MINUTES

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

Call to Order: By **CHAIRMAN BILL THOMAS**, on March 14, 2001 at 3:00 P.M., in Room 172 Capitol.

ROLL CALL

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

Members Excused: None.

Members Absent: None.

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

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

Committee Business Summary:
Hearing(s) & Date(s) Posted: SB 361, SB 116, SB 171, SB 290, 3/11/2001

HEARING ON SB 361

Sponsor: SEN. WALTER McNUTT, SD 50, Sidney

Proponents: Bob Olsen, Mt. Hospital Assn.
Katherine Donnelley, Mt. Hospital Assn.
Jerry Loendorf, Mt. Medical Assn.
Gloria Hermanson, Mt. Assn. of Ambulatory Surgery Centers
Mona Jamison, Mt. Chapter of the American Physical Therapy Assn.
Amy Sullivan, Mt. Occupational Therapy Assn.
Sami Butler, Mt. Nurses' Assn.

Opponents: Gene Jarussi, Billings

Informational Witnesses: None

Opening Statement by Sponsor:

SEN. WALTER McNUTT, SD 50, Sidney, said that the procedure, which is now set in common law, is that when a hospital is a creditor, it should not be subject to attorney's fees and a common fund pooling theory and it should not in any way contribute to those attorney's fees. It should get paid exclusive of those fees. The bill was brought to him by the Montana Hospital Association. Since they've provided treatment and their claim is for the amount of the bill, they should not be included in this common fund, the pooling theory that the Supreme Court is looking at. This has been attempted in a couple of other states and reversed.***{Tape : 1; Side : A; Approx. Time Counter : 0 - 1.2; Comments : First part of sponsor's opening was not on the tape.}***

Proponents' Testimony:

Bob Olsen, Mt. Hospital Assn., said he would try to keep the conversation as simple as he could to talk about when this bill affects a circumstance when a medical provider, whether it be a hospital or a physician or some other medical provider, finds itself involved with a patient who is involved with a lawsuit. This bill attempts to codify what is currently common law. Under common law right now, when a medical provider delivers services to an injured person, they have an opportunity to essentially assert a lien against that individual. In other words, if you're receiving services, under common law you're obligated to pay for those services. If there is no dispute on liability claims by an injured person, this would be true for any of us. If we were to be served at the hospital tonight after the basketball game, we'd owe the

hospital for the services we had. However, if it was one of those Senators that caused that injury, we may want to proceed against that Senator and we would then be involved in a court action. While that opportunity for court action takes place, the hospital or the other medical providers sit waiting for payment for the services they delivered. So, first of all, SB 361 only applies when there is a dispute over liability by a person who's been served in a medical facility, and they are basically going after a judgment against another party, so there's a liability case out there. Essentially, a medical provider is not party to the dispute over liability for their injured patient. They've delivered services, they're waiting to be paid. The bill amends the title that deals with medical provider liens. In order for it to make sure that we're not invading any new ground with this bill, essentially we're talking about current law, section 3 of the bill basically states that a medical provider does not become responsible for a plaintiff's or an injured person's attorneys' fees or costs for their litigation as a matter of having delivered medical services. The first part of that sentence is that a lien by a medical provider is not superior to an attorney's lien. The attorney who also has a lien against any recovery that they manage to gain is the first, or superior, lien. Hospital liens, medical liens are junior to that lien, and they're not trying to change that. Essentially what the bill does is that if a person goes through the system today, a medical provider delivers their services and files a lien against that injured person or their patient to assure that if there is a recovery, they'll get paid for their medical costs. The attorneys go after whomever they're suing, whether it be an insurance company or another party, and essentially what they're doing is saying that their client has these medical costs that total this amount of money, and you should have to pay these medical costs. And there may be other damages that they're trying to secure. If they secure that award, basically the medical provider is waiting to be paid. This bill says they should be able to be paid, and they should not have to engage in sharing with the plaintiff in the attorney's fees. So, if you're on a contingency fee basis, you're essentially not asked to pay for part of that attorney's work. As you get into this issue, you hear a lot of contentions about what does or does not happen in these circumstances, because not everybody who's served in a medical facility ends up a plaintiff in a lawsuit. The long and short of it is that you'll hear if it weren't for the attorney taking on these kinds of cases, the medical providers just wouldn't get paid. And in some cases that may be true, but in a lot of cases that's not the case. When you become obligated for debts that you owe somebody, whether you have insurance for those services or not does not mean that you're off the hook for those debts. It may be that sometimes a person who is injured is uninsured, but that person may be insured. You may have personal health insurance and be involved in an automobile accident and the person that has harmed you is uninsured. If the other party's

