

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON HUMAN SERVICES & AGING

Call to Order: By CHAIRMAN DUANE GRIMES, on March 22, 1995, at
3:20 p.m.

ROLL CALL

Members Present:

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

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

Members Absent: None

Staff Present: David Niss, Legislative Council
Patti Borneman, Substitute Secretary

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

Committee Business Summary:

Informational Hearing:	Department of Family Services - Montana Youth Alternatives Program
Executive Action:	SB 395 DO CONCUR AS AMENDED SB 339 DO CONCUR AS AMENDED SB 416 DO CONCUR SB 293 DO CONCUR AS AMENDED SB 226 TABLED SB 388 DO CONCUR SB 17 RECONSIDERED AND TABLED

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

EXECUTIVE ACTION ON SB 395

Note: Barbara Booher, Executive Director, Montana Nurses' Association, distributed additional literature on this bill for consideration during executive action. EXHIBIT 1

Motion: CHAIRMAN GRIMES MOVED THAT SB 395 BE CONCURRED IN.

Motion: REP. BRUCE SIMON MOVED HIS AMENDMENTS.

Discussion:

REP. SIMON reminded the committee that this is two bills in one and the first section is the issue of whether or not to add an additional person to the board of nursing. He said he worked with SEN. BARTLETT and REP. CAROLYN SQUIRES and there was discussion about adding another person, but there isn't any agreement with the board of nursing, and SEN. BARTLETT would like to eliminate Section 1 of the bill in its entirety, which would then put the board of nursing back at its current level of nine members. The board of nursing and the Montana Nurses Association agreed with that also. His amendment would eliminate Section 1. The second amendment would make the effective date upon passage of the bill.

Vote: Voice vote was taken. The motion carried unanimously.

Motion: REP. SIMON MOVED THAT SB 395 BE CONCURRED IN AS AMENDED.

Discussion:

REP. SIMON said he wanted the record to clearly show that this committee would like to make sure that the board exercise extreme caution in granting temporary authority under the temporary certificate. He said he looked at the board of nursing rules and as he read the rules, he wasn't sure that they actually said that prescriptive authority may not be granted to someone under a temporary certificate. He said he hoped they would very cautious in this area.

Vote: A voice vote was taken. The motion carried unanimously.

EXECUTIVE ACTION ON SB 339

Motion: REP. TONI HAGENER MOVED THAT SB 339 BE CONCURRED IN.

Discussion:

CHAIRMAN GRIMES said this bill would revise insurance coverage for mental illness.

David Niss said the reason for the amendment, which was brought to them by the sponsor, was to make clear that what the bill

would require is a program that has been approved by the American Association for Partial Hospitalization, and not that the program be offered by a member of that association. It was to clarify that difference.

Motion/Vote: REP. SQUIRES MOVED THE AMENDMENTS. The motion carried unanimously.

Motion: REP. SQUIRES MOVED THAT SB 339 BE CONCURRED IN AS AMENDED.

Discussion:

REP. SQUIRES said the bill makes a clear definition with regard to what actual coverage will incur, who will provide, and what the institutions will be.

CHAIRMAN GRIMES said there were no opponents on the bill.

Vote: Voice vote was taken. The motion carried unanimously.

EXECUTIVE ACTION ON SB 416

Motion/Vote: REP. SOFT MOVED THAT SB 416 BE CONCURRED IN. The motion carried unanimously.

{Tape: 1; Side: A; Approx. Counter: 350; Comments: n/a.}

EXECUTIVE ACTION ON SB 293

Motion: CHAIRMAN GRIMES MOVED THAT SB 293 BE CONCURRED IN.

Motion: REP. SIMON MOVED HIS FIRST AMENDMENT.

Discussion:

REP. SIMON said the reason these amendments were proposed was because if they are going to place duties on people with regard to knowing if a claim or statement is mis-represented or faulty or inaccurate, it seemed to him that the Department should make sure people are properly informed. The amendments asked for a program of instruction and assistance to the person submitting applications, claims and forms, so they can be better prepared.

CHAIRMAN GRIMES asked if the cost for this will be encompassed in the current fiscal note. He responded yes.

Vote: Voice vote was taken. The motion carried unanimously.

Motion: REP. SIMON MOVED HIS SECOND AMENDMENT.

Discussion:

REP. SIMON said the way the bill is written, it says that everything has to be in writing. Often people call up on the telephone and get oral advice from the Department, and they don't have it in writing, and while they give answers, the Department is not protected. So, he added the words "oral" and "advice" in the bill so when authorization is given over the phone, they are protected under the law.

CHAIRMAN GRIMES asked if that might not create a loophole in the bill. **REP. SIMON** said that wasn't his intent, but to create some fairness and there would have to be a notation in the documentation that they'd go along with it, but to have documents flying back and forth seemed cumbersome.

CHAIRMAN GRIMES clarified the amendment on page 8, line 14. **REP. SIMON** further clarified the amendment.

REP. DEB KOTTEL asked **Mr. Niss** if it would be just as well to delete the word "written" and the word "authorization" and if not, is the proper word "oral" or should it be "verbal"? **Mr. Niss** said he wasn't sure that related to the entire amendment because it also inserts advice. **REP. KOTTEL** asked again about her suggested wording. **Mr. Niss** said her wording might apply to the bill, but they should consider whether the Department has rulemaking authority to implement this section. Without further guidance by the committee, it would be possible for the Department to adopt a rule limiting it only to written. **REP. KOTTEL** asked if they could segregate the votes on the amendment in terms of "written" and "oral," and then a separate vote on adding the word "advice."

CHAIRMAN GRIMES said it was one amendment and she could propose a substitute amendment if she wished.

REP. SIMON said it could be divided if it was segregated in two parts.

CHAIRMAN GRIMES said if the parts were distinct, he thought in one case they're asking whether it be written or oral, and in the other case, it seemed like authorization or advice goes along with written or oral.

REP. SIMON said he was willing to segregate the amendment.

REP. SUSAN SMITH said that she thought if they were going to have this system, that people will have to be more careful about how the reports are completed. In the age of fax machines, it only takes a minute to have someone fax a paper that can provide information. She said they may be opening a large loophole, and while she knew that wasn't the intent, she didn't think it was a good idea. She suggested encouraging the use of fax machines if information was needed in a hurry.

REP. KOTTEL asked that they segregate the amendments and said the word "advice" is very different than "to be authorized." When someone from a department authorizes someone to take action, that is very distinct from when advice is given. She asked that they vote on the first part of the amendment, which would add the word "oral" as a separate motion.

Substitute Motion: CHAIRMAN GRIMES EXPLAINED THAT THEY WOULD BE VOTING ON THE FIRST HALF OF THE SECOND SIMON AMENDMENT, SEGREGATED BY REP. KOTTEL. A roll call vote was taken. The motion failed on a tie vote of 7-7.

Discussion:

REP. SIMON said he wanted it to be clear that when they talk about authorization and advice, they are two different things and what oftentimes people seek is advice, not authorization. If someone told them to do something wrong, they couldn't be held accountable. If the advice is given, they ought to be able to rely on it.

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

REP. DICK GREEN said he agreed with what REP. SIMON said. He's been annoyed with the Internal Revenue Service, when it sounds like authorization and they say no, it's just advice. He said because it's written, it would be understood as authorization. He said they need this portion in the amendment.

Vote: Voice vote was taken. The motion to adopt the second half of the Simon amendment carried 13-1 with REP. AHNER voting no.

Motion: REP. SOFT MOVED HIS FIRST AMENDMENT (29303).

Discussion:

REP. SOFT said there were concerns about the far-reaching aspects about claim forms being sent in and how this action could be applied against forms that are inaccurate or misleading. The first amendment simply takes "incomplete, inaccurate or misleading" out of Section 6.

REP. SUSAN SMITH wondered why they would want to take that out, because "misleading" doesn't necessarily mean "false."

REP. SOFT said something could be misleading if the wrong box was checked, but it wouldn't be intentional.

Vote: Voice vote was taken. The motion carried 8-6 with REP. CAREY, AHNER, GREEN, KOTTEL, SUSAN SMITH, and WENNEMAR voting no.

{Tape: 1; Side: B; Approx. Counter: 128; Comments: n/a.}

Motion: REP. SOFT MOVED THE SECOND AMENDMENT (29304).

Discussion:

REP. SOFT explained his second amendment. REP. SQUIRES asked if she was a vendor and sold to clients as a provider, she wondered how she'd get into trouble with this amendment.

REP. SOFT said what they were saying is if that benefit was paid and she knew they were not eligible, they would get into trouble. Mr. Niss said that was correct and further clarified the amendment.

Vote: Voice vote was taken. The motion to adopt the second Soft amendment carried unanimously.

Motion: REP. SOFT MOVED HIS THIRD AMENDMENT (29305).

Discussion:

REP. SOFT explained this amendment pertaining to civil liability.

CHAIRMAN GRIMES said they are saying this will not be a criminal proceeding but a civil proceeding, and asked if it applied to the whole statute. REP. SQUIRES said it would fall under Title 53.

{Tape: 1; Side: B; Approx. Counter: 254; Comments: n/a.}

CHAIRMAN GRIMES asked if this would reinforce what is already in statute, or if they are going after Medicaid fraud, perhaps what they need is a criminal proceeding in some cases. He asked for some legal advice.

