

MINUTES

MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON PUBLIC HEALTH, WELFARE, & SAFETY

Call to Order: By CHAIRMAN STEVE BENEDICT, on February 5, 1997,
at 3:00 PM, in Room 410.

ROLL CALL

Members Present:

Sen. Steve Benedict, Chairman (R)
Sen. James H. "Jim" Burnett, Vice Chairman (R)
Sen. Larry L. Baer (R)
Sen. Chris Christiaens (D)
Sen. Bob DePratu (R)
Sen. Dorothy Eck (D)
Sen. Sharon Estrada (R)
Sen. Eve Franklin (D)
Sen. Fred Thomas (R)

Members Excused: None

Members Absent: None

Staff Present: Susan Fox, Legislative Services Division
Karlolyn Simpson, Committee Secretary

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

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 184, 1/29/97
HB 107, 1/27/97
SB 260, 1/31/97
Executive Action: SB 144, SB 208, SB 55, SB 190,
SB 61, SB 254, SB 34

{Tape: 1; Side: A; Approx. Time Count: 3:00 PM}

HEARING ON HB 184

Sponsor: REP. RAY PECK, HD 91, Havre

Proponents: Glenn Martyn, PawsAbilities
Lindsay Schmidt, PawsAbilities

Opponents: None

Opening Statement by Sponsor:

REP. RAY PECK, HD 91, Havre, referred to the second paragraph of a letter of support for HB 184 from Fran Buell who originated this legislation. (EXHIBIT 1) He said that paragraph explains what this bill is all about. Currently Montana law gives certain rights to those with trained service dogs, in terms of admission to public buildings, but those who have dogs in training don't have the same rights. The cost of training a dog is about \$2,500.00. To train these dogs, they need to be exposed to all of the conditions and situations they will encounter after they are placed. This bill gives the trainer the right to have access and admission to public buildings, but that doesn't give them total freedom and the trainer is liable for damages that may be caused by the dog. He read the amendments proposed by the Delta Society. (EXHIBIT 2)

Proponents' Testimony:

Glenn Martyn, Director, PawsAbilities and Partners with Disabilities, Missoula, said service dogs are looked at as a health care option to meet specific needs for persons with disabilities. Service dogs are animals that provide service for various disabilities. There are hearing dogs, guide dogs, seizure alert dogs, and a variety of other types. These dogs are not pets but are trained to do a specific skill for specific disabilities. These dogs are placed in foster puppy program for the first 18 months, then go on to advanced training for specific skills. There are various kinds of identification (ID) worn by these dogs in training to identify the type of training they are receiving, hearing, sight, etc.

Lindsay Schmidt, trainer, PawsAbilities, has a service dog in training and she has taught him 22 commands and will have 40-50 at the end of training. She said she can take the dog into some businesses, but there are some stores and businesses have denied access, for one reason or another.

Opponents' Testimony: None

Questions From Committee Members and Responses:

SENATOR CHRIS CHRISTIAENS asked Lindsay Schmidt what kind of stores won't let her and the dog in.

Lindsay Schmidt said the Great Falls Hastings won't let her in because of a candy aisle, and the Ben Franklin store denied access because of their fabric.

CHAIRMAN STEVE BENEDICT asked REP. RAY PECK if he has a prepared amendment or some proposed amendments.

REP. PECK said he would rough it out and give it to the Legislative Council.

Closing by Sponsor:

REP. RAY PECK said HB 184 will help to enhance the training of service dogs.

HEARING ON HB 107

Sponsor: REP. BETTY LOU KASTEN, HD 99, Brockway

Proponents: Mike Hanschew, Department of Health
Charlie Briggs, Rocky Mtn. Agency on Aging
Randy Barrett, Rocky Mtn Agency on Aging
Susan Good, MT Assn. Life Underwriters and HEAL MT
Verner Bertleson, Senior Citizens Assn.
Irene Theurer, AARP
Tom Hopgood, Health Insurance Association of America
Clyde Daily, State Auditors Office
Dick Pattison, MT Senior Citizens Assn.
Charles Rehbein, DPHHS

Opponents: None

Opening Statement by Sponsor:

REP. BETTY LOU KASTEN, HD 99, Brockway, said HB 107 allows for the deduction of long-term care insurance premiums paid for by taxpayers for their parents or grandparents. The bill was amended in the House because of some problems with the interpretation by the Department of Revenue, because they were only allowing a 50% deduction of the premium. It has been rectified and there is a retroactive clause, putting this in compliance with the federal revenue codes.

Proponents' Testimony:

Mike Hanschew, Administrator, Senior and Long Term Care Division, Department of Health and Human Services, said they support this bill because it encourages people to assume some responsibility for the long term care of their family and avoid dependence on the state for long term care needs.

Charlie Briggs, Director, Rocky Mountain Agency on Aging, said they support HB 107.

Randy Barrett, Area Director, President, Rocky Mountain Agency Aging, said they support HB 107. (EXHIBIT 3)

Susan Good, Montana Association of Life Underwriters and HEAL MT, said they support HB 107. It has been a HEAL objective for people to take care of their own and this bill offers an incentive to do just that.

Verner Bertleson, representing Senior Citizens Association and the Legacy Legislature, said both of these groups are in support of anything that will increase the availability of long term care for seniors and cut the cost to the State. This bill does both.