insurance company isn't going to pay your bills, your own health insurance will cover those costs. When someone is unable to pay those bills, hospitals already have established charitable policies in how they work with people to write off accounts that may be owed if the patient can't afford to pay them. They aren't arguing that the attorney is never helpful, but are saying that even though the attorney may be helpful, they don't have an arrangement with that attorney and they shouldn't be obligated to become part of that arrangement by using the common fund theory. SB 361 merely puts into code what is currently common law and currently the practice in Montana when there are liability disputes. The MHA asks for the committee's support for the bill. ***{Tape : 1; Side : A; Approx. Time Counter : 1.7 - 7.8}***

Katherine Donnelley, Mt. Hospital Assn., is a Helena attorney who participated in the case which brought about this bill. She said the case, which involved a North Dakota hospital, has a lot of issues that don't involve the bill and don't involve the common fund. The reason for this bill is because one of the issues in the case is currently before the Mt. Supreme Court, and that challenges existing case law that allows hospitals to collect the entire amount of their liens. The issue that the Supreme Court is looking at is should the hospital, because it has a hospital lien, be on the line for a pro rata share of the accident victim's attorney fees when the accident victim hired an attorney to pursue the driver of the automobile and got a settlement, and the hospital had treated the accident victim. The Mt. Hospital Assn. filed an amicus brief in this matter on this one issue, saying hospitals should get their full lien amount. The whole reason for liens is sort of under assault here. As some courts have explained it, liens are created by legislatures to offer additional protection for the payment of medical service debts and other debts. Hospital liens, which also include physicians and other providers, have been around in Montana since 1931. In 1971 a Montana Supreme Court decision held that a hospital which provides health care to an accident victim is not liable for a pro rata share of attorney fees incurred by the person in getting a settlement from a third party. The court reasoned that the hospital really doesn't have any connection with this third party suit except it's a creditor, there isn't any contract between the hospital and the attorney, and there is no saying whether or not the hospital could have been paid from other sources from the injured person such as other insurance policies or other assets. That's the law in Montana. If a common fund is applied, even in just some situations where it is equitable, that would be an administrative and financial problem for health care providers. Before deciding whether to file a lien, the provider would have to analyze the case and decide whether they would be more likely to get paid for the full value of services by filing a lien or not

filing. It would be a complex analysis and another administrative cost that is not going to health care but would burn up health care dollars. It would be a waste of resources if in every lien filed the provider thought they might have to fight on the equities. Why would a provider file a lien if they thought they might end up going to court to argue about it? In cases where a hospital or other provider doesn't recover for the full value of its services, they have to come up with the value somewhere else, which is cost shifting. **EXHIBIT(huh58a01)** ***{Tape : 1; Side : A; Approx. Time Counter : 7.8 - 15.5}***

Jerry Loendorf, Mt. Medical Assn., said they support the bill. He pointed out first that, with regard to this bill, the attorney's lien is prior. The attorney gets paid in full from any judgment before any health care provider gets paid. The matter to him is simple. If he gets injured and is taken to the hospital, health care providers in the hospital repair his body and charge him a certain amount for doing that. He has no insurance or other way to pay for it but working, so he works and pays for it because he owes that amount because they repaired his body. If he has health insurance, it pays for it. The health care providers shouldn't be paid any less because he has insurance and it paid for it. The same applies if the accident was caused by somebody else, he hired an attorney who sued somebody, and now he has a pot of money. The health care providers are still owed the amount of money for repairing his body. That's the work they did, and it shouldn't be diminished because he hired an attorney to collect for him. ***{Tape : 1; Side : A; Approx. Time Counter : 15.5 - 17.2}***

Gloria Hermanson, Mt. Assn. of Ambulatory Surgery Centers, pointed out that surgery centers are not included in the title of the bill but are included further down in section 2, which had been added as an amendment. Surgery centers are in the same position as hospitals and physicians, and they support the bill. ***{Tape : 1; Side : A; Approx. Time Counter : 17.2 - 18}***

