

MINUTES

MONTANA SENATE  
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON PUBLIC HEALTH, WELFARE, & SAFETY

Call to Order: By CHAIRMAN STEVE BENEDICT, on March 7, 1997, at  
3:39 PM, in 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  
Karolyn 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 256, HB 302, 2/24/97  
HB 297, 3/4/97  
Executive Action: None

*{Tape: 1; Side: A; Approx. Time Count: 3:39 PM}*

HEARING ON HB 297

Sponsor: REP. MATT McCANN, HD 92, HARLEM

Proponents: Susan Good, MT Academy of Dermatology  
Dr. David Murdock, Kalispell  
Linda Garberg, teacher, Whitefish

Opponents: David Lechner, MT Academy Family Practice  
Jim Crichton, Blue Cross and Blue Shield  
Bill McDonald, MT Assn. Health Care Purchasers  
Joyce Brown, Department of Administration

Kay Wagner, Yellowstone Community Health Plan  
Anita Bennett, Montana Logging Assn.  
Tom Hopgood, Health Insurance Assn. America  
Don Allen, MT Benefit Plan  
Steve Turkeweiz, MT Auto Dealers Assn  
Tanya Ask, Blue Cross and Blue Shield

Opening Statement by Sponsor:

REP. MATT McCANN, HD 92, Harlem, said HB 297 is an act providing an insured person's access to dermatological services without having to first get a referral. It has a lot to do with managed care.

Proponents' Testimony:

Susan Good, representing Montana Academy of Dermatology, submitted signed petitions from Billings, Helena, Bozeman, Missoula, and Butte in support of HB 297. (EXHIBITS 1-5)

Dr. David Murdock, Dermatologist, Kalispell, said he represents the views of all the dermatologists in Montana and also represents their patients with skin diseases. HB 297 preserves the rights of patients to see a dermatologist, regardless of their health care insurance. Most HMOs require a patient to first see their primary care gate keeper, even if they know the patient needs to see a dermatologist or have a chronic skin disease. The unique thing about skin diseases is that patients can see it and can appropriately self refer to a dermatologist, if they so choose. He thinks this bill has been misunderstood by some primary care physicians because they don't want to see everyone who has a skin problem. They can't possibly do that and want primary care physicians to take care of the skin disease they are able to, but patients must be in charge of that decision. The issue is cost: is it more cost effective to see a dermatologist instead of a primary care for the treatment of a skin disease. The answer is yes. The diagnosis is accurate and the skin disease is less expensive to treat. He gave summarized studies of dermatologists diagnosing and treating a skin disease versus a primary physician, and compared the cost. The problem with a patient seeing a primary care physician is they don't always refer, when needed, a patient to a dermatologist for the treatment of skin disease and many HMO's discourage referrals because of a financial incentive. The patient's preference is often overlooked in their desire for direct access to see a dermatologist.

Only OB/GYNs and Ophthalmologists are the other specialists where direct access might be appropriate. Most specialties do not want direct access and the possibility of this bill opening up the flood gates to other specialties is unwarranted. HMOs will find direct access to a dermatology is cost effective and will enhance the HMO's marketability among the patient population. The skin disease diagnostic accuracy of dermatologists is much higher than for primary care physicians. He compared the education of dermatologists and primary care physicians. Skin disease afflicts

31% of the population and accounts for 7% of all patient visits to a physician, second only to trauma as a cause for occupational disability. The incidence of skin cancer is skyrocketing. It is estimated that one in four Americans will develop skin cancer in their life time, and one in 85 will develop a melanoma skin cancer, which is the most serious types of cancer. If the skin cancer is caught in the early stages, it is much less expensive to treat. If melanoma is not caught in the early stages, the treatment is more drastic and much more costly. (EXHIBIT 6) He said the situation described in the newspaper column to Ann Landers is not rare. (EXHIBIT 7)

**Linda Garberg, teacher, Whitefish,** said she was diagnosed with a nodule melanoma four to five months after having her regular physical examination, which she has bi-yearly. None of her regular physical exams included a skin examination. The treatment required the most drastic and costly surgery to give her a chance for survival. The cost of her surgery was about \$10,000.00 but that is just a fraction of the total cost if additional cancer treatment is necessary. An early stage melanoma, diagnosed and treated by her dermatologist, would probably have gone undetected by her primary care physician. HB 297 would be validated if it were only a money issue, but, for her, this goes beyond being a money issue. Anything that limits the access of an individual to early detection of melanoma is morally irresponsible. This does not affect lives but saves them.