REP. KOTTEL asked if it would change the original intent of the section, or does it just clarify the section that it was always civil liability.

Mr. Niss explained that during the question/answer period at the hearing, he talked to **Greg Gould**, the Department's legal counsel, concerning the use of subsection (3) in section 6 which imputes knowledge to a provider, and whether that knowledge could be used to prove the state-of-mind element of the criminal offense under section 7. Mr. Gould said the application of that subsection would not work for three reasons: because it would negate the definition of "knowingly" in Title 45, Chapter 1; because it would probably be unconstitutional; and because that was not the intention of the Department. This amendment takes the Department at its word and simply says that subsection (6) applies only in a civil, rather than a criminal, proceeding.

REP. KOTTEL asked if it clarified the bill and wouldn't change the intent of the bill as drafted. Mr. Niss agreed.

CHAIRMAN GRIMES said section 6 is truthfulness, completeness and accuracy of submissions to Medicaid agencies would be a civil violation, as opposed to other parts of the bill which would be criminal.

Vote: A voice vote was taken. The motion to adopt the third Soft amendment carried unanimously.

Discussion:

REP. SIMON said he had a letter to clarify the bill. **EXHIBIT 2**

Motion: **REP. SOFT** MOVED HIS FOURTH AMENDMENT (29306).

Discussion:

REP. SOFT said this amendment picks up on the first amendment which again strikes incomplete, inaccurate and misleading, and affects section 7.

CHAIRMAN GRIMES asked why he didn't put it with the first amendment. **REP. SOFT** replied that it's a different section.

{Tape: 1; Side: B; Approx. Counter: 409; Comments: n/a.}

CHAIRMAN GRIMES asked **REP. SOFT** if the sponsor of the bill had seen the amendment. He said that he had not. **CHAIRMAN GRIMES** asked for the committee's permission to ask the Department's views on the amendment.

Mr. Greg Gould, Legal Counsel, Department of Social and Rehabilitation Services, said he had not seen the amendments previously, but understood that it would amend the criminal offense, section 7, so the criminal offense would be purposefully or knowingly making, submitting or authorizing a false claim, but would no longer be an offense if purposefully or knowingly submitted or authorized an incomplete, inaccurate or misleading claim.

CHAIRMAN GRIMES asked for an example of who would be impacted by the language "incomplete, inaccurate or misleading." **Mr. Gould** replied that there are many different kinds of services that require different combinations of documentation or authorizations, so there are many different possible scenarios. He said it was difficult to say, but explained that a false impression could be made by inaccuracy or incompleteness, when the intention is to be truthful.

REP. SIMON asked **Mr. Gould** about the words "inaccurate and incomplete" but wondered about the meaning of "misleading." He wondered if they struck the two words and left "misleading" so if a person submitted a false or misleading claim, if it would suffice. **Mr. Gould** said that would probably be adequate. In a conversation with **Mr. Niss**, he said they believed the intent was

that the incompleteness or inaccuracy would make a material difference; in other words, the person would end up receiving a payment they were not entitled to.

Substitute Motion: REP. SIMON MOVED TO ADOPT THE FOURTH SOFT AMENDMENT (29306), BUT STRIKE "OR MISLEADING." The motion carried 13-2 with REPS. MARTINEZ and SUSAN SMITH voting no.

Motion: REP. SOFT MOVED HIS FIFTH AMENDMENT (29307).

Discussion:

REP. SOFT explained that the amendment says that in order for a person to be criminally convicted for making a false claim, the person must have known that they were not entitled to the benefit.

REP. SQUIRES asked Mr. Niss if medical personnel would be held liable for charging an item to Medicaid if they were in error. REP. SOFT said he didn't believe this would be applicable to the amendment.

REP. SQUIRES restated her question about comfort items provided to patients that are not eligible expenses under Medicaid. Mr. Niss responded that this amendment had nothing to do with whether it's an individual working for a provider or a supervisor or the board of directors, or who is actually criminally liable. The criminality of the employees of a provider are resolved under other law in Title 45, Chapter 1, part 2, criminal responsibility for acts of a corporation, partnership, etc. The amendment does not apply there. What it would do is, assuming that a false claim (defined as a misrepresentation of fact made by someone with the authority to submit claims on behalf of the provider) is submitted. The issue is if the misrepresentation of fact, in and of itself, is sufficient to result in a conviction or must the state show that the person who submitted the false representation was trying to recover money that the person wasn't entitled to.

Vote: The motion carried unanimously.

Motion: REP. SOFT MOVED HIS SIXTH AMENDMENT (29308).

{Tape: 2; Side: A; Approx. Counter: 000; Comments: n/a.}

REP. SOFT explained the amendment. Mr. Gould was asked to explain it further to the committee. He noted that they tried to eliminate the word "improper" because it seemed vague as used in the sentence. They were more concerned with defining the activities as having an intentional element, something wrongful, rather than just a mistake. The amendment would put the word "improper" back in. He just commented on the amendment and stated their intent. Otherwise, he didn't see too much difference or a problem, if the word "improper" was removed.

Either way, the Department would have to define the activities and conduct that constitute the words used.

CHAIRMAN GRIMES asked about the use of the word "improper" and how it would affect the original intent. **Mr. Niss** explained the context of the amendments. He said the issues were raised by private counsel for Medicaid providers. He gave an account of the intention of the bill and reiterated, in more statutory detail, what **Mr. Gould** said.

CHAIRMAN GRIMES asked **REP. SOFT** what the intention was of the phrase "but are not limited to." He thought it could be removed and still have the same impact, unless there were other reasons. He wanted an idea of the Department's intent. **REP. SOFT** deferred to **Mr. Gould**.

Mr. Gould said that the rulemaking could also include procedures, by which the Department could consider sanctions and other procedures. He cited the first line of subsection (3) where it says that the department shall adopt rules establishing a system of sanctions applicable to providers who engage in fraudulent abuse.

REP. KOTTEL said if they looked at subsection (3), they give the Department the authority to adopt rules to establish a system of sanctions, and she understood that to mean referring back to the rules, that in their rulemaking authority, they must make sure they have rules to deal with fraud and abuse. Her concern is that if the activities are not specifically defined, they would not be illegal. She wondered if defense lawyers might find a loophole in the statute if the language wasn't tighter.

Vote: Voice vote was taken. The motion to adopt the sixth Soft amendment carried 13-2 with **REP. SOFT** and **BERGMAN** voting no.

Motion: **REP. SOFT MOVED HIS SEVENTH AMENDMENT (29309).**

Discussion:

REP. SOFT said this amendment would require a hearing. **Mr. Niss** said the language that would be struck by the amendment are lines 12 and 13, on page 24 of the bill. This section does not require a hearing under the Montana Administrative Procedure Act, before recovery of overpayment or imposition of sanctions. The section to be amended as it's written in the bill, would allow SRS to impose sanctions for a false claim without holding a hearing.

REP. KOTTEL said she would oppose the amendment. She said currently, a pre-termination hearing is allowed before welfare benefits are terminated. But such a hearing is not required when disability benefits are at issue. She said the question is the level of severity of what is being taken, the risk of loss, and the economic cost of a pre-termination hearing. The amendment would require a pre-termination hearing prior to the removal or

the nonpayment of any benefits. She said that is a tremendous burden for the state to do in every case prior to demanding the return of benefit payments. When disability benefits are the issue, they can have a post-termination hearing. If the benefits are removed and they realize they may be wrong, the person has a right to a hearing. If the government takes the welfare benefits back under this amendment, she asked why they should make the state have a pre-hearing and she didn't think it was necessary, the risk of loss is minimal, and the economic cost is great to require a pre-hearing.

REP. LIZ SMITH asked **REP. SOFT** to respond to **REP. KOTTEL'S** statement. He said she was correct and that the issue has gone both ways in court cases. Whether it's fair or due process, it can go both ways.

REP. SIMON wondered about the recovery of an overpayment and sanctions. He thought sanctions were too harsh, and that due process may be in order. Whereas, recovery of an overpayment is a different level of severity. **Mr. Gould** wished to describe the intent of the amendment and said the statement to be deleted was intended to clarify the right of a hearing as granted in the statute, and did not necessarily have to be prior to the recovery of the overpayment or the imposition of a sanction, but as **REP. KOTTEL** mentioned, it's a matter of due process and they must handle cases one by one.

REP. SIMON said he was interested in the difference between sanctions and overpayment. **Mr. Gould** said they are two different situations, but thought the section would depend on a case-by-case analysis under due process. An imposition of sanctions would require a showing that it was fraud or abuse under the bill as written, whereas an overpayment would simply require a showing that they were not entitled to the money.

REP. SIMON asked about the term "due process" and asked if that didn't mean due process under law. **Mr. Gould** said the bill as written would not in any way say the person does not get a hearing. They would get a hearing in all cases, but what this dealt with was the timing of the hearing. Would it be held before the sanctions are imposed or the money recovered, or can the money be recovered and the sanction be imposed and then the hearing in due course will follow.

Vote: Voice vote was taken. The motion failed 13-2 with **REPS. MOLNAR** and **SOFT** voting yes.

