MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON PUBLIC HEALTH, WELFARE & SAFETY

Call to Order: By **CHAIRMAN JIM BURNETT**, on March 6, 1995, at 3:30 PM

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: HB 245, HB 301, HB 407
Executive Action: None

HEARING ON HB 245

Opening Statement by Sponsor:

REP. CHRIS AHNER, HD 51, Helena, said HB 245 concerns the at-risk child care program that has served about 700 low income working families FY 94. Under current rules, these families need child care in order to work, must be at-risk for welfare dependency, must pay a portion of their own child care expenses, and have an income below 133% of poverty. Most families served by this program have incomes below 100% of poverty, which translates to a $5.92 per hour full-time employment wage for a single parent household with 2 children. This program is currently fully funded and no additional funds are being requested. $400,000 from the General Fund is matched by $770,000 in Federal funds, providing

$1.2 million in child care funds to help low-income families remain independent of welfare. If Montana is not able to keep this program, many families served would go back onto welfare or, for the first time, be forced to into welfare. The average cost of child care for these families is about $150.00 per month per child. A single mother with 2 children on AFDC cash assistance costs about $416.00 per month. Child care subsidies are a key ingredient in getting families back to work.

Proponents' Testimony:

Mary Alice Cook, representing the Advocates for Montana's Children, said the Department of SRS did a survey recently, and there are 756 children on the waiting list for child care. She urged the Committee's support of HB 245.

Sharon Hoff, representing the Montana Catholic Conference, said child care is essential to keeping people out of the welfare system. She urged to Committee to support HB 245.

Penny Robbe, Department of Social and Rehabilitative Services, said HB 245 is an essential part of the welfare reform efforts in Montana, and urged the Committee to pass the bill.

Opponents' Testimony: None

Questions From Committee Members and Responses:

SENATOR SPRAGUE said it was stated there are 756 children waiting for child care, is this a new additional program to welfare reform, and if that many children are waiting, are there that many places for the children to go.

Penny Robbe said this is not a new program, but started in the last Legislative session when funds were appropriated in HB 2 for this program to begin, but found there was no statutory authorization to run this particular program, and this bill will give the statutory authorization. There are 756 children waiting to be served under this program, but it's a cap entitlement from the Federal government so only so many Federal dollars can be used for this program. She said if this program is lost, that many more people will have to go onto AFDC. She said there are other child care support services in the welfare reform bill in addition to this program.

SENATOR SPRAGUE asked if this will operate in unison with the welfare reform or is this an integral part of the program.

Penny Robbe said this will allow for a seamless delivery of services. There are people currently on welfare, looking to get a job, and with some child care, they could take that job and, hopefully, remain independent of welfare. When they are no longer an AFDC recipient, they lose their entitlement to child care unless another program is funded for this service.

SENATOR ESTRADA asked if this is a welfare reform program. She said she thought enough money was allotted for child care to take care of the children in SB 209, and is this program a part of that bill, separate, or is approval required for a part of that bill already passed.

Penny Robbe said this is a separate program from welfare reform. If there was no welfare reform, they still want this program to be continued. The child care appropriated under welfare reform is additional intensive child care assistance for those people who are currently on AFDC, to help them get off. This bill provides child care for those who are at risk for going on AFDC.

Closing by Sponsor:

REP. AHNER said this is a Governor-approved program, a program that received General Fund authorization during the last Legislature, and this bill is only to OK this program to continue for education, training, and employment needed for the recipients so they can become self-sufficient. She said, support work, not welfare.

HEARING ON HB 407

Opening Statement by Sponsor:

REP. JOHN COBB, HD 50, Augusta, said last session of the Legislature SB 121 provided the delegation of nursing tasks to unlicensed persons. The Board of Nursing adopted some administrative rules, but only for delegation to unlicensed persons in the giving of medication, and only in certain settings, such as schools, group homes, and personal care, where nurses are not readily available. It is not allowed in hospitals, nursing homes, and other facilities. He referred to page 2, lines 25-30, saying the Board shall adopt rules for delegation of nursing tasks, but they still control the delegation of tasks.

He said the bill will authorize the delegation of tasks in additional sites, that if it's OK in certain sites, then it's OK in others.

Proponents' Testimony:

Rose Hughes, Executive Director, Montana Health Care Association, spoke from her written testimony. **EXHIBITS 1 and 2.**

Jim Ahrens, President, Montana Hospital Association, said they support HB 407. He said times change, there different needs, and this bill is an effort in meeting some of those changing needs.

Beda Lovitt, representing the Montana Medical Association, said they support HB 407 and believe it improves the statutory language to allow the delegation where licensees and the Board determines are the most safe.

Kelly Williams, representing the Department of Social and Rehabilitation Services, said they support HB 407. **EXHIBIT 3.**

Opponents' Testimony:

Becki Andersen, R.N., spoke from her written testimony in opposition to HB 407. **EXHIBIT 4.**

Blanche Proul, Anaconda, spoke from her written testimony in opposition to HB 407. **EXHIBIT 5.**

Dale Dallmann, President, Montana Emergency Nurses Association, read his written testimony in opposition to HB 407. **EXHIBIT 6.**

Ed Caplis, Executive Director, Montana Senior Citizens Association, said they oppose HB 407 and think it will have a negative impact on the quality of care and safety in nursing homes.

Riata Turley, President, Montana Organization of Nurse Executives, said they oppose HB 407 as it is currently drafted, but are offering amendments to the bill. **EXHIBIT 7.** She said they are proponents of nursing tasks, but caution consumers that each situation is different, and therefore, are concerned about the ability of the Board of Nursing to define each nursing task which could be delegated and performed by unlicensed persons in all health care settings. They believe the key is unlicensed assisted personnel must be appropriately delegated to, supervised by, and monitored by professional licensed registered nurses to insure the health and safety of the public.

Barbara Booher, Executive Director, Montana Nurses Association, spoke from her written testimony, saying the MNA opposes HB 407. **EXHIBIT 8.** She said this bill contains no language that the decision to delegate would remain with the licensed nurse.

She offered an amendment to HB 407 to assure licensed nurses can exercise professional judgement about delegation of tasks, without interference or coercion. **EXHIBIT 9.** The amendment allows the Registered Nurse or Licensed Practical Nurse to refuse to delegate to a person they feel has not demonstrated sufficient skill in some of the areas they feel are delegateable, and allows the R.N. or L.P.N. to refuse an assignment they believe is out of the scope of their practice. She handed out a Nurse Aide Skill Competency checklist. **EXHIBIT 10**

Wayne McKay, representing the Montana L.P.N. Association, said he asked many people in 2 shopping malls in Great Falls if they agreed with this bill, and did not find a single person who did. He handed out a statement from the Montana L.P.N. Association. **EXHIBIT 11.**

Nancy Heyer, President, Board of Nursing, said the Board thinks this bill is unnecessary because the administrative rules are only 8 months old and the arguments for this bill were presented

to the Board. They felt they needed to take as balanced approach to this issue as possible. Rules can be changed, can expand delegation of nurses by nurses in hospitals and nursing homes. When the Board established the rules, they needed to proceed in the areas of immediate concern, where there weren't any nurses, and access to nursing presented a problem to public safety. The amendments proposed by the Nurses Association are OK, but they would prefer HB 407 be killed and allow the administrative rule-making to take place.

Melton, Attorney, Department of Commerce, on behalf of the Board of Nursing, he said they oppose HB 407 and support for the amendments. **EXHIBIT 12.**

Sandy Spencer, Registered Nurse, Billings, urged the Committee to vote no on HB 407. **EXHIBIT 13.**

Wendy Blakely, Registered Nurse, Billings, urged the Committee to vote no on HB 407. **EXHIBIT 14.**

Jean Ballantyne, Registered Nurse, urged the Committee to kill HB 407. **EXHIBIT 15.**

Jeanine Ford, nursing student, Carroll College, and Vice President, Student Nurses Association, said they strongly oppose this bill.

Questions From Committee Members and Responses:

SENATOR KLAMPE asked about the makeup of the Board and can a licensed nurse, now, refuse to delegate tasks.

Nancy Heyer said the Board consists of 4 Registered Nurses, 3 Licensed Practical Nurses, and 2 consumers, who cannot represent anyone in health care. They are appointed for 2-year terms. A nurse can refuse to delegate and can decide when and what to delegate.

SENATOR KLAMPE asked why the Board decided to delegate in the personal care areas.

Nancy Heyer said because the person in a personal care home is less serious, it does not require the skills of a licensed nurse.

SENATOR MOHL asked about the differences in the education of a licensed nurse and an unlicensed nurse.

Barbara Booher said the minimum level of education for a Registered Nurse is a 2-year associate degree, but most nurses are completing a 4-year degree program. There are some 3-year diploma programs, but this is not available in Montana.

SENATOR MOHL asked about the education of an unlicensed nurse.

Barbara Booher said unlicensed assisted personnel may be required to have a High School diploma or equivalent, which is probably the minimum. There is no such thing as an unlicensed nurse.

SENATOR FRANKLIN referring to the Nurse Aide Skill Competency Checklist (**EXHIBIT 10**), asked **Rose Hughes** what tasks she would choose to delegate that can't be delegated now.

Rose Hughes said the only task that is authorized now; and limited in certain settings, is limited delegation to non-licensed people to give certain kinds of medications that have already been measured or counted. The Board is currently allowing this in the settings listed in the bill, and that is the only one that would be allowed in nursing homes. HB 407 would allow this delegation of tasks in additional settings.

SENATOR BAER asked if this is a premature concept without the proper foundation, and if there is any provision for any kind of training program for people who could demonstrate their abilities prior to being delegated the responsibility on their own. He said this works well in the military, but individuals are intensively trained and are supervised before being delegated to perform on their own.

Nancy Heyer said the administrative rules passed by the Board of Nursing in July, 1994 is a good start. With these rules there is some flexibility that can authorize delegation in any setting, or specify certain training in certain settings. In the 35 states where delegation is done, the Board of Nursing regulates the unlicensed nursing assistants. Montana is the only state that does not have that authority to regulate them, so the unlicensed person is not directly regulated by the Board of Nursing.

SENATOR BAER asked if he could be assured the Board of Nursing would require certain criteria to make sure these people are competent in the tasks listed.

Nancy Heyer said the Board of Nursing has been accused of being too stringent in their requirements, but she can give her personal assurance that their desire is not to be so restrictive that it becomes an access issue. Their intent for the administration of medication was to meet a need, then revaluate these rules in July 1995. They want to expand the present rules, but want to do so in small steps.

SENATOR ECK said she is concerned about bills that come before the Legislature that really could be dealt with by a Board. She asked if there is anything the Board of Nursing couldn't have done by rule.

Lance Melton said this bill addresses a restriction on limitations and settings, and the Board has a rule that addresses settings that could be more flexible that it currently is if the Board determines that it protects the safety of patients.

SENATOR ECK said she is concerned about the training, and whether training can be provided.

Lance Melton said the Board can regulate the steps a nurses needs to take before delegating to an unlicensed person, but the Board cannot regulate what that unlicensed person does. It can set up procedures to be followed before that delegation occurs, and can require that the nurse train and supervise that unlicensed person in a way that protects the public.