Irene Theurer, representing AARP, said encouraging people to buy long term care coverage for themselves, parents or grandparents is one of the most productive things she has seen come about in a long time. It has to be a win-win situation and support this bill.

Tom Hopgood, Health Insurance Association of America, said they fully support this bill.

Clyde Daily, State Auditors Office, said this is a good bill and will encourage responsibility for long term care. Currently, about 2% of the population makes use of it and anything that would increase that number they support.

Dick Pattison, President, Montana Senior Citizens Association, seconds the support already indicated by **Verner Bertleson.**

Charles Rehbein, Senior Long Term Care Division, Department of Public Health and Human Services, supports HB 107 on behalf of the Governor's Council on Aging.

Opponents' Testimony: None

Questions From Committee Members and Responses:

SENATOR JIM BURNETT asked why this isn't a 2-way street where parents or grandparents can give assistance to younger family members.

REP. BETTY LOU KASTEN said there is a problem because of the Medicaid nursing home reimbursement. The Medicaid budget is driving the State budget, especially in the human service division and anything that can be done to tweak that budget will help and this bill may do that. What we want to do is insure care for the elderly and this bill will give the incentive to do that. She said the bill could be amended to allow parents or grandparents to give assistance to younger family members, but she is afraid if too much is done, the bill may not pass.

SENATOR LARRY BAER referred to page one, line 27, the language beginning on line 19, says there are certain things allowed as deductions, then line 23, certain things are not deductible. Then line 27 says long term care premiums paid, and wondered if he is missing something in the code sections.

REP. KASTEN said the Department of Revenue found the 100% deduction of the premium was not clear in the statutes. Because of their interpretation the statutes, they did not allow the 100% deduction resulting in the need for some retroactivity of the deduction. There would have been trouble without the inclusion of how this deduction fits in with the federal tax code, which is the reason for the amendments put on in the Tax Committee.

Bob Turner, Department of Revenue, referred to page one, line 21, saying the income tax itemized deduction is tied to the federal

itemized deduction with the State legislating its own itemized deductions in addition to the federal deductions. Starting January 1, 1997, long term care insurance premiums are an allowed deduction on the federal income tax. Presently, medical insurance premiums and long term care premiums are allowed as deductions, subject to the seven and one-half percent threshold any excess over that. The Department of Revenue agreed the intent is to allow a 100% deduction for long term care insurance premiums, which is done in subsection 7-7B, but don't want taxpayers to take a double deduction from the premium payments tied to the federal government.

SENATOR BAER asked for clarification saying, it's a deduction in one area but not in another, and is this to avoid double dipping.

Bob Turner said is correct.

SENATOR CHRIS CHRISTIAENS asked if the amended bill is reflected in the fiscal note.

REP. KASTEN said it is not necessary to include that in the fiscal note because the Department of Revenue allows the 100% deduction to be retroactive.

Bob Turner said the 1991 Legislature passed the 100% deduction for long term care premiums and the 1995 Legislature passed HB 202, which allowed 100% deduction for medical health insurance premiums, then the Legislature cut it back to 50%. In doing so, it was codified wrong, referring to page three, line seven, and it said one-half of premiums of the long term care. It allowed one-half of the health insurance premiums and one-half of the long term care premiums.

{Tape: 1; Side: B; Approx. Time Count: 3:49 PM}

Closing by Sponsor:

REP. BETTY LOU KASTEN said this is tied to the Kennedy-Kassabaum (KK) bill which gives people the 100% deduction for those who want to care for their elderly parents. As to cost, this will tweak the Medicaid budget. Asset transfer is difficult to do and with all of the lien laws, this bill will allow someone who wishes to care for their parents a good way to insure they are taken care of, and keeping the assets in the family business while providing care. She said **SENATOR WALTER McNUTT** will carry HB 107 in the Senate.

HEARING ON SB 260

Sponsor: **SENATOR DEBBIE SHEA**, SD 18, Butte

Proponents: **Debbie Grover**, self

Carol Brown, self

Perry Eskridge, Department of Commerce

Mike Myer, Missoula Coalition of People with Disab.

Opponents: None

Opening Statement by Sponsor:

SENATOR DEBBIE SHEA, SD 18, Butte, said the elderly and disabled in the state have uncertainty about long term care and many wish to remain at home, but need someone trained in personal care, who is honest and competent. She read portions of sections five (fitness of character and level of competency), six (\$2,000.00 bond), and nine (fees for licensure) of the bill.

Proponents' Testimony:

Debbie Grover, self, said there are 10,080 people over the age of 65 in Montana. Many of the aged need home care providers so they can stay in their own home, but there is nothing now to prevent abuse, theft, and neglect by those providers. This does not affect the person doing the abuse but does affect the client. SB 260 provides some security to the client, that the care giver is licensed and bonded, including a background check. Day care providers must be licensed and carry insurance for our children, now it is time to protect our elderly and disabled.

Carol Brown, self, said she supports SB 260 because more elderly need long term care in their own homes. There have been many reports of the elderly being abused and defrauded by their care givers. The requirements in SB 260 for care givers would assure the elderly would not be abused or neglected.