#### Opponents' Testimony:

**David Lechner, representing Montana Academy of Family Practice,** said there are about 250-275 board certified family practitioners in Montana who are opposed to this bill. They have training from dermatologists, and are able to manage about 95% of all problems that come into the office.

**Jim Crichton, Medical Director, Blue Cross and Blue Shield,** said HB 297 sounds like a good for patients to have direct access, but health care costs are increasing. Costs can be controlled by managed care programs. They want to maintain the quality of health care. He said HB 287 is more of a turf and money issue than cost containment or access issues.

**Bill McDonald, Executive Director, Montana Association of Health Care Purchasers,** said they oppose HB 297 and want to see all Montanans receive the highest quality of health care possible. (EXHIBIT 8)

**Joyce Brown, Department of Administration,** said she administers the State Employee Benefit Plan. During the last three years, health care costs for most public employees have been held under 2% across the country due to competing managed care plans. The Montana State Employee Benefit Plan has experienced 8.8% increases in the last three years and Blue Cross Blue Shield has been using a trend factor of 16% because managed care has not

developed in Montana like it has in the rest of the country. HB 297 will hinder the development of HMOs in Montana. (EXHIBIT 9)

**Kay Wagner, Yellowstone Community Health Plan**, described the makeup of the board in their HMO and said theirs is not the typical HMO. The HMO concept saves money by reduces duplication, inappropriate utilization, and over utilization of services. She said Medicare and Medicaid have found that direct access, to any and all kinds of care, is not cost effective so they are moving their membership towards managed care. (EXHIBIT 10)

**Anita Bennett, Montana Logging Association**, said they oppose HB 297. The issue to their members is the price of premiums they can afford and still have a quality policy. (EXHIBIT 11)

**Tom Hopgood, Health Insurance Association of America**, said he has heard that cost of health insurance is the issue. The insurance industry is looking for ways to cut costs. Utilization review, preferred provider agreements, HMO, and managed care cut costs. There have been many debates mostly spearheaded by providers who say their service is essential and needs to have special provisions made for them in these cost cutting areas. HB 297 does not cut costs but will increase costs.

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**Don Allen, Montana Benefit Plan**, said they oppose HB 297 and agree with the testimony given by **Tom Hopgood**.

**Steve Turkeweiz, Montana Auto Dealers Association**, said they oppose HB 297.

**Tanya Ask, Blue Cross and Blue Shield**, said there was a bill before the committee on network adequacy and quality assurance. Monitoring measures are very important and monitoring measures are in place in the fee for service indemnity environment, which the managed care industry feels important to make sure managed care delivers quality health care. Early in the Session, a managed care bill was heard, other providers wanted to be included in the direct access. At that point it was the physical therapists, so the comments that it would be only a few specialists is not valid.

**Questions From Committee Members and Responses:**

**SENATOR FRED THOMAS** described his son's medical problems, their visits to several doctors to find answers, then they were referred to a dermatologist then an allergist. He said they did not need direct access to see a dermatologist because they didn't know what the problem was, and neither did anyone else. He asked if direct access is just for dermatologists, how would HB 297 will help.

**Dr. David Murdock** said he sees two to three patients a day who self refer because they have seen their family physician many

times for treatment of a skin disease, spending hundreds of dollars on medications, without relief from the condition. Full skin exams are not a part of physical exams by primary care.

**SENATOR THOMAS** asked if primary care physicians are refusing to refer patients.

**Dr. David Murdock** said many primary care physicians do refuse to refer. HMO Montana may be the most virtuous HMO in the country, but there have been stories about HMOs where there is a direct financial disincentive for family physicians to refer. The family doctor gets paid more at the end of the year, the less patients they refer and less is spent for patient care. That may or may not be true with HMO Montana, but it is true for many HMOs around the country.

