

MINUTES

**MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY

Call to Order: By **CHAIRMAN JERRY O'NEIL**, on February 21, 2003 at 3:30 P.M., in Room 317-A Capitol.

ROLL CALL

Members Present:

Sen. Jerry O'Neil, Chairman (R)
Sen. Duane Grimes, Vice Chairman (R)
Sen. John C. Bohlinger (R)
Sen. Brent R. Cromley (D)
Sen. Bob DePratu (R)
Sen. John Esp (R)
Sen. Dan Harrington (D)
Sen. Trudi Schmidt (D)
Sen. Emily Stonington (D)

Members Excused: None.

Members Absent: None.

Staff Present: Dave Bohyer, Legislative Branch
Andrea Gustafson, Committee Secretary

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

Committee Business Summary:

Hearing & Date Posted: HB 321, 2/13/2003; HB 150,
2/13/2003; SB 192, 2/13/2003
Executive Action: SB 358; SB 347; SB 348; HB 150;
SB 192

EXECUTIVE ACTION ON HB 358

Discussion:

SEN. DUANE GRIMES, SD 20, Clancy, announced that executive action would be done on several bills before starting the hearings.

SEN. JERRY O'NEIL, SD 42, Columbia Falls, moved to indefinitely postpone SB 358.

SEN. TRUDI SCHMIDT, SD 21, Great Falls, thought there should be some discussion on it. She said she knew both sides had come together and had some discussion and thought that needed to be taken into consideration before immediately postponing it. She asked that one from each side speak.

Ms. Lamire, Massage Therapist, said they were not able to come up with any kind of resolution.

Ms. Susan Carlson, Massage Therapist, said she had made her position clear at the end of the hearing and that nothing had changed. She said there was no compromise.

SEN. O'NEIL said that it was clear from everyone who had spoke at the hearing that each person was educated on the type of massage therapy they practiced. He had yet to hear from anyone who was unhappy about the way massage therapy was being practiced from a consumer's point of view.

SEN. JOHN BOHLINGER, SD 7, Billings, said that he had initially come to the hearing to support the bill because he thought licensure would give status to the profession and to provide third party payment for services rendered. After hearing from so many constituents and people he did not know, he said he could not support the bill. He said that until agreements could be made and those that were currently in the profession could be protected, he could not support the bill.

SEN. EMILY STONINGTON, SD 15, Bozeman, agreed with **SEN. BOHLINGER.** She said she could not support a bill regardless of how much merit and good intention it offered, when there was so much opposition. She said it needed more work and urged both sides to come together to find something that worked for the profession.

SEN. ROBERT DEPRATU, SD 40, Whitefish, said he was disappointed in the attitude from the night of the hearing, when he asked both sides to come together and work something out. He did not appreciate that disinterest portrayed. He said he was in a

business that was somewhat regulated and said it was always much better to come together and develop what worked, rather than have the legislature mandate rules. He hoped that over the next several months, after things cooled, that both sides could come to agreement. He did not think expecting licensure was out of line, which was basically a business license that came from the state board.

SEN. SCHMIDT said she too was disappointed in the attitude during the hearing. She said people get organized and develop an opposition, but may not be aware of how much work went into developing a bill.

Motion/Vote: **SEN. GRIMES** moved that **SB 358 BE INDEFINITELY POSTPONED**. Motion carried 9-0.

EXECUTIVE ACTION ON SB 347

Motion: **SEN. GRIMES** moved that **SB 347 DO PASS**.

Discussion:

SEN. GRIMES moved the amendments SB0034701.asb and asked that **SEN. KEENAN** address the purpose of the amendments.

SEN. BOB KEENAN, SD 38, Bigfork, said he worked on the amendments so that it would not change the intent of the bill, in order to address the concerns of the Community Mental Health Centers and the County Commissioners. He handed out an Implementation Timeline for SB 347. **EXHIBIT (phs39a01)** He said in October 2003 there would be an effective date for all the sections except the repeal of section 201 and 204; 201 would be definitions and 204, being the most important part of the bill. January 2004, full implementation and transition to the Service Area Authority (SAA) plan state wide, would be presented to the Children and Families interim committee. The following June, the transition plan defining the community mental health centers role, including any special designation. The plan would detail roles of the SAA that are assumed, as described in the new Section 3. In July, the repealers would go into effect on 53-21-201 and 53-21-204. January 2005, the legislature convenes again, which will provide opportunity for the department to revisit or retool the SAA plan. **SEN. KEENAN** said if the Central SAA plan was working well and the Eastern one was not, then they had the legislative session to make adjustments, so that by July 2007, full implementation of the SAA's would be in all regions. He said the first three amendments had to do with pushing the implementation back 16-17 months, which was all in the title. The next amendment, Section 2, clarified the department functions and duties identified by the SAA process, being a need for the Addictive Mental Disorders