Motion/Vote: **REP. SIMON** MOVED A CONCEPTUAL AMENDMENT TO STRIKE "OR IMPOSITION OF SANCTIONS." A roll call vote was taken. The motion carried 11-4 with **REPS. GRIMES, CAREY, KOTTEL,** and **WENNEMAR** voting no.

Motion: **REP. SOFT** MOVED THAT SB 293 BE CONCURRED IN AS AMENDED. The motion carried unanimously.

{Tape: 2; Side: A; Approx. Counter: 618; Comments: n/a.}

EXECUTIVE ACTION ON SB 226

Motion: REP. KOTTEL MOVED THAT SB 226 BE CONCURRED IN.

Discussion:

REP. KOTTEL said they had significant discussion about this bill and during that time with the sponsor's approval, she drafted these amendments. She quickly described the nine amendments for SB 226.

{Tape: 2; Side: B; Approx. Counter: 49; Comments: n/a.}

Vote: The motion carried 14-1 with REP. SUSAN SMITH voting no.

Motion: REP. SIMON MOVED THAT SB 226 BE CONCURRED IN AS AMENDED.

Discussion:

REP. MOLNAR said this is another situation where "one group is trying to say if you meet our criteria, then that's fine, you can carry our card." People who are not licensed counselors now are okay, as far as he's concerned, if they don't portray themselves as such.

REP. KOTTEL said any of the individuals who are volunteer or who work even for pay under a 501(c)3 nonprofit corporation, are exempt from this bill. But she believed there was a problem in terms of ethical violations. People who abuse or take advantage of others that are vulnerable. She said the Department receives numerous calls from people victimized by unlicensed counselors, and because they are unlicensed, there's nothing the Department can do. If they are licensed, they can be dealt with. The bill would not stop anyone from being a therapist, a crystal gazer, or any other type of counseling, such as advice or motivational speaking. It would stop people from referring to themselves as a licensed professional counselor and would limit the type of advice given out, such as for severe mental disorders. She thought it was a good compromise and said all the people who wrote to her originally objecting to the bill, understood and accepted the bill as drafted after talking with her. He urged them to accept the bill as well.

{Tape: 2; Side: B; Approx. Counter: 155; Comments: n/a.}

CHAIRMAN GRIMES asked REP. KOTTEL to describe some of the complaints the Department had received.

REP. KOTTEL said there were several examples where in a therapeutic relationship, a woman is vulnerable and transfers to an unlicensed therapist who has no training, and because of her

sensitive mental condition is able to take advantage of her sexually. This is malpractice when a licensed professional counselor or psychiatrist does it, but it is not called rape, it is simply "so what?" She told about a woman who became suicidal where crystals were used in her therapy. Another example was of a counselor who used a restaurant in which to practice therapy and encouraged her client to divorce her husband and leave her children, all in an effort to "find herself." She became very dependent on this counselor to her own and her family's detriment. She said this bill would stop people from representing themselves as professional counselors who treat seriously mentally ill people, and would prevent them from testing or assessing of mental illness cases.

CHAIRMAN GRIMES said he was concerned about the scope of who they are eliminating from counseling and wondered if there might be turf battles. However, he understood her concern for protecting the public.

REP. BERGMAN said they are all concerned about the same thing, but said **REP. KOTTEL'S** examples were probably not as rare as she indicated. She didn't think that was the point, and said they are discussing whether a person has a right to counsel. She said that being unlicensed doesn't mean a counselor is untrained. They refer clients to more appropriate treatment when they know it's "over their head." Likewise, just having a license doesn't guarantee a good counselor and she said there are numerous licensed counselors who have caused problems. She said if the original purpose of the bill was not to let someone say they're licensed, if they're not, then she would agree with it, but didn't think the bill would accomplish this.

{Tape: 2; Side: B; Approx. Counter: 295; Comments: n/a.}

REP. SUSAN SMITH said this bill ought to pass.

REP. KOTTEL clarified that in using the word untrained, it was connected as follows: untrained in conducting assessments and diagnosis. She stated that it takes very specific training to make a proper diagnosis and also to conduct psychological testing. She said her graduate work was in clinical psychology and said one of her frustrations was that they never gave mental illness and mental health the same respect they gave physical illness and physical health. She said there are very defined parameters on who can work on the ankle or the foot and who can operate and said people don't expect to be able to provide medical treatment as they do psychological treatment, and just "because mental illness is not visual, it doesn't mean it's not definable; because assessment is not tangible, it also does not mean it's not definable."

REP. SOFT said there are situations of people acting as certified chemical dependency counselors and while they may have gone through alcoholic treatment, they are not certified. He said the

bill does say that if they're not certified, they can't sell themselves as such.

REP. DICK GREEN said they shouldn't make the mistake of passing the bill thinking it would solve an enforcement problem. He said it's already illegal and the bill wouldn't make it more illegal.

REP. KOTTEL said her understanding of current law is that they would have to refer to themselves as licensed professional counselors to be in violation. Someone could refer to themselves as a professional counselor and not be in violation. The bill would clarify that they don't have to say they're an LPC, just calling themselves a professional counselor would be a violation.

{Tape: 2; Side: B; Approx. Counter: 420; Comments: n/a.}

REP. LIZ SMITH responded to **REP. SOFT'S** statement in which he discussed the issue of labeling of the position, but she said it would not affect the labeling of professional counselor, but would affect the scope of practice. She asked **REP. KOTTEL** if the hospice program would be impacted by this bill.

REP. KOTTEL said the hospice program is a nonprofit organization and the counselors would not be referring to themselves as professional counselors and could continue to give bereavement counseling.

REP. SIMON said this is kind of like a "reserve of title" situation. He said they had a turf fight in 1987 over nutritionists. People running health food stores were calling themselves nutritionists. There were people who were trained dieticians who were calling themselves nutritionists. Currently, under the law, if someone goes by the title of nutritionist or dietician, they must be licensed under the board of medical examiners. He said the bill would prevent people from calling themselves by a professional title that would mis-represent their background and training.

REP. BERGMAN asked if taking money for what they do makes them a professional. Several members of the committee commented in agreement that to receive money doesn't not designate professional status.

Vote: A roll call vote was taken on the bill as amended. The motion failed on a tie vote 8-8.

Motion/Vote: **REP. SUSAN SMITH** MOVED TO TABLE SB 226. The motion carried 13-3 with **REPS. CAREY** and **WENNEMAR** voting no. **REP. BOHLINGER** voted no by proxy.

{Tape: 2; Side: B; Approx. Counter: 688; Comments: n/a.}

EXECUTIVE ACTION ON SB 388

Motion: REP. CAROLYN SQUIRES MOVED THAT SB 388 BE CONCURRED IN.

Discussion:

CHAIRMAN GRIMES told the committee this is the Medicaid managed care act, and would set up the pilot program for the option of going to a managed care concept by **SEN. HARP**. There were no opponents to the bill.

REP. SQUIRES said she participated in the managed care activities of the Department of Social and Rehabilitation Services and was doubtful at first. She stated her belief that if they could get people to participate in managed care and have a gatekeeper type of individual working with them, they could achieve some cost containment and wouldn't be so critical of individuals when they arrive at emergency rooms.

REP. HAGENER said she was concerned about the rural areas and the service they could receive and whether they are looking at cost before the needs of people. She said both those concerns were addressed and would be covered within the bill, so she had no objection.

REP. LIZ SMITH said this is a sour grape to her and she had a concern. She said they were jumping by leaps and bounds into something for which they have inadequate assurance. She wasn't sure who the managed care company would be and was concerned that it may be a company from outside of Montana.

REP. SQUIRES said she learned in the meetings she attended that a group was chosen with which to structure the managed care delivery system, but there was no indication that the provider would be from out of state. She said they would use the RFP process. During the special session, they dealt with both mental and physical health because she saw people being left behind. She assured **REP. SMITH** that people would get better care under this bill than they'd ever had before. Pathways to the rural areas would also assure quality health care to those residents. It would also provide for good doctor care and preventative care.

CHAIRMAN GRIMES said there would also be an oversight function by the legislative finance committee. This is addressed in section 9 of the bill. This bill more clearly defines what they want the Department to do.

Vote: Voice vote was taken. The motion carried 15-1 with **REP. SUSAN SMITH** voting no.

{Tape: 2; Side: B; Approx. Counter: 845; Comments: n/a.}

EXECUTIVE ACTION TO RECONSIDER SB 17

Motion: REP. DICK GREEN MOVED TO RECONSIDER SB 17. Roll call vote was taken. The motion carried 9-7 with REPS. BOHLINGER, SQUIRES, CAREY, HAGENER, KOTTEL, SIMON and WENNEMAR voting no.

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

Discussion:

REP. KOTTEL said one of the things they discussed in prior action was the stigma that is attached to being a homosexual and that this is really a communicable disease bill. She described what recently took place on the floor of the Senate where a member of the Senate said that people who engage in consensual homosexual activity commit a worse crime than someone committing sexual molestation or violent sexual assault. She provided examples of the brutal kinds of sexual assault that were considered lesser crimes than consensual behavior, and thought it showed the depth of the stigma attached to homosexual behavior. She said SB 214 was amended to have lifetime registration of these individuals.

CHAIRMAN GRIMES responded to the committee's objection and asked REP. KOTTEL to get to her point. She said SB 17 would require people to tell another person who their contacts are; and this would expose that person to prosecution for another crime, that of sodomy, which is illegal in Montana and is a felony. She said there are a lot of ramifications for someone to publicly tell who their partners are. Currently, this information is given in private. She said there isn't a sane person who would get an HIV test knowing this may criminalize their partner.