**SENATOR THOMAS** said one of his constituents asked him to support HB 297 because of the importance in seeing his dermatologist.

**SENATOR THOMAS** asked the constituent when he had last seen his primary care physician and asked for a referral. The constituent replied it was 20 years ago. **SENATOR THOMAS** asked how this bill affects the problem and what is the problem.

**Dr. David Murdock** said currently, 95% of this patients self refer. The problem is there are nine HMOs applying to do business in Montana resulting in dermatology patients unable to self-refer if they belong to one of these programs.

**SENATOR CHRIS CHRISTIAENS** asked how many states with HMO's allow direct access.

**Dr. David Murdock** replied, about 85% of the Kaiser system, which is in California, Washington, and eastern states, and at present, only one state, Georgia, that has a law like this. There are many states where Kaiser has plans.

**SENATOR EVE FRANKLIN** asked how many pending applications there are for managed care.

**Claudia Clifford, Auditors Office,** said they have two applications pending and a modification for an existing HMO.

**CHAIRMAN STEVE BENEDICT** asked what type of medical training do dermatologists receive, and whether it is comparable to a family physician.

**Dr. David Murdock** said dermatologists are medical doctors (MD) first with a minimum of one year of general medical training and three additional years of specialization in dermatology.

**CHAIRMAN BENEDICT** asked without this bill, what would prevent patients from choosing dermatologists as their primary care physician.

**Dr. David Murdock** said dermatologists limit their practice to dermatology. Some of his patients ask him to write refill prescriptions for other conditions, but they refer many patients back to the general practitioner.

**CHAIRMAN BENEDICT** asked if, knowing that managed care is coming, he could expand his practice so that he is taken care of.

**Dr. David Murdock** said he went into dermatology so he wouldn't have to do other types of medical care.

**SENATOR SHARON ESTRADA** said she had received a letter from a past representative from Billings, Jack Sands, and asked **Kay Wagner** to read a portion of the letter and respond. (EXHIBIT 12)

**Kay Wagner** said she didn't know what plan they have, but generally, once there is an established relationship with the primary care physician, it doesn't always require an office visit to obtain a referral. All that is required is a phone call to their primary care physician for referral to see a specialist.

**SENATOR DOROTHY ECK** asked about managed care legislation and if most HMO plans allow referral upon phone request from a regular patient.

**Claudia Clifford** said the legislation, carried by **SENATOR BENEDICT**, quality assurance and network adequacy, would address whether or not a network included dermatologists, so those services available as part of the plan. It would not necessarily address the care of dermatological services or other specialty care.

**SENATOR ECK** asked if, under the Blue Cross managed care plan, a patient goes to his primary care physician and is not satisfied with the examination of his problem and went to go to a dermatologist, would that be covered.

**Tanya Ask** said under HMO Montana, patients ask for a referral and, in most instances, the primary care physician does refer. Once a relationship has been established between a patient and physician, the patient can phone the physician for a referral to a specialist.

**CHAIRMAN BENEDICT** asked if the patient self-refers after seeing the primary care provider, would that still be covered.

**Tanya Ask** said patient self-referrals normally are not covered, but if the patient later calls the primary care physician a retrospective referral frequently is given.

**SENATOR ECK** asked if a patient first sees a dermatologist and has other health problems, is a medical report sent to the primary care physician.

**Tanya Ask** said normally there is communication between physicians caring for patients.

**SENATOR LARRY BAER** asked if there is a referral fee when the primary care physician refers a patient and if this practice is isolated to certain specialties, such as surgery, and if this is utilized in dermatology.

**Dr. David Murdock** said he doesn't know what is meant by a referral fee, but there is an office visit fee when a patient comes in to see about a referral and there is a consultation fee.

**SENATOR BAER** gave a hypothetical situation where a general practitioner refers a patient to see a surgeon for a surgical consultation and a consult or referral fee is charged, that is sometimes split between the specialist and the primary care physician. He asked how wide spread this practice is and if he, in his specialty, and other dermatologists use that procedure.