Division (AMDD) in asking that the duties be put into statute and that AMDD recognize their importance and do a good job. It clarified the department's responsibility to assure the functions were completed and allowed the SAA, as the statute described, assume any or some of the duties over time, so this would transfer over to the SAA ultimately. The next amendment changed the "must" to a "may", the national certification accreditation. He said the proposed amendments from the department were not included. They were attempts to reinstate Section 53-21-204. The framework was to create a level playing field with choice and increased accountability for outcomes in the system. He said there was still no answer as to why CMHC's should have special designation. The answer in testimony was that they did not want to be accredited and that they did not want or believe they could compete in a competitive atmosphere. They thought the bill would eliminate them. He did not see how that could be. County involvement was addressed in Section 3. He said he plugged the County involvement through the SAA and tried to keep them as part of the process at the same time of transition. He said the proposed amendment further entrenched and institutionalized the status quo that SB 347 was trying to break free of. He said the committee was better off killing the bill than to accept the department's amendments to just reinstate the existing 30 year old law that had been mostly ignored for a long time. He said in his amendment, in response to the county's plea to stay involved, amendments were proposed to specifically identify their involvement in the development of the SAA board. That was on the second page of the amendments, number 10. In amendment 11, he asked **Susan Fox** to make sure there would be a bid threshold. She said that would be covered under Title 18. Under Administrative Rule, Title 18, there was a bid threshold so that bids did not have to be put out for small service. Amendment 14 took care of the psychologist concerns regarding appropriately certified or licensed mental health center or mental professional, and that it was a continuation of services, so it would not be exclusive to mental health centers. In new number 15, new Section 6, all other providers that existed right now will also stay involved. Number 7 was the directive and the transition to the service areas because the service areas are not ready yet to go into business. At the bottom of page 3 of the amendments, #19 was the board of visitors' requirements. **SEN. KEENAN** said he was happy with the language being submitted. It made it a workable process and was not as dictatorial as the existing language was that resulted from the last legislative session. The last sentence said that within 15 working days of the board's receipt of the facility's response to arrive at a mutually agreed upon resolution. This encouraged communication rather than drop dead dates where there would be conflict.

SEN. GRIMES asked what happened if the time frames were not met.

SEN. KEENAN said with the 2004 repealer, it would transition it. In June, the defining role with the CMHC's, including any special designation, plan would also detail any roles with the SAA's described in new Section 3.

SEN. GRIMES asked if Section 5 was still going to be in his bill in law which allowed continuation of services through the facilities of existing CMHC's. They were not going to go away if the deadlines were not met. **SEN. KEENAN** said that was correct, that would be the backstop.

SEN. STONINGTON asked how broad a support he had. Did he work with the department and the CMHC's and other providers. **SEN. KEENAN** said he worked with the providers, not the CMHC's, nor the department. **Susan Fox** and **SEN. SCHMIDT** had concerns that were brought in.

SEN. STONINGTON asked if **Dan Anderson** could respond to **SEN. KEENAN**'s amendments. **Mr. Anderson** said he had not had a chance to review the amendments. He had come in late and did not hear all of the changes. He thought the phasing in portion would be appropriate.

SEN. SCHMIDT asked if there was anything he wanted to comment on. **Mr. Anderson** thought it made sense for the SAA's to have a process to phase in and some sort of a time line. He thought there should be some maintenance of the House center, the compubase between the House and the statute, if that was not there, he was disappointed.

SEN. SCHMIDT asked **SEN. KEENAN** what it was that **Mr. Anderson** was disappointed in. **SEN. KEENAN** said he was referring to the inclusion of the CMHC's in statute, or recognition of the county and the CMHC relationship, that it was not recognized.

SEN. STONINGTON said it was a major system of change in a time when mental health was crying for stability. For 25 years there had been a relationship between the county governments and community mental health centers that have set up services in most towns across the state. There were other providers that wanted equal opportunity in all of this and the SAA concept was sort of bringing in a whole new concept of three regions that would administer the mental health services for adults. She said she understood what **SEN. KEENAN** was trying to do. She said the counties were saying, "whoa, too much too fast." **Mr. Anderson** brought in amendments that tried to provide for the counties and the CMHC's relationship to still have validity in law and continue over a period of time, which **SEN. KEENAN** resisted. He

wanted to break that open with the SAA and that meant taking some stature and presence of the CMHC's. **SEN. KEENAN** said she was fairly accurate. He said everybody came to the subcommittee and said 'yes' to the SAA, that they were getting there, when in truth they were not. He thought it was important to get moving toward the future. Section 7 gave them a four year period to develop the SAA's transition away from the CMHC's special designation, and as part of that, in part 2, the "department shall define the role of existing mental health centers which must be licensed mental health centers as part of the transition plan." He again said he never got an answer as to why the CMHC's should be specially designated, but did hear they did not want to be accredited and they feared they would be eliminated. He did not see this happening. He said there was an obvious link between AMDD and the CMHC's. He was surprised they were not excited about the language in 53-21-204, which called for proportionate shares in funding and things like that which caused the counties to come to the table and show their commitment to the mental health system.

SEN. STONINGTON said the part she was uncomfortable with was the huge systemic change involving so many with so much mistrust in the system currently, that it strikes that without the support of the groups involved. She was not convinced there should be a level playing field or that the CMHC's should not be the bulk of the mental health system with a SAA governing the region. She said she had struggled to understand it over the last 12 months and was not quite there yet. She acknowledged **SEN. KEENAN** of having more experience with it, but again said it was a major change.

SEN. SCHMIDT said she liked it because something needed to be done with the mental health system and saw that it was saying, "this is what we want to see happen. We want to see these SAA's, we respect the County Commissioner's concern, we want the mental health centers to be in place, but we also think these other people can be involved in the process of providing services."

SEN. STONINGTON said her subcommittee on Human Services approved a drafting of a bill to pass the CMHC's providing gate keeper function with the state hospital and to strengthen in many ways, their position with the department. She asked if it would be in conflict with the bill. **SEN. KEENAN** said no and that he supported that. He did not see a problem with it at all.

SEN. SCHMIDT said she thought it important to move the bill onto the floor and have it go to the House committee to see what happened there. She said people needed to get used to the idea

and maybe some fine tuning would be done in the process. She said it was a change needed to give structure that was badly needed.

Motion/Vote: SEN. O'NEIL moved that AMENDMENT SB034701.ASB DO PASS. Motion carried 9-0.

Dave Bohyer, Legislative Services Division, said Susan Fox had handed him a note regarding amendment 12, following the word "competively," put the language under guidelines. "The Department of Administration pursuant to 18-4-133, 18-4-305, and 18-4-306." He said those statutory sections related to exigent circumstances, small bids, small dollar value bids, and certain services. He thought she had discussed this with SEN. KEENAN.

SEN. BRENT CROMLEY, SD 9, Billings moved that additional amendment.

