

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON HUMAN SERVICES

Call to Order: By **CHAIRMAN BILL THOMAS**, on February 19, 2001 at 3 P.M., in Room 172 Capitol.

ROLL CALL

Members Present:

Rep. Bill Thomas, Chairman (R)
Rep. Roy Brown, Vice Chairman (R)
Rep. Trudi Schmidt, Vice Chairman (D)
Rep. Tom Dell (D)
Rep. John Esp (R)
Rep. Tom Facey (D)
Rep. Daniel Fuchs (R)
Rep. Dennis Himmelberger (R)
Rep. Larry Jent (D)
Rep. Michelle Lee (D)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. Holly Raser (D)
Rep. Diane Rice (R)
Rep. Rick Ripley (R)
Rep. Clarice Schrupf (R)
Rep. Jim Shockley (R)
Rep. James Whitaker (R)

Members Excused: None.

Members Absent: None.

Staff Present: David Niss, Legislative Branch
Pati O'Reilly, Committee Secretary

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

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 540, HB 566, HB 101
2/16/2001
Executive Action: HB 540, HB 566, HB 482, HB
486, HB 494, HB 237, HB 101,
HB 553

HEARING ON HB 540

Sponsor: REP. GARY BRANAE, HD 17, Billings

Proponents: Bill Kennedy, Yellowstone County Commissioner
Dean Harmon, Roosevelt County Commissioner
Brian Cameron, League of Women Voters

Opponents: Donald Harr, Mt. Medical Assn., Mt. Psychiatric Assn.
Jacob Wagoner, Bozeman
Charlie McCarthy, Exec. Dir., Mt. Mental Health Assn.

Informational Witnesses: Randy Poulsen, Chief, Mental Health
Services Bureau, DPHHS
Dorothy Poulsen, Medicaid Pharmacy Program, DPHHS

Opening Statement by Sponsor:

REP. GARY BRANAE, HD 17, Billings, said that many people in this state suffer from mental illness and greatly benefit from the use of prescription drugs. In recent times, the cost of such drugs has risen dramatically, which has resulted in an extreme hardship for many people. This bill provides the Dept. of Public Health and Human Services the ability to implement a program for the bulk purchase of prescription drugs for the recipients of publicly-funded mental health services. The bulk buying power could result in a savings of one-third to one-half of pricing. This bill will give the department the leeway to work with the Dept. of Corrections and Dept. of Administration to join in a buying program. There is something similar to this already set out. Later this year, the n-cap program will also be taken advantage of. This is a bulk prescription drug program operated through Minneapolis that will buy drugs involved for a six-state region. If this bill passes, the drugs that are purchased would be distributed locally. This could be worked with already eligible federal distribution pharmacies located in the state. The local health centers already buy in bulk from the federal pharmacy. He sees this bill as a first step in reducing drug costs and infusing needed dollars into the mental health program. He hasn't seen the fiscal note but heard that there is a large number on it, probably because it relates to a start-up program. He doesn't see this as a start-up program, but tying into something that already exists. It isn't asking for money to keep purchase prices down but more money to put back into the programs. *{Tape : 1; Side : A; Approx. Time Counter : 1.5 - 4.2}*

Proponents' Testimony:

Bill Kennedy, Yellowstone County Commissioner, said he chairs the Region 3 Mental Health Center Board. One of the reasons he had

asked the sponsor to come forward with this bill was to put on the table for the legislature the opportunity to do some bulk purchasing. To buy in bulk, to get these drugs down to the local regions and to be able to cut some of the costs by buying in bulk is something that is on the positive side. We have to start somewhere in looking at areas in which we can cut costs, especially for prescription drugs, and put the dollars back in the mental health program, or county commissioners across the state will come back year after year asking the legislature for more and more dollars for mental health services. This bill is a positive first step to start to look at how we can put new dollars, savings dollars, back into a program and to be able to offer mental health services. We don't have all the answers with this bill, but he would ask for a do pass and to work with the department on any problems as the bill goes over to the Senate. **{Tape : 1; Side : A; Approx. Time Counter : 4.4 - 7.2}**

Dean Harmon, Roosevelt County Commissioner, said he serves on the Eastern Montana Mental Health Board, and he concurs with the testimony of the previous proponent. He said that more often than not, the patients that Eastern Montana Mental Health serves do not have the means to purchase the drugs necessary for their appropriate treatment. It is appropriate that we as a state see to it that they are cared for in a reasonable manner. **{Tape : 1; Side : A; Approx. Time Counter : 7.2 - 8.6}**

Brian Cameron, League of Women Voters, said that for many years the League has supported legislative efforts to promote legislation that provides for cost-effective medications and health-related services while controlling costs. They believe that this bill is a good deal for everyone around. If the state's buying power can be leveraged to cut some deep discounts for the patients who deserve it, they strongly support that effort. They recognize that the cost of prescription drugs is at the forefront of the public debate and also recognize this legislature's budget pressures, and see this bill as simply good public policy to make efforts to tell our citizens that we want to do something about these costs and at the same time do this without breaking the bank. **{Tape : 1; Side : A; Approx. Time Counter : 8.6 - 10}**