CHAIRMAN GRIMES reminded the committee that they have already debated this bill extensively and while people have the right to speak, he mentioned previous discussion.

REP. SUSAN SMITH asked when other diseases are reported and contacts are made to notify people, and those contacts are of the same sex, are they now being reported as felonies.

REP. KOTTEL said she didn't know. REP. SMITH said after researching this bill, the tests would be anonymous and the only time this would change is if there was a positive test result, and the contact would be made by a health officer. It would remain confidential in that respect. She thought that needed to be done to prevent the spread of the disease.

REP. MOLNAR said everyone there had their minds made up. He called for the question.

Vote: Roll call vote was taken. The motion failed on a tie vote 8-8.

Motion/Vote: CHAIRMAN GRIMES MOVED TO TABLE SB 17. Roll call vote was taken. The motion carried 8-8.

{Tape: 3; Side: A; Approx. Counter: 200; Comments: n/a.}

INFORMATIONAL HEARING ON
MONTANA YOUTH ALTERNATIVES PROGRAM
Department of Family Services

Introductory Discussion:

REP. MOLNAR said there is a shift in focus in how to handle juvenile violent offenders as currently handled at Mountain View School and Pine Hills School. He mentioned testimony by REPS. GRADY and COBB in the Appropriations Committee regarding how the Aspen Program would be funded and contracted.

CHAIRMAN GRIMES said he wished to conduct the hearing in the context of a potential committee bill. Proponents and Opponents would testify with questions from the committee to follow. Then they will decide if they wish to take any action.

REP. KOTTEL asked what the transmittal date was for committee bills. CHAIRMAN GRIMES said they would have to get the rules suspended for this committee bill. Some weeks ago REP. MOLNAR asked him to schedule this meeting and he was unable to schedule it before the deadline.

REP. KOTTEL asked what the vote on the House floor would be to suspend the rules. CHAIRMAN GRIMES said it would have to be a two-thirds vote and would be an uphill battle. He allowed this informational hearing because he wanted to honor any committee member's intention to bring before the committee issues that pertain to committee business.

{Tape: 3; Side: A; Approx. Counter: 320; Comments: n/a.}

Proponents' Testimony:

Hank Hudson, Director, Department of Family Services, described the legislative process they have already been through. This change lies within the Department and is a budget neutral proposal, so it didn't require legislative approval. However, after discussions with the governor, it was suggested they go to the Human Services and Aging Joint Appropriations Subcommittee for review. They received a 5-1 approval. The no vote was from a legislator who believed it wasn't the legislature's business to decide how they operate their program. They held a long hearing before the full Appropriations Committee, who also gave their approval. EXHIBIT 3

He provided some background on program oversight and management of the juvenile corrections system. He worked with all those

involved in guidelines for sentencing juveniles, to determine the level of severity of their crime. They are scored to give a rating to each individual. They concluded that the kids coming into the system need to be constantly tracked. Educational programs and restitution programs were researched. They developed seven programs to enable these kids to make restitution.

At Pine Hills School they decided to have 80 kids in a high security facility. At Mountain View School, they found they needed to serve more kids and to keep them longer. And, they needed to address their needs more aggressively and give them an experience that would make kids think, as expressed by one of the kids, "I'm glad I did that, I never want to do it again." They want to do something that will shake the kids up and make them see things in a different light. They had to do this within the existing facilities and budget.

They are proposing the Montana Youth Alternatives Program which is a four-phase program, of which the wilderness phase is one. He said this is one of the best examples of reinventing government. After making this conclusion, they put together a group of people including a judge, probation officers, board of crime control members, and the youth justice council.

Mr. Hudson described the partnership formed with the Utah-based Aspen Program to redesign their program. The target group are those kids who are rated 8-12 who have not been to Pine Hills Schools yet, and have the best chance to be rehabilitated. She said they are not the typical Mountain View School kids, but are much "harder" and have committed more serious offenses, but can still be "turned around." He described some of the conditions they made, such as having to be a co-ed program with proven educational and safety strategies.

He concluded by saying that this is not the final solution to youth corrections in Montana, but would just be a way of serving 40 children, and filling a middle piece of the corrections system. He referred to **REP. SOFT'S** study bill that would point out many other needs within the program. He stressed that this is just one piece. He mentioned his participation in changes leading to the closure of Galen and Rivendell Hospital, and said since he's worked for the state, their program has gotten smaller and he's worked on downsizing. He mentioned testifying on a bill that even eliminated his own position.

He said the discharge and admission policy under this program would remain the authority of the Department. They lost control when Rivendell was privatized and that was a mistake. He said they are concerned about the education component. This is a unique problem because most of the kids are two years behind grade level, and they have many serious problems. "Getting further behind in their credits is probably not the preeminent issue that we're dealing with with these kids." He said they

have worked hard with OPI to provide a way for them to earn credits. He said most of the kids in the program "need to learn how to learn, and to learn why to learn."

He mentioned that the sole source contractual process would follow state provisions. He said in Montana there is no program that provides co-education, wilderness, and aftercare components that would be able to administer and develop all the components they want. He said that is why they chose the Aspen Program.

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

Opponents' Testimony:

Neil Christensen, former principal, Mountain View School, now working as a counselor at Helena High School, said he's been in the educational field in Montana for 38 years. He felt badly that Mountain View School was closing and said that the concept of learning to learn was his term, and that's what is happening at Mountain View School. He said when the kids come to school, they are disciplined and learn the subjects taught in school; subjects that can't be taught in the wilderness. He was adamantly opposed to the wilderness program only as a minor adjunct to the sound accredited school that has been at Mountain View where they can earn credits, goals can be created and made, they learn to learn, and gain credit to return to their regular schools.

He said some kids will never learn anything, and some will learn a great deal. There have been many success stories at Mountain View School. He was proud of the school, especially the teachers who have worked with kids who could hardly be taught in regular schools. He described problems with the rest of the juvenile corrections system. The probation program allows too many kids to run loose in the streets and this increases crime. He said since the wilderness program is very selective, there may not be places to put these kids who need facilities. He believed in a structured, controlled environment in which kids learn, which is the case at Mountain View School; this is their constitutional right, that they be afforded a quality education. He believed this is best embodied in an accredited school, not a wilderness program.

Bill Robbins, special education teacher, Mountain View School, said **Mr. Hudson** mentioned five successful students in the Aspen Program, and said he only knew about the one taken from his classroom and put in the program. He said the Aspen Program never requested any special education records for that student, which is required by law. This girl did break the law after successfully graduating from the program, and is now in an expensive out-of-state facility. He had serious concerns about this program.

Mr. Robbins described what he learned when he played the role of a parent and called the Aspen Program. **EXHIBIT 4** What he learned really scared him. He described that the first two or three days, they feed them only granola, bananas and water and make them hike. He was told this is for the purpose of detoxification. He said he was a clinically certified substance abuse counselor and that is not how someone is detoxified. He was informed that their diet at the wilderness program consisted heavily of split peas, rice, beans, oats, pasta, salt pork--all foods designed to be cooked. He said in a wilderness program he worked in 20 years ago, they used freeze-dried food. He was told the food was designed to be cooked, because if a kid didn't gather firewood, he would have to eat an uncooked meal. He didn't know if this is how they would do it in Montana, but that's how it's done in Utah.

He described an oxcart being hauled by the kids in a video he watched. He said they have to put everything they need except food in the oxcart. They hike to various food drops. If they don't pull the cart, their peers will complain about it. The intention was to strengthen the behavior of the kids having to pull the cart using peer pressure. He said that was negative reinforcement, which goes against the special education use of positive reinforcement.

This would be a difficult program to monitor. Currently, legislators are able to visit his classroom at any time and he asked how they would be able to do that "out in the hills." He learned that the Aspen Program's educational component consisted of one certified teacher. He asked specifically if they do IEP and CST tests to assess the kids and make him accountable to the parents, the kids and the school. He found they didn't. He wondered how they would make assessments in a wilderness program. He also thought there was a chance for serious injury. He said in their program manual they have provisions for removing a body. He couldn't see how this program would improve the recidivism rate.

{Tape: 3; Side: B; Approx. Counter: 290; Comments: n/a.}

Toni Gies, teacher, Mountain View School, submitted written testimony. **EXHIBIT 5**

Damon Schlenske, Mountain View School, said he was called by **John Brekke**, owner of a wilderness treatment center and asked him to represent him because he didn't know about the meeting. He was planning to meet with his attorneys in Helena the next day and wanted the committee to know what his plans are. **EXHIBIT 6**

{Tape: 3; Side: B; Approx. Counter: 390; Comments: n/a.}

Questions from Committee Members and Responses:

REP. MOLNAR thought they could decide after this hearing if they wished to pursue it further. **CHAIRMAN GRIMES** said, since they haven't had the benefit of a full hearing, so if they decided to take action, they would need to research the subject further. He opened the meeting for questions.

REP. LIZ SMITH asked **REP. MOLNAR** about the wilderness program only dealing with high risk and not delinquent children. She heard that they don't have the expertise for those with special needs. **REP. MOLNAR** said he was not an expert on the wilderness program and the reason he wanted this meeting was to learn more about it. **Mr. Hudson** was asked to respond.