Mona Jamison, Mt. Chapter of the American Physical Therapy Assn.,said there are physical therapists throughout the state who provide services after an accident, send out a bill for the services, and then a few of them have received letters from attorneys saying that their claims or invoices for services have been reduced because they're going to help fund some of the attorneys' fees. The physical therapists support the bill. They know that they stand in line and aren't asking at this time to change the order of priority of the liens. ***{Tape : 1; Side : A; Approx. Time Counter : 18 - 19.5}***

Amy Sullivan, Mt. Occupational Therapy Assn., said they support the bill. Occupational therapists across Montana also provide services

to injured people after accidents. They take the viewpoint that they're small time providers and their bills are not very large, but when 25 to 40 percent of the amount is taken off to pay attorney fees, it provides a real economic hardship for occupational therapists. ***{Tape : 1; Side : A; Approx. Time Counter : 19.5 - 20.2}***

Sami Butler, Mt. Nurses' Assn., said that nurses are the largest group of health care providers in the state and in the nation, and the association supports this bill. ***{Tape : 1; Side : A; Approx. Time Counter : 20.2 - 21.3}***

Opponents' Testimony:

Gene Jarussi, Billings attorney, said he thinks he is the guy who's responsible for this bill. The case that led to this bill involved a man who was rendered a quadriplegic by reason of a car wreck. He was taken to a hospital in North Dakota for the after-the-wreck care for about three months. The hospital said that the value of the services rendered was about $305,000 in round numbers. The man had no insurance and no assets and was, at that point, at the mercy of the government. While in the hospital, it was apparent that there was nothing available to pay the bill, no assets, no insurance, and no ability for him to return to work to pay off the bill in the future. At that point in time, the hospital approached the couple and suggested they apply for Medicaid, which they did. The also hired Mr. Jarussi and a North Dakota attorney to represent them. Initially the insurer for the driver of the car said there was $50,000 of coverage. Ultimately the attorneys convinced the insurer there was actually about $530,000, which they deposited in the court in Sidney, Montana. At that point the hospital decided to apply for a Montana health care lien in the amount of $305,000. The attorneys said that wasn't a problem. Because of the attorneys' work, they were able to generate a fund of $530,000. Had it not been for their work, the hospital would have submitted its bill to Medicaid and would have gotten about $170,000. The attorneys felt that under the equities of this case, the hospital should pay some share of the attorneys' fees, because without the plaintiffs going to work and generating that fund, the hospital would have received only $170,000, but now they would do better than applying to the taxpayers for payment. That is the background of the case, and that is the common fund doctrine. Having made an effort to generate a fund, those who benefit in the fund should contribute to the payment of the fees. This bill doesn't affect the attorney fees, because they're going to get paid. The question in this case is, should the hospital, who had nothing except the Medicaid application, contribute to the payment of those fees. The common fund doctrine has been around for a long time and generally it comes up in circumstances like these. There is a subdivision with

30 houses in it, and it is determined that pollution has contaminated every one of the lots so the value of the property has been diminished. If one person out of the 30 brings a claim against the polluter and is able to recover a common fund for everybody, the courts have said that in such circumstances where other people had a claim but chose not to pursue it, if they benefit by the efforts of the one person, they should pay some portion of the attorney fees. That's the concept. What is important to acknowledge is that a hospital or a common claimant has every right to say that if the judge applies the common fund doctrine, it would be fair for them not to have to pay a full pro rata share for any number of factors. It is open for discussion, and the court has the discretion to determine the percentage share. If the common fund doctrine is found to apply in the case he described, the plaintiffs will have some money to put in their pocket and the health care providers in Montana who were involved will get paid. If the money all goes to the North Dakota hospital, the Montana providers will only get paid by applying to Medicaid, because once the money is gone, the plaintiffs will be entitled to Medicaid. The original $305,000 of expenses is now only a portion of the medical bills that are owed, and many are owed to Montana health care providers. If the common fund doctrine is applied, and if the ND hospital does have to pay some of the attorney fees, that's more money to pay for the medical bills that have been and will be incurred in Montana. He summarized his testimony by stating that this is an equitable doctrine, it does not apply in every case, and it is something that hospitals can benefit from. He asked the committee to vote against the bill. ***{Tape : 1; Side : A; Approx. Time Counter : 21.3 - 30}***

Questions from Committee Members and Responses:

Rep. Jent asked **Mr. Jarussi** if he had a copy of the *Kilmer* case that he had cited. **Mr. Jarussi** said it has not yet been decided so there is no Supreme Court decision, and he doesn't have a copy of the briefs with him. **Rep. Jent** asked if this bill addresses a situation in a case that hasn't been decided by the Supreme Court but had been decided in Mr. Jarussi's favor by the District Court. **Mr. Jarussi** said it was decided against them at the District Court. **Rep. Jent** asked if the case had anything to do with Workers' Compensation. **Mr. Jarussi** said no.

