

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
59th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON HUMAN SERVICES

Call to Order: By **CHAIRMAN ARLENE BECKER**, on March 7, 2005 at 3:00 P.M., in Room 472 Capitol.

ROLL CALL

Members Present:

Rep. Arlene Becker, Chairman (D)
Rep. Tom Facey, Vice Chairman (D)
Rep. Don Roberts, Vice Chairman (R)
Rep. Mary Caferro (D)
Rep. Emelie Eaton (D)
Rep. Gordon R. Hendrick (R)
Rep. Teresa K. Henry (D)
Rep. William J. Jones (R)
Rep. Dave McAlpin (D)
Rep. Tom McGillvray (R)
Rep. Mike Milburn (R)
Rep. Art Noonan (D)
Rep. Ron Stoker (R)
Rep. Bill Warden (R)
Rep. Jonathan Windy Boy (D)

Members Excused: Rep. Pat Wagman (R)

Members Absent: None.

Staff Present: Susan Fox, Legislative Branch
Mary Gay Wells, Committee Secretary

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

Committee Business Summary:

Hearing & Date Posted: HB 742, 3/2/2005
SB 29, 3/2/2005
Executive Action: HB 669, Do Pass As Amended
HB 740, Do Pass

HEARING ON HB 742**Sponsor: REP. ROSALIE BUZZAS, HD 93, MISSOULA****Opening Statement by Sponsor:**

REP. ROSALIE (ROSIE) BUZZAS opened the hearing on **HB 742**. The bill would establish a statewide registry for advanced declarations concerning life-sustaining treatment. It would provide for an electronic statewide repository for advanced directives such as living wills and power-of-attorneys for health care. The website would come through the Attorney General's office. It would be a secure data base that is designed to provide authorized healthcare providers immediate access to the registry at all times. There would be no cost to an individual to register and/or search the documents. She emphasized that this would help individuals make their healthcare wishes known in accordance with the Montana's Right of the Terminally Ill 3 Act and the Federal Patient's Self-determination Act. It alleviates the burden on families during times when loved ones are too ill to communicate and it helps healthcare providers give appropriate care when patients cannot communicate. Hospital costs for patients with advanced directives who died in the hospital were 38% less than those without advanced directives. Additionally, end-of-life care consumes 12% of all healthcare expenditures and 27% of Medicare expenditures. The bill has an appropriation of \$100,000 and \$75,000 would be spent in the first year for setting the program up. In the second year, \$25,000 would be used to pay for licensing and maintenance of the system.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 3.6}

Proponents' Testimony:

Lily Tuholske, Executive Director, Life's End Institute, Missoula Demonstration Project, gave her testimony and submitted the written copy.

EXHIBIT (huh50a01)

{Tape: 1; Side: A; Approx. Time Counter: 3.6 - 8.7}

Susan Hancock, Project Director, Choices Bank, Missoula, gave her testimony and submitted the written copy.

EXHIBIT (huh50a02)

{Tape: 1; Side: A; Approx. Time Counter: 8.7 - 13.4}

Kathy McGowan, American Cancer Society (ACS), concurred with the previous testimonies. She wanted to say that one of the goals of the ACS is to promote quality of life for people who have experienced cancer. Part of that quality of life is being able

to make good end-of-life decisions and do so in a safe and helpful way for their families.

Pam Bucy, Attorney General's Office, Department of Justice (DOJ), stated that this is an important bill. This is part of a big national movement. Many attorneys general are getting involved and educating their constituents on end-of-life issues. Attorney General McGrath is working on providing an educational component on the website. With the appropriation provided in the bill, they can utilize and expand the existing program that is already working in western Montana.

{Tape: 1; Side: A; Approx. Time Counter: 13.4 - 15.9}

Jan Jahner, Registered Nurse, St. Peter's Hospital, introduced herself and gave a brief background of the positions she has held as a nurse. She has coordinated a program that strongly supports end-of-life care. The program is called Transitions and Life Choices. Their goals are to be helpful, supportive and encouraging in the area of completing an advanced directive, to assist people when they are sorting through goals of care and to help family members in the midst of a crisis. The healthcare providers in the emergency room asked for a system that would allow them to get advanced directives immediately for their patients as they come into the hospital. It would help them immensely in what they should do for a critically ill patient.

