

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON PUBLIC HEALTH, WELFARE, & SAFETY

Call to Order: By CHAIRMAN STEVE BENEDICT, on March 14, 1997, at
3:46 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)

Members Excused: Sen. Fred Thomas (R)

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 502, 3/7/97
HB 412, 3/5/97
SJR 16, 3/10/97
Executive Action: None

{Tape: 1; Side: A; Approx. Time Count: 3:46 PM}

HEARING ON SJR 16

Sponsor: SENATOR DEBBIE SHEA, SD 18, Butte

Proponents: Charles Briggs, Area Agency on Aging, Helena
Mike Hanshew, DPHHS
Verner Bertelsen, MT Senior Citizens Assn.
James Larsen, Meriweather Unit

Opponents: None

Opening Statement by Sponsor:

SENATOR DEBBIE SHEA, SD 18, Butte, said we have gone from a controversial act to a resolution. Because people are living longer and are choosing to stay in their homes, many will need assistance in their everyday living. This resolution is to initiate a study to address the concerns with which we will be faced. This study is important because there is a potential for abuse of the elderly by their care givers.

Proponents' Testimony:

Charles Briggs, Director, Area Agency on Aging, Helena, said, with the increasing need for home care as part of the long-term care continuum, the agency is concerned about the risk for abuse and exploitation of older persons by unqualified care providers. (EXHIBIT 1)

Mike Hanshew, Administrator, Senior and Long-term Care Division, Department of Public Health and Human Services, said this study is the appropriate way to address the standards that should be set for home care in Montana, for both the public-funded programs and those paying for their own care. This sector of long-term care is exploding because people want to stay in their own homes and want good and affordable care. One of the issues to be addressed by this study is the protection of people from abuse and exploitation, but they don't want to set up standards that, on paper protect people, but in reality they don't work or make it prohibitively expensive.

Verner Bertelsen, representing Montana Senior Citizens

Association, said they strongly support this study because there have been occasions where a care-giver is brought into the home and they become a part of the family, making the person needing the long-term care vulnerable to abuse and exploitation. They would like to see the results of the study integrated with programs presently in place, so it won't cost the state a lot of money, and when a home-companion is needed, the individual can go to a registry to get information of people who have been screened to provide care. It is very hard to find someone to provide home-care in rural areas and maybe it's because there is no registry of people to provide care.

James Larsen, Meriweather Lewis Unit, said he has some insight about this bill. People who have Alzheimers can't defend their rights and people in mental institutions who can't defend their rights. There is no social police force in this country to police social activities.

Opponents' Testimony: None**Questions From Committee Members and Responses:** None**Closing by Sponsor:**

REP. DEBBIE SHEA said **Barbara Larsen** is a proponent but couldn't be here. She thanked the committee for the hearing.

HEARING ON HB 412

Sponsor: REP. ELLEN BERGMAN, HD 12, Miles City

Proponents: Greg Van Horssen, State Farm Insurance
Kathleen Martin, DPHHS

Opponents: None

Opening Statement by Sponsor:

REP. ELLEN BERGMAN, HD 12, Miles City, said this bill is not controversial. It allows an out-of-state health care provider order an HIV test for insurance companies. There is a new test for HIV which is a saliva test which is quicker and reportedly more accurate. Following normal procedure, insurance companies require testing for HIV before issuing life insurance policies want to be able to use the saliva test instead of a blood test. This is coming before the legislature because of the term "health care provider" because the sample must be sent to an out-of-state laboratory, so it crosses the state line, which then involves another health care provider on the other side.

Proponents' Testimony:

Greg Van Horssen, representing State Farm Insurance, said they recognize the important changes in the science of testing for HIV. The saliva test was developed as an alternative to the blood test for HIV. This self-administered test is 99.97% accurate and is approved by the FDA. It allows insurers to utilize this new technology, but under the specific provisions of the AIDS Education Act, an HIV test can only be ordered by a health care provider. The definition of the health care provider in that Act requires the health care provider be licensed in Montana. The change requested by this bill is, when an individual purchases insurance over a threshold amount, the insurance company physician would tell the individual to self-administer the test. With the amendments, a properly licensed doctor from another state, on the behalf of insurer, can direct the insured to do the saliva test which is then sent to a lab out of state for testing. He said he represents the State Farm Insurance Company and is not speaking for any laboratory or other insurance company.

Kathleen Martin, Chief Communicable Disease Control and Prevention Bureau, Department of Public Health and Human Services, said the Department supports HB 412 for the reasons previously stated by the sponsor and Mr. Van Horssen. As of April 1, the saliva test will be available at the Department of Health. This amendment to the statute is needed because current law only allows blood testing for HIV.

Opponents' Testimony: None

Questions From Committee Members and Responses:

SENATOR CHRIS CHRISTIAENS asked if all new applicants for life insurance are required to have an HIV test, and if there are criteria for the testing.

Greg Van Horssen said the criteria are governed by thresholds of age and/or the amount of insurance. Hypothetically, State Farm uses the age range of 18 to 50 years and anyone who applies for \$50,000.00 or more is tested. Anyone who meets this criteria must be tested.