Opponents' Testimony: None

Perry Eskridge, Professional Occupational Licensing Bureau, Department of Commerce, referring to the fiscal note, said they would need to hire someone to do background checks, on those who apply for licensure and hire a consultant to research and recommend levels of licensure and appropriate skills training or experience necessary for the various levels. In addition, because there is no national exam, a licensing exam would need to be developed at the cost of, at least, \$2,000 per level. The biggest problem the Department of Commerce has with SB 260, as written, is not legally defensible. The intent of the legislation is to provide a efficient, low cost licensing program, run by the Department of Commerce, without the use of a licensing board. He talked about the necessity of the Legislature clarifying the Department of Commerce's limits of authority, rights, and obligations for this program, plus guidance to determine licensing levels. He asked how trustworthiness and competency can be determined and said there are no specifics, in the bill, as to how far the Department can or must go. He said this bill is a good start, but limits must be set up.

Mike Myer, Coalition of Montanans concerned with People with Disabilities, said he opposes SB 260, but the idea is good. There is a need for honest, dependable, and capable assistance available to those who need it, but he doesn't think licensing is

the most effective way. The problem with licensing is, for most of the elderly and disabled, the assistance needed is not medical in nature, but instead is for routine activities, such as bathing, dressing, cooking, and housekeeping. Many of the people who provide personal assistance do not do so on a full time basis, but instead it is a part time job for college students or others who want to supplement their income. Licensing will create a bureaucratic process so fewer people will want to do it. It needs to be recognized that the health care is moving toward keeping people in their homes and communities. Individuals can do some screening of applicants, but he's not sure licensing is insurance for honesty and trustworthiness.

Questions From Committee Members and Responses:

SENATOR LARRY BAER said he doesn't see any provision in the bill requiring licensing except for those representing themselves as licensed home companions for employment, and this wouldn't apply to family members or close friends who would volunteer their services.

SENATOR DEBBIE SHEA said she thought so.

SENATOR BAER said he will talk to **REP. WILLIAM BOHARSKI** and **Dr. Peter Blouke** about a rational and sensible approach to administering this program.

CHAIRMAN STEVE BENEDICT said the Department of Commerce obviously had enough time to prepare a list of problems with the bill and asked if they had shared them with the sponsor of the bill.

Perry Eskridge said they had and he does not think any of the problems are insurmountable. There is another program that runs into similar problems, licensing private investigators and private security patrol officers, on which FBI checks are done, obtaining letters of reference from family and former employers. The background checks are quite comprehensive, taking a lot of time and is a somewhat expensive process, but yet it is do-able.

CHAIRMAN BENEDICT asked how long the Department has known about the problems with the bill.

Perry Eskridge said the Department received the bill on Friday afternoon and he received it on Monday afternoon.

SENATOR CHRIS CHRISTIAENS asked if there is another board under which this licensing could go, such as the day care providers, rather than setting up a new board.

CHAIRMAN BENEDICT referred to page three, lines one and two. The Department wants put in an efficient, low cost licensing program, to be run directly by the department without the use of a licensing board.

SENATOR CHRISTIAENS said \$50,000.00 is not low cost.

Perry Eskridge said the \$50,000.00 is for a consultant to set up levels of licensure and would give guidance to the department. There would be no new board. The Department of Health has a board of personal care attendants and this may be an appropriate place for licensing home companions.

Joyce DeKunzo, Department of Health, said they do have a personal care program paid for by Medicaid.

SENATOR CHRISTIAENS asked if would be possible for the home companions to come under that group.

Joyce DeKunzo said they have had that question and this bill would not necessarily impact those paid with Medicaid funds. They have about 3,000 individuals currently employed by the 32 personal care agencies around the state. For those individuals, there is a training program, background checks, reference checks and some testing, based on a 16-hour training program. The Department of Health requires these agencies give all attendants a particular level of training, follow their own hiring practices, and be responsible for the behavior of those individuals in clients homes. They are not sure if all of those 3,000 individuals, who Medicaid pays for, would come under this licensing program. There would be a significant fiscal impact on the Department of Health if this bill includes these individuals.

SENATOR DOROTHY ECK asked about waivers and case management services that could provide these services for a small fee to anyone, and whether they still do that.

Joyce DeKunzo said any agency out there is a bonafide agency providing these services. For the services provided to those who are Medicaid eligible, the personal care attendants are paid with Medicaid funds. The rate paid to agencies for providing services to Medicaid eligible includes all of the administrative requirements that attendants must have a certain level of training, they must be supervised by a nurse, and those kinds of things that the Medicaid rate pays for. There are many people who do not wish to go through the agencies because they can hire a person directly, and pay them less than the agency cost. Some people do go through the agencies because it does give them a level of protection and pay that cost privately but other people want to get a personal care assistant at a lesser cost because they are not paying that administrative cost of unemployment insurance and workers comp.

SENATOR ECK asked if the Department of Health would help with the case management plan for people like neighbors and family, who are not being paid by anyone.

Joyce DeKunzo said yes, if it was a Medicaid eligible person.

SENATOR ECK asked if it was a private pay client, could they do the same thing.

Joyce DeKunzo said no, if the person is not Medicaid eligible, the Department of Health cannot pay the agency for the service.

