secretary-treasurer of nursing home operator RASO Enterprises Inc., of Bend. "People on Medicaid are told their care won't be paid for if they don't choose it."

Critics also say that the program must be more closely regulated. The foster care homes are allowed to care for high-acuity cases with minimum staff training requirements. For example, 38 percent of the residents receive care by home operators who are required to have only two years of experience in provider systems.

The state has launched a wide-ranging reform effort. In addition to authorizing a statewide audit by the state attorney general's office, officials have named two committees of industry experts and citizens to assist in the program's reevaluation.

SCARY SECRETS

OF ADULT FOSTER CARE IN OREGON



A WOMAN WITH DEMENTIA IS SERIOUSLY burned by hot water after being left alone in a bathtub; she dies two weeks later. Patients are ignored and left lying in their excrement, or left tied to beds. A caregiver confesses that he committed four "mercy killings."

These shocking stories came out of Oregon this fall, bringing to light the dark side of the state's adult foster care program. The program, once heralded as a model for other states, is now the focus of major reforms, raising serious concerns about the trend toward commercial home care.

After news of the mercy killings surfaced in August, *The Oregonian* and other newspapers uncovered other patient abuses in the program,

which is the largest in the nation. A stinging county auditor's report followed, alleging unsafe conditions in two-thirds of 40 foster homes visited. The auditor's report blamed the poor conditions on inadequate regulation and overzealous promotion of the program, which has more than 9,000 beds. Each home is licensed to care for up to five people at a time.

"We've learned that we have problems to a greater extent than we thought," admits James Wilson, administrator of the state's Senior and Disabled Services Division, which oversees adult foster care.

H. Wayne Nelson, the deputy ombudsman in the state's Office of the Long Term Care Ombudsman, which represents foster home residents,

Some new rules are already in effect. After completing the mandatory 18-hour training course, new operators must now take a competency test. If a person fails the test twice, he or she is required to repeat the course. Previously, applicants needed only to attend the 18 hours of training. In addition, licensers now make unannounced visits when they inspect homes for relicensing. Before, critics say, operators were given notice several weeks in advance.

State administrator Wilson says he is also taking a hard look at the policy on criminal background checks for would-be operators. Current rules require checks that go back just five years, and are usually limited to Oregon records. Out-of-state or federal criminal records are checked only if an applicant has lived in Oregon for five years or less.

Wilson says that some of the program's problems can be attributed to inadequate funding, which led to staff shortages. "Five or six years ago, we had an in-house monitoring team that numbered 14 people. Due to state budget cuts, we laid off 25 percent of our staff and we no longer have that monitoring capability. If we still had that team, we probably would have seen these problems coming."

Two new investigators have been hired to protect residents and help shut down foster care homes deemed unsuitable for the program. In addition, nurses working for the state will visit homes where Medicaid patients live to assess the quality of medical care they receive. Only about one-third of Oregon's foster care residents, however, are Medicaid patients.

More measured growth for the program is one goal for Oregon's foster care, state sources say. Even advocates of community care say that they found the foster care program's growth to be dizzying in the past. "They've licensed new adult foster care homes in such great numbers that there is a high vacancy rate in the Oregon program," reports lobbyist Grover Simmons, of the Independent Adult Care Providers Association.

"We believe the state's theory is that having lots and lots of homes makes the price of service cheaper and cheaper because providers must compete against one another," Simmons adds. "But a low level of reimbursement attracts an element of people who may not be the most desirable home operators." BY DON NICHOLS

HCFA's Final Enforcement Rule Gives New Muscle to OBRA Quality Standards

A NEW HEALTH CARE FINANCING Administration (HCFA) regulation represent the final phase of implementing the nursing facility reform provisions of the Omnibus Budget Reconciliation Act of 1987. The new rules, which were published in the Federal Register of November 10, address what fines and others' sanctions nursing homes may face for violating quality standards as well as issues such as how state and federal inspectors, or surveyors, will monitor nursing homes.

