

**MINUTES**

**MONTANA HOUSE OF REPRESENTATIVES  
58th LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON HUMAN SERVICES**

**Call to Order:** By **CHAIRMAN BILL THOMAS**, on January 15, 2003 at 3:15 P.M., in Room 172 Capitol.

**ROLL CALL**

**Members Present:**

Rep. Bill Thomas, Chairman (R)  
Rep. Arlene Becker, Vice Chairman (D)  
Rep. Mark Noennig, Vice Chairman (R)  
Rep. Steven Gallus (D)  
Rep. Ray Hawk (R)  
Rep. Holly Raser (D)  
Rep. Don Roberts (R)  
Rep. Ron Stoker (R)  
Rep. Jonathan Windy Boy (D)

**Members Excused:** Rep. Tom Facey (D)  
Rep. Daniel S. Hurwitz (R)  
Rep. Larry Jent (D)  
Rep. Penny Morgan (R)

**Members Absent:** None.

**Staff Present:** Susan Fox, Legislative Branch  
CJ Johnson, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed. Tape stamp refers to material immediately following.

**Committee Business Summary:**

Hearing & Date Posted: HB 51, 1/6/2003; HB 56, 1/6/2003;  
HB 121, 1/6/2003  
Executive Action: none

**HEARING ON HB 121**

**Sponsor: REPRESENTATIVE EDITH CLARK, HD 88, Sweet Grass County**

**Opening Statement by Sponsor:**

**REP. CLARK** said that this bill is at the request of the Department of Public Health and Human Services (DPHHS). With the passage of this bill, DPHHS will be able to collect monies more effectively and efficiently.

**Proponents' Testimony:**

**Mick Robinson, Administrator of Fiscal Services (DPHHS)**, said that this bill will help simplify and clean up the way that monies are collected. The current statute does not make this applicable anymore, and it will allow for the money to flow into a fund until the bond is satisfied, and then the excess will go into the general fund. He stated that there is also a friendly amendment to this bill that would change the effective date upon approval, to July 1, 2003.

**EXHIBIT (huh08a01)**

**Marie Matthews, Fiscal Policy Bureau**, distributed a handout that she explained to the committee.

**EXHIBIT (huh08a02)**

**Bob Mullan, Bureau Chief DPHHS**, said that this bill simplifies a very complicated accounting process, and it will also simplify his budget process.

**Opponents' Testimony:** none

**Questions from Committee Members and Responses:**

**REP. FACEY** asked Ms. Matthews what do the accounts on 2A and 2B on (Exhibit 2) accomplish. He also asked if the money will go into the general fund, and if it is in there, will the same amount of money be appropriated to Mental Health Services. **Ms. Matthews** said that the accounts on 2A and 2B are Medicaid. The Mental Health Services have requested that the monies go into the general fund, and the agency's primary goal is to bring in as much revenue as possible.

**REP. STOKER** asked Bob Mullan how they keep patients. **Mr. Mullan** said that in the past they have been criticized for holding on to patients for too long, and this removes all impropriety for that to happen.

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**REP. NOENNIG** asked **Bob Mullan** why there is an uncomfortable tie between the number of Medicaid clients in the institution and the amount of funding for Mental Health Services. **Bob Mullan** deferred to **Ms. Matthews** who said that the revenue that is placed into the special fund is identified as money that the department can spend, and the money is Medicaid collections only. He said the money comes from the federal government. If Medicaid goes up and collections go down, then the Department of Revenue suffers. He said if the opposite happens, the money will go into the general fund.

*{Tape: 1; Side: A; Approx. Time Counter: 21.6 - 26.8}*

**REP. RASER** asked Mick Robinson what the guarantee is that the money will be used for Mental Health Services once it is in the general fund. **Mr. Robinson** said that there is no guarantee, but there is a process that will be followed to show where it is appropriated. **REP. RASER** asked Mick Robinson if it was possible if in a tight fiscal year that the money could be shifted and not spent on mental health. **Mr. Robinson** said that could happen. He informed the Committee of a language problem with the bill and the Committee staffer addressed it. **REP. RASER** asked Mick Robinson with the way the funds are set up if there was a way that the government could take that money and use it for other services besides Mental Health. **Mr. Robinson** said once the funds enter in to the account, it has lost its identity. If Mental Health is collecting the revenues they have to be deposited into one of the state special revenue funds, which is a problem.

**REP. RASER** stated that the bill does have language that would tie the legislature to using it for Mental Health. She asked if that language is removed will that money be used for whatever is needed. **Mick Robinson** said this is earmarked money that is specific for managed care programs.