Ms. Jahner encouraged the Committee for a do pass.

{Tape: 1; Side: A; Approx. Time Counter: 15.9 - 19.6}

Dan Dixson, Chaplain, Community Medical Center, Missoula, stood in support of the bill because he felt it vital for the Committee to hear how important an electronic repository for advance directives is. He daily witnesses decisions made when there is a narrow gap between life and death. If a patient is unable to speak for themselves, then the family members have hard decisions to make if there is no advance directive. Often times family members are not available. And many times, family members are not of one mind as to the best course of treatment or what the patient would want. Patients can end up on life-sustaining equipment which they may not have wanted. He believed that advance directives would not solve every problem or conflict; but since Choices Bank has come online in Missoula, he has gone to the secure site numerous times to obtain a patient's advance directive which assisted the healthcare team and the family of the patient.

{Tape: 1; Side: A; Approx. Time Counter: 19.6 - 23.6}

Casey Blumenthal, Montana Hospital Association, verified first hand what an agonizing time this can be for the patient and their

family. It can make life or death easier for all concerned. She urged the Committee for a do pass.

Robert Speirer, Volunteer Advocate, AARP Montana, was supportive of the bill, gave his testimony and submitted his written testimony.

EXHIBIT (huh50a03)

{Tape: 1; Side: A; Approx. Time Counter: 23.6 - 26}

Bob Ream, Former Montana Representative, told of when his mother had a massive stroke when he was serving in the House. Her wishes had been made well-known to the family, but still there were some conflicts. With an advance directive, it would have helped. He was very supportive of the bill and urged a do pass.

Beth Brenneman, Attorney, Montana Advocacy Program, said their clients find a great sense of relief and control in being able to dictate their wishes concerning their healthcare. They were in strong support of advance directives.

Chuck Butler, Helena, asked the Committee for their support for HB 742. He told his story of how his mother died ten years ago. His father wanted everything done that was possible to keep her alive. The siblings felt their mother was ready to die and did not want to put her through any more suffering. The doctors also felt there was nothing more they could do for her. From this experience of his mother's death, he urged the passage of the bill and also encouraged the public education and outreach program pertaining to advanced healthcare planning and end-of-life decision making.

{Tape: 1; Side: A; Approx. Time Counter: 26 - 32}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. GORDON HENDRICK asked if there should be any concern about a conflict with the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA). **REP. BUZZAS** replied that is always a possibility. New Section 4, talks about confidentiality but she referred the questions to Ms. Tuholske. **Ms. Tuholske** explained how the system works in Missoula. The documents that are deposited are not part of a medical record. As such, they do not technically fall under HIPAA regulations. However, many of the documents that they receive, especially those from lawyers, do specifically state the HIPAA regulation and that they will be followed under those regulations. Her group has been instructed

by attorneys that, because the documents are not officially a part of a medical record, the HIPAA regulations do not affect those documents.

REP. HENDRICK inquired about the need for more Full Time Equivalent (FTE) people. **Ms. Tuholske** said that in Missoula, they have trained personnel to accept advance directive documents at deposit locations. They accept only documents that are appropriate for the system. **Ms. Bucy** anticipated expanding the program in Missoula. They have not requested an FTE because the bill already has an appropriation. They thought they would need funds for programming costs to connect to the data base that already exists.

REP. HENDRICK asked if this system would save hospital medical record employees a lot of research and headaches. **Ms. Bucy** said that was her understanding.

{Tape: 1; Side: B; Approx. Time Counter: 0 - 5.1}

REP. WILLIAM JONES wondered how a person could change their advance directive if they have a change of mind and what would happen if they changed their mind once they entered a hospital. **Ms. Hancock** explained that in the process of accepting these documents for deposit, the paperwork is scanned into a computer and created as a PDF document--one that cannot be changed online. However, if a person chooses to revoke the document, they may revoke it by telling Choices Bank to remove the document from their system. If a person changes their mind about the choices they want, they create a new document which is then scanned into the system. The document that has the most recent date is the one considered as a valid and legal document. At anytime, if a person can communicate their wishes to a doctor, that takes precedence over an advance directive. A living will is only effective if the person is unable to communicate their wishes.