The regulation aims to ensure that nursing facilities comply with federal requirements promoting the quality of care and quality of life in nursing homes. "Enforcement remedies" spelled out by the regulation range in severity from drafting a plan of correction to civil fines of up to \$10,000 a day to termination of a facility's participation in the Medicare and Medicaid programs. In extreme cases, the state may close a facility and arrange for the transfer of its residents. Previous enforcement tools were limited to terminating nursing homes from the Medicaid and Medicare programs or denying payments for new admissions until deficiencies were corrected.

HCFA Administrator Bruce C. Vladeck said the regulation "provides the flexibility in each case to apply a remedy that fits the problem," adding that applying penalties is not necessary

in most cases because nursing homes promptly to correct deficiencies.

In addition to introducing sanctions, the regulation spells out the following changes from the current system:

- In determining deficiencies, surveyors will focus on actual outcomes of care rather than on the existence of policies, procedures, and manuals.

- States will be required to develop a systematic approach for determining deficiencies.

- Nursing homes will be allowed in the final resolution of disputes for both state and federal surveys. In addition, facilities are entitled to one formal hearing with either the state or HCFA, depending on who rendered the enforcement decision.

- The definition for substandard care will differentiate between serious deficiencies directly related to resident care and lesser deficiencies related to administrative requirements.

The final enforcement rules, along with the general approval of the leading industry organizations, American Health Care Association, the American Association of Homes and Services for the Aging.

"We believe that the enforcement regulations demonstrate the positive attitude that HCFA has shown in recent years in its efforts to improve the survey process," AAHSA president Sheldon Goidman said. BY YVONNE PARSONS

Five States Vote on Longterm Care Issue

NURSING HOME RESIDENTS AND their caregivers were affected to varying degrees by the fates of five state ballot initiatives around the country. Here's a brief rundown.

PASSED:

☒ **Oregon. Ballot Measure 16,** the Physician-Assisted Suicide Initiative, will allow doctors to prescribe lethal doses of barbiturates to terminally ill patients wishing to end their own lives. The person must be deemed legally competent and request the drugs twice, in writing. Counseling is required in cases of depression or related cognitive disorders.

"We will have to train our social



My name is Keith Wilson. I am the president of Wilson and Company, a health care consulting company engaged in planning for long term providers. Our Montana clients own and operate nursing homes, home health agencies and certified rehabilitation programs throughout the state.

I am here today to offer some information regarding the successful management of the nursing home bed supply by the Department of Health. This agency has helped to create a very good network of long term services, a significant part of which are the nursing home beds being considered for moratorium under HB 109.

The certificate of need process works quite well. The following table, data taken from U.S. Census information, Department of Commerce and Department Health, illustrates the effect of CON on nursing home bed growth.


Time Period	65+ Population Growth	Nursing Home Bed Growth	Growth Per Year
1960-1970	18%	118%	11.8%
1970-1980 (CON in place 1975)	23%	48%	4.8%
1980-1990	26%	19 1%	1.9%
1990-2000 (Projected)	13%	13%	1.3%

1990 - Jan Bed growth projected by Wilson & Company to keep up with 65+ age group growth.

We note that the aggregate bed occupancy for the three years proceeding is 91.9% average with many areas running at or near 100% utilization.

We have attached a graphic illustration of the CON effect on bed growth.