**Dr. David Murdock** said he thinks that is called fee-splitting but it does not happen in dermatology.

**Closing by Sponsor:**

**REP. MATT McCANN** said the industry does not want this because of cost but direct access to dermatologists is not going to increase costs. It all comes down to a philosophical argument about the gate-keeper in HMO opening that door. Anyone who joins an HMO is within their framework because the HMO write the rules, but the individual has the choice to quit the HMO and get their own policy, but many Montanans will not be able to make that choice. At this point, the playing field and terms for HMOs can be established because managed care is not running Montana, yet. They are coming into Montana and it may not be possible to make adjustments in the future, 10-20 years from now. He said the rules need to be made for the people of Montana before the HMOs come in.

Note: the hearing recessed from 4:41-4:53 PM

**HEARING ON HB 302**

**Sponsor:** **REP. JOHN BOHLINGER, HD 13, Billings**

**Proponents:** **Thad Langford, dentist, Bozeman**  
**Mary McCue, MT Dental Association**

**Opponents:** **None**

**Opening Statement by Sponsor:**

**REP. JOHN BOHLINGER, HD 14, Billings**, said HB 302 is at the request of a medical doctor. This legislation will require the development of a program or protocol to assist and rehabilitate dentists who are impaired by their alcohol or drug use. This will not require new funding from the State of Montana. This program

is identical to that which governs the medical profession. It is a program established to assist and rehabilitate licensed physicians who have been found to be physically or mentally impaired by their use of drugs or alcohol. Similar legislation exists to protect the nursing profession. Doctors and nurses urge the passage of this law because of a concern for the health care consumers and the need to provide effective safe health care. The other concern is for the physician or nurse whose life and welfare has been threatened by their use of drugs and alcohol. The provisions of this legislation are to establish a rehabilitation program or protocol for dentists and a mechanism for reporting of incompetence or unprofessional conduct to the professional standards review organization and Montana Dental Association. At this point, the dentist can voluntarily submit to an evaluation for substance abuse or the board can compel the licensee to complete an evaluation for substance abuse, if the licensee does not do so voluntarily. It also provides immunity from civil lawsuit to the person or organization which, in good faith, provided information to the State Board of Dentistry. Based on the experience his son had with drug and alcohol abuse and then rehabilitated, he said rehabilitation programs work and can restore the individual's life.

**Proponents' Testimony:**

**Thad Langford, dentist, Bozeman,** said this is his second year serving on the dental board. This bill will help assist in dealing with recalcitrant dentists who the board strongly suspects of having a drug or alcohol problem, to get an evaluation. The protocol in HB 302 has worked well for the medical profession and is needed in the dental profession.

**Mary McCue, representing Montana Dental Association,** said she will answer questions about the amendments. The dental association thinks this is a good bill because it will help impaired dentists to get help before the Dental Board must act. She referred to language on page 2, section 3, saying this bill does provide due process for dentists to have an evaluation. They support the amendments because they narrow the scope of the bill to dealing only with circumstances involving drugs and alcohol. The original bill included mental illness and chronic physical illness, and that was not the original intent of the bill.

**Opponents' Testimony:** None

**Questions From Committee Members and Responses:**

**SENATOR CHRIS CHRISTIAENS** asked about the present procedure for dealing with dentists with drug and alcohol problems.

**Dr. Langford** said currently, if a dentist is unable to practice due to mental illness or disability, a complaint will be filed with the Dental Board leading to an evaluation of the individual and appropriate treatment.



SENATOR CHRISTIAENS asked if, without this language, there is nothing the board can do to compel the dentist to seek treatment. He is particularly concerned about the dentist who is in the beginning stages of Alzheimers disease.

Dr. Langford said someone would have to file a complaint.

SENATOR CHRISTIAENS asked Dr. Langford if he had a problem if that remained in the bill.

Dr. Langford said he wouldn't have a problem with that but doesn't know what the legal ramifications would be with the bill being broader than the present.

SENATOR CHRISTIAENS asked Susan Fox about the language in the original bill and wondered if it was beyond the scope of the title of the bill as drafted. Susan Fox said she would check on it.

SENATOR JIM BURNETT asked if the individual is not willing to go to treatment, what good is it.

Dr. Langford said the premise of the bill is, if the individual has a problem, is identified as having a problem, and if the individual refuses to have an evaluation the board can revoke the license to practice. He referred to page 2, line 10, reasonable aftercare. If the individual submits but doesn't go through with the program or does not complete the program, the board can revoke the license.