Mr. Hudson clarified that the Department would oversee the program and write the rules and set the criteria. He said that seriously emotionally disturbed children are not taken at correctional facilities. The federal government has spent time with them to straighten this out. He said there are limits as to what they can do. He reiterated that the wilderness component is just one small part of what they do. He said the beauty of the program is that there are four phases and depending on the individual's situation, they would modify the program to the child. He discussed the licensing criteria they developed.

REP. SOFT said he had a number of questions. **CHAIRMAN GRIMES** wished to limit the number of questions and told the committee members that they had a time constraint.

REP. AHNER asked if they would be deciding whether or not to have a committee bill. **CHAIRMAN GRIMES** said they would be deciding whether or not to develop a subcommittee to further research the possibility of a committee bill. He asked **REP. SOFT** to narrow his questions down.

REP. SOFT said he visited a wilderness program in North Carolina and found it to be very well run. He said they had all read about therapeutic wilderness programs and acknowledged the good ones and the bad ones. He asked how many programs were reviewed, who reviewed them, and which ones.

Mr. Hudson said about 4-6 programs were reviewed in Florida, California and other places. **Al Davis, Department of Family Services**, explained that a team went around and looked at all the programs recognized in the country out of an institute in Ann Arbor, Michigan. They identified five programs which he visited. He described the research they completed.

REP. SOFT asked how this program would be run. **Mr. Hudson** said the kids admitted would be those who scored between 8-12 under the sentencing guidelines. Phase I would provide a secure setting and be operated like a traditional correctional facility. From there, they would determine which of the next three phases they would go into. They would need to have their needs appropriately addressed in that setting.

REP. SOFT asked which department would be overseeing the program. Mr. Hudson said it would be the Department of Corrections.

REP. KOTTEL asked if it had already been approved by the Appropriations Committee. She was told it was already approved on a 5-1 vote by the subcommittee, and the full Appropriations Committee voted down other proposals. He said they have delayed this project because they felt they needed to have legislative feedback, but would like to get going on it.

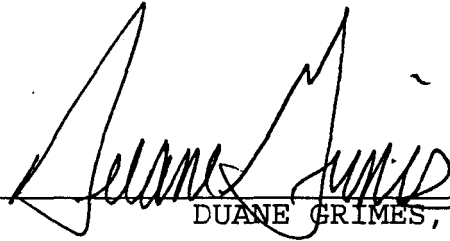
{Tape: 3; Side: B; Approx. Counter: 775; Comments: The tape ran out before the end of this informational hearing that continued for about 10 minutes.}

REP. BERGMAN asked about the downsizing that is occurring at the Department and why they were doing away with Mountain View School. Mr. Hudson explained the program to her and how it would replace the current facility.

REP. SOFT agreed to meet with individuals concerned about the transition to this program and report back to the committee with more information.

ADJOURNMENT

Adjournment: 6:30 p.m.

A handwritten signature in black ink, appearing to read "Duane Grimes", written over a horizontal line.

DUANE GRIMES, Chairman

A handwritten signature in black ink, appearing to read "P. Borneman", written over a horizontal line.

PATTI BORNEMAN, Recording Secretary

DG/pb

HOUSE OF REPRESENTATIVES

Human Services and Aging

ROLL CALL

DATE 3/22/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Duane Grimes, Chairman	✓		
Rep. John Bohlinger, Vice Chairman, Majority			✓
Rep. Carolyn Squires, Vice Chair, Minority	✓		
Rep. Chris Ahner	✓		
Rep. Ellen Bergman	✓		
Rep. Bill Carey	✓		
Rep. Dick Green	✓		
Rep. Toni Hagener	✓		
Rep. Deb Kottel	✓		
Rep. Bonnie Martinez	✓		
Rep. Brad Molnar	✓		
Rep. Bruce Simon	✓		
Rep. Liz Smith <i>late 3:50</i>	✓		
Rep. Susan Smith	✓		
Rep. Loren Soft	✓		
Rep. Ken Wennemar	✓		



HOUSE STANDING COMMITTEE REPORT

March 23, 1995

Page 1 of 2

Mr. Speaker: We, the committee on Human Services and Aging report that Senate Bill 395 (third reading copy -- blue) be concurred in as amended.

Signed:


Duane Grimes, Chair

Carried by: Rep. Tuss

And, that such amendments read:

1. Title, lines 5 and 6.

Strike: "PROVIDING" on line 5 through "NURSE;" on line 6

2. Title, line 11.

Strike: "2-15-1844,"

Following: "37-8-202"

Strike: "1"

Following: "PROVIDING"

Insert: "AN IMMEDIATE"

Strike: "DATES"

Insert: "DATE"

3. Page 1, line 27 through line 2 on page 3.

Strike: section 1 in its entirety

Renumber: subsequent sections

4. Page 3, line 6.

Strike: "10"

Insert: "nine"

5. Page 6, line 10.

Strike: "DATES"

Insert: "date"

Committee Vote:

Yes 16, No 0.

671527SC.Hbk

6. Page 6, lines 10 through 12.
Strike: "(1)" on line 10 through "ARE" on line 12
Insert: "[This, act] is"

-END-



HOUSE STANDING COMMITTEE REPORT

March 24, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Human Services and Aging report that Senate Bill 339 (third reading copy -- blue) be concurred in as amended.

Signed: _____

Duane Grimes, Chair

Carried by: Rep. Tuss

And, that such amendments read:

1. Page 3, line 13.

Following: "THROUGH"

Strike: "AN"

Insert: "a program that complies with the standards for a partial hospitalization program that are published by the"

2. Page 3, line 14.

Following: "ASSOCIATION"

Insert: "if the"

Following: "PROGRAM"

Insert: "is"

3. Page 4, line 9.

Following: "THROUGH"

Strike: "AN"

Insert: "a program that complies with the standards for a partial hospitalization program that are published by the"

4. Page 4, line 10.

Following: "ASSOCIATION"

Insert: "if the"

Following: "PROGRAM"

Insert: "is"

-END-


Committee Vote:

Yes 16, No 0

681624SC.Hbk



HOUSE STANDING COMMITTEE REPORT

March 23, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Human Services and Aging report that Senate Bill 416 (third reading copy -- blue) be concurred in.

Signed: _____

Duane Grimes
Duane Grimes, Chair

Carried by: Rep. Soft

Committee Vote:
Yes 16, No 0.

671532SC.Hbk



HOUSE STANDING COMMITTEE REPORT

March 23, 1995

Page 1 of 2

Mr. Speaker: We, the committee on **Human Services and Aging** report that **Senate Bill 293** (third reading copy -- blue) be concurred in as amended.

Signed: _____

Duane Grimes, Chair

And, that such amendments read:

Carried by: Rep. Cobb

1. Page 6, line 27.

Page 7, line 8

Strike: ", incomplete, inaccurate, or misleading"

2. Page 6, lines 28 and 29.

Strike: ", incompleteness, inaccuracy, or misleading nature"

3. Page 7, line 8.

Following: "made"

Insert: ", resulting in a claim for a service or item when the person knew or had reason to know that the person was not entitled under applicable statutes, regulations, rules, or policies to medicaid payment or benefits for the service or item or for the amount of payment requested or claimed"

4. Page 7.

Following: line 13

Insert: "(6) The department shall directly or by contract provide a program of instruction and assistance to persons submitting applications, claims, reports, documents, and other information to the department concerning the completion and submission of the application, claim, report, document, or other information in a manner determined necessary by the department. The program must include:

(a) clear directions for the completion of applications, claims, reports, documents, and other

Committee Vote:

Yes 15, No 0.

671534SC.Hbk

information;

(b) examples of properly completed applications, claims, reports, documents, and other information;

(c) a method by which persons submitting applications, claims, reports, documents, and other information may, on a case-by-case basis, receive accurate, complete, specific, and timely advice and directions from the department before the completed applications, claims, reports, documents, and other information must be submitted to the department; and

(d) a method by which persons submitting applications, claims, reports, documents, and other information may challenge the department's interpretation or application of the manner in which the applications, claims, reports, documents, and other information must be completed.

(7) This section applies only for the purpose of civil liability under Title 53 and does not apply in a criminal proceeding."

5. Page 7, line 19.

Strike: ",incomplete, inaccurate,"

6. Page 7, line 20.

Following: "agency"

Insert: "for a service or item when the person knows or has reason to know that the person is not entitled under applicable statutes, regulations, rules, or policies to medicaid payment or benefits for the service or item or for the amount of payment requested or claimed"

7. Page 8, line 14.

Following: "authorization"

Insert: "or advice"

8. Page 24, line 13.

Strike: "or imposition of sanctions"

-END-



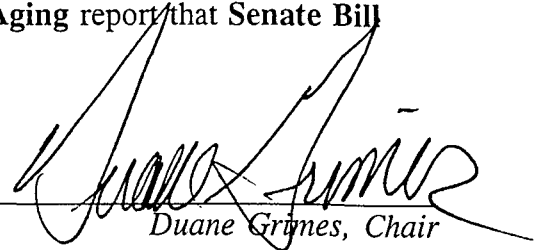
HOUSE STANDING COMMITTEE REPORT

March 23, 1995

Page 1 of 1

Mr. Speaker: We, the committee on **Human Services and Aging** report that Senate Bill **388** (third reading copy -- blue) be concurred in.