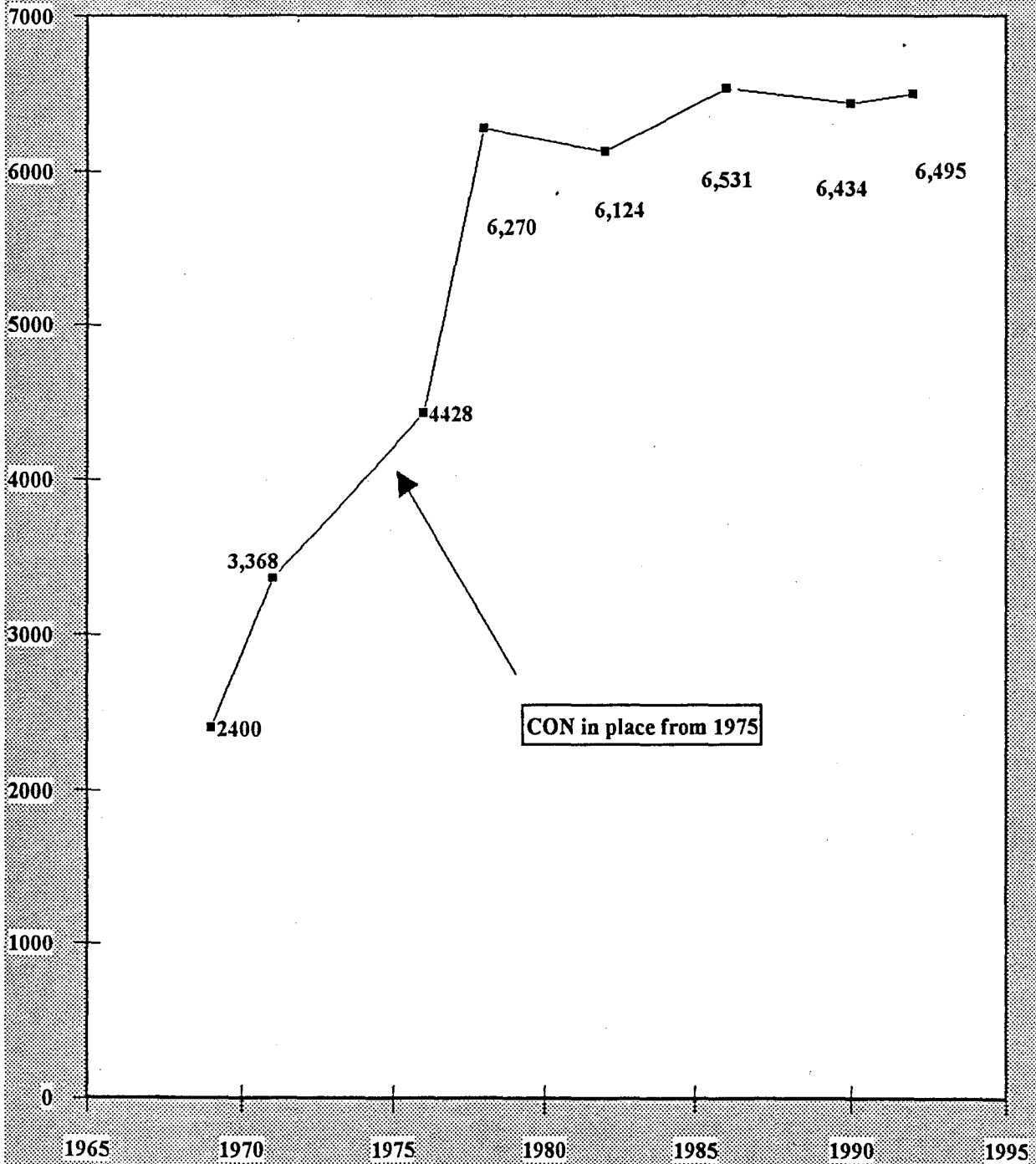
As planners and health care consultants we believe the present state system works well and should be continued. We are in opposition to HB 109.



Keith Wilson
Wilson & Company
Sheridan, Wyoming
307-672-7123

Montana Long Term Care Beds

Growth With / Without CON



HEALTH CARE PLANNING IN THE MOUNTAIN STATES

Wilson Copy
EXHIBIT 2
DATE 1-13-95
I HB 109

THE CON PROCESS
and
its Relationship to
LONG TERM CARE BEDS

July 28, 1994

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.

Wilson & Company • Sheridan, Wyoming

EXHIBIT 3
DATE 1-13-95
HB 109

MONTANA HOSPITAL ASSOCIATION

TESTIMONY

IN OPPOSITION TO

HOUSE BILL 109

3 YEAR MORATORIUM ON NURSING HOME BEDS

Montana hospitals are opposed to placing a 3 year moratorium on new nursing home beds. Health care providers today are working to reduce costs, renew aging physical plants, and restructuring their operations to improve medical services. Hospitals are concerned about this bill because 43 of Montana's 55 hospitals operate a nursing home in conjunction with the hospital. And demand for long term care is increasing in some parts of the state, especially for specialty care units like transitional care and subacute services.