Rep. Noennig asked **Ms. Donnelley** if she had a citation for the case to which she had referred. She said she did and would get it to him. **Rep. Noennig** said he was trying to focus on the common fund theory, which had been couched in terms of whether or not someone is responsible to pay attorneys' fees, but what really happens, since the attorney gets paid anyway, is whether or not the claimant has to pay 100 percent of the lien or whether the claimant gets to keep a portion of it; in other words the attorney doesn't get any

different amount of money, and he wondered if he was correct. **Ms. Donnelley** said that is correct. **Rep. Noennig** asked what happens if there is no attorney involved, and if there ever is a situation where someone could recover on a claim and there isn't enough money to pay all the creditors, including the health care provider, would the theory apply then or would there be a difference in the theory. **Ms. Donnelley** said she believed that the common fund theory only applies to attorney fees. There are other established rules regarding the priority of liens, and a creditor without a lien is an unsecured creditor and is at the bottom.

Rep. Noennig said he is focusing on the idea that what happens here is whether or not someone who is a creditor of an injured party who recovers money has to be satisfied with payment from the fund that was recovered, or if they have the right to pursue that particular individual personally for the rest of the money. He wondered if there could be a situation where there are no attorneys' fees involved where the common fund theory would apply, and because the person recovered the money himself and there was only one pot of money, if it would have to be shared among the creditors and they couldn't go after the plaintiff for any more money. He asked if it has to be an attorneys' fees case. **Ms. Donnelley** said she had never seen common fund referred to in a context other than attorney fees.

Rep. Noennig said he understood Mr. Jarussi's argument that it might benefit providers under this theory, because the claimant might have money available after the settlement after the satisfaction of the existing claims for future medical expenses, but he didn't understand why North Dakota and Montana providers who had already billed his client for services wouldn't have to participate in the claim, and he asked **Mr. Jarussi** to explain the difference. **Mr. Jarussi** said when the case was filed there was only one lien holder, the ND hospital, which is why there are no other liens in there. **Rep. Noennig** asked if that meant that there couldn't be additional liens that would share pro rata for the bills that had been incurred since that time. **Mr. Jarussi** said the way the pleadings are framed up now is it's a tight, well-described group of claimants, the plaintiffs and the hospital. If the plaintiffs then have money, they will have to start looking to the other creditors that have liens, or just plain creditors, and start paying them. The creditors will have to decide what they want to do. ***{Tape : 1; Side : B; Approx. Time Counter : 0 - 9.8}***

Closing by Sponsor:

Sen. McNutt said that he isn't an attorney, and in the Senate hearing there was some testimony given that was not given today, including by the trial lawyers. Since the hospital had no contact

with the attorneys, the attorneys were not working in behalf of the hospital or other medical providers, and they should not be required to give up a portion of their bill that ultimately goes to the plaintiff that the attorney represents. He doesn't know the interactions with attorneys and what they do with their professional fees, but he was told that they will get paid. Whether it's in the bill or not, he was assured by several attorneys that they come first. Where the excitement is starting to come to the surface is that, and he doesn't know if it is because this case has been filed with the Supreme Court and that the petition is to look at a common fund pooling theory in Montana, there are some attorneys who are starting to withhold some funds on medical provider bills, and he thinks probably prematurely. That got the juices flowing, and that's why this bill is here. He thinks it is this legislature's responsibility to set the policy of what we're going to do in this state. He doesn't think that one case in North Dakota should be the guide for the other hundreds of cases in Montana that may arise. He provides medical insurance to his employees and last year his rates went up 34 percent. This cost shifting is taking place. Ultimately somebody has to pay the bill, and it's going to be those of us that are continually trying to pay for those insurance premiums and services that we want to see our employees or our families get. This bill is common sense. He doesn't think Montana wants to go down the road of becoming a common fund state. He doesn't think we're trying to degrade attorneys for the work they do. He doesn't think this is an unfunded mandate being placed on attorneys, as was stated in the Senate floor debate. The bill specifically says that attorneys will get paid first anyway. He asked for the committee's support of the bill. **Rep. Sliter** will carry the bill in the House. ***{Tape : 1; Side : B; Approx. Time Counter : 9.8 - 14.5}***