SENATOR ECK asked if the group who wants to be licensed is an organized group.

SENATOR SHEA said they were not, but were just individuals in her community.

SENATOR ECK said generally those groups who want to be licensed pay all of the expenses for the departments to do what they do, and asked **SENATOR SHEA** if that would happen in this case.

Editors note: the response to **SENATOR ECK** was unintelligible.

SENATOR LARRY BAER gave a hypothetical situation where a person wants to give home care and wants to become an Licensed Vocational Nurse (LVN), and have the educational qualifications, then asked about the licensing cost.

Joyce DeKunzo said they don't do any licensing. When an agency signs up as a provider of personal care for Medicaid eligible individuals, the department requires these employees to have a certain level of training, but there is no certification or licensure attached.

SENATOR BAER asked about the cost to the applicant and the Department of Commerce for a LVN applicant's testing, background check and other pre-requisites that are similar to those for licensed home companions (LHC).

Perry Eskridge referred to the fiscal note. Under HB 518, license fees must equal the cost of running the program. The number of licensees multiplied by the license fee charged which, ideally, equals the budgeted amount for running the program. The projected license fee for 3,000 applications would be \$165.00 for the initial application and the renewal is \$50.00 per year.

SENATOR BAER asked how the proposed fees for a LHC compare with an LVN, who is a more highly trained and qualified person.

Perry Eskridge said he was not sure.

SENATOR EVE FRANKLIN said she thought the LVNs and LPNs are licensed by the board of nursing.

SENATOR BAER asked about the rationale for projected cost of this program versus other people with licenses, and thinks the cost of this is inordinately high.

CHAIRMAN BENEDICT said this is a new program and must be set up, as compared to one already in existence, where testing and other requirements do not have to be developed.

Perry Eskridge agreed and said nurses use the national certified exam for nursing, the exam development cost being spread out over the 50 states. The LHC exam would be a state program, the cost of development to be borne by the state.

SENATOR BOB DePRATU asked if licensing would open it up to third party payers, rather than putting the person, who needs long term care, in a nursing home.

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Perry Eskridge said the insurance company would be expected to underwrite, and would be mitigated, to some extent, by the governmental agency doing background checks. They have methods to determine if these people are qualified, and provide some assurance to the insurance company why this person is eligible to provide services in someone's home.

Closing by Sponsor:

SENATOR DEBBIE SHEA said the power in this bill given to administrative agency is a bit broad and thanked the committee for the education she gained at the hearing.

10 minute break

The hearing resumed at 4:50 PM.

CHAIRMAN STEVE BENEDICT said he has a statement to make to the committee members. He is disappointed that members of this committee have felt the need to call his character into question in regard to any business that has come before the committee. He feels the committee has been run efficiently as possible with a great deal of concern and latitude with the committee members. Some of the things that have occurred in the last couple of days make him wonder whether that is the right track. Possibly not every one has been in the room when he stated his intention on some of these bills, as far as holding some of these bills until the committee sees some of the other bills coming up. This is being done in about half of the Senate committees in this legislative session. There are bills in Business and Industry that require a great deal of thought, with three bills already and a fourth coming that has some direct conflicts or addresses some of the same subject matter, so are holding the three bills until the fourth is heard. The same thing was done in Senate Labor where there are bills addressing contractor registration, and waited until all the bills had been heard before deciding which parts of bills to keep and which bills they wished to address. He said he will work diligently, on behalf of every member of the committee, to make sure the bills heard will be acted on in a timely manner, but with all of the information needed. It seems the minority members of the Senate are not on the same page because he hears from **SENATOR HALLIGAN** that they are moving too fast and need to slow the process down and that bills are being rammed through. Now the other part of that

equation is the accusation that bills are being sat on and holding bills. He said he will try to take everybody's feelings and thoughts into consideration, if those thoughts are expressed directly.

SENATOR SHARON ESTRADA said she is concerned with the newspaper article and was surprised by the article. She said she thinks the Public Health Committee has been working very hard and there have been times when there has not been enough time to do executive action, and everyone has been treated fairly.

SENATOR CHRIS CHRISTIAENS said he had no idea of the process until he asked. He said he has been at every Public Health committee meeting and still had no idea what **CHAIRMAN BENEDICT's** plan was. Those bills heard with lots of public testimony and a lot of support, and these people have been wondering where that bill was and why it hadn't come out of the committee. He said he was sorry that **CHAIRMAN BENEDICT** thought that was a disparaging remark against his character and was not meant to be. There was a reporter present when those questions and that discussion came up, and they can report whatever they see. He said bills should stand on their own merit and had there been an explanation upfront, as to the plan, the question wouldn't have come up. He said he is willing to work with **CHAIRMAN BENEDICT** and others, and thinks he has. Some bills get tabled, and the discussion isn't on just the minority side of the aisle regarding what is going on with bills in the committee.

SENATOR EVE FRANKLIN said she is not questioning how hard the committee is working, but it is not appropriate to bring up **SENATOR HALLIGAN** in the committee, when he is not present, and that is another issue. She stands by what was reported in the newspaper and was quoted as making the statement. She said she was concerned about **SENATOR NELSON's** bill, heard on the third day of the Public Health committee. Her understanding of protocol is everyone's receives fair notice, fair hearing, and courtesy to the sponsor. She agrees that often bills must be coordinated, but that is done with the cooperation with the sponsor or some good faith agreement.