{Tape: 1; Side: B; Approx. Time Counter: 5.1 - 8.3}

REP. RON STOKER questioned that if the document is not considered a legal document as far as HIPAA is concerned, does it have the force of law. **Ms. Hancock** replied, "Yes."

REP. STOKER inquired if a lawsuit would occur if the doctors or hospital did not follow the advance directive. **Ms. Hancock** said that might happen. She asked for Mr. Dixson's opinion. **Mr. Dixson** responded that if there is an advance directive and a doctor does not feel like they can fulfill that directive, by law they are to revoke themselves. They must transfer the patient to another physician who can follow the directive. Most hospitals have an ethics committee. If there is a conflict between the

wishes of the family and the physician, it would go to the ethics committee and have it dealt with out in the open.

{Tape: 1; Side: B; Approx. Time Counter: 8.3 - 11.7}

REP. STOKER wanted to have a set of the forms or blanks that are used for an advance directive. **Ms. Hancock** replied that they did not have a particular form, but would send what they use.

REP. TOM MCGILLVRAY inquired as to who could access these advance directives. In the bill, only attending physician, registered nurse, hospital or medical records department staff could access the records. **Mr. Dixon** replied that in Missoula, chaplains have a password to go online and check advance directives. He didn't know about the bill. **REP. BUZZAS** felt that pastors, chaplains, priests, or ministers could be included.

{Tape: 1; Side: B; Approx. Time Counter: 11.7 - 16}

CHAIRMAN BECKER wondered if there was something a person could carry with them. **Ms. Hancock** said there is a card similar to a donor card. It is called the Access Code Card and it has the person's name and an access code. They recommend the card be carried by the person in their wallet. They recommend that the second card be given to their healthcare representative or anyone else they want.

Closing by Sponsor:

The Sponsor closed.

{Tape: 1; Side: B; Approx. Time Counter: 16 - 22.9}

HEARING ON SB 29

Sponsor: SEN. TRUDI SCHMIDT, SD 11, GREAT FALLS

Opening Statement by Sponsor:

SEN. TRUDI SCHMIDT opened the hearing on **SB 29**. The bill would do two things: 1) change the statutes under eligibility on Page 3 which states a person who has been convicted of a felony drug offense would be eligible for food stamps or TANF and 2) put into place, on Page 2, starting on Line 24, rules regarding testing and reporting requirements. Under current Montana law, people who are eligible for food stamps or TANF cannot receive benefits if they have had a drug related felony since August 22, 1996. This same ban on benefits does not apply to people who have served their time for any other criminal offense and who qualify

based on income. The former have been singled out and denied a basic benefit to get back on their feet. According to the Department of Correction's data, the top offense for females in the state for fiscal year 2003 was drug possession. Most have children and try to make a living once their sentence has been completed. This bill allows DPHHS to apply financial sanctions including loss of benefits to individuals who fail the rules and the conditions of their probation and parole. The Department of Corrections (DOC) would be engaged in the testing and supervision of these individuals. Additional consequences may also be applied by DOC as a result of parole violations. This bill allows each agency to do what they do best.

{Tape: 1; Side: B; Approx. Time Counter: 22.4 - 28.1}

Proponents' Testimony:

Eric Schiedermayer, Montana Catholic Conference, gave his testimony and submitted his written testimony.

EXHIBIT (huh50a04)

Mary Holverson, Representing Minkie Medora, Registered Dietitian, Missoula, explained why she was speaking for Ms. Medora. She read Ms. Medora's testimony and submitted the written copy.

EXHIBIT (huh50a05)

{Tape: 2; Side: A; Approx. Time Counter: 0 - 6.2}

Julie Bruner, Montana-Northern Wyoming Conference of the United Church of Christ Social Justice Committee, stood in support of the bill. She said people coming out of prison need help so that they and their children do not continue to suffer by being deprived of the necessary support to get their feet on the ground and establish healthy ways of living.

{Tape: 2; Side: A; Approx. Time Counter: 6.2 - 7.1}

Don Hargrove, Montana Addiction Services Providers, gave some background on the bill. He felt the bill was needed and would help those people who needed it most when they are down. In the long run, it should save the state money.