Signed: _____


Duane Grimes, Chair

Carried by: Rep. Grimes

Committee Vote:
Yes 14, No 1.

671533SC.Hbk

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Human Services and Aging Committee

DATE 3/22/95 BILL NO. SB 17 NUMBER _____

MOTION: Table

NAME	AYE	NO
Rep. Duane Grimes, Chairman	✓	
Rep. John Bohlinger, Vice Chairman, Majority	✓	
Rep. Carolyn Squires, Vice Chairman, Minority	✓	
Rep. Chris Ahner		✓
Rep. Ellen Bergman		✓
Rep. Bill Carey	✓	
Rep. Dick Green		✓
Rep. Toni Hagener	✓	
Rep. Deb Kottel	✓	
Rep. Bonnie Martinez		✓
Rep. Brad Molnar		✓
Rep. Bruce Simon	✓	
Rep. Liz Smith		✓
Rep. Susan Smith	WAAA	✓
Rep. Loren Soft		✓
Rep. Ken Wennemar	✓	

8

8

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Human Services and Aging Committee

DATE 7/22 BILL NO. 9B293 NUMBER

MOTION: Simon amendment -

Kottel segregate 1st part -
29302. Fails on a tri

NAME	AYE	NO
Rep. Duane Grimes, Chairman	✓	
Rep. John Bohlinger, Vice Chairman, Majority		
Rep. Carolyn Squires, Vice Chairman, Minority	✓	
Rep. Chris Ahner		✓
Rep. Ellen Bergman	✓	
Rep. Bill Carey		✓
Rep. Dick Green		✓
Rep. Toni Hagener	✓	
Rep. Deb Kottel	✓	
Rep. Bonnie Martinez		✓
Rep. Brad Molnar		✓
Rep. Bruce Simon	✓	
Rep. Liz Smith		✓
Rep. Susan Smith		✓
Rep. Loren Soft	✓	
Rep. Ken Wennemar		✓

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HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Human Services and Aging Committee

DATE _____ BILL NO. SB 226 NUMBER _____

MOTION: No Concur as amended

NAME	AYE	NO
Rep. Duane Grimes, Chairman		✓
Rep. John Bohlinger, Vice Chairman, Majority	✓	
Rep. Carolyn Squires, Vice Chairman, Minority	✓	
Rep. Chris Ahner		✓
Rep. Ellen Bergman		✓
Rep. Bill Carey	✓	
Rep. Dick Green		✓
Rep. Toni Hagener	✓	
Rep. Deb Kottel	✓	
Rep. Bonnie Martinez		✓
Rep. Brad Molnar		✓
Rep. Bruce Simon	✓	
Rep. Liz Smith		✓
Rep. Susan Smith		✓
Rep. Loren Soft	✓	
Rep. Ken Wennemar	✓	

8

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HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Human Services and Aging Committee

DATE 3/22 BILL NO. SB 226 NUMBER

MOTION: Tabled

NAME	AYE	NO
Rep. Duane Grimes, Chairman	✓	
Rep. John Bohlinger, Vice Chairman, Majority	✓	
Rep. Carolyn Squires, Vice Chairman, Minority		✓
Rep. Chris Ahner	✓	
Rep. Ellen Bergman	✓	
Rep. Bill Carey		✓
Rep. Dick Green	✓	
Rep. Toni Hagener	✓	
Rep. Deb Kottel	✓	
Rep. Bonnie Martinez	✓	
Rep. Brad Molnar	✓	
Rep. Bruce Simon	✓	
Rep. Liz Smith	✓	
Rep. Susan Smith	✓	
Rep. Loren Soft	✓	
Rep. Ken Wennemar		✓

Simon
proxy

13 3

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Human Services and Aging Committee

DATE 9/22/95 BILL NO. SB 293 NUMBER

MOTION: Simon - to strike "or
imposition of sanctions."
carried

NAME	AYE	NO
Rep. Duane Grimes, Chairman		✓
Rep. John Bohlinger, Vice Chairman, Majority		
Rep. Carolyn Squires, Vice Chairman, Minority	✓	
Rep. Chris Ahner	✓	
Rep. Ellen Bergman	✓	
Rep. Bill Carey		✓
Rep. Dick Green	✓	
Rep. Toni Hagener	✓	
Rep. Deb Kottel		✓
Rep. Bonnie Martinez	✓	
Rep. Brad Molnar	✓	
Rep. Bruce Simon	✓	
Rep. Liz Smith	✓	
Rep. Susan Smith	✓	
Rep. Loren Soft	✓	
Rep. Ken Wennemar		✓

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HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Human Services and Aging Committee

DATE 3/22/95 BILL NO. 9B17 NUMBER _____

MOTION: Reconsideration

NAME	AYE	NO
Rep. Duane Grimes, Chairman	✓	
Rep. John Bohlinger, Vice Chairman, Majority		✓
Rep. Carolyn Squires, Vice Chairman, Minority		✓
Rep. Chris Ahner	✓	
Rep. Ellen Bergman	✓	
Rep. Bill Carey		✓
Rep. Dick Green	✓	
Rep. Toni Hagener		✓
Rep. Deb Kottel		✓
Rep. Bonnie Martinez	✓	
Rep. Brad Molnar	✓	
Rep. Bruce Simon		✓
Rep. Liz Smith	✓	
Rep. Susan Smith	✓	
Rep. Loren Soft	✓	
Rep. Ken Wennemar		✓

9 7

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Human Services and Aging Committee

DATE 7/22/95 BILL NO. SB 17 NUMBER

MOTION: Rep. Green - No concur

NAME	AYE	NO
Rep. Duane Grimes, Chairman	✓	
Rep. John Bohlinger, Vice Chairman, Majority		✓
Rep. Carolyn Squires, Vice Chairman, Minority		✓
Rep. Chris Ahner	✓	
Rep. Ellen Bergman	✓	
Rep. Bill Carey		✓
Rep. Dick Green	✓	
Rep. Toni Hagener		✓
Rep. Deb Kottel		✓
Rep. Bonnie Martinez	✓	
Rep. Brad Molnar	✓	
Rep. Bruce Simon		✓
Rep. Liz Smith		✓
Rep. Susan Smith	✓	
Rep. Loren Soft	✓	
Rep. Ken Wennemar		✓

proxy

8 8

HOUSE OF REPRESENTATIVES COMMITTEE PROXY

DATE

3/21/95

I request to be excused from the

Health & Human Services

Committee meeting this date because of other commitments. I desire

to leave my proxy vote with

Carolyn Aguirre

Indicate Bill Number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

HOUSE BILL/AMENDMENT	AYE	NO
S.B. 395	X	
Amendment NP	X	
LR 2-20-95	X	
CB 1116	X	

SENATE BILL/AMENDMENT	AYE	NO

Rep.

(Signature)

Brian Carey

HOUSE OF REPRESENTATIVES COMMITTEE PROXY

DATE 3-23-95

I request to be excused from the Human Service Committee
Committee meeting this date because of other commitments. I desire
to leave my proxy vote with Rep. Bruce Simon.

Indicate Bill Number and your vote Aye or No. If there are
amendments, list them by name and number under the bill and
indicate a separate vote for each amendment.

HOUSE BILL/AMENDMENT	AYE	NO
SB 395	X	
SB 293	X	
SB 416		
SB 339	X	
SB 388	X	
SB 17		X
SB 226	X	

SENATE BILL/AMENDMENT	AYE	NO

Rep. John C. Schumiger
(Signature)



Montana Nurses' Association

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

EXHIBIT 1
DATE 3/22/95
SB 395

MEMORANDUM

TO: House Human Services Committee Members

Rep. Duane Grimes	Rep. John Bohlinger
Rep. Carolyn Squires	Rep. Chris Ahner
Rep. Ellen Bergman	Rep. Bill Carey
Rep. Dick Green	Rep. Toni Hagener
Rep. Chase Hibbard	Rep. Deb Kottel
Rep. Bonnie Martinez	Rep. Brad Molnar
Rep. Bruce Simon	Rep. Liz Smith
Rep. Susan Smith	Rep. Loren Soft
Rep. Ken Wennemar	

**FROM: Barbara Booher, Executive Director
Montana Nurses' Association**

RE: SB 395
Temporary Advanced Practice Work Permit for Registered Nurses Awaiting Certification

DATE: March 22, 1995

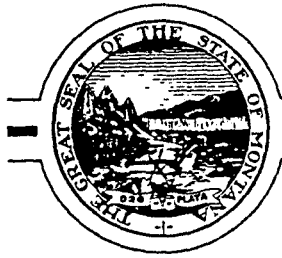
Several questions were raised during the hearing on SB 395. To aid in your deliberations, I am supplying the following documents:

- 1) Two (2) Nursing Fact Sheets describing the four types of Advanced Practice Registered Nurses and Registered Nurse preparation.
- 2) The Montana Nurse Practice Act with location identifiers for the statutes and rules.
- 3) The Board of Nursing's FY 1996 & 1997 proposed budget and revenue projection documents.