CHAIRMAN BENEDICT said he told **SENATOR NELSON** he was waiting for the KK bill before acting on SB 34, and she seemed to understand that, but maybe not.

SENATOR FRANKLIN said your interpretation of her response was different from what it was.

SENATOR LARRY BAER said he didn't read the newspaper article and don't know what bills are being talked about and doesn't think this committee is being run any differently than it was during the last session, when **SENATOR BURNETT** was the chairman.

CHAIRMAN BENEDICT asked which bills the committee wished to consider for executive action.

EXECUTIVE ACTION ON 34

Motion: SENATOR EVE FRANKLIN moved SB 34 DO PASS.

Discussion: CHAIRMAN BENEDICT said he had visited with SENATOR NELSON and said this bill is required under Kennedy-Kassebaum, and her bill is word-for-word in the Kennedy-Kassebaum bill. It would be better to wait for the KK bill before considering SB 34 and, rather than doing several bills that deal peripherally with the same subject, do one.

SENATOR CHRIS CHRISTIAENS asked about the location of the KK bill.

CHAIRMAN BENEDICT said it is downstairs.

SENATOR CHRISTIAENS asked which version it is.

CHAIRMAN BENEDICT said it's a combination, a consensus bill.

SENATOR CHRISTIAENS said he would like to co-sign.

CHAIRMAN BENEDICT said that would be alright if he liked the bill and suggested waiting until he read the bill to make up his mind.

SENATOR LARRY BAER asked if it would be in the best interests of the sponsors of all these bills, that the committee wait and look at the bills together and see how they interact with one another, rather than taking them separately, then piece-meal them down the line, and asked if that was CHAIRMAN BENEDICT's intention.

CHAIRMAN BENEDICT said that is his intention, but will give the committee the latitude to do what ever they think is best.

SENATOR FRANKLIN said in the past, when issues like this have come up, bills have been passed then the bills go to a subcommittee to coordinate them, and possibly CHAIRMAN BENEDICT would like to consider.

CHAIRMAN BENEDICT said he would take that into consideration.

SENATOR FRED THOMAS said this bill probably doesn't need to be put into a subcommittee. It is common sense to retain similar bills, of this nature, for other bills coming. If there is a need to act on this bill, he would make a table motion to keep SB 34 in committee for future use, to cluster the bills together so they can be considered together, rather than separately.

Motion/Vote: SENATOR THOMAS moved to TABLE SB 34. The motion CARRIED by ROLL CALL VOTE with SENATORS CHRISTIAENS, ECK and FRANKLIN voting NO.

Discussion: SENATOR ECK asked how many bills that have been heard are included in the KK.

CHAIRMAN BENEDICT said SB 34 is the one in this committee and there are several in the Senate Business and Industry.

SENATOR ECK asked if the wording is identical to the federal bill or to the bill being drafted.

CHAIRMAN BENEDICT said the wording in SENATOR NELSON's SB 34 is in conformance with the federal Kennedy-Kassebaum. The bill being drafted includes the identical language contained in SB 34.

EXECUTIVE ACTION ON SB 144

Motion: SENATOR FRED THOMAS moved SB 144 DO PASS.

Amendments: CHAIRMAN BENEDICT asked if there are amendments.

Motion: SENATOR THOMAS moved the amendments (SB014401.asf) DO PASS. He said they are consensus amendments, agreed to by the OB/GYNs, the insurer entities, and everyone who testified on the bill. (SB014401.asf) (EXHIBIT 4) The auto dealers withdrew their opposition. He said the amendments clarify that the bill applies only to covered services in a given health benefit plan and self referral is confined within the benefit plan network, reclarifying that participation of OB/GYNs as primary care is condition upon physicians meeting the same credentials, and the health plan not being required to employ a specified number if an insufficient number are willing, allows the health plan to limit self referral according to medical guidelines, and clarifies reimbursement of OB/GYNs.

SENATOR FRANKLIN said there was a later consensus on another issue between the insurers and Jacqueline Lenmark, which takes out the phrase "under supervision." She said the Advanced Practice Registered Nurses (APRN) don't practice under supervision.

CHAIRMAN BENEDICT the discussion should be confined to the amendments before the committee, then they could be amended further, because the motion on the table is to adopt SB014401.asf amendments.

SENATOR ECK said she thinks it is appropriate to amend the amendments.

CHAIRMAN BENEDICT said there would be an opportunity to do that, but first the amendments on the table must be acted upon, then amend the amendments.

SENATOR ECK asked if it is possible to amend the amendments before adopting them.

SENATOR BURNETT said the procedure is to act on the amendments then amend them.

Vote: The DO PASS motion for amendments SB014401.asf PASSED UNANIMOUSLY.

Amendments: **SENATOR FRANKLIN** said there is an amendment taking "under supervision" out because the APRNs do not practice under supervision.

Susan Fox explained the amendments, adding a contingency, SB014403.asf will not work now that SB014401.asf has been adopted.

Motion: **SENATOR FRANKLIN** made a MOTION the conceptual amendments to SB 144 DO PASS, that any place it says "under supervision" be taken out. The reason that is appropriate is APRNs practice under independent scope of practice and do not practice under supervision. In this instance they collaborate with but don't, under law, practice under supervision.