Motion/Vote: SEN. CROMLEY moved that AMENDMENT TO #12 IN SB 034701.ASB DO PASS AS AMENDED. Motion carried 9-0.

Motion/Vote: SEN. ESP moved that SB 347 DO PASS AS AMENDED. Motion carried 7-2 with CROMLEY and STONINGTON voting no.

EXECUTIVE ACTION ON SB 348

Motion/Vote: SEN. HARRINGTON moved that SB 348 DO PASS AS AMENDED. Motion carried 9-0.

SEN. O'NEIL asked if there were any amendments for SB 348.

Jani McCall, Deaconess Billings Clinic, said she had a few amendments that Mr. Bohyer completed. She gave them to SEN. KEENAN and he approved. She said they were striking the word "intensive" and inserting "inpatient" in quotations. Page 2, Line 6 and again on Page 10, Line 2, just "intensive" was struck and then it left in "inpatient psychiatric services." On Page 1, Line 1, where it was based on "admission criteria", because it was a significant part of the amendment.

Mr. Bohyer said it was there and again on Page 10, Line 11. He confirmed that on Page 2, Lines 11 and 12, subsection (b) was stricken entirely. This was provided to SEN. KEENAN who said that they were within his intent.

Motion/Vote: SEN. ESP moved that THE AMENDMENT DO PASS. Motion carried 8-0.

HEARING ON HB 321

Sponsor: REP. CINDY YOUNKIN, HD 28, Bozeman

Proponents: Pat Melby, Montana Medical Association
Dennis Salisbury, Physician
Gloria Hermanson, MT Society of Otolaryngology
Lawrence Macaby, Physician
Toni Moilanen, Allergy Technician
Donna McCreedy, Certified Medical Assistant, (CMA)
Susan Cox, CMA

Opponents: None.

Opening Statement by Sponsor:

REP. CINDY YOUNKIN, HD 28, Bozeman was still in another meeting and unable to open. SEN. ESP opened for her. He said HB 321 was to clarify delegation of clinical tasks by physicians to medical assistants who worked in the office. The proponents would elaborate on the bill and asked for support of SB 321.

Proponents' Testimony:

Pat Melby, Montana Medical Association, said they requested REP. YOUNKIN to introduce the bill on their behalf. He first distributed Dr. Neil Roger's written testimony EXHIBIT (phs39a02) who was unable to be there, as well as the written testimony of Sue Weingartner, the Executive Director of the Montana Podiatric Association. EXHIBIT (phs39a03) Mr. Melby said HB 321 was brought for the purpose of clarifying delegation of clinical tasks by physicians to medical assistants who worked in their office. Medical assistants were unlicensed health care workers who worked in physicians' offices and provided a variety of tasks for physicians, many of them administrative, such as assisting with the billing, paperwork, keeping medical records, and filing. They also provided clinical tasks such as taking vital signs and assisting in obtaining patient history, preparing a patient for examination procedures of treatment, preparing and administering medications and immunizations, maintaining the records for that, and coordinating patient care with other healthcare providers. He said medical assistants had provided those services for more than half a century and had been common practice in Montana for that long. Medical assistants were used across the country by physicians and certification was available for medical assistants from the national association of medical assistants. They had to meet certain qualifications for that purpose. Physicians believe

that under current law, the delegation of immunizations, the physician had the ability to delegate those tasks. The board of nursing had some difficulty with this and believed that in the case of administering medications and giving injections, that those tasks were for a licensed nurse. Over the past year, the board of nursing had issued about nine cease and desist orders to medical assistants, threatening them with prosecution if they continued to administer medications or give injections. The purpose of the bill was to first, define what a medical assistant was, which was an unlicensed allied care worker who functioned under the supervision of the physician and who could perform administrative and clinical tasks. **Mr. Melby** said the substantial part of the bill was in Section 5, last page, which basically provided that the Board of Medical Examiners provide guidelines for the performance of administrative office duties and clinical tasks by medical assistants, including the administration of medication. They would provide the level of physician's supervision required for the medical assistant for those tasks. He said in the House, a caveat was added that would get the board to adopt the requirement of on sight supervision of the medical assistant by a physician for invasive procedures, administration or allergy testing. The physician was also responsible for the medical assistant, ensuring that the medical assistant was competent to perform the clinical tasks and meet the requirements of the guidelines, and that the clinical tasks performed were in accordance of the board's guidelines and good medical practice. The physician was responsible, legally liable for anything that the medical assistant may do that is not within the guidelines and not within good medical practices. He requested an immediate effective date be added to the bill and strongly urged support of the bill.

Dennis Salisbury M.D., Montana Mental Health and Montana Academy of Family Physicians, said it was important to remember that all those in medicine and nursing were about patient safety and providing the best care for patients. The bill assures that. It made the physician responsible for assuring that the training and the administration and the performance on the job were up to the standards of the physician and were in the best interests of the patient. **Mr. Salisbury** said that when a patient came in who needed an antibiotic, he was responsible for that antibiotic whether or not the person administering it was an RN, an LPN or himself. It was his responsibility. He said this bill was not far from that which had already been practiced for years. He thought the state was in a terrible budget crunch. Medicaid had been cut by 7% in terms of reimbursement and Medicare had been cut by 5.4% in reimbursement. **Mr. Salisbury** said many physicians' offices were running on a very thin line. In his office he use RN's, LPN's, and himself in various positions and

had to do various procedures in order to assure that the patients were cared for. If it were true that immunizations and injections could only be done by RN's, the cost to his office would tip him over the edge. He said he was in the largest physician group in town and they were barely solvent financially. He said if they were only allowed to hire RN's to fulfill the clinical tasks, patient care would suffer. He said the ability for them to administer those medications to the patients would potentially suffer and they would have to send them to the hospital where they would wait in long lines and pay higher fees. **Mr. Salisbury** said the bill assured that patients were well cared for and it assured that physicians were taking the responsibility they needed to be taking for the care of the patients in the administration of immunizations and injections. It also preserved the role of the physician and the nurse in the functioning of the office as it had been previously done.