SENATOR CHRISTIAENS asked if the rule was still in place for a person who has purchased a life insurance and lives beyond 3 years, then dies from AIDS, the policy pay because it was not a pre-existing condition?

Greg Van Horssen said he didn't know the current status of that contractual language, but will get the information.

SENATOR CHRISTIAENS asked if this bill does anything to relieve the liability, because there are a number of provisions in the law for penalties for the inappropriate disclosure of information.

Greg Van Horssen said confidentiality remains intact.

SENATOR FRANKLIN asked if when the out-of-state licensee orders the test, the individual can get the results sent to their own health care provider.

Greg Van Horssen said yes, that is a requirement and is part of their written consent.

SENATOR DePRATU asked how the test is administered to be sure there is no substitute of the test sample.

Greg Van Horssen said it is administered by the applicant in the presence of an insurance agent.

Closing by Sponsor:

REP. ELLEN BERGMAN said, in the House hearing, there was a question about the confidentiality of sending the samples out of state, but there is no problem with this just because it is going out of the state.

HEARING ON HB 502

Sponsor: **REP. LOREN SOFT, HD 12, Billings**

Proponents: **Dan Anderson, DPHHS**

Gloria Hermanson, MT Psychological Assn.

Andrea Merrill, Mental Health Assn. of MT

Kathy McGowan, MT Council of Mental Health Centers

Bob Olson, MT Hospital Assn.

Bob Torres, MT Chapter National Assn. Social Workers
Vickie Frazier, Deputy County Attorney, L & C County

Opponents: Lonnie Olson, MT Advocacy Program
Bob Caldwell, Psychiatrist, Helena
Jill Long, self
Kathy Standard, Meriweather Lewis Institute
Suzanne Thweatt, self
Wesley Alcorn, MT Advocacy Program

Opening Statement by Sponsor:

REP. LOREN SOFT, HD 12, Billings, said HB 502 is a mental illness voluntary commitment bill which addresses the issues of mental disorders and how the needs of those with mental disorders are addressed. This bill is needed because the Community Commitment Law will sunset in July, 1997. The whole mental health treatment delivery system is going to change with the start of mental health managed care on April 1, 1997.

The purpose of HB 502 is to continue to provide for community commitment for persons with mental disorders which allows for early intervention and to remain in the community in less restrictive and less expensive and more appropriate settings than the Montana State Hospital. It also allows for a commitment of 90 days instead of 30. Involuntary treatment of an individual is allowed when that person's mental disorder will result in deterioration to the point where he can no longer care for himself, if the condition is left untreated. The term "seriously mentally ill" is replaced with "person who suffered from a mental disorder." Referring to section 16, he said the current statutes are unclear regarding the consent for mental health treatment for minors. If a minor is at least 16 years old, a parent or guardian can see that the minor remains in treatment if they think that treatment is necessary, without resorting to a court order. Section 25 outlines who is financially responsible for those who are involuntarily committed and which is the responsible county of residence at the time of commitment because they are responsible for up to, and including, the transportation to the treatment facility. Pages 29-30 broadens the definition of potential community based on options which judges can utilize, and allows for involuntary medication by a physician, designated by the court or physician from a treatment facility to prevent further deterioration or hospitalization. Section 29 allows the mental health facility to maintain a current photograph of the patient for the protection and safety of the individual.

CHAIRMAN BENEDICT turned the Chair over to SENATOR JIM BURNETT.

Proponents' Testimony:

Dan Anderson, Administrator, Addictive and Mental Disorders Division, Department of Health and Human Services, said the Department brought this bill to REP. SOFT and came from a committee composed of providers, consumers, family members, and state agency people to primarily look at the sunseting of the

Community Commitment Law. They decided to reformulate the law and look at how involuntary commitments are made. This bill deals with a controversial topic, serious mental illness, parental consent, and involuntary treatment. This is a major move forward and will result in a better mental health law. He outlined sections of the bill and the changes made to current law.

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Gloria Hermanson, Montana Psychological Association, said they support HB 502 as it stands. It has been in the works for a long time and there has been extensive opportunity for input to this legislation.

Andrea Merrill, Executive Director, Mental Health Association of Montana, said they support this bill. Care needs to be taken with legislation and there are quite a few checks and balances in this bill. Listen to consumers because they know what the problems are.

Kathy McGowan, Montana Council of Mental Health Centers, said they support this bill and the comments made by **Andrea Merrill**.

Bob Olson, Montana Hospital Association, said they support HB 502 and have worked with the Department to develop more community-based services as an alternative to the Montana State Hospital.

Bob Torres, representing Montana Chapter National Association Social Workers, said they support HB 502 for the reasons previously stated. He wanted to state the concern of family members of the seriously mentally ill who require strict methods to deal with their illness. Until now family members had no recourse until the patient was a danger to himself and others to get treatment, but now family members can request commitment.