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

DEPARTMENT OF
SOCIAL AND REHABILITATION SERVICES

EXHIBIT 2
DATE 3/22/95
SB 293



MARC RACICOT
GOVERNOR

PETER S. BLOUKE, PhD
DIRECTOR

STATE OF MONTANA

P.O. BOX 4210
HELENA, MONTANA 59604-4210
(406) 444-5622
FAX (406) 444-1970

March 13, 1995

Representative Duane Grimes, Chairman
House Human Services and Aging Committee

Dear Mr. Chairman:

I am writing to address questions raised in the committee hearing on Friday, March 10, 1995 regarding certain aspects of Senate Bill 293, regarding medicaid fraud.

Section 6 of Senate Bill 293 is intended to specify certain fundamental responsibilities of every medicaid provider. We believe that, as a matter of public policy, these responsibilities must be stated to protect the integrity of the medicaid program.

The first key element in this statement of responsibility is the basic principle of honesty. Under subsection (1), providers and persons acting on their behalf would be deemed to represent that the documents and other information submitted to the medicaid program are true, complete, accurate and not misleading, to the best of the person's knowledge and belief. Under subsection (2)(a), providers would have a duty to exercise reasonable care to ensure the truthfulness, completeness and accuracy of documents and information submitted to the medicaid program.

The second key element in this statement is a responsibility to inquire in advance of billing in areas that are reasonably subject to question. The medicaid fiscal agent processes about 250,000 claims each month through an automated claims processing system. In this system, information stated on the claim form is keyed into the system and the system automatically processes the claim. If the claim is facially correct, the provider will receive payment. This allows providers to be paid quickly, rather than waiting for manual claims processing. The system relies heavily upon the honesty and integrity of providers. False or other improper claims may not be discovered until after the provider has received payment. Providers should be held to a duty to inquire before undertaking questionable billing. Subsection (2)(b) would establish a provider duty to exercise reasonable care to ensure that the claims submitted to the medicaid program are claims for which the provider is entitled to be paid.

The third key element in this statement of responsibility is the principle that the provider, who receives the benefit of the medicaid payment, must exercise supervision over and take responsibility for the acts of their employees that bill the medicaid program on the provider's behalf. Without such a responsibility, it is too easy for a provider to accept the benefit of improper or even dishonest billing, but then when confronted with the impropriety or dishonesty, to disclaim knowledge and responsibility. Subsection (3) would prevent a person from disclaiming knowledge if the person knew of the impropriety or, by virtue of their position, authority or responsibility should have known of the impropriety. Subsection (4) would prevent a person from avoiding responsibility if the person's failure to exercise actual authority or responsibility caused the improper conduct to occur.

The primary intended effect of section 6 is to encourage providers to exercise care and to practice honesty in their dealings with the medicaid program. If a provider fails to meet its responsibilities under section 6 and that failure is fraud or abuse as defined in section 1 of the bill, the department could impose civil sanctions under section 15 of the bill. The use of sanctions may be appropriate and necessary in specific cases to address the behavior of problem providers.

Section 6 would not create absolute liability for providers. In a civil sanction case under section 6, the burden would be on the department to show that the provider or person failed to exercise reasonable care, or that the particular circumstances of the individual provider indicate that the provider knew or should have known of certain facts. Providers would have the opportunity to show otherwise. This section is not intended to penalize honest misunderstandings or mistakes, or occurrences beyond the reasonable control of the provider. Further, the section is not intended to make a person responsible solely by virtue of their position.

Concerns have been raised regarding whether section 6 would be used to prosecute providers for acts of their employees even though the provider did not know of or authorize the improper conduct. Section 6, which would be codified in the Title 53 medicaid statutes, is not intended to provide a basis for criminal prosecution. Section 7 establishes a criminal offense for medicaid fraud. Section 7 would be codified in the criminal code, Title 45, which has separate definitions of the applicable mental states, purposely and knowingly. The intent of the bill is that the stricter criminal code mental state requirements would apply in the criminal context. Section 45-2-103, MCA states that a person is not guilty of a criminal offense unless, with respect to each element of the offense, the person acts while having one of the mental states as described in the criminal code. The bill is not intended to hold anyone criminally liable for the criminal acts of another, nor do we believe the bill or other law would permit it.

We look forward to the committee's fair consideration of Senate

EXHIBIT 2
DATE 3-22-95
SB 293

Bill 293 and a do-pass recommendation.

Sincerely,

Nancy Ellery

Nancy Ellery, Administrator
Medicaid Services Division

MONTANA YOUTH ALTERNATIVES
Schedule for Implementation
February 23, 1995

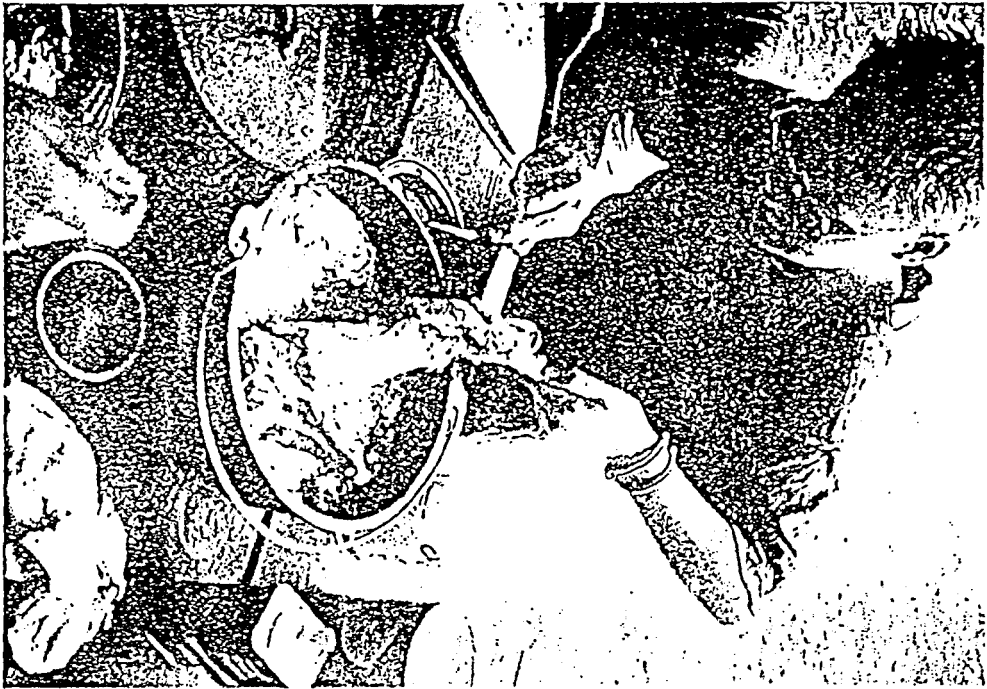
The following task force met at Mountain View School to establish target task completion dates for major transition events:

Tim Marshall	Gordon Birch	Dr. Larry Stednitz
Jim Bauch	Al Davis	John Paradis
Beth McLaughlin	Virgil Dixon	Cindy Mckenzie
Derek Cabrera	Steve Nelson	Chuck Smith
Gale Keil	Cindy Walton	Donna Aldrich
Tim Ferritor	Tom Russ	Becky Bruska

DATE TASK COMPLETED

TASK

February 24, 1995	Establish building utilization plan for placement of three programs. (Identified responsible parties - Jim Bauch, Tim Marshall, Al Davis, Gordon Birch, Steve Nelson)
February 24, 1995	Post positions for phase I and begin identifying potential candidates of RIF list. Follow with public advertising for positions in Phase 1. All positions will be hired by April 1, 1995. (Identified responsible parties - Virgil Dixon, Becky Bruska, Jim Bauch.
March 1, 1995	Aspen to post and begin screening applicants for Phases 2, 3, and 4. Actual posting will occur by 3/1/95, 4/1/95, and 4/15/95 (Identified responsible parties - Tim Marshall, Gordon Birch, Larry Stednitz)
March 1, 1995	Complete development of Aspen Youth Alternatives major contract including signature of all parties. (Identified responsible parties - Al Davis, Tim Marshall, Mary Ann Akers)
March 5, 1995	Finalize contract between Montana Conservation Corps and Aspen Youth Alternatives. (Identified responsible parties - Tim Marshall, Steve Nelson)
March 5, 1995	Finalize lease contract with Aspen. (Identified responsible parties - Al Davis, Tim Marshall)



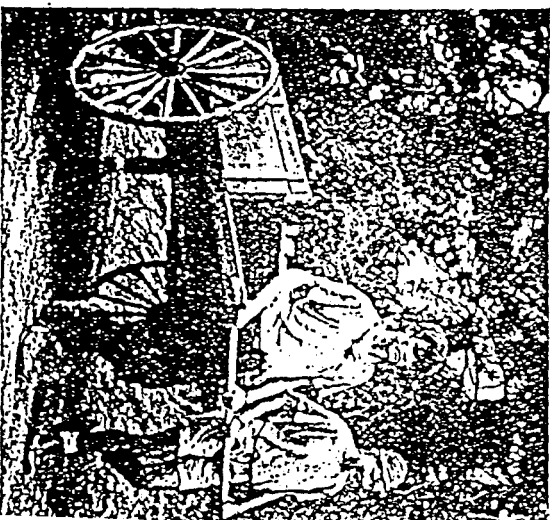
What are you
rebellious against?
What're you for?
—Norton Brando
in "The Wild One's"

THE WILDERNESS EXPERIENCE: HELPING TROUBLED TEENAGERS "GET REAL"

Most troubled adolescents have discovered the "art" of manipulation. By manipulating parents, teachers and therapists, they can delay dealing with their own behavioral problems.