Discussion: **CHAIRMAN BENEDICT** asked if these are consensus amendments or is it something that was just worked out with the OB/Gyns.

SENATOR THOMAS said the amendment makes good sense.

Vote: The DO PASS motion for the conceptual amendments to SB 144 PASSED UNANIMOUSLY.

Discussion: **SENATOR FRANKLIN** said she has two more amendments. The initial motivation for this bill came from OB/GYNs because they are interested in becoming primary care providers, but the Advanced Practice nurses are concerned about the bill. APRNs were put into this bill because OB/GYNs wanted to protect their ability to have APRNs working in collaboration with them in their practice. The APRNs want an amendment that is another issue. She read amendment to insert "New section." (SB014404.asf) (**EXHIBIT 5**) **Jacqueline Lenmark** and the insurers do not like this amendment.

Motion: **SENATOR FRANKLIN** moved the amendments (SB014404.asf) to SB 144 DO PASS.

SENATOR THOMAS asked **SENATOR FRANKLIN** to explain the intent of the amendment.

SENATOR FRANKLIN said if a consumer wants to be a patient of a family practice nurse practitioner, who is able to provide women's health care services plus primary care for such things as colds and flu, they would not be precluded from access to this health care provider in the managed care network of providers.

SENATOR THOMAS said, so, an individual could go to a family practice nurse for OB/GYN services.

SENATOR FRANKLIN said yes.

SENATOR ECK asked if this doesn't require the family practice nurse be part of a plan.

Susan Fox said SB014404.asf amends the amendment, SB014401.asf, then amends the bill. She said **SENATOR FRANKLIN's** amendment would include the nurse practitioners, by definition, in the plan, if they were available and practiced within the geographic service area. It's back to the original language, putting them back into the definition, which amendment SB014401.asf took them out.

Vote: The motion for amendment, SB014404.asf, to SB 144 FAILED with **SENATORS ECK** and **FRANKLIN** voting YES.

Motion: **SENATOR FRANKLIN** moved the amendment, SB014405.asf, DO PASS. (EXHIBIT 6) She referred to page four, line four, saying in the new amended version, it deals with self referral. The new amendment says the covered person requires notification to the plan prior to self referral. The question is, if there is some failure to make that notification, does that mean services can be denied.

Discussion: **SENATOR THOMAS** asked if services could be provided though my plan requires me to notify them, and asked **SENATOR FRANKLIN** if she was saying that would be void.

SENATOR FRANKLIN said what she would like to do is, if notification is not made, for whatever reason, and the person goes directly to their OB/GYN, there would be some sort of penalty or increase of the co-pay, and not just have it denied.

SENATOR THOMAS said he understands what **SENATOR FRANKLIN** is trying to do, but doesn't think the amendments should be changed at this time.

SENATOR LARRY BAER asked **Tanya Ask** if Blue Cross and Blue Shield provides a 24-hour phone for notification of services.

Tanya Ask said there is a 24-hour line for emergency situations. Every HMO is different, but under their plan, a self-referral for an emergency would be covered, but if a person self-refers and doesn't notify the plan because they forgot to get a referral, the claim may be denied. But if the individual come back and explains the situation, it would probably be overturned.

Vote: The DO PASS motion for amendment (SB014405.asf) FAILED with **SENATOR FRANKLIN** voting YES.

Motion: **SENATOR CHRISTIAENS** moved the amendments, SB014402.asf, (EXHIBIT 7) to SB 144 DO PASS.

Discussion: CHAIRMAN BENEDICT asked if this amendment was discussed with those people who have been collaborating on the bill.

SENATOR CHRISTIAENS said he has not, but it was his impression, at the time of the hearing, these amendments are necessary for the Department of Health to continue to require referrals for the Medicaid Passport program.

Mary Dalton, Department of Health, said they had agreed on these amendments.

CHAIRMAN BENEDICT asked why this amendments was not included with the amendments from the OB/GYNs.

Jacqueline Lenmark, Montana Section of American College of Obstetricians and Gynecologists, said these amendments were not included in the comprehensive set of amendments because it's being requested by a public agency, but they had agreed on them.

SENATOR THOMAS asked why this is being done.

Susan Fox said this has two different agency amendments in it. Amendments one and three are the codification that the State Auditors Office identified, and amendment number two is requested by the Department of Health.

CHAIRMAN BENEDICT, clarified, saying, one and three are auditors amendments and two is DPHHS.

SENATOR THOMAS asked why number three is being done.

Susan Fox said it was due to the codification instruction on page five of the bill, codifies it into title 33, chapter 22. Chapter 22 is for disability insurance. The term primary care provider is used specifically under HMO concepts, which is title 33, chapter 31. The State Auditors office said this amendment would make it clear it applies to HMOs and to general disability insurance.

Vote: The DO PASS MOTION for the amendments (SB014402.asf) to SB 144 PASSED UNANIMOUSLY.

Motion/Vote: SENATOR THOMAS moved SB 144 AS AMENDED DO PASS. The motion PASSED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 208

Motion: SENATOR SHARON ESTRADA moved SB 208 DO PASS.