SENATOR BENEDICT asked if the Board can do this by rule, the Legislature says we can't wait for this rule, a bill is introduced, why then does everyone in the nursing profession becomes upset.

Lance Melton said the issue of delegation was not to be forced on the Board. The first delegation was allowed after the 1993 Session as a result of the Board's efforts of SB 121. The Board decided to take the approach of evaluating on the lowest common denominator, the administration of medications only in settings where the population or patient population was, for the most part, healthy. The Board wanted to evaluate how it worked in these type of settings before expanding, and intends to review, and possibly expand some of the tasks, in July 1995.

SENATOR BENEDICT asked about the difference between a personal care and nursing home, in terms of one being a critical population and other not.

Lance Melton said the Board is making decisions based on Class A and B personal care homes, and if the Board did make a mistake, then possibly the personal care homes should be removed as an appropriate setting until the Board can do its re-evaluation.

SENATOR FRANKLIN asked about the motivation or rationale for the delegation of duties in 1993.

Barbara Booher said there are 2 motivations. The major complaint was from the Great Falls area where teachers and teacher's aides were asked to do nursing care on students that were trying to be main-streamed. The other is for a waiver the Board had given to group homes in SRS to do tube feedings, then the waiver was rescinded. A task force tried to make rules that would meet everybody's need to delegate and when a set of rules was finally agreed upon by the 20 different organizations involved, it was presented to the Board of Nursing for legislation to be drafted. The legislation was broad, allowing the Board to delegate, which was SB 121. After it was passed, another version of the rules was agreed on by the task force that allowed for delegation of medications only, and only in certain settings.

SENATOR ESTRADA asked if a Registered Nurse delegates a duty and this delegation results in the death of a patient, who is liable.

Rose Hughes said if there was a lawsuit, probably it would be against both the Nurse and the nursing home.

{Tape: 1; Side 2}

SENATOR SPRAGUE said he sees this as a monetary issue. He asked if this bill passes and there are more people working, is this helpful to the patient.

Sandy Spencer said she does not see this as a monetary issue, but sees it from the patient advocate standpoint. She doesn't think that additional unlicensed personnel would be more beneficial, and would rather have another nurse, who she can trust and has the education and training, as opposed to additional unlicensed personnel.

SENATOR SPRAGUE asked about the nurse to patient ratio and if its in relation to the intensity of care.

Sandy Spencer said the care is delegated based on the number of employees at work.

SENATOR BENEDICT asked about the benefit of unlicensed personnel when there is a limited number of nurses on the floor, and would it be better to have nothing rather than this bill pass.

Sandy Spencer said she would not accept nothing

SENATOR BENEDICT rephrased his question, telling about his mother's post-operative experience of not getting her pain medication as ordered because the nurses were busy doing other tasks and not available to administer her medications. Under the supervision of a nurse, an unlicensed person could have given her the medication to relieve her pain. He asked whether this bill would be better than the alternative of not having an adequate number of people to care for the patients.

Sandy Spencer said HB 407 with the amendment may be acceptable for a nurse to decide who, of the unlicensed personnel, is competent to give medications. She said that would be more acceptable.

SENATOR FRANKLIN asked **REP. COBB** what tasks, other than the current tasks allowed, would he delegate.

REP. COBB said that's up to the Board of Nursing to decide what to delegate, where and in what setting. The issue is the setting. It's OK for the unlicensed person to administer medication at someone's home, but not a nursing home or a hospital.

SENATOR FRANKLIN asked if this was a settings issue, not more tasks.

REP. COBB said yes, it is a settings issue. If the task can be delegated in one setting, then it should be in other settings as well. Once the decision to delegate is made, the setting should not be the issue.

Closing by Sponsor:

REP. COBB said the main issue is settings. The Board of Nursing has the right to decide what type of delegation because it is the Board who has the final control.

HEARING ON HB 301

Opening Statement by Sponsor:

REP. LOREN SOFT, HD 12, Billings, said HB 301 is a combination cleanup bill and consolidation of some licensing activities, and definitions of services provided. This bill was a collaborative effort between 4 state departments. The intent is for the consolidation of state regulatory functions putting health care providers in one department, and offers a single point of access for state licensing services for the public.

He went through the bill, pointing out the major changes: license of adult foster care, name change to end state renal dialysis, requirements for home infusion therapy services, places 4 different types of residential care facilities under one agency, documentation of accreditation and recommendations from the Joint Commission to the Department of Health, application by facility for inspection, placement in personal care facility, and removes minimum number for number of people in personal care facility.

Proponents' Testimony:

Denzel Davis, Administrator, Health Care Facilities Division, Department of Health and Environmental Science, spoke from his written testimony in support of HB 301. **EXHIBIT 16.** He said this is an issue of consolidation of these types of facilities and point of access. SB 158 ties in with this and indicates the long term plan in the state for alternative settings in the delivery of health care to the elderly population.

Charles Briggs, Director, Rocky Mountain Agency on Aging, spoke in support of and urged passage of HB 301. He said this is a positive step toward consolidation for long-term care.

Joyce DeCunzo, representing the Department of Social and Rehabilitation Services, spoke in favor of HB 301. **EXHIBIT 17.**

Rose Hughes, representing the Montana Health Care Association, said they support HB 301, particularly facilities providing long-term care. She said bringing all of the long-term facilities, and

their licensing and inspections under one agency will be helpful in dealing with all the aspects of long-term care.

Bob Olson, Montana Hospital Association, said they support HB 301 for all the reasons previously stated.

Jerry Loendorf, representing the Montana Medical Association, said they support HB 301. He said the bill does not mention the Montana Medical Legal Panel, but has the unintended effect of amending the law that deals with the Montana Medical Legal Panel. Referring to 27-6-103 Definitions, (2) Health care facility, portion of the handout, **EXHIBIT 18,** he said the health care facility definition now will include 4 more types of facilities (page 3, line 30 through page 4, lines 4-8 of HB 301). Referring to **EXHIBIT 18,** he said this can be taken care of by adding the highlighted portion to HB 301, thereby taking away the unintended result of HB 301. If this is not done, these 4 additional groups would get a bill from the Montana Medical Legal Panel for part of the assessment for the panel.

Opponents' Testimony: None

Questions From Committee Members and Responses:

SENATOR MOHL referring to the Fiscal Note, he asked about the recovery of $3,490 per year.

REP. SOFT deferred to **Roy Kemp** to explain.

Roy Kemp, Licensure Bureau Chief, said the fees are based on $1.00 per bed annual license. There is a minimum of $20.00 per facility, so those with less than 20 beds would provide $20.00 for the licensing service. Any facility that has 20 or more beds would provide $1.00 per bed plus the $20.00 minimum fee. He said these fees are adequate to process and handle the paperwork for the licensing.

SENATOR MOHL asked for a clarification of the fee, and whether this is an increase or a savings.

Roy Kemp said it is adequate for handling the work of issuing licenses, maintaining records, and mailing the license. It is not an increased expense to the General Fund.

SENATOR MOHL asked if this is all that can be saved by consolidating 3 agencies.

Roy Kemp said this is not a consolidation of 3 agencies, but a consolidating facilities who are licensed under separate agencies to one licensing agency for all these facilities.

SENATOR SPRAGUE referred to the Fiscal Note, line 2, and asked about the adult foster care homes not paying a fee.

Roy Kemp said he did not know why the Department of DFS doesn't assess a fee for the license of adult foster care homes. These homes are for 4 people or less, and is generally a home where someone is caring for a disabled adult. DFS would not charge for the license, but there would be a $20.00 charge for processing of the license.

SENATOR SPRAGUE asked about the $20.00 minimum charge, even there is no fee, but just to process the license.

Roy Kemp said DFS charges the fee, but the Department of Health and Environmental Sciences charges $20.00 to issue that license.

SENATOR ECK asked if the new section for adult foster care is lifted from some requirements that now exist for foster care.

REP. SOFT said yes, DHES has taken them over. They were formerly in the Department of Family Services.

SENATOR ECK asked if these are the same requirements.

REP. SOFT said yes they are.

SENATOR KLAMPE asked how this will coordinate with HB 345.

REP. SOFT said there still would need to be a licensing agency, and this just coordinates the licensing from 4 department to one.

SENATOR KLAMPE asked if HB 301 will have to be amended to take out the word "department".

REP. SOFT said he doesn't know what the ramifications will be.

SENATOR BURNETT said there is a committee that will coordinate everything.

SENATOR SPRAGUE asked about the amendment.

REP. SOFT said the amendment doesn't hurt or help the bill.

SENATOR SPRAGUE asked about the adult foster care homes who are not being charged a fee, how many there are, and if the are entrepreneurs.

REP. SOFT said yes they are entrepreneurs, but doesn't know how many.

Susan Fox said under assumption #6, the Department will license 122 adult foster care facilities.

SENATOR ECK asked about the added language on adult foster care homes, and wondered if something is being repealed.

Closing by Sponsor:

REP. SOFT thanked the Committee and encouraged passage of the bill.

ADJOURNMENT

Adjournment: 4:58 PM

SENATOR JIM BURNETT, Chairman

KAROLYN SIMPSON, Secretary

JB/ks

MONTANA SENATE
1995 LEGISLATURE
PUBLIC HEALTH, WELFARE AND SAFETY COMMITTEE

ROLL CALL DATE 3/6/95

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		

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SENATE HEALTH & WELFARE
EXHIBIT NO. 1
DATE 3/6/95
BILL NO. HB 407

MONTANA
HEALTH
CARE
ASSOCIATION

36 S. Last Chance Gulch, Suit
Telephone (406) 443-28

SENATE PUBLIC HEALTH COMMITTEE

March 6, 1995

HOUSE BILL 407 - NURSE DELEGATION

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

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

Problems with Current Law

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

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

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

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

c. The rule arbitrarily precludes delegation in settings that are arguably the safest settings

SENATE HEALTH & WELFARE
EXHIBIT NO. 2
DATE 3/6/95
BILL NO. HB 407

MONTANA
HEALTH
CARE
ASSOCIATION

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

HOUSE BILL 407 - NURSE DELEGATION

HB 407, sponsored by Rep. John Cobb, relates to the delegation of nursing tasks by licensed nurses to unlicensed individuals. In the House, this bill was supported by the Montana Health Care Association, Montana Hospital Association, Montana Medical Association and the Dept. of Social and Rehabilitation Services. It passed the House on a vote of 68 to 30 and is scheduled for a hearing in the Senate Public Health Committee on March 6.

Current Montana law allows licensed nurses to delegate tasks to unlicensed individuals. Current law does not limit the settings in which delegation may take place, but rules adopted by the Board of Nursing specifically prohibit delegation in hospitals, nursing homes and physician offices while allowing delegation in a wide variety of other settings including personal care facilities, hospices and home health. We believe that it makes no sense to prohibit delegation in settings such as hospitals and nursing homes where there is on-site supervision available by licensed nurses while allowing it to go on in less safe settings where on-site supervision is not available. HB 407 addresses this problem.

WHAT HB 407 DOES:

(1) It provides that the Board of Nursing will adopt rules allowing delegation of nursing tasks that the Board determines can be delegated safely.