Opponents' Testimony:

Donald Harr, representing the **Mt. Medical Assn. & Mt. Psychiatric Assn.**, is a Billings physician and psychiatrist. He stated that he is testifying as an opponent rather than a proponent because he has some concerns and questions. The associations are in favor of the general concept and the purpose of this. Not having any awareness of whether there are any studies to determine the relative costs eventually from this method of approach as compared to other

methods of approach, he cannot speak to that. The only reason that he raised any concern is that he is not aware of how this is going to be resolved for the patients to be able to access their medications when they are living out in the hinterlands somewhere. If there are only a few distribution areas around, then he thinks it will be extremely important that there be some means of easy access to the patients. Many of these individuals who have serious illnesses have difficulty remembering to get their prescriptions filled again in time. If they have to order by mail, they may be several days delayed in getting their medication; or if they have to travel long distances, many of them do not have the means of transportation to do that. That is the reason why he signed up as an opponent. Otherwise, he is in favor of the general concept of the bill. **{Tape : 1; Side : A; Approx. Time Counter : 10 - 13.8}**

Jacob Wagoner, Bozeman, said he is a consumer and a member of the Mental Health Oversight Advisory Council. One of his biggest concerns as a consumer is that every time he sees a fiscal note of this size, he asks what it is going to take to keep this thing running in administrative costs and warehousing and so on. Every time he sees a new start-up program with this kind of fiscal note, he thinks about more money going to the top in administrative costs and less money going to the consumer. He thinks it is a noble effort and the concept is well received, but he questions the financial feasibility and how much it will cost to continue to run it. **{Tape : 1; Side : A; Approx. Time Counter : 13.8 - 14.1}**

Charlie McCarthy, Exec. Dir., Mt. Mental Health Assn., said he is not speaking out in opposition because the association did not consider it when they developed their public policy platform. However, he wanted to express the same concerns as Dr. Harr and Mr. Wagoner, and that is access to medications. Right now mental health consumers get their medication from the nearest pharmacy or their favorite pharmacy, and he wants to make sure that they still will be able to have access and not have to travel distances when a lot of them don't have cars. There already are a lot of steps that people have to go through to get the appropriate medications, whether it's a lower co-pay for a generic and a higher co-pay for a different kind of a drug, or whether they have to try certain drugs that don't cost as much first before they get the one they really need; and he is afraid that this could be one more step or one more loophole. It gets very expensive if these people don't get their medications on time, because very often they can end up impacting the system somewhere else along the line or being admitted to the state hospital or other treatment facilities. **{Tape : 1; Side : A; Approx. Time Counter : 13.8 - 15.4}**

Informational Testimony:

Randy Poulsen, Chief, Mental Health Services Bureau, DPHHS, said that he wanted to explain how the present system works for public mental health clients, whether they are medicaid recipients, or for those who don't qualify for medicaid, they have the mental health services plan, which is primarily state funded. Under both of these programs, a pharmacy benefit is offered, wherein the state, through medicaid or through MHSP, pays for the appropriate psycho tropic medications for individuals who qualify for either of these programs, basically the public client. They do this through the same system, both medicaid and mental health services plan, that was designed and works primarily for the medicaid program. It's a system whereby an individual can go to any participating local pharmacy to get their prescription filled. This means that since there is virtually a pharmacy in every town of any size in Montana, there is good access to drugs. Those pharmacies provide more to the clients than just filling prescriptions. Quite often they assist the client in various ways, including sometimes allowing them to purchase or giving them the medications in advance of their actual eligibility coming through, because there is some delay between a person becoming eligible and being on the computerized system that the pharmacists use. He feels that they have an efficient and effective system that works, and works at a reasonably low cost for the state. For the mental health services plan, they have a very limited formulary and only pay for effective psycho tropic medications, those medications that are useful in the treatment of mental illness. The question that occurred to him on this bill is that it calls for the public mental health client to be able to purchase their medications at a low cost through the bulk rate, which is probably a good idea, but perhaps the intent should be that the state purchase the medications because that's what they're doing for these clients now. The question is, is it the intent of this bill and of the legislature to have the state purchase and allow people who are not eligible for the state's defined programs now to purchase drugs through a lower cost as provided by bulk purchasing by the state, and would this apply to all medications or only psycho tropic medications? If so, it would be important to specify which ones. **{Tape : 1; Side : A; Approx. Time Counter : 15.4 - 19.2}**

Dorothy Poulsen, Medicaid Pharmacy Program, DPHHS, said that in developing the fiscal note for this bill, they assumed that the state would not develop pharmacies but would try to use the local pharmacies. The big cost is buying and distributing the drugs, basically a wholesaling activity. Most wholesalers will charge between three and five percent of the cost of the drug, and that's where a big part of the cost is. The state would still have to pay somebody to distribute the medications that they were buying. They do have a contract now in place that they're using for the state institutions, and they get a bulk price. They get lower prices

through McKesson, who is a wholesaler. Those prices are comparable or less than the prices possible through the Minnesota contract. Using their bulk price numbers in terms of determining the fiscal note, they'll try to make it as accurate as to what it would cost the state as possible. {Tape : 1; Side : A; Approx. Time Counter : 19.2 - 21.2}

Questions from Committee Members and Responses:

Rep. Esp asked the sponsor if it was his intention to just have psycho tropic medicines included in this bill or to include all medications. **Rep. Branae** referred the question to **Mr. Kennedy**, who said they wanted to be able to cover medications for the consumers that they use through the mental health program. He said they are talking about both the psycho tropic and the other medications that their clients would need. **Mr. Poulsen** said under the medicaid program, a client can receive any prescribed medication so long as it is not an experimental medication, and under the mental health services plan, they have a formulary that specifies basically all of the available medications that are effective for treatment of mental illness. That's the only medication the state covers; they don't cover blood pressure medication or anything like that.