Gloria Hermanson, MT Society of Otolaryngology, submitted written testimony for **Dr. Hugh Hetherington**. **EXHIBIT (phs39a04)**

Lawrence McEvoy, Physician, said he was board certified in internal medicine. He ran a solo practice in Helena for many years and served 8 years on the Board of Medical Examiners, one of them as vice president, and an additional three years as president of the Board of Medical Examiners. He also stated that he completed 8 years with the Board in November of last year.

Mr. McEvoy said that many had emphasized that the bill codifies current practices. The Board of Medical Examiners had paid significant attention to this matter during the eight years while he was on the Board and also had a position paper on this. The board's position was that physicians could delegate under the law the tasks to people who work in their office. The bill held the physician or podiatrist to be accountable and yet gave flexibility to the physicians in the running of their practice. He urged passage of HB 321. He said it had merit and was worth considering.

Toni Moilanen, Allergy Technician, read and submitted her written testimony. **EXHIBIT (phs39a05)**

Donna McCreedy, Certified Medical Assistant, (CMA), read and submitted her written testimony. **EXHIBIT (phs39a06)**

Susan Cox, CMA, said she grew up in **SEN. ESP's** district and that he would know her family, the Schnoctons. She said she now lived in **REP. YOUNKIN's** district in Bozeman. She was one of the CMA's in Montana currently with a cease and desist order from the State Board of Nursing. In her office, the order had prohibited her from giving injections, which was one of the things she would

normally do. She also did the basic patient care, vital signs, taking the patient back and getting them ready for the doctor's examination, charting. **Ms. Cox** said she ran the lab tests for the office and reported the results to the physicians. She ran the x-ray room. She was sent to be certified as a basic x-ray technician, and ran the EKG's and set up the defibrillator if that was needed, set up the crash cart if that was needed, including other equipment if needed, and assisted with minor surgery procedures. She said the cease and desist order had kept her from doing injections which in the office she worked at they did not have narcotics. They had antibiotics, pain medications, and anti-inflammatory type things as well as immunizations. The hardest part that her office had to go through was during the flu shot season where the doctors had to give their own injections during that time and any other medications, even though she was there and capable of doing so herself. She strongly supported HB 321 because it would help alleviate the differences between the medical association and the nursing board. It would allow the medical assistants to function in a capacity they had been trained for without limitations and continue to do what they had been doing for years.

Opponents' Testimony: None.

Informational Testimony:

Jim Brown, Business Standards Division, Department of Labor & Industry, said he had staff members available. **Lisa Addington, Chief of the Health Care Licensing Bureau; Jeannie Warsech Executive Director for the Medical Examiners; and Barb Swehla, Executive Director of the Board of Nursing.**

Questions from Committee Members and Responses:

SEN. BOHLINGER said he heard that if the bill did not pass, it would add to the cost of medicine. More RN's would have to be hired to administer shots. He asked **Mr. Melby** to comment. **Mr. Melby** said he could not speak for the physicians' office, but would assume that in many physicians' offices where medical assistants had been carrying out the duties, they might have to hire nurses to carry out those functions, and that would tend to increase the cost of physicians and for most patients. There would be no increased reimbursement for the service. He said that in many areas of the state, there was a nursing shortage, so it may provided a hardship as well.

SEN. ESP asked if there was anyone from the Board of Medical Examiners.

Jeanie Worsch, Executive Director of the Board of Medical Examiners was there.

SEN. ESP said that it was mentioned earlier that physicians and nurses were under her supervision and wanted to know how that worked. **Ms. Worsch** said the State of Montana and the physicians had the ability under Montana law currently to delegate their authority and delegate tasks to individuals whether that be RN's, LPN's, or currently medical assistants. She said we were talking about unlicensed individuals in this state who would be delegated tasks by the physicians. Currently, the board licensed those physicians, but this would be an unlicensed individual who was trying to get qualified under statute to administer medications and injections.

SEN. ESP asked if they had regular discussions about this area. **Ms. Worsch** said the board had considered this several times during board meetings and it was an ongoing issue. Recently, in the last 18 months or so, the Board of Nursing had issued cease and desist orders on the Board of Medical Examiners. She said that was the phone call they frequently got, from those physicians who are getting those cease and desist orders sent to their medical assistants. She said they try to not get involved, but they did have position papers that the Board of Medical Examiners had issued with regard to the delegation of tasks.

SEN. ESP asked **Ms. Butler** what her thoughts were on the bill. **Sami Butler, MNA**, said the association had talked about the bill and were able to put some amendments in on the House side.

SEN. DEPRATU asked **Ms. Worsch** about all the discussions with the Board of Medical Examiners and wondered if they had a problem with the medical assistants giving the injections. If they did was it because the board did not think they were qualified or because the statutes were not clear. **Ms. Worsch** said in the board's discussions, they had no problem delegating those tasks to the medical assistants. The board firmly believed that the physician was responsible for everything that occurred in the physician's office.

SEN. DEPRATU asked why they issued the Cease and Desist orders. **Ms. Worsch** said they did not issue them, the Board of Nursing issued them.

SEN. DEPRATU asked why the Board of Nursing would be wanting to issue the Cease and Desist orders. Was it because of the statute or did they think the people were not properly trained. **Ms. Swehla** said the Board of Nursing felt that they needed to carry

out what they believed was their legislative mandate, which was first, define what nursing practice was, and second, to deal with complaints that came to the Board of Nursing relating to the unlicensed practice of nursing. They were given two attorney general opinions that support that position. She said most of the Cease and Desist orders had been issued because of complaints from patients. The Cease and Desist orders did not occur because a nurse was out in the field and identified people who were practicing nursing without having a nursing license. The screening panel of the Board of Nursing reviewed the complaints that were issued by patients and had to take action based on current law.