Motion: SENATOR CHRISTIAENS moved the amendments to SB 208 DO PASS.

Discussion: SENATOR ESTRADA asked Larry Akey to explain the amendment. His understanding is the Governor's budget request

anticipates the startup not beginning until October, 1997, but if the program were to start July 1, the Governor's budget request would have to be amended.

Vote: The DO PASS MOTION for the amendments to SB 208 PASSED UNANIMOUSLY.

Motion/Vote: SENATOR ESTRADA moved SB 208 AS AMENDED DO PASS. The motion PASSED UNANIMOUSLY.

{Tape: 2; Side: B; Approx. Time Count: 5:45 PM; Comments: some comments unintelligible due to paper shuffling and other table noise}

EXECUTIVE ACTION ON SB 254

Motion: SENATOR THOMAS moved SB 254 DO PASS.

Motion/Vote: SENATOR THOMAS moved to TABLE SB 254. The motion PASSED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 55

Motion: SENATOR THOMAS moved SB 55 DO PASS.

Discussion: Susan Fox said there were two suggested changes to the amendments. (EXHIBIT 8)

Motion: SENATOR THOMAS moved the amendments to SB 55 DO PASS.

Discussion: SENATOR THOMAS said amendment three should read "insurance producers" instead of insurance agent.

Susan Fox explained amendment four.

SENATOR ESTRADA asked if the sponsor of the bill had agreed to that amendment.

CHAIRMAN BENEDICT said yes.

Vote: The amendments to SB 55 PASSED UNANIMOUSLY.

Motion: SENATOR BAER moved SB 55 AS AMENDED DO PASS.

Discussion: SENATOR ECK said she not only looks at the bill, but looks at the fiscal note, and the fiscal note to the bill is about one million dollars.

Vote: The DO PASS motion for SB 55 AS AMENDED PASSED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 190

Motion: SENATOR THOMAS moved SB 190 DO PASS.

Discussion: **SENATOR CHRISTIAENS** said he is concerned and finds it strange those who supported this bill a couple of years ago are now opposed to it. He asked what has changed and questions whether everything is alright.

SENATOR THOMAS said the calls he had received had to do with the willing provider act, which has no effect, not even closely related. The first he remembers about this was in 1991, involving two hospitals in Billings. One hospital and a provider for the PPO made an agreement, and the PPO had to offer the same to the other hospital, which eliminated the negotiating ability. He asked if the committee wants a bill that eliminates the ability to negotiate. This requires insurers to negotiate, and enter into agreements with specific providers and doesn't have the bid language included. He doesn't think there is a need for the 1991 law and doesn't see that SB 190 creates a problem.

SENATOR ECK asked why the rush to get language out, and what would happen if this bill just sits.

SENATOR THOMAS said he didn't know.

CHAIRMAN BENEDICT said there was some confusion with this bill whether it affect optometrists or chiropractors, and thinks this has been clarified.

SENATOR ECK asked **SENATOR THOMAS** if all those who previously thought they had a problem now don't.

SENATOR THOMAS said he had calls because of a lobbyist who didn't understand the language in the bill, what is was and was not doing. The concern has now been withdrawn.

SENATOR FRANKLIN asked **SENATOR THOMAS** what was said to turn them around. There are some people who are still concerned, such as the APRNs. She asked **Steve Shapiro** if the APRNs are still concerned about this bill.

Steve Shapiro said the Advanced Practice Nurses are still concerned about that new line and are not sure why it was necessary to insert it. The bidding language that is being stricken and inserting that new language can leave out some classes of providers, like the nurses, chiropractors, podiatrists, etc.

SENATOR THOMAS asked **Steve Shapiro** if he thought if they were left out they would no longer be providers of health care to people in the network.

Steve Shapiro said they are concerned the APRNs may be left out of the program. There have been various ways nurses have been included in different insurance programs. Frequently, the way the insurers prefer to do it is to run the bills through a medical doctor. The APRNs want is to be independent practitioners,

providing mid-level health care. It's not a big industry yet, but they don't want the door closed.

SENATOR ECK asked what would happen if the new language on line 22 was left out.

Susan Fox said that language was in existing law before the new subsection 3 was added. It is new language today but was in the law in the past before the bidding provision was included.

CHAIRMAN BENEDICT said this bill returns to pre-1991 law.

Susan Fox said if this language did not exist in the bill it could lead to increased ambiguity and may create more of a problem than it did in the past.

SENATOR THOMAS asked if the language was not included.

Susan Fox said that is correct.

SENATOR CHRISTIAENS asked if this language does exclude classes of providers.

Susan Fox said it may give the latitude to exclude.

SENATOR THOMAS asked if it mandates including anyone.

Susan Fox said she is not sure.

SENATOR THOMAS said for there to be an insurance program there must be providers for health care. He said, to be concerned that someone doesn't have this or that is not that prudent on our part. There must be a full service out there or there will not be a program. He feels there will be so much growth in APR area and will probably do it for a better cost, there will be more benefit for consumers and for insurers programs to use that.

SENATOR BAER said he has been listening to the discussion and still doesn't know the reason for this bill and wants to understand the purpose of the bill and what it will do.

CHAIRMAN BENEDICT asked **Tom Ebzery** to explain why this bill is here.