Rep. Esp asked **Ms. Poulsen** about how many dollars we're talking about between the medicaid pharmacy program for psycho tropic drugs and the mental health services plan. She said the expenditure for the mental health services plan is around \$2.7 million. The medicaid program in the last year spent about \$58 million, and about one-quarter of that, or about \$12 million, was for mental health drugs. **Rep. Esp** asked if, under the current program, they negotiate for a discount with a wholesaler. **Ms. Poulsen** said they don't have anything to do with a wholesaler the way they're running the program now. They have a contract with pharmacies that they pay a wholesale price minus ten percent, so they discount the cost of the drug from the pharmacy and then pay them a dispensing fee on top of that. The only place that they have any bulk pricing is in terms of the state contract for the state institutions. **Rep. Esp** asked if they pay as a billing, and **Ms. Poulsen** said their system has all the drug prices in it and they keep it updated weekly, in terms of the average wholesale price, which they receive through a national organization. When the pharmacy bills the state their usual and customary charge, the state then tells them how much they're going to pay, which is the average wholesale price minus ten percent.

Rep. Schmidt asked **Bill Kennedy** if this bill is modeled after any other state's law, or if other states do it this way, or is this a beginning step. **Mr. Kennedy** said the concept came to him a few months ago after they started looking at the State Corrections

Dept.'s bulk purchasing of pharmaceuticals. Mental health has no new money, so they are trying to look at all possibilities of finding new dollars to infuse back into the program. This is an effort to work with the department and the legislature in trying to get a system that is consumer-friendly and saves money. He hasn't yet had the opportunity to get in touch with any other states that are actually doing this right now.

Rep. Noennig asked **Ms. Poulsen** about item 5 on the fiscal note under "assumptions," which showed \$4.85 per prescription as a dispensing fee, and whether she thought that was realistic and if there was a possibility of saving money or not. She said that presently pharmacies make their money from the profit on the product, so even when the state takes a 10 percent discount, they're still making a profit. Her understanding is that the discount they receive on the drug can be between 15 and 50 percent, depending upon the drug. Presently they receive a profit on their product, but under this bill, if the state buys the drugs through a bulk purchase and provides that drug to the pharmacies and they dispense it at the cost that the state is paying for it, there would be no profit on the product. Therefore, in order to have the pharmacies do this, the state would have to pay them something for their services. Right now the state pays them \$4.20. The fiscal note numbers came from the similar service provided to the state by McKesson. They provide the drug at their cost, and this year they're charging an \$8.25 dispensing fee. Next year it will go up to close to \$9.00. So the \$5,900,000 on the fiscal note is what she estimated the state would have to pay the pharmacies per prescription, in addition to what we currently pay, to bring them up basically to a \$9 dispensing fee in order to pay for their services. **Rep. Noennig** asked if the result would be that even though there is a saving as a result of the wholesale price discount of 3-5 percent, the additional cost for dispensation exceeds that, wouldn't there be a better way to do that. **Ms. Poulsen** said that probably the best way to do that would be able to get a better discount than what the state is now getting from McKesson, which is basically a 22 percent discount. Her estimate is that the state would have to get pretty close to a 30 percent discount in order to maybe even make money. Probably the way to do that is in cooperation with other states, and she has looked at the feasibility of doing something like this. **Rep. Noennig** asked if it is realistic to compare the 30 percent discount she needs with the 15 to 50 percent discounts the pharmacies get, because 30 percent is between 15 and 50 percent, or is he comparing apples with oranges. Wouldn't cooperative purchasing agreements among states do something similar to that. **Ms. Poulsen** said it is possible, but the state would have to explore that. She had to base her figures on the current bulk purchasing price.

Rep. Dell asked **Ms. Poulsen** about a proposed amendment to change "shall" to "may" and if that would give her more flexibility to look at programs other states have and bring the numbers down further, and would that cause her to be a proponent of the bill. **Ms. Poulsen** said as a representative of the department, she is neutral on this bill. **Rep. Dell** said he thought this might allow her to be more flexible and look at other state's programs, and he asked if she would anticipate doing that in the future. **Ms. Poulsen** said that she has the ability to look at a bulk purchase price right now. There is nothing in statute or regulations that would prevent her from doing that sort of thing if she could figure out a way to make it cost effective. {Tape : 1; Side : A; Approx. Time Counter : 21.2 - 30} {Tape : 1; Side : B; Approx. Time Counter : 0 - 8.5}

Closing by Sponsor:

Rep. Branae said he thought most of the committee could agree that the concept of the bill is good. We're interested in making our mental health programs better, helping people, and being able to put more dollars back into the program so that we can help more people. We probably have to accept the fact that there are some areas that we need to look at again and maybe to work a little more on, such as distribution in rural areas. These problems can be addressed. Our desire is not to hurt the consumer but to make this whole process one that is better for everyone. He asked the committee to consider an amendment to insert "may" instead of "shall." {Tape : 1; Side : B; Approx. Time Counter : 8.5 - 10}

HEARING ON HB 566

Sponsor: REP. JESSE LASLOVICH, HD 57, Anaconda

Proponents: Rep. Steve Gallus, HD 35, Butte
Larry Noonan, CEO, AWARE Inc.
Bob Olsen, Mt. Hospital Assn.
Jeff Folsom

Opponents: Kathy McGowan, Ex. Dir., Community Mental Health Centers
Bill Kennedy, Yellowstone County Commissioner
Dr. Donald Harr, Billings, Mt. Psychiatric Assn. & Mt. Medical Assn.
Dean Harmon, Roosevelt County Commissioner
Paul Meyer, Ex. Dir., Western Mt. Mental Health Center

Opening Statement by Sponsor:

REP. JESSE LASLOVICH, HD 57, Anaconda, said this bill updates the laws pertaining to community mental health centers. He considers it to be a housekeeping bill that is designed to bring the important community mental health system into the modern era. He supports the community mental health system, but he also believes that the system should be allowed to mature, along with the other programs that affect Montanans with disabilities. In 1964, President John F. Kennedy wanted to jump-start services for folks who suffered from mental health disabilities; and in the intervening years, a great deal of progress has been made. In those days, there was little opportunity for choice of treatment approaches, because the system was just developing. Since then, both the science and the potential approaches have blossomed. The current law's failure to bring services along with this growth has meant that consumers and communities have not benefitted from new initiatives. There are many qualified local providers of services for the disabled that, under present law, are excluded from providing those services in spite of being licensed in Montana. This has resulted in hit or miss situations where mental health services are provided in an uneven and sometimes unfair way. There is no reason to assume that the same consumer choice that works well in other parts of the economy won't work when it comes to the provision of mental health services. Significant cost savings and consumer choice have already occurred in places where competition has provided some tension in the provision of those services. The ability for consumers or local governments to choose among several approaches would only lead to a more responsive system. There is nothing in this legislation that forces anyone to change systems that they already currently have. It only provides for the option if desired. His goal with this legislation is to strengthen the position of Montanans with disabilities by making the current system more responsive and fair.
{Tape : 1; Side : B; Approx. Time Counter : 10 - 16.4}

Proponents' Testimony:

Rep. Steve Gallus, HD 35, Butte, said that the bill gives counties the opportunity to purchase services that are not available regardless of circumstances. There are many examples where these circumstances don't exist. One would be the current system regarding screening, which needs to be done for proper admission to the state hospital; and there are problems there that have led to population problems. He works in mental health, as a youth case manager for AWARE Inc., and is a big proponent of community mental health, and this bill is an attempt to make things better by providing opportunities to the people who provide it, to the counties and to the consumers.**{Tape : 1; Side : B; Approx. Time Counter : 16.4 - 18.3}**

Larry Noonan, CEO, AWARE Inc., said that in 1998 AWARE Inc. was allowed to compete for services with the CMHCs, just before managed care started. They were successful at that time in winning the contract to provide youth case management services in Region 4. They started with 124 kids in the Butte, Helena and Bozeman areas, and now provide youth case management to over 800 children across the state. Their success has been at the expense of the CMHCs but to the benefit of the consumers. Consumers now have a choice of providers in many locations in the state, and they are exercising that choice by choosing AWARE's services. Other providers have followed them in youth case management services, and now most of such services are provided by providers other than the community mental health centers. When it comes down to competition, other providers can provide the services that the centers currently provide, and he believes that consumers will be able to choose which services they believe are the best. He thinks the question is what's most important, protecting the status quo from competition and accountability, or allowing consumers some control over their care and allowing counties some options in their choices. **{Tape : 1; Side : B; Approx. Time Counter : 18.3 - 20}**

Bob Olsen, Mt. Hospital Assn., said his association hadn't had time to study this bill but they're inclined to support it because it addresses concerns with mental health services. This bill will broaden the opportunity for those people who might deliver services the opportunity to get paid to do those services under the same rules that mental health centers can now operate under. Now in the mental health community, they are trying to keep more people in the community instead of admitting them to the state hospital at Warm Springs. To do that, there must be crisis intervention in a community, and if the mental health center is not willing or able to produce those services, someone else has to do that. This bill seems to provide an avenue for the local community to figure a way to direct their dollars to produce those services. He believes that some amendments to the bill are necessary. **EXHIBIT (huh41a01) {Tape : 1; Side : B; Approx. Time Counter : 20 - 25.1}**