At the Aspen Achievement Academy, teens cannot "con" reality. The rigors of this outdoor therapeutic program bring them face to face with survival. In such an environment, students can quickly gain maturity, grow up, learn the meaning of self-reliance, and gain a new respect for the care that came so easily at home.

While our seven-week wilderness experience is not a boot camp, it is not summer camp either. Each individual has a responsibility towards his or her activity group members. Together with trained trail staff, they participate in a rigorous program designed to maximize their abilities as individuals and as team players.



Nature is always
hinting at us.
It hints over and
over again...
And suddenly we
take the hint.
—Robert Frost

My name is Toni Gies and I am a teacher at Mountain View School. I have a BFA in Art from the University of Montana and a minor in Home Economics. I have taught there for 8 years and taught previously in Billings.

From its inception the new plan to close Mountain View has been ill planned and full of unanswered questions. The Mountain View teachers have felt confused, misled and very concerned for the student population we now serve. In our contact with other schools and teachers we often hear about the problem students who now are simply sent back into the classrooms. Here in Helena we can show you a large student population that assembles daily outside of Helena High and is increasingly a police problem. Other towns have similar fringe groups sprouting up. Our concern now is for the female population we did serve. We are not at all sure that they are being served elsewhere. We are not at all sure that their own community and or families of origin are helping them. Are you sure?

Many of the students we now serve tell us they are headed for Excelsior in Spokane or Denver? We have seen students sent to these expensive out of state facilities. How can this be cost effective? Where are our, in state, facilities? Ask DFS how much this is costing us.

The Wilderness Program first proposed for our site has been seen by us as meeting only a select type of students needs. Many questions about the program were unanswered in the three legislative hearing previously attended by teaching staff. I am unsure if they have been answered yet. Some questions that remain are; 1). How will we meet Special Ed requirements. 2). How will they meet the special needs of female students, (pregnancy, obesity, anorexia...), 3). Title Nine gender issues, 3). Do they have any firm locations for setting up the wilderness plan, 4). What is the cost per day and how is that broken down per phase, 5). What are the educational plans of Aspen, we have yet to see a curriculum with scope and sequence.

The quality of treatment for these already at-risk children rests on what is decided here today. Please consider this matter very seriously and place yourself and or your children or grandchildren in their place.....then decide!

Toni Gies, Family and Consumer Science, MVS

This table represents the student population during the traditional school year, August to June at Mountain View School for the last seven school years and the population for the current school year. As the table illustrates the average number of students per day has rapidly declined since the school year 90-91.

Other statistics you may find interesting are the total population for the school year, the number of students we served during the following academic years.

<u>Academic Year</u>	<u>Girls</u>	<u>Boys</u>
1989-90	144	0
1990-91	165	0
1991-92	139	0
1992-93	77	38
1993-94	61	32

We currently have a population of 12 girls. It is difficult for us to believe that all of these girls we've had over the years did not belong in Mountain View, that they were all bad placements. There is a need for Mountain View School.

	<u>Aug.</u>	<u>Sept.</u>	<u>Oct.</u>	<u>Nov.</u>	<u>Dec.</u>	<u>Jan.</u>	<u>Feb.</u>	<u>Mar.</u>	<u>Apr.</u>	<u>May</u>	<u>Jun.</u>	<u>School Year</u>	
87-88: High	42	43	45	52	50	46	49	53	57	57	56	High Average	50
87-88: Low	33	36	43	46	41	41	40	45	49	51	52	Low Average	43
Average	37.5	39.5	44	49	45.5	43.5	44.5	49	53	54	54	Average Per Day	47
88-89: High	36	46	46	52	54	53	57	59	68	69	65	High Average	55
88-89: Low	34	39	40	41	51	49	51	52	52	64	61	Low Average	49
Average	35	42.5	43	46.5	52.5	51	54	55.5	60	66.5	63	Average Per Day	52
89-90: High	49	54	57	51	49	49	50	50	55	52	48	High Average	51
89-90: Low	43	47	47	45	46	42	45	46	49	45	47	Low Average	46
Average	46	50.5	52	48	47.5	45.5	47.5	48	52	48.5	47.5	Average Per Day	48
90-91: High	43	45	60	64	60	63	69	73	61	59	60	High Average	60
90-91: Low	41	40	46	58	57	57	59	65	54	53	59	Low Average	54
Average	42	42.5	53	61	58.5	60	64	69	57.5	56	59.5	Average Per Day	57
91-92: High	42	54	61	61	53	50	48	50	50	47	44	High Average	51
91-92: Low	41	40	52	49	46	43	45	47	44	41	41	Low Average	44
Average	41.5	47	56.5	55	49.5	46.5	46.5	48.5	47	44	42.5	Average Per Day	48
92-93: High	25	36	36	43	48	45	33	34	37	40	41	High Average	38
92-93: Low	23	22	31	36	39	31	30	29	29	32	37	Low Average	31
Average	24	29	33.5	39.5	43.5	38	31.5	31.5	33	36	39	Average Per Day	34
93-94: High	21	25	29	30	30	27	15	25	27	26	24	High Average	25
93-94: Low	21	16	25	25	27	18	12	14	24	21	22	Low Average	20
Average	21	20.5	27	27.5	28.5	22.5	13.5	19.5	25.5	23.5	23	Average Per Day	23
94-95: High	18	22	24	25	21	14	14					High Average	20
94-95: Low	17	16	18	21	16	11	13					Low Average	16
Average	17.5	19	21	23	18.5	12.5	13.5					Average Per Day	18

* As of February 10, 1995

Questions: Who decides placement
Why can't we see a document showing where Montana

Reinventer - Occupatin - Employer - for John Brekke provider (Marion Int.)
Reinventer Self - & Mr. John Brekke - Wilderness Treatment Center.

1. Have been able to observe the workment of the Aspen-MVS proposal - from my standpoint I can't see how an out of state ~~provider~~ ^{provider} can be allowed concessions from our State to initiate a conceptual model into an operational one at the expense of mountain qualified - wilderness programs - small business men who like John Brekke who have spent 12+ years developing a sound treatment facility for our Mountain youth.

In my years at MVS I am amazed how confusing this project has developed in terms of;

① - statewide questions such as why hasn't there been open / fair competition - RFP's amongst the Montana businesses? Is - a ^{has any committee reviewed} site service ^{any other providers} ~~proposed~~ ~~proposed~~ ~~proposed~~

② If this original Montana Youth Alternatives Program / Aspen program is a true "Wilderness" concept why couldn't the Dep. initially work with such people like Mr. Brekke, who has established forest / wilderness usage day permits? Aspen has not been able to date secure true "wilderness" or a land base to operate.

③ In the interim many fine Mountain - trained employees at MVS have been RIF'ed in preparation for the initial "start" up of the Aspen - Mountain Youth Alternatives Program -

④ Not against Aspen specifically but am against reinventing the social-rehabilitative wheel by merely seeking an "alternative" - The Montana Youth Alternatives Program should be just that - a Montana structured, operated and managed by the State of Montana - if that's

printing
state
a state
in hand.

for the sake
of "change"

(4) con't - if this program would have originally worked out the same "flow chart" of processing, educating ^{at a rate of} and experiential wilderness care ^{from} within instead of from the outside - much of this last minute budgetary and atmosphere of confusion would have been eliminated.

J.B. (5) Giving an ~~outside~~ ^{out-of-} state vendor ^{provides} "seemingly" unfair concessions such as a "sole source" contract w/out allowing for open/fair competition may cause for future "precedents" -
- do we - do you know all of the concessions that Arzon has been offered to come from out of state to care for our native juveniles - (rent, repair, security,?)
- will the State of Montana give future vendors ~~provisions~~ in similar situations - deferred or eliminated concessions - rent, repairs, etc.

(6) Is the insurance adequate for such an operation?

(7) ^{30 day} ^{6 months} ^{1 year} [?] Does the State of Mt. have an alternative plan in the event that for some unforeseen reason this (Arzon) ^{provider} ~~vendor~~ does not ~~fully~~ "fulfill" the agreement? - Do we have a proposed ~~sub~~ ^{provider} provider?

(8) John Brekke has authorized us to share "that he has retained a local attorney to totally review the entire process of this "sole source" contract between Arzon & the State. - Not only his program but others in the State who weren't contacted and allowed to participate in the process "feel legally slighted by the State of Montana."

(9) Has any committee reviewed the ~~track~~ ^{eff} of any of our

not only improve:

- This committee but any committee should "proceed w/ caution" and illustrate some additional patience in order that my ~~own~~ ⁱⁿ conscientious due diligence by the State anyone offering additional plans should be allowed to be introduced.

? I have shared numerous sessions w/ stretched out Montana ^{MVS} employees - of which some have quit, been laid off, taken the r.i.f. alternative who have been promised that by early January of this year a posted list of Argen employment positions would be set - to date no such listing has taken place -

If Argen isn't ready to list job positions are they ready to proceed in such a demanding and important human ~~sector~~ service?

EXHIBIT 6

DATE 3-22-95

MT Youth Alt