Hospitals, as part of their efforts to rein in medical costs, have converted excess hospital beds to long term care. These beds play an important role in reducing medical costs. First, using existing capacity is less expensive than building new beds in freestanding facilities. Long term care beds also play an important role in reducing the length of time patients spend in the hospital. Patients are able to move from high cost hospital beds to a much lower cost settings. According to the annual survey of hospitals, the average length of stay in hospitals has dropped to just 4.94 days in 1993. This compares to over 6 days in previous years and saves patients thousands of dollars.

Placing a moratorium on increasing beds will have several unintended consequences. Facilities who must rebuild to correct fire and life safety violations or upgrade their services will be forced to close. Hospitals who could convert excess beds will be barred from doing so. Montana's citizens are aging. People will need more long term care settings, but they may not be traditional rest home services. As people find alternatives to their health care needs, fewer long term beds may be needed in some markets. But specialized long term care services are still growing strong. The moratorium proposed in House Bill 109 will merely create regional shortages, and increase prices.

Long term care is a growing burden on the state. But SRS budget estimates predict patient bed days are growing at just 1 percent per year. The real cost growth in long term care is contained in increasing government regulations- and there's no moratorium proposed on that.

MHA appreciates the desire of legislators to rein in increasing Medicaid costs. But a moratorium on new long term care services simply isn't a good way to accomplish that goal. MHA asks the members of this committee to vote no on House Bill 109.

PONDERA MEDICAL CENTER

COMMENTS AND CONCERNS REGARDING H.B. 109

My name is Carl Hanson. I am the Administrator of Pondera Medical Center (PMC). PMC is the joint operation of Pondera County's 27 bed hospital and 67 bed nursing home in Conrad.

My concern with H.B. 109 is that it will create conflict and confusion between state agencies with jurisdiction over nursing homes. I feel that local efforts to meet health care needs will become more complicated and difficult if this bill becomes law.

For example, the PMC nursing home building does not comply with more recent fire and life safety codes. The structure lacks a complete sprinkler system, and certain smoke corridors are incomplete.

Until 1992, the Montana Department of Health tolerated these code violations due to the low incomes of the people being served, the relative safety of the structure, and the high cost of replacing or remodeling the building.

However, during their annual survey in April of 1992, the building deficiencies were cited, forcing Pondera County to replace or remodel the nursing home.

If the problems in the nursing home building are not corrected, the Department of Health will not license the facility. This creates a situation where one state agency requires over \$2,000,000 of construction to upgrade the nursing home while another state agency would prevent such work from proceeding through the moratorium being proposed.

Studies by architects and engineers revealed that remodeling expenses would exceed the cost of building a new nursing home. New construction was unaffordable. Consequently, a plan was developed to convert the existing hospital inpatient areas into the new nursing home and build a new hospital wing. Financing has been acquired, and construction is scheduled to begin as soon as the frost is out of the ground.

Pondera County determined that the nursing home bed capacity in the region is insufficient to absorb the number of elderly that would be displaced if the nursing home in Conrad closed or lost its Medicare certification. Surveys indicate that approximately 70% of the nursing home residents could be accommodated within a 100 mile radius of Conrad. That distance would have to be expanded to 150 miles to find available beds for the other 30%. Such distances are not conducive to good health.

I believe this bill is unnecessary. Market forces are dictating the future of long term care, and government efforts to control supply will only make matters more bewildering.

As evidence of the power of market forces in Pondera County, PMC is reducing the number of hospital and nursing home beds by 32% through the construction project about to begin. The reduction in available beds is a direct result of less demand rather than a moratorium on construction of nursing homes in the state.

Over \$106,000 in overhead and operating costs will be saved each year by Pondera County's hospital and nursing home construction plan.

I strongly suggest that passage of H.B. 109 will only make matters more confusing and complicated in Pondera County as we try to meet the medical needs of our residents in a cost effective manner. I also feel strongly that market forces are much more effective than government regulations when it comes to matching supply with demand.

Please vote no on H.B. 109.