Jeff Folsom said he supports the bill. It's about accountability and choice. One aspect of the bill is that it tries to clean up language so we know exactly what is being talked about when we talk about community mental health centers. It also defines the responsibilities of the centers. Present law does not require that comprehensive services be provided in all of the counties. Services are inconsistent from area to area, and nonexistent or scarce in rural areas. The bill clarifies the autonomy of counties to utilize tax dollars in an accountable manner. It gives the counties the ability to identify gaps in the local system and have a choice of service providers. **{Tape : 1; Side : B; Approx. Time Counter : 25.1 - 30}**

Opponents' Testimony:

Kathy McGowan, Ex. Dir., Community Mental Health Centers, said that she has struggled with this bill because she doesn't like to be involved with turf battles. Basically the bill is the work of a single provider who somehow perceives that they are at a competitive disadvantage right now, and that's not true. We are talking about county monies, and under present law, any provider can go to the counties and say that they want to be the provider, or one of the providers, of mental health services. That is being done in several counties right now. A change in the law is not needed to get this so-called competition. She suggested that the committee ask three questions while considering the bill: (1) Was DPHHS involved in this bill and what do they think of it? (2) Has the Mental Health Oversight Advisory Council been a part of planning in this bill? (3) Has the HJR 35 or the Legislative Finance Committee that worked on mental health over the interim been a part of this planning? In all cases, she would say no. She is not saying that there should not be any changes in the community mental health center laws. Montana is going forward with changing its public mental health system. There are differing interpretations among members of the mental health caucus as to what this bill does, and they aren't sure exactly what it will do. **{Tape : 2; Side : A; Approx. Time Counter : 0 - 6.1}**

Bill Kennedy, Yellowstone County Commissioner, who is the chair of Mental Health Center Region 3, said he commends the sponsor for trying to do something to improve mental health services, but there are problems with the bill, and he has some concerns. He shared written testimony by Howard Gipe, Flathead County Commissioner and highlighted some of the reasons for Mr. Gipe's opposition. The bill appears to create new mandates for services, and the dollars just aren't there to do this. Existing services would be diluted. **{Tape : 2; Side : A; Approx. Time Counter : 6.1 - 13.5}**

Dr. Donald Harr, Billings, Mt. Psychiatric Assn. & Mt. Medical Assn., said he serves on the Mental Health Oversight Advisory Council and has worked in the mental health system in Montana for the last 43-1/2 years so knows about the numerous changes that have taken place. Opponents to the bill are not opposing it out of concerns for competition or accountability. He is concerned about the potential effect on patients. The bill also seems to separate the community mental health boards from the community mental health centers, which he doesn't think will be acceptable to counties. The Mental Health Oversight Advisory Council is working on the concept of forming regions for of mental health services in the state, which will take some time, so he didn't think the legislature should rush into changes at this time. **{Tape : 2; Side : A; Approx. Time Counter : 13.5 - 18.5}**

Dean Harmon, Roosevelt County Commissioner and a member of the Eastern Montana Mental Health Board, is concerned that if this bill passed, private corporations might take the most lucrative clients, leaving the counties with the difficult, long-term and expensive cases. *{Tape : 2; Side : A; Approx. Time Counter : 18.5 - 21.5}*

Paul Meyer, Ex. Dir., Western Mt. Mental Health Center, explained what had actually happened with the services that were supposedly cut back at two of the hospitals in their region, according to a proponent's testimony. The Center really hasn't pared back their emergency services. *{Tape : 2; Side : A; Approx. Time Counter : 21.5 - 23}*

Informational Testimony: None

Questions from Committee Members and Responses:

Rep. Facey asked **Kathy McGowan** about other pending legislative bills that would address this issue, and she said there are no other bills; however, there are other bills dealing with other mental health issues. **Rep. Facey** asked **Paul Meyer** about the emergency services provided at St. Patrick's Hospital, and he said they are consultation services. If a patient is admitted to the hospital, the center does not provide in-patient services because St. Pat's is providing it. **Rep. Facey** asked who pays for services, and **Mr. Meyer** said it is a combination of insurance, medicaid and other coverage, but if a patient isn't covered, then the hospital has to absorb the costs.

Rep. Esp asked **Larry Noonan** how this bill would give him a competitive edge that AWARE doesn't have now. He said they've been trying for four years to figure out how they could provide adult mental health services in their region but have run into problems because of the perception that the centers have a monopoly. This bill might clarify that they are allowed to compete. **Rep. Esp** asked if this bill passed, if **Mr. Noonan** would consider his program to be a community mental health center. **Mr. Noonan** said no. **Rep. Esp** asked what definition within the bill his program would fall under. **Mr. Noonan** said he couldn't answer that question.

Rep. Noennig asked the sponsor which portions of the bill were substantive and which were just terminology changes. **Rep. Laslovich** went through sections of the bill, saying Section 1 is clean-up language; Section 2, which is the most contentious section, discusses the provision of various services within the regions; Sections 3, 4 and 5 contain clean-up language; and Section 6 provides for funds.

Rep. Brown said it must be more than clean-up language, because it strikes corporation in every change except the one on page 3, line 21, and he asked the sponsor if there is a difference between a mental health center and a mental health corporation. **Rep. Laslovich** said he had discussed this with the bill drafter, and line 21 could be amended to address this concern.