(2) It provides that tasks that the Board of Nursing determines can be safely delegated without on-site supervision can also be delegated in a hospital, nursing home, physician's office or other setting where on-site supervision by a licensed nurse is available. This allows nurses in hospitals, nursing homes and physician offices the same discretion with respect to delegation that nurses in other settings have.

(3) It gives the Board the authority to specify training and supervision requirements for the delegation of nursing tasks.

WHAT HB 407 DOES <u>NOT</u> DO:

(1) HB 407 does not require the Board of Nursing to allow the delegation of any particular tasks. It will be up to the Board to determine what tasks may be safely delegated.

(2) HB 407 does not require any nurse to delegate any tasks. Nurses will have the discretion to determine whether they wish to delegate tasks the Board allows them to delegate.

WE BELIEVE THAT THE DELEGATION PROVIDED FOR IN HB 407 ALLOWS FOR THE SAFE AND COST EFFECTIVE DELIVERY OF SERVICES TO OUR PATIENTS. PLEASE SUPPORT HB 407.

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HOUSE BILL 407 - NURSE DELEGATION

1. Settings where delegation may take place

Under current board rules	Added by HB 407
Current statute does not limit settings. However, current Board of Nursing rules limit settings where delegation may take place to the following:	*HB 407 does not limit settings, but provides that where delegation is safe in unsupervised settings, it must also be allowed in supervised settings:*
Schools	"hospital, nursing home, physician's office or other setting where onsite supervision by a licensed nurse is available."
Montana state prison, women's correctional center	
*Personal care facility A	
*Personal care facility B	
*Hospice services including inpatient hospice facilities and residential hospice facilities	
*Home health agency services	
Personal care attendant program	
Adult foster care homes	
Group homes	
Any "community based residential settings not subject to licensure under 50-5-101.	
*subject to licensure under 50-5-101.	*hospitals and nursing homes are subject to licensure under 50-5-101, but physician offices are not.

The Board of Nursing currently allows delegation in settings where onsite supervision is not available, while precluding it in settings where onsite supervision by licensed nurses is

available. Clearly, delegation is safer where onsite supervision is available so there seems to be no legitimate basis for excluding settings such as hospitals, nursing homes and physician offices.

In addition, the Board of Nursing currently allows delegation in settings and by entities that are allowed to care for terminally ill patients or those needing skilled nursing care such as inpatient and residential hospice facilities and home health agencies, and personal care B facilities, while excluding it in skilled nursing facilities which provide care to the same types of patients.

2. Tasks delegated

Current statute	Under HB 407
The current statute leaves to the Board of Nursing's discretion which tasks may be delegated.	HB 407 also leaves to the Board of Nursing's discretion which tasks may be delegated. HB 407 also clarifies that the Board may provide for delegation only in those instances when it will not endanger the public health and safety.

3. What has the Board of Nursing done with respect to the delegation authority in current law?

The Board has adopted rules which allow for the delegation of one task only: limited administration of medications

The Board has limited the delegation of this task to:

> "(a) pharmacy or authorized prescriber prepared medication via inhalant dispenser;
>
> "(b) oral medication taken from a prefilled labeled medication holder, labeled unit dose container, or original marked and labeled container from the pharmacy for the patient;
>
> "(c) oral medical that needs to be measured for liquid medication or a tablet

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broken for administration provided the nurse has calculated the dose;

"(d) suppository medication taken from a prefilled labeled medication holder, labeled unit dose container, or original marked and labeled container from the pharmacy for the patient."

Under the Board rule, a nurse may not delegate "the calculation of any medication dose, administration of medications by injection route, administration of medications used for intermittent positive pressure breathing or other methods involving medication inhalation treatments, or administration of medications by way of a tube inserted in a cavity of the body."

The Board rule also contains a list of nursing tasks which may not be delegated. This list is unnecessary since the rule is clear that the only task that can be delegated is administration of medications as limited in the rules.

The Board rules also contains a list of tasks which have always been recognized as tasks which are NOT within the exclusive domain of nursing and which can be performed by non-nurses. This list in no way expands what non-nurses can do since these tasks have always been considered appropriate for nurse aides and others to perform.

4. Does HB 407 change the Board's current limitations of tasks to be delegated?

If HB 407 passes, administration of medications (as limited in the Board rules) will continue to be the only task allowed to be delegated until such time as the Board of Nursing determines that it is safe for nurses to delegate other tasks. The Board will decide which tasks can be safely delegated in the future and what limitations may be placed on the performance of the tasks, as was done in the current rules on delegation.

However, if HB 407 passes, limited administration of medications as outlined in the rules will be allowed in hospitals, nursing homes and physician offices where onsite supervision by licensed nurses is available. Please note, delegation of this task is already allowed in settings where onsite supervision is not available.

5. Will HB 407 require licensed nurses to delegate tasks to unlicensed persons?

Under current law	Under HB 407
No requirement for licensed nurse to delegate - decision to delegate lies with each licensed nurse.	No change from current law.

6. Is delegation safe?

Under current law	Under HB 407
a. Board of Nursing determines which tasks to delegate	a. Board of Nursing determines which tasks to delegate - *based on public health and safety*
b. Individual licensed nurses determine to whom and under what circumstances they will delegate	b. Individual licensed nurses determine to whom and under what circumstances they will delegate
	c. Board of Nursing is given specific authority require appropriate training and supervision of individuals to whom tasks are delegated.

7. Who supports this bill?

Montana Health Care Association
Montana Hospital Association
Montana Medical Association
Montana Dept. of Social and Rehabilitation Services

8. Who opposed this bill?

Montana Board of Nursing
Montana Nurses Association
Montana LPN Association

Prepared by: MONTANA HEALTH CARE ASSOCIATION
36 S. LAST CHANCE GULCH, STE A
HELENA, MT 59601
406 443 3876

SENATE HEALTH & WELFARE
EXHIBIT NO. 3
DATE 3/6/95
BILL NO. HB 407

DEPARTMENT OF
SOCIAL AND REHABILITATION SERVICES

MARC RACICOT
GOVERNOR

PETER S. BLOUKE, PhD
DIRECTOR

STATE OF MONTANA

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

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

HB 407 - Revise Nursing Rules to Reduce Costs

The Department of Social and Rehabilitation Services supports House Bill 407 to allow for the delegation of nursing tasks to nonlicensed individuals who were adequately trained by a licensed nurse to perform specific nursing tasks.

The Department believes that there would be potential cost savings if delegation were allowed in certain setting such as in the home of an individual, personal care settings, assisted living settings, group home settings and even in institutional settings for performing nursing tasks that could be administered by nonlicensed staff who were properly trained and supervised.

Safety is certainly an issue and this bill allows the nurse to determine the appropriateness of the delegation for each of the specific patients involved and to provide the training necessary for delegation of each task where appropriate.

Delegation in physicians offices, nursing facilities and hospitals is appropriate in many instances. Appropriate support and backup staff will be more accessible if problems occur with delegation in these settings.

I urge you to support legislation concerning the delegation of nursing tasks in order to reduce costs and provide access to services in a multitude of settings.

SENATE HEALTH & WELFARE
EXHIBIT NO. 4
DATE 3/6/95
BILL NO. HB 407

TESTIMONY IN OPPOSITION TO HB 407

TO: Members of Senate Public Health Committee
FROM: Becki Andersen, RN
DATE: March 6, 1995
RE: HB407

Since HB 407 passed through the Montana House of Representatives and now will move on to the Senate Public Health Committee, I have discussed the bill with several individuals in and outside nursing. Some of these individuals lead companies which include nursing or health care components. The consensus of their opinions and mine is that HB 407 is not healthy for nurses nor the public in the following ways:

1. **Compromises patient safety**. Example: Conceivably, in Home Health nursing and other areas of patient care, an RN will be responsible for documenting that patients have received good NURSING CARE from NON-NURSING PROVIDERS of care, such as nurses' aides. The RN "may...or need not" be present during the tasks assigned. We have strived hard to reach and always maintain quality care. Care is standardized by regulations in the NURSE PRACTICE ACT which, presently would require a RN to report any individual performing nursing tasks without a license to do so. This requirement is in place because nursing tasks require education, regulation and dynamic evaluation which is closely monitored by the Board of Nursing. It does not suffice that the delegating RN has the education or is regulated or is evaluated if the RN is not the individual performing these tasks.

2. **Leaves gaps in definition**, thus abuse is invited: The TASKS are not clearly defined, therefore there is much room for free definition. If the Board of Nursing is left to discern what tasks may and may not be assigned, I would support their leaving things as they are now, because having nurses perform nursing tasks is the only safe and quality way to go. Please do not interpret this to mean nurses nor the BON is not flexible. I cannot speak for the board. However, I can say that I am not flexible on this issue. Leaving a loose definition of tasks will be abused by some employers, leaving patient safety in jeopardy, compromising quality care and putting the RN in an ethical position which, at present, is clearly defined. I, for one, will not be the RN to delegate nursing tasks to non-nurses, nor sign my name (attach my license) to an employer's document for delegating. I have not been able to find any other nurse who is willing to do this either.

3. **If the intent is COST CONTAINMENT, this is the wrong band-aid.** There is no cost-savings study for this bill. It is assumed that if less RNs are needed, the patient, employer or government saves health care costs. Consider the long term costs when wounds are infected and the "delegated employee" doesn't know signs and symptoms of infection, but the RN has not been present to properly ASSESS the patient's status because the RN's new task is to sign forms of delegation for many para-professionals

Example: Many of the elderly patients seen by home health agencies and nursing homes are diabetics. This disease is one of the most complicated disorders, requiring proper education and skills to continually assess the disease stage and its secondary effects on metabolism, renal, vision, and skin systems. Only by visiting the patient personally and ASSESSING their status, can a properly educated nurse work toward that patient's optimal health.

4. SRS has not established **standards which control the growth** in home health and nursing home expansion into sub-acute care. A focus at this time should be on the development of standards which outcome in quality care in those arenas, rather than degrading the quality of care which the health care providers are able to offer.

I implore you to treat this bill with informed wisdom. **Please vote against HB407.**

SENATE HEALTH & WELFARE
EXHIBIT NO. 5
DATE 3/6/95
BILL NO. HB407

TO: SENATE PUBLIC HEALTH COMMITTEE

RE: HB407; COBB, REVISE NURSING RULES TO REDUCE COSTS

THIS BILL, HB407, IS DEVIOUS AND DANGEROUS. IN THEORY IT MAY SOUND RATIONAL/LOGICAL AND THAT IT CAN BE EASILY AND EFFECTIVELY IMPLEMENTED. IN REALITY, IT DOES NOT AND CAN NOT PROTECT THE HEALTH AND WELFARE OF THE PEOPLE OF MONTANA. IT SHOULD ALSO BE NOTED THAT THE BILL WAS PREPARED AND SUBMITTED WITHOUT THE KNOWLEDGE OF THE BOARD OF NURSING (*BON*) - A BODY WHOSE MEMBERS WERE APPOINTED BY THE GOVERNOR WITH THE CONSENT OF THE SENATE TO SAFEGUARD LIFE AND HEALTH IN THE PRACTICE OF NURSING.