Testimony of Saint Vincent Hospital and Health Center
in Opposition to HB 109 (Cobb)
House Human Services and Aging
January 13, 1995

My name is Tom Ebzery and I represent Saint Vincent Hospital and Health Center in Billings. I rise in opposition to HB 109 which places a 3-year moratorium on the approval of additional long term care facilities by the certificate of need process.

Although Representative Cobb's efforts to control expenditures in the Medicaid program are laudable, this is the wrong method and Saint Vincent Hospital urges a DO NOT PASS on this legislation for a number of reasons.

First, the result is a further rationing of health care dollars without regard to actual needs of the population or current patient loads in the affected communities needing long term care.

Second, by restricting the number of patients able to enter long term care facilities, this adds pressure on hospitals where the patient is staying, and the result will likely increase expenditures in the long run rather than decreasing them...an exact opposite of what Representative Cobb was intending to do.

Saint Vincent Hospital continues to have problems with the certificate of need process altogether as we firmly believe it is an outdated and ineffective cost containment strategy. The elimination of the CON process in 1989 for acute care hospitals has not caused a corresponding increase of unneeded capital projects as opponents argued would happen. The marketplace has acted to keep health care costs down.

This bill is a drastic measure fraught with complications and should not pass.



Holy Rosary Hospital

EXHIBIT 06DATE 1-13-95HB 1092101 Clark Street
Miles City, Montana 59301406-232-2540, 1-800-843-3820
Fax 406-232-7904A member of the Presentation Health System
Sponsored by the Presentation Sisters

January 13, 1995

Dear Committee Members:

I am writing this letter in opposition of House Bill 109. It is my opinion, that if approved, House Bill 109 would be detrimental to the continuum of patient care, as well as the efficiency of the total health care delivery system in the state of Montana. Placing a moratorium on nursing home beds would negatively impact the entire health care reform movement in Montana. This is something that would definitely not save Medicaid dollars in the future.

Point in Case: In 1991, Custer County asked Holy Rosary Hospital to assume management of the Custer County Rest Home. The facility was in such a state of disrepair, the State demanded an upgrade of the physical structure to meet life safety codes or face a potential closure of the facility. Because of the physical debt, and Custer County's limitation on the number of mills allowed to be passed, Custer County could not raise the money necessary to upgrade the facility.

Holy Rosary Hospital agreed to assume management of CCRH and to include it in the hospital's plans for a new health care facility in Miles City. The construction of Holy Rosary Health Center will be completed in the Fall of 1995. The new facility will provide hospital, clinical and extended care services in one, single story structure. Extended care beds have been decreased from 124 to 107 beds. The new facility is based on an integrated health care delivery system designed to meet the emerging medical trends such as shifts from inpatient to outpatient treatment, reduction of duplicate services, and the overall reform and efficiency of health care services in southeastern Montana. This will result in more cost effective services for the patients and residents of this region.

If House Bill 109 would have been in effect during the last three years, the Custer County Rest Home would probably have closed. This would have resulted in the displacement of many elderly residents in southeastern Montana. The health care reform that is occurring through the building project in Miles City, and the enhanced services and continuum of care that will come with it, would never have happened with the passage of a bill such as House Bill 109.

Thank you for your consideration of my views.

Sincerely,

H. Ray Gibbons
President & CEO

Caring for Life

HB109

January 13, 1995

Mr. Chair and members of the committee, my name is Kay Jennings and I am a nursing home administrator at Village Health Care Center in Missoula. In the last 3 years one of the largest growth areas in my facility has been our special care for Alzheimers. It has gone from 20 beds to 51 and we are always 99% ~~to~~ occupied. We accept only the last stages of this disease into our units and these are usually people who have been cared for at home by a devoted spouse. Unless these people can afford to hire 24 hour a day care there usually comes a point where the spouse is exhausted physically and mentally and placement in a LTC facility is the only option. Also 70 % of the people cared for on this specialty area are private pay vs the other long term care area in my facility.

The other area of tremendous growth is the area of Medicare Part A skilled and the sub acute area. We currently have 27 skilled beds and 10 subacute beds and here again, we started out with 10 dedicated skilled beds 3 years ago.