Rep. Schmidt asked **Bob Olsen** if the bill required the counties to do anything different from what they're doing now. **Mr. Olsen** said he didn't think so, but it allowed other mental health corporations to approach the department and the counties for contracts to deliver services. **Rep. Schmidt** asked if there would be a choice of providers. **Mr. Olsen** said he believed that was the intent. **Rep. Schmidt** asked **Kathy McGowen** the same questions. **Ms. McGowen** said providers can already ask counties to be providers so the bill doesn't change that. She doesn't know what contracts the proponents have in mind, and thinks that they can already approach the department for contracts. **Mr. Poulsen** said DPHHS allows any provider who meets the licensure or certification standards to enroll as a provider and be reimbursed for services. There are presently 15 licensed mental health centers in the state.

Rep. Facey said 3/4 of this committee are new and don't know what's going on regarding mental health services, and he'd like to keep the bill alive to keep the discussion going; and he asked **Ms. McGowen** what she thought about that. She said the world wouldn't end one way or the other, and it wouldn't be onerous.

Rep. Raser asked **Mr. Kennedy** if the bill provides county commissioners with more choice or flexibility. **Mr. Kennedy** said the choice is there currently. Services are currently offered, and this would dilute services. *{Tape : 2; Side : A; Approx. Time Counter : 23 - 30} {Tape : 2; Side : B; Approx. Time Counter : 0 - 9.3}*

Closing by Sponsor:

Rep. Laslovich thanked the proponents and the opponents who had testified. He said that if the other licensed mental health centers can already access the money, that's great, but he doesn't know what it would hurt to put that into law. Some counties aren't getting the services. A lot of the clean-up language in the bill was put in by the bill drafter. He thinks attention needs to be brought to this issue and something needs to be done. When they do study this, he hopes they will take this bill into account, because we know there is a problem. *{Tape : 2; Side : B; Approx. Time Counter : 9.3 - 19.7}*

HEARING ON HB 101

Sponsor: REP. ROY BROWN, HD 14, Billings

Proponents: None

Opponents: None

Opening Statement & Closing by Sponsor:

REP. ROY BROWN, HD 14, Billings, said he was bringing HB 101 before the committee and requested that the committee table it because the bill had been incorporated into another bill. {Tape : 2; Side : B; Approx. Time Counter : 19.7 - 20.9}

EXECUTIVE ACTION ON 101

Motion/Vote: REP. BROWN moved that HB 101 BE TABLED. Motion carried unanimously. {Tape : 2; Side : B; Approx. Time Counter : 20.9 - 21.5}

EXECUTIVE ACTION ON HB 540

Motion: REP. Hemmelberger moved that HB 540 DO PASS. {Tape : 2; Side : B; Approx. Time Counter : 21.5 - 23}

Discussion: Rep. Brown said he had missed the hearing but noticed that Dr. Harr had been an opponent, and he has the highest respect for Dr. Harr. Rep. Noennig said that most of the opponents were not opposed to the concept but to how it would be implemented and what the cost may be. Dr. Harr had been concerned about access to the drugs. The question was called for.

Motion/Vote: REP. Hemmelberger moved that HB 540 DO PASS. Motion failed 6-10 with Facey, Jent, Lee, Newman, Raser, and Shockley voting aye.

Motion/Vote: REP. NOENNIG moved that HB 540 BE TABLED. Motion carried 10-6 with Facey, Jent, Lee, Newman, Raser, and Shockley voting no. {Tape : 2; Side : B; Approx. Time Counter : 23 - 26.7}

EXECUTIVE ACTION ON HB 566

Motion: REP. JENT moved that HB 566 DO PASS. {Tape : 2; Side : B; Approx. Time Counter : 26.7 - 30} {Tape : 3; Side : A; Approx. Time Counter : 0 - 2.2}

Discussion: Rep. Newman said that he was impressed with Rep. Facey's concerns about having a chip in the game. He knows there are several Senate bills pending concerning this issue, and the committee might want to keep this bill alive so it will also have a chip in the game. If the bill is killed, the committee has no other vehicle to address these issues and may get lost in the shuffle. Rep. Jent said during his campaigning he attended many meetings at which county commissioners and other concerned folks addressed mental health issues, including community-based mental health. This bill tries to set up a vehicle for the distribution of mental health services.

Motion/Vote: REP. RIPLEY moved that HB 566 BE AMENDED. Motion carried 13-4 with Brown, Esp, Fuchs, and Noennig voting no. EXHIBIT (huh41a02) {Tape : 3; Side : A; Approx. Time Counter : 2.2 - 4}

Motion: REP. ESP moved that HB 566 BE AMENDED. {Tape : 3; Side : A; Approx. Time Counter : 4 - 6}

Discussion: Rep. Esp said that his amendment would strike the underlined new language and revert back to the old language on page 3, lines 1, 2 and 3. Rep. Facey said he would resist the amendment and he doesn't think most of the members of the committee know enough about the subject to do the necessary work on this bill, and this amendment gets to the heart of the bill. Rep. Newman quoted from the state constitution which states that laws can't be amended during passage through the legislature so that the original purpose of the bill is changed. He thought this amendment goes directly to what the sponsor was trying to accomplish with this bill and he thought that isn't allowed. Rep. Noennig said he thought that although the amendment changed an important part of the bill, it didn't change the purpose. Mr. Niss said that the Supreme Court decides whether amendments are outside the scope of a bill by looking at the title of a bill and seeing if the change would change the purpose and scope of the bill as defined by the title. Since this bill is a generally revising bill, he thinks that the Court would be likely to rule that this amendment was within the scope of the bill. Rep. Newman said the committee ought to address the bill itself rather than trying to amend it and gut it that way. Rep. Esp said he is concerned that if the bill is passed, the counties won't be able to afford to do all the things it requires, so it would be kind of an unfunded mandate to the counties.