SEN. DEPRATU asked if the statute was changed would the board having any further problem with it. **Ms. Swehla** referred that to legal. She said it would also depend on the complaint. Each was reviewed by the Board of Nursing, based on the individual merits of that complaint.

SEN. SCHMIDT asked **Ms. Swehla** for some examples of the complaints that the Board of Nursing has gotten. **Ms. Swehla** said some complaints came from patients who believed they were injured because of inappropriately administered medications. When information like that came to the Board, it went directly to the screening panel who determined if there was a need to take action and in those cases, they believed that given the Attorney General opinion that states that it was the Board's job to determine what nursing practice was and that it was the Board's job to deal with what the Board considered to be unlicensed practice of nursing. They dealt with those on an individual basis. There was one example of an unlicensed practice where the individual admitted that she was doing what the Board of Nursing contended she was doing as a practice of nursing, and that she would not cease from doing so. Two more complaints came in from patients in that area against that individual, and with current statutes, the Board had no choice but to file an injunction, because this individual failed to cease and desist from the practice of nursing.

SEN. SCHMIDT said the Board of Nursing had language into the Bill so that they remained neutral and asked what the language was. **Ms. Swehla** said it was the Montana Nurses Association that worked with the sponsor which involved putting some amendments into the bill.

SEN. SCHMIDT asked **Ms. Butler** what the amendments were. **Ms. Butler** said they were on Page 4, Lines 14-16.

SEN. SCHMIDT asked if they were the ones who put in podiatrist. **Ms. Butler** said no.

SEN. ESP said new Section 5 refers to the Board. The new subsection (c) said the board would ensure minimum education requirements for a medical assistant as the rules were developed. He asked if the board had any idea of what those rules might be.

Ms. Swehla said she did not. The decision would be for the medical tech nurse.

SEN. ESP asked if a procedure for handling patients was in place.

Ms. Swehla said they did. It was the same procedure the Board of Nursing had that was under the division and it was for all health care and occupational licensing, the "*be informed compliant act*." The same process was done with the Board of Medical Examiners. It went before a screening panel, and where it was looked at to see if there was a violation of the Medical Practice Act.

SEN. ESP asked if the complaints come to her or to the Board of Nursing. **Ms. Swehla** said they did not receive any complaints with the Board of Medical Examiners.

SEN. SCHMIDT asked what the effective date or a time frame would be for developing the minimum education standards. **Ms. Warsech** said that it was her understanding the Montana Medical Association had requested that the committee amend it for an effective date and then the board would need some options or some opportunity to go through the administrative procedures in order to adopt rules.

SEN. BOHLINGER asked **REP. YOUNKIN** how she felt about the addition of podiatrists to her bill, if she had any problem with it.

REP. YOUNKIN said she did not have a problem with it. She said the House Business and Labor Committee had discussed it, but did not get it on and believed **REP. GALVIN-HALCRO** had the amendment on the floor. **REP. YOUNKIN** said **REP. GALVIN-HALCRO** had talked to her about it before hand, and did not have any problem with it.

SEN. O'NEIL asked if she recommended adding an effective date and how she would recommend it be structured. **REP. YOUNKIN** said she liked her bills to be effective on passage and approval.

SEN. O'NEIL asked if that would allow the department time to do their administrative rules.

REP. YOUNKIN said the Board met with the examiners who would make the administrative rules that went along with it and they would take that up in their normal course of business. She did not see the two conflicting with each other to the extent that it would not be effective on passage and approval.

Closing by Sponsor:

REP. YOUNKIN said she was asked to bring this bill by some doctors that lived in Bozeman because they had used for many years medical assistants and she thought this was a good way to continue allowing and utilizing services of medical assistants. It would assist in keeping health care affordable and more available, particularly in rural communities. She heard testimony about the shortage of nurses and paramedical professionals all across the country and thought utilizing medical assistants was well advised. The important thing to remember was that they remain under the supervision of physicians. Physicians were governed specifically by the Board of Medical Examiners, and the language that was added on the House floor was discussed with MNA and the Board of Nursing, was that the Board needed to have rules requiring on-sight supervision for invasive procedures and administration of patient and allergy testing. It was important and appropriate and in doing so, it provided a greater level of supervision for those kinds of procedures. She said it was in everyone's best interest, especially the physician, to make sure that the patient care was accurate and appropriate. **REP. YOUNKIN** said she would be in favor of the amendment to make it effective upon passage and approval and asked for passage out of the committee and out of Senate and back to the House for the approval of the amendment.

HEARING ON HB 150

Sponsor: **REP. BOB LAWSON, HD 80, Whitefish**

Proponents: **Chris Volinkaty, Child Development Centered Surveys**
Jerry Driscoll, American Federation of Laborers-Congress of Industrial Organizations (AFL- CIO)
Jan Spiegle-Stinger, MT Families with Children with Disabilities
Joan Grawman, Support & Technique for Empowering People (STEP), Lifespan Respite Coalition
Sylvia Danforth, Developmental Educational Assistance Program (DEAP)
Walt Melcher, Montana Association of Independent Disability - Services Systems Advocacy (MAIDS-SA)
Jani McCall, MT Children's Initiative, MAIDS-SA
Steve Yeakel, MT Council for Maternal & Child Health

Opponents: None.