YOU SHOULD ALL BE AWARE THAT THE QUESTION OF DELEGATION OF NURSING DUTIES ISN'T NEW - IT WAS STUDIED BY A TASK FORCE ORGANIZED BY THE *BON* WITH CONCERNED INDIVIDUALS FROM OVER THE STATE REPRESENTING VARIOUS NURSING AND HEALTH CARE INTERESTS. FOLLOWING SEVERAL MEETINGS, AFTER CONSIDERABLE STUDY AND DISCUSSIONS, SEVERAL CONCLUSIONS AND RECOMMENDATIONS WERE PROVIDED THE BOARD. THE GENERAL PUBLIC HAD THE OPPORTUNITY TO ATTEND THE FORMAL BOARD MEETING AND COMMENT.

THE *BON* SUBSEQUENTLY AMENDED THE *MCA* TO INCLUDE RECOMMENDED CHANGES IN DELEGATION - CHANGES THAT WOULD CONTINUE TO PROTECT THE PUBLIC WHILE NOT INTERFERING WITH THE INTERNAL OPERATIONS OF INSTITUTIONS/FACILITIES. REPRESENTATIVES FROM THE *BON* ALSO WORKED WITH THE DEPARTMENT OF PUBLIC INSTRUCTION AND A MANUAL/PAMPHLET WAS PREPARED FOR SCHOOLS ON DELEGATION FOR TEACHERS.

HOWEVER,THE SETTINGS THAT ARE OF THE MOST CONCERN TO ME ARE NURSING HOMES AND GROUP HOMES. THESE COMPANIES/FIRMS UTILIZE LARGE NUMBERS OF NURSES' AIDES - HIRED OFF THE STREET (USUALLY YOUNG PERSONS) WITHOUT PREVIOUS EDUCATION/OR EXPERIENCE, AND PAID THE MINIMUM WAGE. THE WORK IS HARD, HENCE A LARGE TURNOVER IN PERSONNEL. IN ADDITION, THERE ARE NO STAFFING PATTERNS/MANNING RATIOS, i.e., NUMBER OF PATIENTS ASSIGNED ONE AIDE; NUMBER OF AIDES ASSIGNED A NURSING SUPERVISOR. WE ARE AWARE THAT NUMBERS OF LICENSED NURSES IN SUCH FACILITIES ARE MAINTAINED AT AN ABSOLUTE MINIMUM. AS A CONSEQUENCE, NUMBERS AND SKILL-MIX MAY BE BEYOND THE SPAN OF CONTROL OF A NURSE SUPERVISOR RESULTING IN POOR SUPERVISION AND EVEN POORER TRAINING OF AIDES. IN A SITUATION LIKE THIS, ANY DELEGATION OF TASKS PLACES THE NURSE AT RISK - HER LICENSE AND HER LIVELIHOOD COULD BE ON THE LINE.

MEMBERS OF THIS COMMITTEE SHOULD ALSO KNOW THAT CURRENTLY BETWEEN 60 AND 70% OF ALL COMPLAINTS OF PATIENT ABUSE ORIGINATE IN NURSING AND GROUP HOMES AND THE NUMBER APPEARS TO BE INCREASING.

IN SUMMARY, THERE IS AN INTRINSIC CONTRADICTION BETWEEN "PATIENT SAFETY" AND "COST EFFECTIVENESS" i.e., IF <u>SAFE</u> NURSING FOR THE PUBLIC IS DESIRED, TRAINED AND LICENSED HEALTH CARE PROVIDERS ARE REQUIRED. IF THE "HOME" LOOKS FIRST FOR A "COST EFFECTIVE" (LEAN AND MEAN) OPERATION TO IMPROVE THE PROFIT POSITION, THEN PUBLIC SAFETY MUST BE COMPROMISED. IF ONE CONSIDERS THE ABSENCE OF STAFFING PATTERNS/MANNING RATIOS AND LACK OF UNIFORM STANDARDS OF

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TRAINING AND CONDUCT, OPPORTUNITIES ARE BEING CREATED FOR LARGE SCALE ABUSE OF PATIENTS AND VIOLATIONS IN MEDICAL CARE. THE OLD ADAGE, *'YOU GET WHAT YOU PAY FOR,'* COULDN'T BE TRUER IN THIS INSTANCE AND LAXITY IN HEALTH CARE COULD HAVE SERIOUS, IF NOT FATAL CONSEQUENCES.

ACCORDINGLY, I URGE THIS BILL BE VOTED DOWN IN THIS COMMITTEE.

RESPECTFULLY,

BLANCHE PROUL
218 E. Park Avenue
Anaconda, Montana 59711

SENATE HEALTH & WELFARE
EXHIBIT NO. 6
DATE 3/6/95
BILL NO. HB 407

MONTANA
EMERGENCY
NURSES ASSOCIATION

172 WOODLAND EST. RD. GREAT FALLS MT 59404 406-761-1849

3 MAR 95

AS THE ELECTED REPRESENTATIVE OF PROFESSIONAL EMERGENCY NURSES IN MONTANA, I AM HERE TO VOICE OUR CONCERNS WITH HB407. WHILE THE MEMBERS OF THE MONTANA EMERGENCY NURSES ASSOCIATION REALIZE THE NEED FOR CREATIVE SOLUTIONS IN ORDER TO PROVIDE CONTINUED, QUALITY, COST-EFFECTIVE CARE IN THE FACE OF DIMINISHING RESOURCES AND ESCALATING COSTS, AND, WHILE THE INTENT OF THIS LEGISLATION IS TO FACILITATE THESE GOALS, WE MUST URGE CAUTION WHEN THERE ARE ATTEMPTS TO DELEGATE NURSING TASKS WITHOUT DIRECT, PROFESSIONAL NURSING SUPERVISION.

ON A NATIONAL SCALE, MANY STATES HAVE ALREADY IMPLEMENTED SIMILAR LEGISLATION WITH SIMILAR INTENTIONS. THIS MOVEMENT HAS RESULTED IN A POSITION STATEMENT BY THE NATIONAL LEADERSHIP OF THE EMERGENCY NURSES ASSOCIATION IN ORDER TO DIFFERENTIATE BETWEEN NURSING TASKS AND PROFESSIONAL NURSING CARE. THIS POSITION STATEMENT IS ATTACHED. IN ADDITION, THE NATIONAL LEADERSHIP OF E.N.A. HAS REVIEWED THIS LEGISLATION, VOICED ITS OPPOSITION, AND IS MONITORING THE PROGRESS OF THIS BILL.

THERE HAVE BEEN SEVERAL "EXPERIMENTS" IN STATES THAT HAVE IMPLEMENTED LIKE LEGISLATION. SOME HAVE SUCCESSFULLY INTEGRATED NON-RN CARE GIVERS INTO THE EMERGENCY CARE TEAM; HOWEVER, THESE SUCCESSES HAVE BEEN ACHIEVED ONLY WHEN THE NON-RN CARE GIVERS ARE UNDER THE DIRECT SUPERVISION OF PROFESSIONAL EMERGENCY NURSES. EXAMPLES OF THE FAILURES HAVE BEEN EMERGENCY DEPARTMENTS THAT REPLACED THEIR RN STAFFS WITH EMERGENCY MEDICAL TECHNICIANS (E.M.T.'s). WHILE E.M.T.'s ARE WELL TRAINED TO PROVIDE PRE-HOSPITAL CARE AND WHILE THEY ARE TRAINED TO PERFORM MANY OF THE SAME TASKS AS EMERGENCY NURSES, THOSE EMERGENCY DEPARTMENTS THAT HAVE EMPLOYED THEM EXCLUSIVELY QUICKLY DETERMINED QUALITY OF CARE AND EFFICIENCY DROPPED. NONE OF THESE EXPERIMENTS HAVE LASTED MORE THAN A YEAR BEFORE RN's WERE BROUGHT BACK IN. HAVING BEEN FIRST AN E.M.T., THEN L.V.N. BEFORE BECOMING AN R.N. IN AN EMERGENCY DEPARTMENT, I CAN ATTEST THAT NON-RN CARE GIVERS CAN PERFORM MANY NURSING TASKS AND PERFORM THEM WELL; HOWEVER, THEY CAN NOT PROVIDE QUALITY, COST-EFFECTIVE NURSING ASSESSMENT, PLANNING, IMPLEMENTATION, OR EVALUATION OF CARE. BY ANALOGY, R.N.'s ARE NOT TRAINED OR QUALIFIED TO REPLACE PHYSICIANS. WE SHOULD ALL WORK TOGETHER AS A TEAM TO PROVIDE QUALITY, COST-EFFECTIVE PATIENT CARE.

THE PATIENT IS THE ONE YOU SHOULD KEEP IN MIND WHILE YOU CONSIDER THIS LEGISLATION. THE PATIENT IS THE ONE WHO WILL HAVE TO LIVE WITH THE DECISIONS YOU PRECIPITATE HERE. THE PATIENT IS THE ONE THAT HAS VOICED THEIR DESIRE TO HAVE COMPETENT, PROFESSIONAL NURSING CARE IN MANY NATIONALLY PUBLISHED SURVEYS. THE PATIENT IS THE ONE THAT EXPECTS YOU TO PROVIDE PROTECTION OF THEIR HEALTH AND SAFETY.

PLEASE CONSIDER THIS LEGISLATION CAREFULLY. CONSIDER WHAT YOU WOULD WANT FOR YOUR LOVED ONES, NOT JUST IN HOSPITAL EMERGENCY DEPARTMENTS, BUT NURSING HOMES AS WELL. CONSIDER WHAT IS IN THE BEST INTERESTS OF THE PATIENTS AND CITIZENS OF MONTANA. PLEASE DO NOT ALLOW UNLICENSED PERSONS TO PERFORM NURSING TASKS WITHOUT NURSING SUPERVISION. AS AN EMERGENCY NURSE, I RECOMMEND YOU DON'T TRY A BAND-AIDE FOR THE BIGGER DISEASE OF OUR HEALTH CARE PROBLEMS IN MONTANA.

THANK YOU,

DALE R. DALLMANN, RN CEN CFRN
PRESIDENT
MONTANA EMERGENCY NURSES ASSOCIATION

ATTACH: E.N.A. POSITION STATEMENT

EMERGENCY NURSES ASSOCIATION

POSITION STATEMENT

THE USE OF NON-REGISTERED NURSE (NON-RN) CAREGIVERS IN EMERGENCY CARE

STATEMENT OF PROBLEM

A health care crisis in America has occurred as a result of numerous contributing factors such as increased health care costs, increased patient acuity, rising patient admissions and in some regions, insufficient nursing resources to optimally meet the demands. This has led to a situation in which organizations have sought to redesign health care delivery systems and provide alternative staffing options such as the use of non-RN caregivers to meet patient care needs. Non-RN caregivers are individuals who are unauthorized to perform professional nursing activities as defined by the State Nurse Practice Act. Examples of Non-registered nurse caregivers are: Licensed Practical Nurses (LPNs)/Licensed Vocational Nurses (LVNs), Nurse Aides, Nursing Assistants, Orderlies, Emergency Department Technicians, Emergency Medical Technicians (EMTs), Paramedics, and Physician Assistants (PAs).