Substitute Motion/Vote: REP. HIMMELBERGER made a substitute motion that HB 566 BE TABLED. Substitute motion carried 12-6 with Facey, Jent, Newman, Ripley, Shockley, and Thomas voting no. {Tape : 3; Side : A; Approx. Time Counter : 6 - 15.8}

EXECUTIVE ACTION ON HB 482

Motion: REP. RASER moved that HB 482 DO PASS. {Tape : 3; Side : A; Approx. Time Counter : 15.8 - 16.5}

Discussion: Rep. Facey said he would like to see this bill moved along and discussed by the Appropriations Committee with the other bills related to use of the tobacco settlement funds. Rep. Raser said she thought it made sense for the Appropriations Committee to consider all of these bills together and prioritize them. This bill has merit and should be considered. Rep. Ripley said he had heard that the money is spent, and if it is, there's no use passing any bills using the tobacco settlement money. Rep. Facey said he just realized that this bill sets up a trust within a trust, which he thought ought to be discussed by a larger group. Rep. Noennig said the committee had already acted on this bill and it had failed on a tie vote, 9-9. The fiscal note had assumed that the money would come from the general fund because the executive budget had an allocation for all of the interest from the tobacco funds. The bill's sponsor, Rep. Gillan, had pointed out that the Appropriations Committee, the House and the Senate hadn't decided yet whether that would be the case or not, so she thought the fiscal note was premature to assume that. Rep. Shockley said he is philosophically opposed to a trust within a trust because that locks up money so future legislatures can't use it for good purposes, and he thinks that's poor public policy. Rep. Jent said on the tobacco money bills, he thought this committee ought to consider the money matches and pass the bills if the committee wants to pass them. Then this committee and Appropriations could get together and decide what to do. The tobacco money is an exception to the usual budget rule, and the committee doesn't know for sure how much of it is spent or still available, so should vote on the bills as a matter of public policy in health and human services. Rep. Esp said that this bill would be low on his priority list of all the bills that have come through this committee dealing with spending the tobacco trust fund money. There are more direct treatment things that he thinks are more valuable than this. Rep. Raser said she doesn't have the list of all the options so doesn't know where this would be on her priority list. She doesn't think the legislature should just rubber stamp the executive budget but to decide whether or not they agree with the governor's proposed expenditures. Rep. Brown said item 4 on the fiscal note is ridiculous and should not be in there and he wondered who wrote it. Beyond that, he thinks the committee must make a policy decision as to whether it wants to create a trust within a trust whose funds will be used for this particular purpose. This bill would not be on his priority list. The question was called for. {Tape : 3; Side : A; Approx. Time Counter : 16.5 - 26.5}

Motion/Vote: REP. RASER moved that HB 482 DO PASS. Motion failed 7-11 with Dell, Facey, Jent, Lee, Newman, Raser, and Schmidt voting aye. {Tape : 3; Side : A; Approx. Time Counter : 26.5 - 27.2}

Motion/Vote: REP. SCHMIDT moved that HB 482 BE TABLED. Motion passed 11-7 with Dell, Facey, Jent, Lee, Newman, Raser, and Schmidt voting no. {Tape : 3; Side : A; Approx. Time Counter : 27.2 - 28}

EXECUTIVE ACTION ON HB 486

Motion: REP. LEE moved that HB 486 DO PASS. {Tape : 3; Side : A; Approx. Time Counter : 28 - 30}

Discussion: Rep. Schmidt said that although this is a big appropriation, caring for children in foster care is a serious issue, and the foster parents are not being paid. Even though this probably won't be funded completely, she'd like to be able to show these people that we believe what they said and we believe what they're doing is important and that they do need some help in caring for these children who are in the foster care system. She thinks this bill should be passed on to the Appropriations Committee. Rep. Noennig wondered if the sponsor could amend the bill to reduce the appropriation.