Opening Statement by Sponsor:

REP. BOB LAWSON, HD 80, Whitefish said the title said it all: "An act exempting providers of companionship services or respite care for the aged or the infirm from wage and hour requirements to conform to the federal law. Exempting the provisions of companionship services or respite care to the aged or infirm from minimum wage and overtime, unemployment insurance and workers' compensation insurance if the person providing the service is employed directly by the family or a legal guardian." He said in Section 1 was an exemption from minimum wage and overtime compensation. On Page 2, Line 22, the same language was repeated in two other cases. **REP. LAWSON** said it was a laundry list of things that were excluded from the provisions of minimum wage and overtime. An employee in domestic service employment to provide companionship services, was defined in 29 CFR 5526: "Respite care for individuals because of age or infirmity and were unable to care for themselves," as provided in Section 213-80-15 of the Fair Labor Standards Act 29-USC-213, "when the person providing the service directly by a family member or an individual who was a legal guardian." He said in Section 2, there were exclusions, exceptions for unemployment insurance. On Page 9 was a laundry list. Line 7, similar language was added where a person was exempted again from unemployment insurance for service performed to provide companionship services. In Section 3, were exemptions from workers' compensation. The same verbage was seen again on Page 12, Line 1. He said what was done in Sections 1, 2, and 3 provided exceptions from minimum wage and overtime compensation and exceptions from unemployment insurance and exceptions from workers' comp. with the idea that these were people giving provider or companionship service or respite care for the aged or infirm. They were the person providing the service and were directly employed by the family or legal guardian. **REP. LAWSON** said it came out of the Family Health and Human Services interim committee which he had the opportunity to serve on for the last three interims. He said there was no fiscal impact to the state. Respite care workers provide parents and guardians with a needed break from giving care to their loved ones who are unable to care for themselves because of age or infirmities. It allowed those aged and infirm people to stay in their communities at home within their comfort zone. It stretched resources by allowing and encouraging the care at home. It allowed more money to get to the actual needs. It imported its parental rights and responsibility and it encouraged family safety and stability. It encouraged in home services and it worked. We have willing families and willing respite care-givers. It reduced barriers to

families taking control of the situation. It allowed more family choice and flexibility. **REP. LAWSON** asked for a DO CONCUR consideration.

Proponents' Testimony:

Chris Volinkaty, Executive Director the Child Development Centered Surveys, said she was there on behalf of children and families who needed providers in Region 4 and 5. She passed out a sheet listing the highlights of HB 150. **EXHIBIT (phs39a07)** She also represented the seven counties of western Montana with families and children who were disabled or at risk for developmental disabilities. Respite care was started at the point of institutionalizing. Families of individuals who had developmental disabilities were taking them home, came to the legislature and said 'you know, if you could just give us a break from continuous care once in awhile, we could support our kids in our own home,' which was how respite care started. She said it had been a successful model, and had been used in mental health, foster care, and senior services. Up until now it was understood that this was covered under the domestic exemption. Over a year ago, the center from Medicaid services came to the state and did an audit, found the system had a few problems. Children's services were exemplary, except the auditors did not like how providers were paid. It was suggested that they employ the providers.

{Tape: 2; Side: A}

They started working with **Senator Baucus's** office and through there were able to get in touch with CMS. She said they figured out a federal way they could use their medicaid waiver money but they needed an exemption from wage and hour time. It was a simple service, and it was probably what most parents used with little kids. She said if a family member wanted to go visit her sister-in-law from Friday night until Monday morning, she would have violated the 40-hour work law and then you have to report sleep time and over-time and so this very simple program gets very complicated and expensive. The problem with it was that 30% was mostly in administrative costs. Usually, it's a neighbor or a friend that provided that, so it always has been kind of a community helping sort of program that's been successful. Families have said that the number two reason they are able to keep their children at home was respite care which was very valuable to them. Families did not like the idea of agencies hiring the employee or employees. They wanted to choose their

own providers, they felt that they were best able to decide who it was that should care for their child. So, HB 150 did two things, it exempts the companionship or respite care for the aged and infirm, from wage and hour requirements, and conforms to the federal companionship law. It also exempts companionship service for respite care to the aged or infirm from unemployment insurance and workers' compensation insurance, if the person provided the service was employed directly by the family or legal guardian. She urged for a do pass on the bill.

Jerry Driscoll, AFL-CIO, said they strongly supported the bill. He said it worked for years until the federal government changed the rules. These people were not actual employees in the normal definition. They are neighbors or friends and they give those people a week-end off and have a regular job somewhere else. Some people were in school getting special education degrees, and just needed the experience, so there was no need for them to have all the things that a normal employee had.

Jan Spiegler-Stinger, MT Families with Children with Disabilities, said she was there as a parent of a young lady who was now a young adult with disabilities. She was a long term consumer of respite care services. Ms. Spiegler-Stinger said her daughter had Down's Syndrome and was 20 years old. The federal government tended to come into states when they had money in the state and tried to get involved in areas they did not fully understand, and they do so, not always understanding what families with disabled children were like. She said if respite care had been regulated the way the federal government wanted to regulate it, her family would have never used it because they would not have liked the idea of someone telling them who to hire to care for their child. She and her husband wanted the flexibility that they had for any of their other children. It would have been prohibitive even if it might have been a cost savings. She said she did not know about families in other states, but did know that families with disabled children in Montana did not like to be told what to do any more than any other Montanan liked to be told what to do. She said the exemption made good sense and urged for it to be passed.

Joan Grawman, Support & Technique for Empowering People (STEP), Lifespan Respite Coalition, said STEP was a private non-profit organization, who worked with about 400 families a year who had children with disabilities. She asked for support of HB 150 for several reasons. First, she was the development administrator with STEP and the project director for a federal grant. They provided education support to families from all human service

populations including those with seniors and parents that they watch and kids with disabilities. They worked with a wide range of families. They were having a hard time telling families what their responsibilities were in regards to respite providers, and HB 150 clarified where respite providers fit into the scheme of things, and it would make STEP's job easier and better. Second, her job at STEP was serving families with kids with disabilities. She explained that what the system had done before, was build in some bureaucracy and they did not want to spend money on bureaucracy. They wanted to spend it on families. Their resources were limited already and asked for support of HB 150. She handed in written testimony for **Megan Carlisle, Grant Coordinator for STEP EXHIBIT (phs39a08)**; **Joan Reed Kimball, Program Director for Yellowstone County Council on Aging EXHIBIT (phs39a09)**; and for **Susan N Smith-Havener, Consumer of STEP's services. EXHIBIT (phs39a10)**