**REP. STOKER** asked Bob Mullan if the \$500,000 will be used will be matched to make \$1 million. **Mr. Mullan** said that is correct. He said that the money will go into a fund so the money is matched to total \$1 million.

**Closing by Sponsor:**

**REP. CLARK** closed stating that there is no net impact to the general fund, and the amendment only changes the effective date to July 1, 2003.

**HEARING ON HB 51**

**Sponsor: REPRESENTATIVE EDITH CLARK, HD 88, Sweet Grass County**

**Opening Statement by Sponsor:**

**REP. CLARK** opened stating that this bill is at the request of the DPHHS. This bill changes the name of personal care facilities to assisted living facilities for licensure purposes. This bill is a consumer protection bill. She said that assisted living facilities are the fastest growing facilities in Montana, and the residents in these facilities are in need of care. The range of people that these facilities serve is a wide range, for example people who are dying of cancer, or recovering from operations. This bill will also provide for the cognitive impaired.

**Proponents' Testimony:**

*{Tape: 1; Side: A; Approx. Time Counter:0 - 20}*

**Mary Dalton, DPHHS**, submitted written testimony, which she read.  
**EXHIBIT (huh08a03)**

**Linda Sandman, Owner of Assisted Living Residence**, stated that she supports this bill. This bill reflects the grass roots operations. She said it includes the small and large facilities and also specialized facilities.

**Betty Beverly, Montana Senior Citizens Advocate (MSCA)**, said that this is a consumer protection bill. This bill will make it possible for the families to know what the different facilities can do stating it will address the levels of care that can be provided.

**Pat Callbeck Harper, Director of AARP Montana**, submitted written testimony, which she read.  
**EXHIBIT (huh08a04)**

**Casey Blumenthal, Montana Hospital Association**, submitted her written testimony.  
**EXHIBIT (huh08a05)**

**Rose Hughes, Montana Health Care Association**, submitted her written testimony, and explained the amendment.

**EXHIBIT (huh08a06)**

**Sami Butler, Montana Nurses Association**, stated their support for this bill.

**Opponents' Testimony:** none

**Questions from Committee Members and Responses:**

**REP. WINDY BOY** asked Susan Fox if it is customary to receive the approval of the sponsor for amendments before they are brought to the Committee. **Ms. Fox** said that people usually do, but it is not a requirement, and because this bill is a department bill they will usually check with the Committee or staffer first.

**REP. WINDY BOY** asked **REP. CLARK** if there was any opposition on her part to these amendments. **REP. CLARK** said no, these are friendly amendments that make sure the best care is provided to the elderly population.

**REP. ROBERTS** asked Linda Sandman if there is any protocols that deal with patients outside of these facilities, like power of attorney, and if this could be incorporated into this. **Ms. Sandman** said, "That would be helpful, and the department has changed some of their rules, so there will be more requirements on facilities in regard to the information that they have on file. What is being asked for will be more properly addressed in the rule". **Ms. Dalton** responded that their office is in the process of making some decision on the issues that **REP. ROBERTS** has addressed.

***{Tape: 2; Side: A; Approx. Time Counter: 16.1 - 18.4}***

**REP. HURWITZ** asked Mary Dalton if a family member is in one of these facilities and the care that is provided is not accurate, what is the procedure that would be taken. **Ms. Dalton** said that there are ombudsman who take care of problems like this, or a complaint could be filed with the department and have it investigated.

**Rose Hughes** informed the Committee that forms will be placed on the website and in the facilities, and people are encouraged to use them.

**Betty Beverly** said that from the consumer prospective, they are very satisfied with what has come out of this bill. She said

that sometimes a doctor will place a patient into a facility when the doctor has never seen the patient. She stated that with this bill this situation will be taken care of.

**REP. NOENNIG** asked Mary Dalton what the difference is between Categories A, B, and C. **Ms. Dalton** said that they decided to stay with the five bed capacity care for category B patients.

*{Tape: 2; Side: A; Approx. Time Counter: 24.6 - 27.1}*

**REP. BECKER** asked Rose Hughes how many beds are in Category C. **Ms. Hughes** said that currently there are A and B, and A is unlimited beds and B is five beds only. Category C is added to deal with the cognitively impaired.

**REP. BECKER** asked Rose Hughes if Category C includes the people with Alzheimer's or brain injuries. **Ms. Hughes** said it includes dementia to the point that it is outlined. Which means they have a cognitive impairment and would be the type to leave the facility without regard for the safety of themselves.

**REP. BECKER** stated that in line 8 it talks about adding the words, licensed practical nurse (LPN). **REP. BECKER** asked Rose Hughes why not just put LPN in the definition of licensed health care practitioners. **Ms. Hughes** said because the term licensed health care professional is used in other ways that do not include an LPN.