{Tape: 2; Side: A; Approx. Time Counter: 7.1 - 8.2}

Hank Hudson, Administrator, Human and Community Services Division, DPHHS, said the Department is an enthusiastic proponent of the bill. They look forward to working with the Department of Corrections (DOC). The provision that says, "convicted drug felons could not receive food stamps or TANF," was part of the original welfare reform law passed by Congress in 1995. Congress left it open to states to override the provision. About 26 states have overridden the provision. Food stamps and TANF are provided to help people move forward and escape poverty. SB 29

provides for rule-writing and the rules would be simple. DPHHS would ask DOC to let them know if a person is in compliance with any probation or parole requirements. DPHHS would rely on DOC completely in this area. The fiscal note is not large, and it is all federal funds.

{Tape: 2; Side: A; Approx. Time Counter: 8.2 - 11}

Kim Abbott, Working for Equality and Economic Liberation (WEEL), Helena, spoke for the bill and said that after punishment, rehabilitation is the next logical step. She urged a do pass.

{Tape: 2; Side: A; Approx. Time Counter: 11 - 12}

Steve Yeakel, Montana Council for Maternal and Child Health, offered that at all the meetings he had attended, people were shocked at the narrow discrimination toward drug felons and were appreciative of this bill.

{Tape: 2; Side: A; Approx. Time Counter: 12 - 12.7}

Shirley Brown, Division Administrator, Child and Family Services, DPHHS, stood in support of the bill. She explained that the Division's first focus was to reunite the child with the parent from whom the child was removed. One of the barriers they experience is the prohibition against families who have had a drug conviction and cannot receive food stamps or TANF. If the family does not have resources, it is difficult to reunite the children with the parent. In Cascade County, the number of child abuse and neglect court cases involving methamphetamine increased from 38% in 2003 to 48.5% in 2004. In Flathead County, in June 2004, 50% of the cases were meth related. In December 2004, 63% of the investigations that the Division had conducted had drug-related issues; and 44% of the children in foster care in Flathead County were there because of drug-related issues. In Lake County, as of December 2004, 44% of the investigations were drug related and 76% of the children in foster care were there because of drug-related issues. She mentioned other counties which had high percentages in both investigations and children in foster care.

The 2003 Legislature amended the definition of child abuse or neglect to include, "exposing a child to the criminal distribution of dangerous drugs, the criminal production or manufacturing of dangerous drugs or the operation of an unlawful clandestine lab." Since that became effective, 55 children have been placed in foster care and of those, 19 were under the age of five and nine were under the age of one. This bill would allow some of these parents to access food stamps and TANF and they would be able to provide support for their children.

{Tape: 2; Side: A; Approx. Time Counter: 12.7 - 17.2}

Ron Alsbury, Chief, Probation and Parole Bureau, Department of Corrections (DOC), said that his Department was in full support of the bill. He read a portion of a letter from Warden Jo Acton, Montana Women's Prison, that echos the concerns that the sponsor articulated previously.

EXHIBIT (huh50a06)

{Tape: 2; Side: A; Approx. Time Counter: 17.2 - 20}

Kate Bradford, Director, Montana Food Bank Network, stated that they were in strong support of the bill. She submitted letters from former Director Gail Gray, DPHHS, Bill Slaughter, Director, Department of Corrections, Gayle Tompkins, Director, YWCA of Billings, Kimala Pullman, Registered Dietitian, and a fact sheet from Montana Food Bank Network.

EXHIBIT (huh50a07)

{Tape: 2; Side: A; Approx. Time Counter: 20 - 22.3}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. STOKER said that the funding figures were interesting and questioned the calculations of those figures and asked for clarification. **Mr. Hudson** replied that currently, children may qualify and receive TANF payments while the adult is not receiving the adult share of the benefit. They calculated the figures on the cases they knew about and what it would cost to put them back on these benefits. There may be people who have never applied and they might surface.

REP. STOKER asked if a family of four, receiving benefits from all programs, could have an income of \$24,000 a year. **Mr. Hudson** replied that if a person received all the benefits for which they were eligible, including the cash value on the Medicaid policy, a family of four could have an income of around \$20,000.