Sylvia Danforth, Developmental Educational Assistance Program (DEAP), said DEAP was a nonprofit agency which had been providing a variety of services to children and families in 17 counties of Eastern Montana for more than 25 years. She agreed with everything said previously. She said families tell them over and over that one of the services they value most was respite care. They felt for families that respite care was a preventive strategy and a strategy that strengthened families. It protected family health and well being and allowed individuals to remain in their own home. **Ms. Danforth** said all of us, at some point in our lives will experience a time when we will need some form of respite care for ourselves or a family member. Currently, respite services being provided were family centered services where family members could make the decisions they needed to about their respite provider. They could decide who was going to provide that care, how the care was going to be provided, and they could use people that they knew and that knew their children or their loved ones. She said they did not want to impose additional bureaucracy and they supported this bill.

Wally Melcher, Montana Association of Independent Disability - Services Systems Advocacy (MAIDS-SA), said he lobbied for individuals with disabilities and vocational rehabilitation needs. He said he and his wife were approached by a case manager in Great Falls who asked them to do some temporary foster care for a young man who had multiple disabilities: severe cerebral palsy, blindness, and a growth hormone suppression condition. They took the young man into their home along with their other five children at the time. **Mr. Melcher** said this had been a blessing to them ever since. That was 23 years ago. He was now

a cherished member of their family. The young man taught their children more about compassion, more about getting outside of themselves and seeing to the needs of others than in any other way. They are particular about who takes care of him. **Mr. Melcher** said they used respite care approximately three times a year, and they wanted to choose who did it. They saw HB 150 as a parental responsibility and a rights bill and did not want their choice of who cared for their foster son taken away from them. He strongly urged a do pass consideration.

Jani McCall, MT Children's Initiative, MAID-SA, said respite care was probably one of the most valuable support services to families who had individuals in their families with special needs. It covered the full spectrum whether it was physical, mental, or developmental, for all ages. This was a valuable resource and she urged support of this bill.

Steve Yeakel, MT Council for Maternal & Child Health, said free fixes were very difficult to find this session. He said respite care was one of the most underrated parts of our human services system. He strongly supported the bill and urged for its support as well.

Opponents' Testimony: None.

Informational Testimony:

John Andrew, Department of Labor and Industry said he was available for questions.

Questions from Committee Members and Responses:

SEN. DAN HARRINGTON, SD 19, Butte, said he just passed a resolution that allowed relatives or a family member to get a medicaid waiver so that they could take care of and be paid to take care of the family member needing help. He asked if that resolution would fall under this. **Ms. Volinkaty** said it was similar. Their Medicaid waiver, Title 19 waiver, allowed them to use Medicaid money to pay for it. It would depend if it were for the aged and infirm or if it was for foster care.

SEN. HARRINGTON said it would be for the disabled, in resolution, disabled and Senior Citizens. **Ms. Volinkaty** said it would cover that.

Closing by Sponsor:

REP. LAWSON thanked those who came and testified and for a good hearing. He said he could go through his laundry list as to why it was a good bill again. He urged do concur, and thought **SEN. SCHMIDT** would carry the bill if the bill were to pass out of the committee.

EXECUTIVE ACTION ON HB 150

Motion/Vote: **SEN. BOHLINGER** moved that HB 150 BE CONCURRED IN.
Motion carried 9-0.

HEARING ON SB 192

Sponsor: **SEN. JERRY O'NEIL, SD 42, Columbia Falls**

Proponents: **Mary Dalton, DPHHS, Quality Assurance Division**

Opponents: **Steve Yeakel, Intermountain Children's Home**

Opening Statement by Sponsor:

SEN. JERRY O'NEIL, SD 42, Columbia Falls said SB 192 repealed certificate of needs. When the bill was started, he was going to remove all the Certificate of Needs that were left in Montana. It seemed simple to him because Certificate of Needs did not cost money. He found that it did not work that way, and that it had a fiscal statement of 3.6 million dollars or so. The bill had been whittled down to removing the current provision: requirement for certificate of need for the expansion of the geographical service area of our home health agency. It would not change the status of nursing homes or hospitals. **SEN. O'NEIL** did not believe it would change the status of chemical dependency facilities either. The Certificate of Needs was studied and found that not a whole lot of money was saved and it did not cost any more money either.

Proponents' Testimony:

Mary Dalton, DPHHS, Quality Assurance Division, said the department would support the bill as amended.

Opponents' Testimony:

Steve Yeakel, Intermountain Children's Home, said it was their understanding and hope that in the bill somewhere there would be language that took the impact on Intermountain Children's Homes, which was net decrease in funding through the Office of Public

Instruction of some two hundred and eleven thousand dollars annually, out of the bill.

Informational Testimony:

Jeff Sturm, Director of the Developmental Disabilities, said their concern of the bill was the provision for the ICF/MR, Intermediate Care Facility for the Mentally Retarded. In the former text of the bill without the amendment it would have opened the door for additional ICF/MR. In Montana right now there were two ICF/MR facilities both state operated. One was at Eastmont in Glendive and the other at Montana Development Center in Boulder. The last private ICF/MR that was operated in Montana was two years ago and it was transferred over to a group home. He had two concerns: one, that it would increase the cost for services. Currently, ICF/MR was under commitment so a person who entered an ICF/MR would be committed with a voluntary entry of an ICF/MR. This would open that door. His second concern was that it opened up an entitlement nature to its service that was not entitled in Montana currently. He said this would impact their law suits and other things.

Questions from Committee Members and Responses:

SENATOR BOHLINGER asked what a home health agency was and who was provided the care. **Ms. Dalton** said a Home Health Agency was an agency that provided general skilled nursing care, aid services many times, and physical therapy services to someone in their home. She said when she used to work for them, she would generally see people who would come out of a hospital, for example, who were well enough to go home, but still might need someone to go back and check their dressing or do skilled nursing tests. She said that was paid for by both Medicare and Medicaid and then *travel* insurance.