**REP. BECKER** asked Rose Hughes why define the word LPN when it is not referred to in the bill. **Ms. Hughes** said that the language allows an assisted living facility to define what it does in regards to daily living requirements. She said it also defines what that facility will be capable of handling.

**REP. NOENNIG** stated that he knew an elderly man who had Alzheimer's, and this person had thrown a chair at another person. This elderly man with Alzheimer's developed an infection, and because he didn't have anywhere to go, he ended up dying in the psychological ward. **REP. NOENNIG** asked Mary Dalton if this man would have qualified for Category C. **Mary Dalton** said that it would depend on how often he threw a chair, he could be a danger to others.

**Closing by Sponsor:**

**REP. CLARK** said that HB 51 will benefit those in assisted living facilities, and it provides reasonable licensure procedures. She urged the Committee's support of this bill.

{Tape: 2; Side: B; Approx. Time Counter: 0 - 8.6}

HEARING ON HB 56

Sponsor: REPRESENTATIVE BILL THOMAS, HD 93, Hobson

Opening Statement by Sponsor:

**REP. THOMAS** said that HB 56 addresses mental health nursing care for a Lewistown facility. It will allow for legal guardians to give consent to the wards in these facilities that do not have the capabilities to make decisions for themselves. This bill is a clarification issue.

Proponents' Testimony:

**Dan Anderson, DPHHS**, stated his support of this bill. The Montana State Nursing Home which is located in Lewistown, take most of the patients that do not have other options. Most of the patients are transferred to Lewistown from the Montana State Hospital in Warm Springs. In most cases, the patients are not capable of giving consent, and that is where legal guardians come in. The guardians can admit a ward to a facility. What this bill is doing is changing the language so that it states that a person can be admitted by a guardian.

**Anita Roessmann, Montana Advocacy Program**, read her submitted written testimony.

**EXHIBIT (huh08a07)**

Opponents' Testimony: none

Questions from Committee Members and Responses:

**REP. BECKER** asked Anita Roessmann if someone has a guardian because they have been declared by the court to be incompetent, how can they be expected to competently reply to questions that are being asked of them. **Ms. Roessmann** said that wards can get legal guardians without being scrutinized by the court. There is provision under the law for limited guardianship and full guardianship. She said that limited guardianship is the most common. Guardianships that are created can be overly broad.

**REP. ROBERTS** asked Anita Roessmann if an oral refusal is a higher level of refusal, and if that is what is given to the ward who is incapacitated. **Ms. Roessmann** said that the capacity to make medical decisions by a ward should help decide the guardianship. The department has tightened this up so that they are not having to respond to a refusal when it is not made on reasonable

judgment. She said this bill should be amended so that this issue is cleared up.

**{Tape: 3; Side: A; Approx. Time Counter: 0 - 7.4}**

**REP. NOENNIG** explained what would happen at a full court hearing in regard to a guardian. He asked Anita Roessmann if that is what is meant by a full hearing or if it is different. **Ms.**

**Roessmann** said that the conversation that she had about hearings have not been that detailed. She said that the procedure that was described is a great deal for the court to decide.

**REP. NOENNIG** asked Mr. Anderson if in most cases will the court be involved in regard to guardianship and the scope of it. **Mr. Anderson** said that he is not sure. Often these guardianships are sought on the sole purpose of making admission to the Montana State Nursing Home.

**REP. NOENNIG** said that the problem is that it prohibits the guardian from making a decision without an involuntary court proceeding, which is an unacceptable way to proceed. **REP. NOENNIG** asked Mr. Anderson if that is what the problem is. **Mr. Anderson** said that they believe there are people who would need the kind of care that doesn't meet the criteria for a full involuntary commitment.

**REP. NOENNIG** asked Mr. Anderson if the idea to allow the guardian to grant a court order to allow the consent and continue the consent until otherwise withdrawn has been a possibility. **Mr. Anderson** referred the question to **Russ Cater, Chief Legal Counsel, DPHHS**, said that they were trying to reach a balance. They want the patient to be protected, and they tried to balance between commitment from guardian to the ward. He said that he would be happy to work on an amendment that will address this issue. Russ Carter distributed an amendment to the Committee.

**EXHIBIT (huh08a08)**

**Closing by Sponsor:**

**REP. THOMAS** said that this is a sensitive issue, and this bill is an attempt to compromise. He urged a DO PASS for this bill.

**ADJOURNMENT**

Adjournment: 5:25 P.M.

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REP. BILL THOMAS, Chairman

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CJ JOHNSON, Secretary

BT/CJ

**EXHIBIT (huh08aad)**