REP. STOKER asked if the Department is sure they are on top of how fast the surplus is going to disappear. **Mr. Hudson** said that it is possible they have underestimated the figures; but he asked the Committee to remember that a person cannot receive TANF unless they have dependent children. Also, that group of adults coming out of prison, with children, and willing to abide by their probation and parole requirements and by TANF regulations, should not increase the rolls by much.

{Tape: 2; Side: A; Approx. Time Counter: 22.3 - 27.2}

REP. STOKER asked Mr. Alsbury to elaborate on the number of incarcerated women and what percentage would qualify for these two programs when released from prison. **Mr. Alsbury** replied that, based on what the warden had indicated, 65% of the women were the primary caretakers of the children. The women's population is about 200 at the present time.

REP. CAFERRO inquired of Mr. Hudson that if a person failed a drug test which was part of their parole conditions, would that family be sanctioned. **Mr. Hudson** answered that they would be sanctioned just as if they had failed one of the conditions for food stamps or TANF.

REP. CAFERRO asked if that would be based on a contract with the probation officer. **Mr. Hudson** informed the Committee that one contract is between DPHHS. That contract states the person be in compliance with their probation and parole. He supposed they would have a contract and would submit to drug testing at certain times. DPHHS will not do any drug testing. They will rely on DOC for keeping them informed if a person is or is not meeting their contract.

REP. CAFERRO questioned if the bill passes, would it provide more incentive for the person to stay drug free. **Mr. Hudson** felt the bill would be an incentive.

{Tape: 2; Side: A; Approx. Time Counter: 27.2 - 32}

REP. WARDEN inquired about recidivism rates among people convicted of a drug felony. **Mr. Alsbury** did not have good figures. Approximately 46% of all offenders returning to institutions are from revocation. A number of entrees at both facilities are rather high.

{Tape: 2; Side: B; Approx. Time Counter: 0 - 1.1}

REP. WARDEN asked Mr. Alsbury if he agreed with Mr. Hudson in that this bill would impact recidivism in a positive light. **Mr. Alsbury** replied that would be their hope. They thought that interest in recovery would be a good predictor of responsible behavior.

REP. MCGILLVRAY inquired how many children in foster care are with immediate family members. **Ms. Brown** said that 41% of the children leaving foster care are returned to the parent from whom they were removed. In terms of children in placement right now, she thought 25% of them are placed with extended family members.

REP. MCGILLVRAY asked if a woman coming out of prison is immediately reunited with her child. **Ms. Brown** replied not

necessarily because there is usually a court-ordered treatment plan that is established. There would then be a period of time when they would have to work toward improving their parenting, remain clean, etc.

REP. MCGILLVRAY wondered if being financially stable would be a good requirement. **Ms. Brown** replied that most families are low income and even if they have a job, it is usually low paying; so setting a requirement that they be financially stable without public assistance might mean the family could not reunite.

{Tape: 2; Side: B; Approx. Time Counter: 1.1 - 5.4}

REP. NOONAN asked for clarification on the technical note about the \$22 million reserve funding for TANF. **Mr. Hudson** explained the Department receives a TANF block grant each year of \$44 million. If it is not all spent by the end of the year, it can be carried forward as a reserve. When the caseload is high, more than \$44 million is spent. When it is low, less is spent. The Federal government expects the states to use these funds wisely. When the benefits were reduced in 2003, the caseload dropped by 1,000. There was a surplus of approximately \$23 million. Based upon their projections, that money will be spent down and be in the red by 2008 or 2009. The budget office suggested the Department put this technical note on every piece of legislation that deals with TANF. **Mr. Hudson** felt that this block grant would be frozen for 12 to 13 years.

{Tape: 2; Side: B; Approx. Time Counter: 5.4 - 9.2}

Closing by Sponsor:

The Sponsor closed. **REP. DON ROBERTS** will carry the bill.

{Tape: 2; Side: B; Approx. Time Counter: 9.2 - 11.1. REP. STOKER left the hearing.}

EXECUTIVE ACTION ON HB 669

Motion: **REP. FACEY** moved that HB 669 DO PASS.