The scope of practice, role and lines of accountability for the non-RN caregiver in emergency care has not been clearly delineated or well defined. This contributes to a fragmented approach to patient care and infringement on nursing's scope of practice and compromises quality patient care.

In a 1992 survey by ENA, over half of all states report experiences with this issue, either past or present, or express concern that it is becoming a major issue that will need action in the near future.

ASSOCIATION POSITION

NURSING SCOPE OF PRACTICE

ENA believes that the scope of nursing practice and the standards of nursing care within emergency care settings are defined generally by professional nursing and by State Boards of Nursing, and specifically by ENA .

ENA believes emergency nursing is a specialty area of nursing that involves the integration of the nursing process, the standards of professional performance, and the body of knowledge as defined in the ENA Standards of Emergency Nursing Practice, the ENA Scope of Practice and the ENA Core Curriculum.

ENA believes that the performance of nursing activities by non-RN caregivers constitutes practicing nursing without a license and is not in the interest of quality care nor the health, safety, and welfare of the public.

ENA believes that the registered professional nurse is responsible and accountable for emergency

nursing practice. All non-RN caregivers, involved in providing nursing care within the emergency care setting, shall be directly supervised by and responsible to professional emergency registered nurses. In no case does ENA advocate the use of non-RN caregivers to provide nursing care in place of emergency nurses.

ENA is dedicated to developing and implementing strategies to define and protect the scope of registered emergency nursing practice and the quality of emergency care.

STANDARD OF CARE

ENA believes that the use of non-RN caregivers for the augmentation of nursing care should be guided by the following principles:

- it is the nursing profession that defines and supervises the education, training and utilization of any non-RN caregivers involved in providing delegated nursing care.

- nursing management/administration is accountable for ensuring that utilization of non-RN caregivers complies with the established standards of care.

- a written job description for non-RN caregivers which clearly delineates appropriate duties, responsibilities, qualifications, skills and requirements for registered nurse supervision is in place.

- performance expectations and a mechanism for on-going performance appraisal is established and maintained.

- orientation and training of non-RN caregivers that is appropriate for performance expectations and role responsibility is provided.

- there should always be one registered nurse available in the emergency department and a ratio of non-RN caregivers to the professional emergency nurse which ensures quality care is established and maintained.

- monitoring and evaluation by professional registered nurses of the impact of non-RN caregivers on patient outcomes and adherence to standards of care is done on a regularly scheduled basis.

ENA further believes that emergency nurses, within their professional specialty organization in collaboration with state nurses associations and state boards of nursing, must take an active role in the development of clearly defined and appropriate State and Federal legislation as it pertains to the delivery of emergency services.

EXHIBIT 6
DATE 3-6-95
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EMERGENCY NURSES ASSOCIATION
POSITION STATEMENT
USE OF NON-REGISTERED NURSE (Non-RN) CAREGIVERS IN EMERGENCY DEPARTMENTS

DELEGATION AND COORDINATION OF CARE

While ENA recognizes that there are institutional budgetary constraints and in some areas, a limited supply of nurses, these reasons should not be used as rationale for inappropriate delegation to non-RN caregivers or substitution of registered professional nurses in the emergency care setting.

ENA concurs with the National Council of State Boards of Nursing that:

- while non-RNs may suggest which nursing acts may be delegated, it is the registered nurse who ultimately decides the appropriateness of delegation.

- the non-RN caregiver cannot re-delegate a delegated act.

- boards of nursing must develop clear rules on determination of competence of persons to perform delegated nursing tasks or procedures, the level of supervision necessary, and which acts may not be delegated.

- while employers and administrators may suggest which registered nursing acts should be delegated and to whom the delegation may be made, it is the registered nurse who ultimately decides and who is accountable for deciding whether the delegation occurs. If the nurse decides that the delegation may not appropriately or safely take place, the nurse should not engage in such delegation. In fact, if the nurse decides that delegation may not appropriately or safely take place, but nevertheless delegates, he/she may be disciplined by the board of nursing.

- non-nursing and managerial person must not coerce the nurse into compromising patient safety by requiring the nurse to delegate. While task and procedures may be delegated, the registered nurse should not delegate practice pervasive functions of assessment, evaluation and the exercising of nursing judgement.

RATIONALE

Laws that establish prehospital practice standards for non-RN caregivers do not authorize comparable practice in the emergency department.

Registered professional nurses are not authorized by State Practice Acts to delegate professional duties to non-RN personnel. Professional nursing functions which include assessment, diagnosis, outcome identification, planning implementation and professional judgement must remain the responsibility of the registered professional nurse.

All patients seen in the emergency department deserve comprehensive, professional care by appropriately educated and trained individuals who are practicing health care within their respective scope of practice. All patients seen in the emergency department should be assessed,

have their care planned and evaluated, and be appropriately educated by a registered professional nurse.

Aspects of care cannot be provided in isolation by non-RN caregivers functioning independently of the nurse if the health, safety, and welfare of the public is to be assured. The replacement of emergency nurses with non-RN caregivers will compromise the quality of patient care. In the interest of maintaining quality patient care, it is imperative that every effort be made to provide an adequate number of emergency registered nurses.

REFERENCES

American Association of Critical Care Nurses (1989). Position Statement on Use of Nursing Support Personnel in Critical Care Units, AACN, Aliso Viejo, CA.

American Nurses Association (1992). Position statement on registered nurse utilization of unlicensed assistive personnel, ANA, Washington, DC.

National Council of State Boards of Nursing (1990). Concept paper on delegation, NCSBN, Chicago, IL.

Joint Commission on Accreditation of Healthcare Organizations (1993). Emergency service and nursing care standards, JCAHO, Oakbrook Terrace, IL.

Stephany, T. (1992). Skill mix changes may be a trap. The American Nurse 92(5), 4.

West Virginia Board of Examiners for Registered Professional Nurses (1993). Position statement emergency medical service personnel employed in hospital emergency departments, WVBERPN, Charleston, WV.

Emergency Nurses Association (1990). Standards of emergency nursing practice. St. Louis, MO: The C.V. Mosby Company.

EMERGENCY NURSES ASSOCIATION
POSITION STATEMENT
USE OF NON-REGISTERED NURSE (Non-RN) CAREGIVERS IN EMERGENCY DEPARTMENTS

ADDENDUM

QUESTIONS AND ANSWERS

Following are some commonly asked questions regarding delegation of tasks to non-RN caregivers.

What does it mean to delegate tasks or duties?

Delegation, when used in relation to scope of practice, means the transfer of the responsibility of performing an activity but not the accountability.

Who is responsible for delegating tasks?

While other participants in the health care process may provide assistance in defining the role(s) of non-RN caregiver in the emergency department, the final responsibility for delegating patient care activities must remain with the registered professional nurse who serves as department manager/coordinator.

The registered professional nurse must not delegate professional functions to caregivers not qualified as professional nurses.

How do I know what tasks to delegate?

State Nurse Practice Acts and professional standards of care, along with professional judgement aid the RN in deciding which tasks may be delegated, to whom, and under what circumstances.

What should not be delegated to non-RN caregivers?

Nursing activities that include the core of the nursing process (assessment, diagnosis, outcome identification, planning and evaluation) and require specialized knowledge, judgement and/or skill should not be delegated to individuals who are not licensed to practice nursing. For example, triage, initial nursing assessment, establishment of nursing diagnosis or nursing care goals, development of the nursing plan of care and the evaluation of the patient's progress in relation to that plan of care.

What interventions should not be delegated to non-RN caregivers?

Any nursing intervention which requires professional knowledge, judgement, and skill should not be delegated. Nursing judgement is the intellectual process that a nurse exercises in forming an opinion and reaching a conclusion by analyzing the data.

EMERGENCY NURSES ASSOCIATION
POSITION STATEMENT
USE OF NON-REGISTERED NURSE (Non-RN) CAREGIVERS IN
EMERGENCY DEPARTMENTS

ADDENDUM

(Continued)

But it is just a task, why can't I delegate it?

Registered professional nurses must recognize their specialized skill and expertise, and seek to deliver no less than that high level of skill and expertise to any patient that comes within their care. To delegate professional nursing functions on the premise that they represent mere "tasks" belies the practice and professionalism of the registered nurse; while performing a "task", a registered nurse is also educating, assessing, reassuring, and planning. To delegate the mere "task" fails to also assign responsibility for the concurrent functions, and thus deprives the patient of the fullest scope of qualified emergency care.

When is an RN at risk for delegating tasks?

When the RN knowingly delegates the nursing task to a non-RN caregiver who is not licensed to perform that nursing function, when the delegation is contrary to law, when it involves a substantial risk or harm to a patient, or when the RN fails to exercise adequate supervision over non-RN caregivers to whom nursing functions have been delegated.

REFERENCES

American Nurses Association (1992). Position statement on registered nurse utilization of unlicensed assistive personnel. ANA, Washington, DC.

West Virginia Board of Examiners for Registered Professional Nurses (1993), Position Statement Emergency Medical Service Personnel Employed in Hospital Emergency Departments, WVBERPN, Charleston, WV.

Approved by the ENA Board of Directors: April, 1993

SENATE HEALTH & WELFARE
EXHIBIT NO. 7
DATE 3/6/95
BILL NO. HB 407

Amendments to House Bill 407
by the Montana Organization of Nurse Executives

1. Page 2, line 28
   Following: "is not required"
   Strike: "in order for a nursing task to be delegated."
   Insert: "if the Board has defined the tasks to be performed by an unlicensed person as one which does not endanger the health and safety of the public. The Board shall also define how the task will be delegated, supervised and monitored by a licensed nurse."

2. Page 3, line 1
   Following: "specify"
   Insert: "minimum"

3. Page 3, line 1
   Following: "training"
   Strike: "and supervisory"

4. Page 3, line 1
   Following: "delegation of nursing tasks."
   Strike: "."
   Insert: "to unlicensed personnel. There is nothing in this paragraph to limit or preclude any activities authorized by the board prior to passage of this act."

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

SENATE HEALTH & WELFARE
EXHIBIT NO. 8
DATE 3/6/95
BILL NO. HB 407

TESTIMONY OPPOSING HB 407
MT NURSES' ASSOCIATION
MARCH 6, 1995

My name is Barbara Booher. I am the Executive Director of the Montana Nurses' Association representing over 1400 Registered Nurses across the State of Montana.

MNA is in STRONG opposition to HB 407 for numerous reasons which I believe other opponents are addressing.

The "Delegation Rules" this bill would have the Board of Nursing develop have the potential to create employment disputes by "management" requiring licensed nurses to delegate duties that the nurse considers unsafe. Both the Sponsor, Representative Cobb, and proponents made verbal assurances that the decision to delegate would remain within the discretion of the licensed nurse. The bill offers no language to this effect.

MNA offers the following amendment to HB 407 to assure that a licensed nurse can in fact exercise his or her professional judgement without interference or coercion. MNA would obviously prefer that this bill be killed because of the serious compromises to public safety it invites. However, we respectfully offer this amendment and urge adoption of the amendment if this bill should pass out of committee.