Tom Ebzery, St. Vincent Hospital, said in 1993, when any willing provider language was taken out, resulting in a dispute. The issue is, can we do the PPO process by competitive bidding to get more people involved. These amendments were on books in 1993. They found out with the competitive bidding process, the PPO could make such unreasonable requirements that no one could submit a bid. There was a loophole and no one would participate. There is no hidden agenda here, and basically is thwarting the negotiation between the providers, because of unreasonable conditions placed on it. This doesn't work because it is

desirable to keep competition. As far as some providers being excluded, they were included in this in 1993, and that is not the issue here. The issue is whether you want to keep the competitive bidding and keep the process going and nobody participates and can't, that's why it's being taken out. There is no rush to judgement.

SENATOR ECK referred to page 22, item 3, and asked why it is needed.

Tom Ebzery said that language was in the bill prior to 1991.

CHAIRMAN BENEDICT said he intended to vote in favor of the bill, because most of the lobbying done against this bill by lobbyists who, admittedly by some, knew nothing of what the bill does.

Vote: The DO PASS motion for SB 190 PASSED with SENATORS CHRISTIAENS and FRANKLIN voting NO.

EXECUTIVE ACTION ON SB 61

Motion: SENATOR CHRISTIAENS moved SB 61 DO PASS.

Motion: SENATOR BOB DePRATU moved the KEATING amendments (SB006101.asf) DO PASS. (EXHIBIT 9)

Discussion: Susan Fox explained the amendments. They pare down the bill and remove the old critical point violation civil penalty areas. There are two different kinds of fees, a licensure fee (amendment 15) and plan review fee.

CHAIRMAN BENEDICT said these are consensus amendments between the Department of Health and restaurant association.

SENATOR CHRISTIAENS asked if the fees are high enough to take care of the necessary work and that inspections will take place.

Kathleen Martin, Department of Health, said these fees are as high as some of the local areas would like but are an improvement over the flat fee of \$60.00. It will provide more resources for the local health departments to do inspections.

SENATOR CHRISTIAENS asked if this is an unfunded mandate to the local counties without giving them money to pay for the program.

SENATOR ECK said sanitarians testified for the bill and had letters of support from other sanitarians. It's considerably better than present and probably don't yet know how the risk basis for fees is going to work.

SENATOR CHRISTIAENS said he does not have a problem with the bill except for the fees and doesn't think bills should be passed that don't pay for themselves.

SENATOR THOMAS asked **Kathleen Martin** to address the unfunded mandate issue.

Kathleen Martin said several of the county sanitarians testified in support of this bill and the Department of Health has heard from just about all of the sanitarians in support of this bill. There was serious underfunding in the past and this bill will give considerable resources for this program.

SENATOR CHRISTIAENS said he wants this bill to pass but doesn't want to go home and have his county health department tell him the Legislature sent work to them without enough money to pay for it. Cascade county supports this bill but Cascade county is one of the larger counties that has the personnel and maybe the money to run the program.

SENATOR BAER said this bill looks like the restaurant version of the contractors bill, he's not going to go through that again, is opposed to the bill, and wants his vote registered against the bill.

SENATOR ESTRADA said the fees have gone from \$60.00 to \$250.00 and if the fees are set any higher, she will not vote for the bill.

CHAIRMAN BENEDICT explained the fee schedule. There are two different levels of fees, one for plan review of the facility with a fee up to \$250.00 and license fees range from \$50.00 to \$200.00

SENATOR ECK referred to page 10 of the bill, saying this really doesn't set a fee but asks the department to decide what the proper cost should be.

Susan Fox said the Department of Health wanted to get rid of the \$60.00 fee, but because of the administrative rule making process, it will take some time and they will have to develop the five levels of risk. They needed to have a fee in existence until the fee schedule is established and cover them until the new fees are in place.

Vote: The DO PASS MOTION for the KEATING AMENDMENTS (SB006101.asf) PASSED UNANIMOUSLY.

Motion: **SENATOR ECK** moved the Belcher amendments to SB 61 DO PASS. (EXHIBIT 10) The motion PASSED UNANIMOUSLY.

Susan Fox explained the amendments which clarify risk levels and wild game.

Vote: The DO PASS motion for the Belcher amendments (EXHIBIT 10) CARRIED UNANIMOUSLY.

Motion: SENATOR THOMAS moved SB 61 as amended as amended DO PASS.
The motion PASSED with SENATOR BAER voting NO.

Discussion: SENATOR FRANKLIN asked about the intent of bills, whether to table SB 128, SB 156, and SB 162 and keep them in committee to reconsider actions and bring them out when other like bills come out and consider them in a subcommittee.

CHAIRMAN BENEDICT said his intention is to hold SB 128 until the committee sees other managed care bills, then make a decision at that time which bill will move forward.

SENATOR FRANKLIN said, with that information, she thinks either CHAIRMAN BENEDICT or herself should visit with SENATOR HARGROVE and see what he wants to do.

CHAIRMAN BENEDICT suggested SENATOR FRANKLIN do that. More executive action will be taken on Friday.

ADJOURNMENT

Adjournment: 6:11 PM



SEN. STEVE BENEDICT, Chairman



KAROLYN SIMPSON, Secretary

SB/ks