Discussion:

REP. MCALPIN, REP. HENRY, REP. ROBERTS, REP. CAFERRO, and REP. NOONAN spoke in favor of the bill.

REP. MCGILLVRAY, REP. MILBURN and REP. JONES spoke about the responsibilities of parents and the need to prioritize these programs. As always, there is only so much money to go around.

{Tape: 2; Side: B; Approx. Time Counter: 11.1 - 23}

REP. ROBERTS encouraged the Committee to support the bill. It may not be perfect but it does give guidance and help to those who need this program.

Motion: **REP. HENDRICK** moved that HB 669 BE CONCEPTUALLY AMENDED TO STRIKE "MAY" AND ADD "SHALL" in Section 1, (5).

REP. HENDRICK asked the Committee to look at Page 2, Line 5, (5) which states: "A provider may charge a reasonable fee...." He explained his reasoning.

REP. MCALPIN asked if the person could not afford to pay, then would the person not be able to see their child. **REP. HENDRICK** said that in all of life, limits have to be established. As a legislator he has to make decisions based upon the limitation of the budget.

CHAIRMAN BECKER offered that the Department may work on a sliding fee schedule which is stated in the bill.

{Tape: 2; Side: B; Approx. Time Counter: 23 - 32}

REP. HENRY mentioned the fact that children usually have a guardian ad litem and wondered how that would affect everyone. **REP. CAFERRO** explained that in some cases the court orders how the visitations will be held.

Vote: Motion carried unanimously by voice vote 16-0. **REP. STOKER** and **REP. WAGMAN** voted by proxy.

Motion/Vote: **REP. FACEY** moved that HB 669 DO PASS AS AMENDED. Motion carried 14-2 by roll call vote with **REP. MCGILLVRAY** and **REP. MILBURN** voting no. **REP. STOKER** and **WAGMAN** voted by proxy. *{Tape: 3; Side: A; Approx. Time Counter: 0 - 8.9. REP. WARDEN left the hearing.}*

EXECUTIVE ACTION ON HB 740

Motion: **REP. FACEY** moved that HB 740 DO PASS.

Discussion:

REP. ART NOONAN spoke in opposition to the bill and gave his reasons. He did not think the State of Montana should be held responsible. W. R. Grace was the guilty party and they should be held responsible.

{Tape: 3; Side: A; Approx. Time Counter: 8.9 - 12.8}

REP. MILBURN said this bill would help people who have medical problems through, seemingly, no fault of their own.

REP. ROBERTS explained that people so often do not understand the complexity of substances and the possible harm that can be done. He further explained how certain substances affect the human body. He felt that the State should help them.

{Tape: 3; Side: A; Approx. Time Counter: 12.8 - 16.5}

REP. WINDY BOY spoke about the mines and the problems that are created by them. When these companies go bankrupt, the State is left holding the bag. He was in favor of the bill.

REP. JONES believed that the bill was a bargain for the State and would give Libby time to look for more resources to help those infected by vermiculite.

{Tape: 3; Side: A; Approx. Time Counter: 16.5 - 21.7}

REP. HENDRICK concurred with **REP. JONES** and the long-term effects are totally unknown. The State should be concerned over this issue. He himself probably contracted systemic lupus due to his home being insulated with vermiculite.

REP. MCALPIN opposed the bill.

REP. HENRY wondered if W. R. Grace came through with any money, would the State get a portion back.

REP. ROBERTS explained that with so much money involved there should be no expectation of reimbursement.

CHAIRMAN BECKER saw an article that the state was trying to get a settlement out of W. R. Grace for \$250 million. She felt that the money requested in this bill would just be a tide-over provision.

Vote: Motion carried 12-4 by roll call vote with **REP. EATON**, **REP. MCALPIN**, **REP. MCGILLVRAY**, and **REP. NOONAN** voting no. **REP. STOKER**, **REP. WAGMAN** and **REP. WARDEN** voted by proxy.

{Tape: 3; Side: A; Approx. Time Counter: 21.7 - 24.7}

ADJOURNMENT

Adjournment: 6:15 P.M.

REP. ARLENE BECKER, Chairman

MARY GAY WELLS, Secretary

AB/mw

Additional Exhibits:

EXHIBIT ([huh50aad0.PDF](#))