Amendment on reverse

March 6, 1995

Steven J. Shapiro
Montana Nurses Association

Amendment Offered to HB 407

New Section. Section _____. Section 37-8-443, MCA, is amended to read:

37-8-443. Violation of chapter - penalties. (1) It is a misdemeanor for a person (including a corporation, association, or individual) to:

(a) sell or fraudulently obtain or furnish any nursing diploma, license, or record or aid to abet therein;

(b) practice nursing as defined by this chapter under cover of diploma, license, or record illegally or fraudulently obtained or signed or issued unlawfully or under fraudulent representation;

(c) practice professional nursing unless duly licensed to do so;

(d) practice practical nursing unless duly licensed to do so;

(e) use in connection with the person's name any designation tending to imply that a person is a registered professional nurse or a licensed practical nurse unless duly licensed to so practice;

(f) practice nursing during the time the person's license is suspended, revoked, or inactive status;

(g) conduct a school of nursing or a course unless the school or course has been approved by the board;

(h) interfere with or prevent a registered nurse's or licensed practical nurse's refusal:

(i) to accept responsibility for supervising, monitoring, instructing, or evaluating an unlicensed individual performing a nursing task, act, or responsibility when the unlicensed individual has not demonstrated, in the registered nurse's or licensed practical nurse's professional judgment, the knowledge, experience, preparation, and ability to perform in a safe and competent manner; or

(ii) to perform an act or accept an assignment that is not within the registered nurses's or licensed practical nurse's preparation, capabilities, and experience after being so informed by the registered nurse or licensed practical nurse; or

(i) ~~(h)~~ otherwise violate any provision of this chapter.

(2) Such misdemeanor is punishable by a fine of not less than $100 for the first offense. Each subsequent offense is punishable by a fine of $300, by imprisonment or not more than 6 months in the county jail, or by both such fine and imprisonment.

(3) The several district courts within their respective county jurisdictions may hear, try, and determine such misdemeanor and impose in full the punishment and fines prescribed. It is necessary to prove, in any prosecution, for misdemeanor under this section, only a single act prohibited by law or a single holding out or an attempt. It is not necessary to prove a general course of conduct in order to constitute a violation.

- END -

SENATE HEALTH & WELFARE
EXHIBIT NO. 9
DATE 3/6/95
BILL NO. HB 407

March 6, 1995

Steven J. Shapiro
Montana Nurses Association

Amendment Offered to HB 407

New Section. Section _____. Section 37-8-443, MCA, is amended to read:

37-8-443. Violation of chapter - penalties. (1) It is a misdemeanor for a person (including a corporation, association, or individual) to:

(a) sell or fraudulently obtain or furnish any nursing diploma, license, or record or aid to abet therein;

~~(b)~~ practice nursing as defined by this chapter under cover of diploma, license, or record illegally or fraudulently obtained or signed or issued unlawfully or under fraudulent representation;

~~(c)~~ practice professional nursing unless duly licensed to do so;

(d) practice practical nursing unless duly licensed to do so;

(e) use in connection with the person's name any designation tending to imply that a person is a registered professional nurse or a licensed practical nurse unless duly licensed to so practice;

(f) practice nursing during the time the person's license is suspended, revoked, or inactive status;

(g) conduct a school of nursing or a course unless the school or course has been approved by the board;

(h) interfere with or prevent a registered nurse's or licensed practical nurse's refusal:

(i) to accept responsibility for supervising, monitoring, instructing, or evaluating an unlicensed individual performing a nursing task, act, or responsibility when the unlicensed individual has not demonstrated, in the registered nurse's or licensed practical nurse's professional judgment, the knowledge, experience, preparation, and ability to perform in a safe and competent manner; or

(ii) to perform an act or accept an assignment that is not within the registered nurses's or licensed practical nurse's preparation, capabilities, and experience after being so informed by the registered nurse or licensed practical nurse; or

(i) ~~(h)~~ otherwise violate any provision of this chapter.

(2) Such misdemeanor is punishable by a fine of not less than $100 for the first offense. Each subsequent offense is punishable by a fine of $300, by imprisonment or not more than 6 months in the county jail, or by both such fine and imprisonment.

(3) The several district courts within their respective county jurisdictions may hear, try, and determine such misdemeanor and impose in full the punishment and fines prescribed. It is necessary to prove, in any prosecution, for misdemeanor under this section, only a single act prohibited by law or a single holding out or an attempt. It is not necessary to prove a general course of conduct in order to constitute a violation.

- END -

\bb407 am3

EXHIBIT NO. 10
DATE 3/6/95
BILL NO. HB 407

MONTANA STATE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

NURSE AIDE SKILL COMPETENCY CHECKLIST

Applicant Name: _____ Social Security Number: _____
Address: _____ Facility/School: _____
_____ City: _____

****

Personal Care	Date Practiced	Date Passed	Comments	Observer Signatu
TUB BATH				
SHOWER				
BED BATH				
PARTIAL BATH				
ORAL CARE				
DENTURE CARE				
FEMALE PERICARE				
MALE PERICARE				
NAIL CARE				
HAIR CARE				
SHAVING				
USE OF BEDPAN/URINAL				
USE OF COMMODE				
DRESSING/UNDRESSING				
PREVENTION/OBSERVATION DECUBITUS				
SKIN CARE				
CATHETER CARE: INDWELLING				
CONDOM				
OBTAIN SPECIMENS: URINE				
STOOL				
SPUTUM				
OXYGEN SAFETY				
APPLICATION OF HEAT: AQUA PAD				
HOT WATER BOTTLE				
COMPRESSES				
APPLICATION OF COLD: ICE BAG				
COMPRESSES				
APPLICATION TED HOSE				
RECORDS CARE IN RESIDENTS RECORD				

INFECTION CONTROL	Date Practiced	Date Passed	Comments	Observer Signature
BODY FLUID PRECAUTIONS				
HANDWASHING				
USE OF PROTECTIVE GOWN, GLOVES AND MASK				
DISPOSAL OF CONTAMINATED SUPPLIES				
PROPER LINEN HANDLING, STORAGE AND DISPOSAL				

COMMUNICATION/RIGHTS	Date Practiced	Date Passed	Comments	Observer Signatu
RESPECTFUL IN INTERACTIONS/ COMMUNICATIONS WITH RESIDENT				
KNOCKS BEFORE ENTERING ROOM				
ASKS PERMISSION/EXPLAINS PROCEDURES IN ADVANCE				
DRESSES RESIDENT BY PREFERRED NAME				
DEMONSTRATES TECHNIQUES OF RESPONDING TO:				
COMBATIVE RESIDENT				
DEPRESSED RESIDENT				
ANXIOUS RESIDENT				
COGNITIVELY IMPAIRED				
ENSURES PRIVACY DURING PERSONAL CARE				

ENVIRONMENT	Date Practiced	Date Passed	Comments	Observer Signatu
MAKES AN UNOCCUPIED BED				
MAKES AN OCCUPIED BED				
CLEANS RESIDENT UNIT				
MARKS & CARES FOR CLOTHING				
MARKS & CARE FOR PERSONAL POSSESSIONS				
COMPLETES CLOTHING & POSSESSIONS LIST				
CLEANS RESIDENT CARE EQUIP-MENT (tub/shower basins, wheelchair, combs, brushes, razor, etc.)				
CARE OF GLASSES				
CARE OF HEARING AID				
CARE OF PROSTHESES				

SAFETY AND REHABILITATION	Date Practiced	Date Passed	Comments	Observer Signatu
USES CORRECT BODY MECHANICS				
TURN/POSITION RESIDENT				
RANGE OF MOTION				
USE OF MECHANICAL LIFTS				
AMBULATION TECHNIQUES:				
USE OF GAIT BELT				
USE OF MOBILITY EQUIPMENT				
TRANSFERS:				
BED TO CHAIR				
CHAIR TO BED				
ONE PERSON				
TWO PERSON				
TEACHING:				
ADL RETRAINING				
BOWEL/BLADDER RETRAINING				
USE OF RESTRAINTS				
USE OF SIDE RAILS				
USE OF CALL LIGHTS				
USE OF PROTECTIVE DEVICES: PADDING, HELMETS, ALARMS,				
PARTICIPATES IN FIRE DRILL				

SPECIAL PROCEDURES	Date Practiced	Date Passed	Comment	Observer Signatu
RESIDENT ADMISSION PROCEDURE				
RESIDENT DISCHARGE PROCEDURE				
RESIDENT TRANSFER PROCEDURES				
TAKE AND RECORD: TEMPERATURE- ORAL				
RECTAL				
AXILLARY				
PULSE				
RESPIRATION				
BLOOD PRESSURE				
HEIGHT				
WEIGHT				
CPR (optional)				
HEIMLICH				
POST MORTEM CARE				
OTHER: (write in)				

NUTRITION	Date Practiced	Date Passed	Comment	Observer Signatu
ASSISTS RESIDENTS WHO SELF FEED				
FEEDS HELPLESS RESIDENTS				
SERVES SUPPLEMENTS				
PASSES DRINKING WATER				
RECORDS MEAL/SUPPLEMENT INTAKE				
RECORDS FLUID INTAKE/ OUTPUT				

CERTIFICATION OF COMPETENCY

Program Coordinator or Clinical Instructor:

I, _____ certify that
(name of PC or CI - type or print)

_____ has satisfactorily
(name of student - type or print)
performed all of the above listed skills

_____ _____
Signature of PC or CI Date

_____ _____
Signature of Student Date

SENATE HEALTH & WELFARE
EXHIBIT NO. 11
DATE 3/6/95
BILL NO. HB 407

Montana LPN Association
P.O. Box 6964
Great Falls, MT 59406
Marion H. Nelson, Executive Director
(406) 453-6029
~~(406) 454-3141~~

March 5, 1995

Public Health Committee
Senate of Montana
Montana State Capitol
Helena, MT 59620

Dear Committee Members:

The Montana Licensed Practical Nurses Association opposes HB407. The reasons for this opposition are:

1. The practice of delegation of nursing tasks by licensed nurses to unlicensed personnel is unsafe without sufficient educational background of the person who does the task. Tasks can be taught non-licensed persons but the assessment of the patient to determine the effect of the task upon the patient requires the knowledge of the licensed nurse.

2. We believe if nursing tasks are delegated to non-licensed persons, the number of errors would increase. Because of the lack of background knowledge of the non-licensed person, the error might not be recognized until serious harm occurs.

3. Because of possible increased errors, the costs of patient care could be greater because of litigation. Would the cost of liability for the facility remain the same?

4. The proponents of this bill state there is no shortage of licensed nurses, which we believe to be true, at least in the larger communities. If this bill is passed, there will be more nurses leaving the profession in the future. (Nurses are leaving the field currently.) The nurses who will be leaving will be the ones who view this type of delegation to be to be an unsafe practice for the care of patients/clients. You, as a consumer of health care, may be served by the licensed nurse who will not be physically able to supervise the numbers of non-licensed persons doing nursing tasks.

We urge you, for the safety of the people of Montana,: 1) to look beyond the perceived immediate cost-saving measures, 2) consider the safest nursing care possible for the people of Montana, and 3) vote "NO" for HB407.