SEN. GRIMES asked if an example would be Westmont. **Ms. Dalton** said it was. She said St. Peter's Hospital had one.

SEN. GRIMES asked what was in Billings. **Ms. Dalton** said in Billings it was Rocky Mountain Home Care, Senior Helping Hands, and a few others.

SEN. GRIMES wondered with the lack of a certificate of need, if there had been a problem with unregulated entities performing the same function, so no one could stay in business. He asked why

those who were advocating the bill were not there, if it was for their protection. He said he did not understand that.

Ms. Dalton said Home health had a proliferation of home health agencies a few years ago, and many were related to the particular reimbursement scheme that Medicare had at the time. They had now gone to a perspective reimbursement for home health and she had seen several close over the last few years because it was not as profitable as it once was. She did not know why home health agencies were not there.

{Tape: 2; Side: B}

Ms. Dalton said the department had issued nine certificates of need in the past since the year 2000. She thought four of those were because of a change of ownership or change of need.

SEN. BOHLINGER asked if the the certificate of need were eliminated, would there be more of home health providers or agencies coming on line and would the service they provided be more available. **Ms. Dalton** did not believe so because of the current reimbursement scheme. The majority of their business was Medicare and because of the way they were being reimbursed right now, she did not think there would be a large increase in the number of providers.

SEN. SCHMIDT said the fiscal note was a significant technical concern, as far as House Bill was concerned. She asked what the fiscal note would be now. **Ms. Dalton** said if the amendments were passed, eliminating home health, there would not be a fiscal note.

SEN. GRIMES asked **Mr. Yeakel** if he had time to review the amendments and assumed ICH was out of the bill. **Mr. Yeakel** said yes. Amendment 5 took out almost all of the section they were most concerned about, which was 20-7-436, that had been amended out.

SEN. GRIMES asked **Mr. Sturm** if they would be out as well. **Mr. Sturm** said yes.

SEN. GRIMES had another question for **Ms. Dalton**. He asked if the reimbursement mechanism were to change, which was his concern,

then at what point would people start scrapping the business.

Ms. Dalton said there was a huge shift in the home health care provision with the change in reimbursement. She thought the other reason the department was not as nervous about this was because home health agencies did not have the same kind of capital expenditures as nursing homes or other areas.

SEN. SCHMIDT asked if there was any reason to take it out. **Ms. Dalton** said the nine home health agencies had to go through a certificate of need, had to pay a \$500 fee. She said she needed to amend that. She said \$500 multiplied by 9 in over three years was \$4500, which would be \$4500 less going to the general fund. They would have to prepare a detailed plan that explained that they looked at what the population was and what the need was as well as all the projective work. **Ms. Dalton** said there was much to that for those home health agencies that wanted to expand.

SEN. SCHMIDT asked if it were a benefit for them to do that then. **Ms. Dalton** said the benefit depended on whether they were trying to protect their territory or whether they wanted to expand in their territory. If they wanted to protect their territory, they would like Certificate of Need. If they wanted to expand, and they did not like it, because it's another hoop they would have to go through in order to get there.

SEN. ESP asked if he and **SEN. SCHMIDT** wanted to start a home health care agency in Great Falls, could they start one without filing. **Ms. Dalton** said no, they would have to file a certificate of need.

SEN. ESP asked if the bill was passed, would the bill pertain to some existing facility who wanted to expand. **Ms. Dalton** said if the bill was passed as **SEN. O'NEIL** had amended it, he would be able to start a home health on Tuesday.

SEN. BOHLINGER moved that **SB 192 DO PASS**.

SEN. O'NEIL had amendment SB019201.adb for SB 192.
EXHIBIT (phs39a11)

SEN. ESP moved the bill as amended.

SEN. O'NEIL had a change for number 5 of his amendments. Page 2, Subsection (g). "The provision of a hospital by a hospital of services for home health care, long term care or inpatient chemical dependency treatment. " He moved to strike "for home health care."

SEN. GRIMES asked **Ms. Dalton** to comment on the amendment because it said "the provision by a hospital that services for home health care", which might be different, and wanted **Mr. Flint** to comment on it as well. **SEN. GRIMES** wanted the intent of the amendment be clear. **Ms. Dalton** said it would make the bill cleaner because hospitals were not required to go through Certificate of Need unless they were going to provide services that were subject to a Certificate of Need. If home health care would no longer be subject to certificate of need, it needed to be struck there as well and that it too was a clean-up measure.

SEN. SCHMIDT wanted to clarify that if the hospital was running a home health care service, did that effect them. **Ms. Dalton** said no, it would just make it clear that in the future, if it were passed, the bill was amended and it went all the way through. Home Health Care would not be subject to Certificate of Need whether a hospital provided it or not, no matter who provided it.

SEN. GRIMES moved to strike home health care comma. The sentence would then read "the provision by a hospital of services for long term care or inpatient chemical dependency."

SEN. CROMLEY asked **Ms. Dalton** if a visiting nurse from Billings were here, how she would feel about the bill. **Ms. Dalton** said she did not know.

SEN. SCHMIDT wanted to know why **SEN. CROMLEY** asked. **SEN. CROMLEY** said he was on the board and wanted to know more background. He said it was fine, but would vote "no."

EXECUTIVE ACTION ON SB 192

Motion/Vote: **SEN. ESP** moved that SB 192 DO PASS AS AMENDED.
Motion carried 8-1 with CROMLEY voting no.

{Tape: 3; Side: A}

ADJOURNMENT

Adjournment: 5:55 P.M.

SEN. JERRY O'NEIL, Chairman

ANDREA GUSTAFSON, Secretary

JO/AG

EXHIBIT (phs39aad)