Substitute Motion/Vote: REP. NEWMAN made a substitute motion to POSTPONE CONSIDERATION OF HB 486 UNTIL A DATE CERTAIN, SPECIFICALLY MARCH 9. Substitute motion carried 14-4 with Fuchs, Ripley, Shockley, and Whitaker voting no. {Tape : 3; Side : B; Approx. Time Counter : 0 - 3.8}

EXECUTIVE ACTION ON HB 494

Motion: REP. LEE moved that HB 494 DO PASS. {Tape : 3; Side : B; Approx. Time Counter : 3.8 - 5}

Discussion: Rep. Lee said that she understands the money for this bill is in HB 2. Rep. Brown asked why it has an appropriation if it is in HB 2. Rep. Newman said during the hearing it was stated that the department should be able to find funding for this bill, and they committed to that process. Rep. Mangan, the bill's sponsor, had told Rep. Newman that he had been working with the Appropriations Committee, and he understood that the appropriation had been reduced. Further discussion was held on funding for the bill. {Tape : 3; Side : B; Approx. Time Counter : 5 - 7.2}

Substitute Motion/Vote: REP. RASER made a substitute motion that CONSIDERATION OF HB 494 BE POSTPONED TO A DATE CERTAIN, SPECIFICALLY MARCH 5. Substitute motion failed 8-10 with Dell, Facey, Jent, Lee, Newman, Raser, Schmidt, and Thomas voting aye. {Tape : 3; Side : B; Approx. Time Counter : 7.2 - 9.1}

Motion: Rep. Lee proposed a conceptual amendment, to strike \$1.7 million on page 2, line 2, and insert "subject to appropriation." {Tape : 3; Side : B; Approx. Time Counter : 9.1 - 11.2}

Discussion: Rep. Lee said the purpose of the amendment is because we know there is an appropriation but we don't know how much. Further discussion was held on the appropriate wording of the amendment. {Tape : 3; Side : B; Approx. Time Counter : 11.2 - 12.1}

Substitute Motion: Rep. Raser proposed a conceptual amendment to the effect that DPHHS be directed to look for TANF funds. Discussion was held on the different types of funds that might be available. Rep. Raser said that her concern is that if the legislature doesn't direct the department to do this, it won't get done.

Action on previous motions: Rep. Raser withdrew her conceptual amendment. Rep. Lee withdrew her conceptual amendment. {Tape : 3; Side : B; Approx. Time Counter : 12.1 - 18.6}

Motion: REP. NEWMAN moved that HB 494 BE AMENDED.

Discussion: Rep. Newman proposed to amend the bill to strike the \$1.7 million appropriation on page 2, line 2, and insert the amount of \$1.00 to keep an appropriation in the bill and keep it alive so the committee can find out what the sponsor and DPHHS might have found in the budget for possible funding. Question was called for.

Motion/Vote: REP. NEWMAN moved that HB 494 BE AMENDED. Motion failed 9-9 with Dell, Facey, Fuchs, Jent, Lee, Newman, Raser, Schmidt, and Thomas voting aye.

Motion/Vote: REP. WHITAKER moved that HB 494 BE TABLED. Motion carried 12-6 with Dell, Facey, Jent, Lee, Raser, and Schmidt voting no. {Tape : 3; Side : B; Approx. Time Counter : 18.6 - 21.1}

EXECUTIVE ACTION ON HB 237

Motion/Vote: REP. SCHMIDT moved that HB 237 BE TAKEN FROM THE TABLE. Motion carried on a voice vote. {Tape : 3; Side : B; Approx. Time Counter : 21.1 - 24.3}

Motion: REP. SCHMIDT moved that HB 237 DO PASS. {Tape : 3; Side : B; Approx. Time Counter : 24.3 - 26}

Substitute Motion: REP. SCHMIDT made a substitute motion that HB 237 BE AMENDED.

Discussion: Rep. Schmidt explained the amendments, and Charles Rehbein, Bureau Chief for Aging Services, Senior Long-Term Care Division, DPHHS, presented additional information. Rep. Esp asked if amendment #23701 had been attached to the bill when it had previously been tabled. Mr. Niss said that this amendment was not part of the bill as it came off the table, and if the committee wanted it, they would have to vote on it. He would review it to make sure it did not conflict with Rep. Schmidt's amendment. Further discussion was held on whether the bill had previously been amended prior to its being tabled. {Tape : 3; Side : B; Approx. Time Counter : 28 - 29}

Substitute Motion/Vote: REP. BROWN made a substitute motion that HB 237 BE TABLED. Substitute motion carried 10-8 with Dell, Facey, Jent, Lee, Newman, Raser, Schmidt, and Shockley voting no. {Tape : 3; Side : B; Approx. Time Counter : 29 - 30}

EXECUTIVE ACTION ON HB 101

Motion: REP. BROWN moved that HB 101 DO PASS. {Tape : 4; Side : A; Approx. Time Counter : 0 - 2.2}

Substitute Motion/Vote: REP. NOENNIG made a substitute motion that HB 101 BE TABLED. Substitute motion carried unanimously. {Tape : 4; Side : A; Approx. Time Counter : 2.2 - 3}

EXECUTIVE ACTION ON HB 553

Motion: REP. FACEY moved that HB 553 DO PASS. {Tape : 4; Side : A; Approx. Time Counter : 3.0 - 7.0}

Motion/Vote: REP. NEWMAN moved that HB 553 BE TABLED. Motion carried 17-1 with Facey voting no. {Tape : 4; Side : A; Approx. Time Counter : 7 - 9.5}

ADJOURNMENT

Adjournment: 5:55 P.M.

REP. BILL THOMAS, Chairman

PATI O'REILLY, Secretary

BT/PO/JB
Jan Brown transcribed these minutes.

EXHIBIT (huh41aad)