Martha Jones, L.P.N., President
Charlotte Brurud, L.P.N., Chair, Legislative Committee
Marion Nelson
by Marion Nelson, Executive Director

SENATE HEALTH & WELFARE
EXHIBIT NO. 12
DATE 3/6/95
BILL NO. HB 407

March 6, 1995

Senators
Senate Public Health Committee

Subject: Montana Nurses Association amendments to House Bill 407

Dear Mr. Chairman and Committee Members:

House Bill 407 deals with the Board of Nursing's authority to draft rules on delegation of nursing tasks to unlicensed persons. The Board of Nursing sought the authority to draft rules on delegation in the 1993 General Legislative Session under Senate Bill 121. Under current law, the Board has a discretionary right to draft such rules, which they have done. In the course of the rulemaking, the Board placed a limitation on the settings in which delegation could occur. This decision resulted in House Bill 407, which you are considering today.

Under House Bill 407, the Board would no longer have the discretion to draft rules on delegation of nursing tasks to unlicensed persons. The drafting of such rules would be mandatory. In addition, House Bill 407 prohibits the Board from restricting delegation to specific settings.

If House Bill 407 is passed without amendments, it will be difficult to regulate the delegation process and to establish accountability for the act of delegation. Amendments proposed by the Montana Nurses Association would increase accountability for the act of delegation and make the result of House Bill 407 more manageable from a regulatory perspective. The amendments simply specify that a nurse may exercise his or her judgment in deciding if delegation can take place safely, and provides an appropriate mechanism to ensure that the decision remains with the nurse. Without the amendments, the Board will not be able to effectively determine who is responsible when and if a delegation results in harm to a patient.

The Board requests that the committee give favorable consideration to the amendments presented by the Montana Nurses Association if it decides to issue a "do pass" recommendation on House Bill 407. I am available to answer any questions that the Committee may have regarding my testimony.

Sincerely,

Lance L. Melton
Legal Counsel
Department of Commerce

SENATE HEALTH & WELFARE
EXHIBIT NO. 13
DATE 3/6/95
BILL NO. HB 407

March 6, 1995

TO: Members of the Senate Public Health Committee
FROM: Sandra L. Spencer, M.S.N., R.N.
RE: HB 407

Members of the Senate Public Health Committee,

My name is Sandy Spencer, and I am a registered nurse in Billings. I can only speak for myself when I say I believe there is a moral motivation for why nurses oppose HB 407.

Nurses in professional practice are guided in their decision making in part by a Code of Ethics. This Code puts nursing values of individual health, self-determination and autonomy up front. We all know that values are the motivation for behavior and actions. This is what being a patient advocate is all about. We limit the vulnerability of persons and preserve their dignity and integrity through our education and expertise every day. This builds trust between a nurse and patient. To delegate this practice to someone without the training and education undermines the most basic moral theme in society and in the nursing profession today; that of responsibility toward one's fellow man.

I urge you to vote no on HB 407.

Thank you,

Sandra L. Spencer, MSN, RN

Sandra L. Spencer, M.S.N., R.N.

SENATE HEALTH & WELFARE
EXHIBIT NO. 14
DATE 3/6/95
BILL NO HB 407

Testimony on HB-407

SUBMITTED BY: Wendy P. Blakely
2203 Clark Avenue
Billings, MT 59102
(406)-652-0011

DATE: March 6, 1995

My name is Wendy Blakely, and I am a registered nurse from Billings, MT. I have been a nurse for almost 20 years, but today I am speaking to you from my perspective as a health care consumer. I am a cancer survivor, and since my diagnosis I have been active in consumer advocacy groups such as the National Coalition for Cancer Survivorship and the American Cancer Society. While I do not pretend to be the spokesperson for these groups, my opinion is based in large part from what I have learned from other cancer survivors and their families during my years of volunteer work.

I was fortunate in that throughout my year of treatment both in and out of the hospital, not only did I have all RNs providing my nursing care, but I also had a cadre of very protective Registered Nurse friends who served as quality control watchdogs for me. However, I know that other patients and families are not so lucky. I have learned that most of us who are faced with a serious, chronic, or life-threatening illness or disability do not have the energy or frame of mind to be worrying about the qualifications of those who provide our care. At the time I was undergoing treatment, I was an experienced RN who was pursuing a graduate degree at one of the top-ranked nursing programs in the country, yet I found myself unable to comprehend all that was going on around me related to my care. We patients are in a very vulnerable state at that point in our lives, and we have no choice but to place our trust in the system that delivers our health care. We have to trust that the legislators who set the rules for licensing boards will do so in a responsible manner that has the consumer's best interests at heart. We have to trust that those licensing boards will establish and assure maintenance of the highest possible standards for those that they license. And we have to trust that those who are licensed will have a conscience and practice in a manner befitting their level of education and training. We have to trust that they will not frivolously give away the responsibilities with which they have been entrusted.

By passing House Bill 407 , not only would you as legislators be violating the trust that you have with the public, but you would be asking the State Board of Nursing and all Registered Nurses throughout Montana to do so as well. If you pass this bill, you must be willing to be held accountable for the potential negative impact it may have on health care quality in all settings throughout the state. I know that I will be holding you accountable, and I will be asking my fellow health care consumers that I work with to hold you accountable as well. As a health care consumer, I have experienced first-hand the devasting financial effects that a serious illness or disability can have, and I can sympathize with your desire to minimize costs both for the consumer and for third-party payers. However, cutting quality is not the answer. Most of us in this room would not dream of asking the person who brings our food tray to cross train and fix our computer or our car. Nor would most of us dream of asking the school janitor to teach our children algebra. Why is it that people are so willing to allow just anyone to provide services that directly affect our health and our very lives?

Thank you for allowing me the opportunity to speak to you today. I urge you to vote NO on HB 407.

Wendy Blakely

SENATE HEALTH & WELFARE
EXHIBIT NO. 15
DATE 3/6/95
BILL NO. HB 407

March 6, 1995

Testimony for Senate Hearing on HB 407
Jean Ballantyne, MN, RN
Member Montana State Board of Nursing

My name is Jean Ballantyne. I am a registered nurse from Billings and serve as a member of the Montana State Board of Nursing. I have practiced nursing for 25 years with 16 of those years being in small rural hospitals and nursing homes.

I am speaking in strong opposition to this bill. This legislation first appeared as LC 579--to change nursing rules to reduce health care costs. It was submitted without the input or knowledge of the Board of Nursing. The agenda of the proponents of this bill is to reduce costs of health care by allowing unlicensed persons in nursing homes, hospitals, and physicians offices to perform nursing duties.

This legislation is unnecessary because the Board of Nursing was given statutory authority form the 1993 legislature to write rules for the delegation of nursing tasks. Since 1993, the Board of Nursing has written rules regarding the administration of medications by unlicensed persons. Yes, these rules are "setting specific" and do not include nursing homes, hospitals, and physicians offices. I trust you can imagine why the Board of Nursing has concerns about public safety if delegation of nursing tasks is allowed in such settings. It is widely known that current staffing levels of licensed nurses in many facilities is at the minimum level. This low level of staffing coupled with high turnover of unlicensed persons in nursing homes give us great pause for concern in allowing the delegation of nursing tasks in such settings.

In order to protect the public, the Board of Nursing has proceeded cautiously in writing rules for the delegation of nursing tasks. A cautious approach is the only approach that makes any sense in such a serious matter. The proponents of this bill ~~they~~ have chosen to try and mandate their position through this legislation.

The Board of Nursing exists to protect the public. If this legislation is enacted, the Board will need to promulgate strict rules to fulfill our responsibility to the consumer. We cannot compromise safe nursing care for the sake of reducing costs.

Please defeat this bill in committee. Thank you very much.

Jean Ballantyne MNRN

SENATE HEALTH & WELFARE
EXHIBIT NO. 16
DATE 3/6/95
BILL NO. HB301

HB301 WRITTEN TESTIMONY

Mr. Chairman, Members of the commitee; My name is Denzel Davis. I am the Health Facilities Division Administrator. You have before you HB301 which contains proposed changes to the state licensure statutes, chapter 5 - HOSPITALS AND RELATED FACILITIES.

This bill is intended to update statutory definitions;

HB301 redefines an Adult Day Care facility and restricts Adult Day Care from providing overnight stays. Adult Day Care facilities can seek a Personal Care license if they wish to provide overnight services. Meeting the requirements for personal care will assure that all necessary requirements to provide overnight care is available in the Adult Day Care facility. Adult Day Care facilities that are attached to a nursing facility can admit an overnight stay into an empty bed in the nursing facility. This would not require additional licensure.

HB301 replaces terms no longer in use such as "Kidney Treatment Centers" which changes to "End Stage Renal Dialysis".

HB301 modifies the definition of "health care facility" to identify only those specific types of facilities defined by the legislature and thus subject to regulation and licensure. Under the present language of "includes but is not limited to" any potential provider can request a health care facility/service license and not be required to fit a license category as defined by the legislature. HB301 then updates the list of licensed "health care facilities" to include Chemical Dependency, End Stage Renal Dialysis, Home Infusion Therapy Agencies, and Residential Care facilities. A definition for Home Infusion "service" and "Agency" is added.

If this bill is successful, a definition for Adult Foster Care, Retirement Home, and Residential Care will be necessary. These definitions are added by HB301. The bill defines a "Residential Care Facility" and moves four different facility types under this Licensure category. Licensing would be accomplished by endorsing a residential care license with one or more of the facility types as requested by a provider. The delivery of care in a "Residential Care Facility" will proceed along a spectrum from Retirement Homes, Adult Day Care, Adult Foster Care, and Personal Care. All four facility types covered by a "Residential Care" license will still be properly regulated, inspected, and licensed under the existing rules, but by one agency rather than three different agencies. The Licensure Bureau believes this is in harmony with the efforts to consolidate government and to provide a single point of access for the public.

This bill is intended to allow the department to request documentation from a health care facility to support written evidence of JCAHO accreditation.

The statute states "...any hospital that furnishes written evidence..." This language is problematic. There is a very broad interpretation of this requirement by providers with regards to what they deem written evidence of JCAHO accreditation. The cover letter granting accreditation is not deemed evidence. Accreditation by JCAHO may require a facility follow-up "focused survey" with a time line plan of correction as a basis for accreditation. These documents, in addition to the initial inspection report, follow up reports and any accompanying documents, must be provided to the department for review. This statute only applies if a facility wishes to seek license renewal based on JCAHO accreditation.

HB301 will requires the department to receive notification by a health care facility; indicating they are ready for an initial inspection.

The present statute requires an initial on-site survey within 45 days after receiving an application for a health care facility license. Frequently, a health care facility is not ready for an on-site inspection within that time frame. The results are lost productivity and a duplication of efforts resulting in increased cost to the department. This change will allow a provider to notify the department when they are ready to be inspected and still be able to proceed with the application process. Submitting an application can be important for financial arrangements. It has been reported to the department that on occasion, the owner must show they have initiated the licensure process before the financing institution will proceed.