The skilled patients occupying these beds are usually coming from an acute hospital stay for fx hips, strokes and pneumonia who require usually 2-3 weeks of skilled nursing and therapy. They all are covered by medicare - most of these patients are discharged home.

The subacute patients are extremely medically complex. Currently we have a ventilator patient who is medicaid, but prior to our accepting her was in a very high cost bed in another state, away from family and being paid for by Montana Medicaid. We have a burn patient who was in a burn center in Utah, we have several tracheostomy patients with tube feedings and all require physical, speech, or occupational therapy. Here again, the majority of the payor source is medicare and private insurance.

This legislation would unfairly impact families and patients with alzheimers and it would lengthen the stay of our medicare patients in acute care settings. I urge you not to support HB109. THANK YOU.

01/12/95

18:44

☎ 406 265 1651

No. Mt. Hospital

001

NORTHERN
MONTANAHealth
Care, Inc.

P.O. Box 1231 30 Thirteenth St. Havre MT 59501 (406) 265-2211

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of pages ▶ 1

To <i>Rep. Toni Hagenar</i>	From <i>D. Henry</i>
Co.	Co.
Dept.	Phone # <i>265-2211 x 1302</i>
Fax # <i>1-900-225-1600</i>	Fax # <i>265-1651</i>

January 12, 1995

 EXHIBIT 8
 DATE 1-13-95
 HB 109

The Honorable Duane Grimes, Chairman
 House Committee on Human Services & Aging
 Montana State House of Representatives
 Capitol Station
 Helena, MT 59620

RE: House Bill 109 regarding the placement of a 3-year moratorium on the approval of additional Long Term Care beds by the Certificate of Need process

Dear Representative Grimes:

By way of introduction, I presently serve as President/CEO of Northern Montana Health Care, Inc., whose subsidiaries include Northern Montana Hospital and Northern Montana Care Center. The Hospital has 33 Long Term Care beds and the Care Center is a 103-bed nursing home.

As I understand it, House Bill 109 prohibits any increase in beds in an existing facility, any conversion of hospital beds to nursing facility beds and any relocation of beds from one health care facility or site to another. HB 109 also prohibits the building of a new facility.

I write in strong opposition to passage of this bill. While the intent of Representative John Cobb, the bill's sponsor, is to reduce the Medicaid budget growth curve by ending development of additional beds, those of us involved in the provision of health care can tell you first hand that this a poor strategy to control costs. It ultimately will lead to a serious shortage for some areas, but more importantly, it will place severe limitations on hospitals who plan to rebuild or convert beds and prevents any facility that needs to rebuild to meet modern standards from doing so.

In addition, recent studies indicate that in 1900, people over age 65 constituted 4 percent of our population. By 1988, that proportion was up to 12.4 percent, and it is estimated that by the year 2000, that number will increase to 13 percent. 2030 will see that figure rise to 22 percent. The most rapid population increase over the next decade will be among those over 85 years of age. The medical field needs to be in a position to properly provide the necessary and appropriate care for these individuals. HB 109 would serve to drastically impede our ability to do so.

I urge you and your Committee to oppose House Bill 109. Please don't hesitate to give me a call if you would like more information or wish to discuss this issue in greater detail.

Sincerely,

David C. Henry
 President/CEO

DCH/aks

✓ cc: Members of House Committee on Human Services & Aging

Our Family ... Caring for Yours!

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

Human Services & Aging

DATE 1-13-95

BILL NO. HB 109 SPONSOR(S) Cobb

PLEASE PRINT.

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Jim Athens	MT Hospital Assoc		✓
Joe Rude	H.M.W. Billings		✓
Carl Hanson	Pondera Med ctr		✓
Bill McCaig	Lanti S-A		✓
Kay Gunn	VHCC		✓
Belinda Lallier	Valley View Estates/Hamilton		✓
Gerald Butcher	Horizon Healthcare Corp		✓
Rose Hughes	MHCA		✓
Tom E. Berry	St Vincent Hospital		✓
Keith Wilson	Lantic Enterprise		✓
Sam Sperry	DHES		
Charles Osgood	DHES		

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HR:1993

wp:visbcom.man

CS-14