Vickie Frazier, Deputy County Attorney, L & C County, said they are responsible for filing the petitions for commitment brought to them. The Montana County Attorneys support this bill. It somewhat simplifies how commitments have been done and, under current law the patient would be sent to Warm Springs, but now there is a community-based option. There will be only one category of mental illness and a judge can determine the most appropriate facility for treatment of the individual.

Opponents' Testimony:

Lonnie Olson, Attorney, Montana Advocacy Program, said they oppose HB 502, but their opposition is not just on the law. They encourage early intervention for persons with mental illness. This bill doesn't provide for the right to privacy as it impacts informed consent for treatment. They would like to have an amendment that would require the district court to make a finding during a civil, involuntary commitment hearing, that the respondent is incompetent, incapable of making medical decisions before an order for forced treatment. (EXHIBIT 2)

Bob Caldwell, Psychiatrist, Helena, said he is involved, in and does all of the evaluations, for involuntary commitments in Lewis and Clark and Gallatin Counties. Many of the changes of HB 502 are necessary, but he is concerned that informed consent is not included. Informed consent consists of an individual's understanding the nature of his condition, the proposed treatment, alternative to treatment, including no treatment, and be able to rationally weigh the alternatives, with the rational person's standards, be able to make rational choice of treatment. All of the people who meet the criteria for commitment to either the state hospital or community facility, and are refusing treatment, probably are not competent to give informed consent and are appropriately, involuntarily medicated.

Jill Long, self, said life-saving medications are abused at mental health facilities when patients are involuntarily medicated without determining whether the individual is competent to give informed consent. (EXHIBIT 3)

Kathy Standard, President, Meriweather Lewis Institute, said the major concern for those with mental illness is the issue of informed consent. She can support HB 502 only if informed consent is included. (EXHIBIT 4)

Suzanne Thweatt, self, said she has been in treatment for depression and is presently in recovery because of medications. She described her treatment at Montana State Hospital, saying those who refused medications were labeled as troublemakers. Those with mental illness can make decisions most of the time and she thinks they should be given the opportunity to make decisions whenever possible. (EXHIBIT 5)

Wesley Alcorn, representing the PAIMI Advisory Council, Montana Advocacy Program, said they are a group of volunteers, consumers and mental health providers. They support community commitment but don't want it to become the cornerstone of treatment. Commitment is not the magic bullet. They support HB 502 only if informed consent is included.

Questions From Committee Members and Responses:

SENATOR LARRY BAER asked **REP. LOREN SOFT** if he would be adverse to amending the bill to require the court to find a patient incompetent prior to forced commitment and medication.

REP. SOFT said he wants this bill to be the best it can be. He read lines 13-14, page 30, and said that embodies what we're saying here.

SENATOR CHRIS CHRISTIAENS asked about the predictability of results and deterioration (pages 26 & 27), and how this would be dealt with by the court or commitment.

REP. SOFT deferred to **Beda Lovitt**.

Beda Lovitt said what they are looking at is early intervention to stop that progress toward a restricted environment. Often those with a serious mental illness are stable for quite a while, go off their medication, begin to decompensate and are not able to take care of themselves and may become dangerous. The predictability comes in through their history and that history is taken into account during commitment hearings. When making a determination, the court primarily looks at recent acts because they are the most relevant.

SENATOR CHRISTIAENS asked what time frame is used for the relevant history.

Beda Lovitt said a professional person will be testifying in court regarding the relevant history and giving their expert opinion. These criteria are only for community commitment not for in-patient commitment.

SENATOR CHRISTIAENS said he doesn't see anything about pre-directives for medications and asked if they are in this bill.

Beda Lovitt said there is nothing in this bill about pre-directives. Those directives are made available at the Montana State Hospital.

SENATOR JIM BURNETT asked **REP. SOFT** if other members of the family are allowed an input to the commitment process.

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REP. SOFT said they talked about that in regard to the treatment of a minor. If the minor was placed in a treatment facility, doesn't want to be there and wants to sign himself out, especially if he is older than 16 years, it is best for the parents to be involved in the decision process. Much more is accomplished when the total family is involved in the process with the treatment facility.

SENATOR DOROTHY ECK asked **Lonnie Olson** if he had specific amendments.

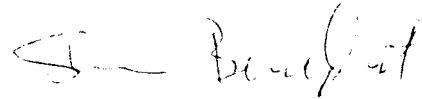
Lonnie Olson said he doesn't have them in the prescribed format, but will put them into correct form.

Closing by Sponsor:

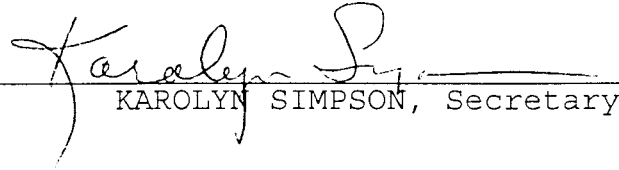
REP. LOREN SOFT said he wants to make this bill the best bill as possible. He related a story of a patient who had many problems and was in a treatment facility and he read a note from the patient.

ADJOURNMENT

Adjournment: 5:28 PM



SEN. STEVE BENEDICT, Chairman



KAROLYN SIMPSON, Secretary

SB/ks