HB301 is intended to remove statutory limitations of Personal Care "A" Facilities.

a) HB301 removes the quarterly requirement for a physician certification and assessment for category "A" personal care resident. In the last legislative session Senator Tom Towe successfully sponsored a bill authorizing the department to write rules for a new personal care category license, to include category "A" & "B" residents. The requirement for assessment of category "A" residents was part of that bill. The focus of category "A" personal care is intended to offer people who require some assistance with activities of daily living an alternative to residing in an institutional setting. Category "A" residents are by definition highly functional people that need only little assistance with activities of daily living. The department feels an assessment was never intended to include category "A" residents. The department sees no justification for a signed statement from a physician for a category "A" PC resident.

EXHIBIT 16
DATE 3-6-95
HB 301

b) HB301 also removes the minimum number from category "A" personal care. The Department has been approached by a number of potential providers who would like a category "A" personal care license for less than 6 residents. Presently this is not permitted by statute. The focus of personal care is to provide a more home-like environment and to place less focus on institutional settings and requirements. Many providers accomplish this by purchasing a house and remodeling where necessary. Suitable houses are already difficult to find with local zoning restriction limits. A personal care facility's resident capacity is determined by available square footage of sleeping rooms, dining, and activity/day rooms. By limiting a minimum of six residents, it makes it more difficult to find a large enough suitable structure to remodel. Further, Adult Foster Care begins with 4 or less residents and Personal Care "A" begins with 6 or more residents. There is no category to include 5 category "A" residents. The Department feels there is no justification for such a minimum requirement. If eliminated it will help to make more personal care homes available to the public as an alternative to entering an institutional setting.

HB301 is intended to continue the Certificate of Need exception for a "Residential Care Facility" presently offered to Adult Foster Care.

HB301 will consolidate the regulatory oversight of Retirement Homes, Adult Day care, Adult Foster Care and Personal Care into a single agency. The new health care license category will be called "Residential Care". Licensure would be accomplished by endorsing the residential care license with one or more of the four facility types as requested by the provider. All facility types covered by a "Residential Care" license are presently exempted from review by Certificate of Need. Therefore, there is no impact by the language clarifying the exemption.

HB301 establishes requirements for Home Infusion Therapy Services.

This section further defines home infusion therapy services and the requirements for the provision of this service.

The Health Facilities Division, licensure Bureau would appreciate your consideration of this bill and ask for a vote of do pass for HB301.

Denzel C. Davis, Administrator
Licensing & Certification Bureau
Health Services Division

DEPARTMENT OF
SOCIAL AND REHABILITATION SERVICES

MARC RACICOT
GOVERNOR

PETER S. BLOUKE, PhD
DIRECTOR

STATE OF MONTANA

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

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

HB 301 - Act Relating to Health Care Facilities

The Department of Social and Rehabilitation Services supports House Bill 301. Passage of this bill will facilitate the provision of home and community services that are alternatives to more costly institutional care.

As part of the Department's Long Term Care Reform efforts, we are developing a number of community options for recipients of long term care services. One of these options, which will be provided under our Home and Community Based Waiver, is adult residential care in foster homes and personal care facilities. The services are being developed under the waiver to ensure the services are cost-effective and targeted to those at risk of institutionalization. The creation of a category defined as residential care facilities and the licensing of these various facilities by only one department will greatly facilitate the definition of, and reimbursement for, this service.

The deletion of the minimum resident requirements for category A personal care facilities will promote the availability of this service in small, more home-like settings. This goes hand in hand with our philosophy regarding the provision of long term care services. That philosophy is to encourage a maximum level of individual independence, foster cost-effective services, and respect the dignity of the individual.

We urge you to pass HB 301.

Chapter Cross-References
Nonliability for peer review, Title 37, ch. 2, part 2.
Unprofessional conduct by physician, 37-3-322.
Revocation or suspension of physician's license, 37-3-323.
Penalties for violations of physician's licensing law, 37-3-325.
Injunctive relief for violations of physician's licensing laws, 37-3-326.

SENATE HEALTH & WELFARE
EXHIBIT NO. 18
DATE 3/6/95
HB 301

Part 1
General Provisions

27-6-101. Short title. This chapter may be cited as the "Montana Medical Legal Panel Act".

History: En. 17-1301 by Sec. 1, Ch. 449, L. 1977; R.C.M. 1947, 17-1301; amd. Sec. 1, Ch. 376, L. 1983.

27-6-102. Purpose. The purpose of this chapter is to prevent where possible the filing in court of actions against health care providers and their employees for professional liability in situations where the facts do not permit at least a reasonable inference of malpractice and to make possible the fair and equitable disposition of such claims against health care providers as are or reasonably may be well founded.

History: En. 17-1302 by Sec. 2, Ch. 449, L. 1977; R.C.M. 1947, 17-1302.

27-6-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Dentist" means:

(a) for purposes of the assessment of the annual surcharge, an individual licensed to practice dentistry under the provisions of Title 37, chapter 4, who at the time of the assessment:

(i) has as his principal residence or place of dental practice the state of Montana;

(ii) is not employed full-time by any federal governmental agency or entity; and

(iii) is not fully retired from the practice of dentistry; or

(b) for all other purposes, a person licensed to practice dentistry under the provisions of Title 37, chapter 4, who at the time of the occurrence of the incident giving rise to the claim:

(i) was an individual who had as his principal residence or place of dental practice the state of Montana and was not employed full-time by any federal governmental agency or entity; or

(ii) was a professional service corporation, partnership, or other business entity organized under the laws of any state to render dental services and whose shareholders, partners, or owners were individual dentists licensed to practice dentistry under the provisions of Title 37, chapter 4.

(2) "Health care facility" means a facility (other than a governmental infirmary but including a university or college infirmary) licensed as a health care facility under Title 50, chapter 5. The term does not include chemical dependency facilities, end-stage renal dialysis facilities, home infusion therapy agencies, and residential care facilities.

(3) "Health care provider" means a physician, a dentist, or a health care facility.

(4) "Hospital" means a hospital as defined in 50-5-101.

(5) "Malpractice claim" means any claim or potential claim of a claimant against a health care provider for medical or dental treatment, lack of medical or dental treatment, or other alleged departure from accepted standards of health care which proximately results in damage to the claimant, whether the claimant's claim or potential claim sounds in tort or contract, and includes but is not limited to allegations of battery or wrongful death.

(6) "Panel" means the Montana medical legal panel provided for in 27-6-104.

(7) "Physician" means:

(a) for purposes of the assessment of the annual surcharge, an individual licensed to practice medicine under the provisions of Title 37, chapter 3, who at the time of the assessment:

(i) has as his principal residence or place of medical practice the state of Montana;

(ii) is not employed full-time by any federal governmental agency or entity; and

(iii) is not fully retired from the practice of medicine; or

(b) for all other purposes, a person licensed to practice medicine under the provisions of Title 37, chapter 3, who at the time of the occurrence of the incident giving rise to the claim:

(i) was an individual who had as his principal residence or place of medical practice the state of Montana and was not employed full-time by any federal governmental agency or entity; or

(ii) was a professional service corporation, partnership, or other business entity organized under the laws of any state to render medical services and whose shareholders, partners, or owners were individual physicians licensed to practice medicine under the provisions of Title 37, chapter 3.

History: En. 17-1303 by Sec. 3, Ch. 449, L. 1977; R.C.M. 1947, 17-1303; amd. Sec. 2, Ch. 376, L. 1983; amd. Sec. 1, Ch. 332, L. 1985; amd. Sec. 1, Ch. 195, L. 1987; amd. Sec. 1, Ch. 96, L. 1989.

Cross-References
Medicine — regulation and licensing, Title 37, ch. 3.
Hospitals and related facilities, Title 50, ch. 5.

27-6-104. Creation of panel. The Montana medical legal panel is created. The panel is attached to the Montana supreme court for administrative purposes only, except that 2-15-121(2) does not apply.

History: En. 17-1304 by Sec. 4, Ch. 449, L. 1977; R.C.M. 1947, 17-1304(part); amd. Sec. 3, Ch. 376, L. 1983.

27-6-105. What claims panel to review. The panel shall review all malpractice claims or potential claims against health care providers covered by this chapter except those claims subject to a valid arbitration agreement allowed by law or upon which suit has been filed prior to April 19, 1977.

History: En. 17-1304 by Sec. 4, Ch. 449, L. 1977; R.C.M. 1947, 17-1304(part).

Cross-References
Arbitration, Title 27, ch. 5.

27-6-106. Immunity of panel members and witnesses from civil liability. Panelists and witnesses are absolutely immune from civil liability for all communications, findings, opinions, and conclusions made in the course and scope of the duties prescribed by this chapter.

DATE 3/6/95

SENATE COMMITTEE ON Public Health

BILLS BEING HEARD TODAY: HB 245, HB 301
HB 407

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
BLANCHE PROUL	Bd. of NURSING	HB407		✓
Jeanine Ford	MT Student Nurses' Assn	HB407		✓
Kelly Willms	SRS	HB407	✓	
JOYCE DECUNZO	SRS	HB301	✓	
Rita Turley	MONE	HB407		Could amend
LANCE MELTON	BD OF NURSING	HB407		✓
Ed Caglis	MSCA			✓
DENZEL C DAVIS	DHES	HB301	✓	
LIZ SMITH	Rep. HD 56	HB407	With Amend:	✓
SHARON HOFF	MT CATHOLIC CONF	HB245	✓	
Joan Miles	LWC Country Health	HB407		✓
[illegible]	MT Med Assn	HB407 HB301	✓	
Frank Kontowski	DFS	245	✓	
Kate Cholewa	MT Womens Lobby	245	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 3/5/95

SENATE COMMITTEE ON Public Health

BILLS BEING HEARD TODAY: ~~HB 245~~, HB 301, HB 407

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
Mary Munger	NURSING	HB 407		X
Wayne McKay	MT LPN Assoc	HB407		X
Joan Ballantyne	Mt State Board of Nursing	HB407		X
Steven Shapiro	MT Nurses Assn	HB407		X
Sandra C. Spencer	nursing	HB 407		X
Wendy Blakely	Nursing	HB407		X
Becki Anderson	Nursing	HB407		X
Barb Cooper	MT. Nurses Assoc.	HB407		X
Nancy Keyser RN	MT Board of Nursing	HB407		X
Mary Alice Cook	Adv. Bd MTs Children	HB 245	✓	
Kathleen Dougherty	Mont Nurses Assn	HB407		X
Todd Hunt	" " "	HB407		X
Leslie Duffey	" " "	HB407		X
DALE R. DALLMANN	MT. EMERGENCY NURSES ASSOCIATION	HB407		X

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10

DATE _____

SENATE COMMITTEE ON _____

BILLS BEING HEARD TODAY: _____

_____

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Kati Cholewa	Human Service Found	245	✓	
Rita Turley	MT Org of Nurse Executives	407		✓ But add amdts
Jim Ahrens	Montana Hospital Assn	407	✓	
Bob Olsen	Montana Hospital Assn	301	✓	
Charles Briggs	Area IV Agency on Aging	407	✓	
Charles Briggs	Area IV Agency on Aging	301	✓	
Roy P Kemp	Licensure Bureau	301	✓	
Teresa Locke	Mt. Med Legal Panel	HB 301	✓ + amend	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

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