SENATOR SHARON ESTRADA asked REP. BOHLINGER if he had said there is no fiscal impact of the program.

REP. BOHLINGER said yes.

SENATOR ESTRADA read a portion of the fiscal note.

REP. BOHLINGER said the \$36,000.00 to establish the program will be paid by dentists from their license fees.

Closing by Sponsor:

REP. JOHN BOHLINGER thanked the committee and said there is sufficient evidence that treatment programs do work.

SENATOR ESTRADA will carry the bill.

{Tape: 2; Side: A; Approx. Time Count: 5:10 PM}

HEARING ON HB 256

Sponsor: REP. ELLEN BERGMAN, HD 4, Miles City

Proponents: Rose Hughes, MT Health Care Assn.  
Jean Ballantyne, MT Board of Nursing

Julie Barr, RN, Hillbrook Care Center, Clancy  
Bill McCarthy, RN  
Linda Stedman, Bureau Chief  
Vickie Jo Reeves, LPN  
Bob Olson, MT Hospital Association  
Barbara Booher, MT Nurses Association  
Michelle Kansier, LPN

Opponents: None

Opening Statement by Sponsor:

REP. ELLEN BERGMAN, HD 4, Miles City, said this bill will allow Licensed Practical Nurse (LPN) to act in a charge nurse capacity in certain long term care facilities. It will not be a supervisory capacity but in a charge nurse capacity, in charge of a wing or a ward, rather than an RN. This concerns nursing homes and will mostly affect rural areas that may have trouble getting Registered Nurses for all shifts. The LPN will not be making all decisions that an RN must make and must be supervised by an RN, but will direct nurse aids with their duties. RNs do not have any better training in management or supervision than LPNs.

Proponents' Testimony:

Rose Hughes, Executive Director, Montana Health Care Association, representing nursing homes throughout Montana, presented written testimony in support of HB 256. It clarifies LPNs acting as a charge nurse is in the scope of practice of an LPN and does not change current practice. (EXHIBIT 13)

Jean Ballantyne, President, Montana Board of Nursing, presented written testimony in support of HB 256. (EXHIBIT 14)

Julie Barr, Registered Nurse, Director of Nursing, Hillbrook Care Center, said she has supervised many Licensed Practical Nurses in the roll of charge nurse. There are many dedicated LPNs working in long term care and she supports this bill so they can continue working in that role.

Bill McCarthy, Licensed Practical Nurse, said he supervises several facilities in Montana. They have found LPNs are a very successful way to provide quality care at a very reasonable price, which is 25-30% less than RNs. They follow the direction and care plan written by the Registered Nurse.

Linda Stedman, Bureau Chief, Certification Bureau, Department of Public Health and Human Services, said the bureau does annual inspections in long term care facilities to see if they are meeting the federal regulations. As was stated in previous testimony, this has been a practice that has been going on in Montana for several years. They have not found any problems when LPNs serve in the charge nurse capacity.

Vickie Jo Reeves, LPN, works as Accrediting Records Director in Park Place. She reviews charts in the patient care plan and to

see that the scope and duties of RNs and LPNs fit within the guidelines of the regulations.

Bob Olson, Montana Hospital Association, said they support HB 256.

Barbara Booher, Executive Director, Montana Nurses Association, said they support HB 302. LPNs as charge nurses is a good idea in the long term care setting.

Michelle Kansier, LPN, said she has been an LPN for 14 years in a charge role. She supports HB 256.

Opponents' Testimony: None

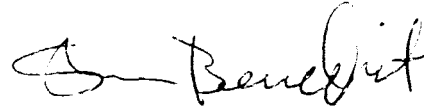
Questions From Committee Members and Responses: None

Closing by Sponsor:

REP. ELLEN BERGMAN said she has heard from many nursing homes who support this bill. The support of the nurses and Board of Nursing is a good recommendation for this bill.


ADJOURNMENT

Adjournment: 5:26 PM



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SEN. STEVE BENEDICT, Chairman



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KAROLYN SIMPSON, Secretary

SB/ks