HEARING ON SB 116

Sponsor: **SEN. EMILY STONINGTON, SD 15, Bozeman**

Proponents: **Chuck Hunter, Administrator, Child and Family Services Division, DPHHS**
Ann Gilkey, Court Assessment Program
Colleen Murphy, Ex. Dir., Mt. Chapter, NASW

Opponents: None

Opening Statement by Sponsor:

SEN. EMILY STONINGTON, SD 15, Bozeman, said this is an omnibus bill with many subjects related to child welfare and it impacts two

major titles in our codes, Title 41 that covers child abuse and neglect and Title 42 which contains the adoption statutes. These titles are the ones that describe what our government does in protecting the lives of our children. These are extremely difficult circumstances, very emotional, very traumatic, very trying for everyone concerned. Our public agency is stretched extremely thin. They are underfunded probably about 40 percent from what they are told they should be doing and are unable to do because of the amount of funding we give them. That puts them between a rock and a hard place. We all want to respect the sanctity of our families, but we need to protect the safety of our children. That's a tough place to be in. What we end up doing with limited funds is that in order to protect the sanctity of the family, we make every effort up front to make sure that we are not taking a child out of the home that that is not appropriate for. We spend a lot of money doing that. Where we fall down is at the tail end of that and making sure that what happens to that child after we do take them out of the home is appropriate and caring and for the welfare of that child. She believes that we can't continue to do it this way. We can't continue to underfund an agency like this, a division like this, and keep on, which is what we do every session, saying we want you to do more with less. This bill, although it doesn't solve that problem, does try to address it in a few ways. One of the ways is an amendment that was put on in the Senate. The underlined language in the title of the bill is found on page 9, section 5, where the language has been inserted. This basically says that if the department is notified of a possible problem in a home, in a child care setting, that they can assess the seriousness of that problem and decide how far they need to go in solving it. Prior to this language being inserted, they had to take on every case that was reported to them and follow it through. This language starts to give them a tool to say they can't do it all, they can't do everything for every case. She supports this as a way to start trying to get our arms around controlling the whole arena of what we've asked the department to do. ***{Tape : 1; Side : B; Approx. Time Counter :14.5 - 20.0}***

Proponents' Testimony:

Chuck Hunter, Administrator, Child and Family Services Division, DPHHS, said they are the entity that deals with child welfare issues in Montana. He presented an analysis of each section of the bill with the reasons for each proposed change, a summary of the discussion that took place in the Senate and a description of the Senate amendments to the bill. He said that he would direct his testimony to the sections that are more substantive in nature and more policy-oriented The process used in developing the bill began with the department going to eight or nine different communities

around Montana and holding public meetings that were hosted by their local advisory councils, to which stakeholders were invited, including the public, people from the courts, foster families and other families who had been involved with their system, to talk about the system and what needed to be changed. Much of the bill is a result of the changes that were suggested at those meetings. The more substantive parts of the bills do the following things: they make a number of clarifications about terms, process and how things happen in the system. The bill shortens the time frame for investigative authorities that are issued by the courts for the department to be involved with a family, to find out what is going on, and to determine if abuse or neglect truly exists. It creates for the department the ability to license and define what a transitional living center is. It eliminates the kind of strange rule they've had in the department in the midst of private adoptions between parents and other private parties when parents want to put their kids up for adoption and there are no abuse and neglect issues. It clarifies the department's role and the role of the courts in making decisions about placement of children, and it gives the department the ability to take a more active role in assessing cases at the front end of the system. In section 1, page 2, lines 21 and 22 of the bill, they are asking to change the public policy section of the child abuse and neglect statute in the list of where they look to place when they have to take a child from a home and place the child in another setting. The public policy says they should look to extended families and they want to add the term of non-custodial parent as the first place where they should look. If there is abuse and neglect taking place in a home but the parents have been separated for some reason and that non-custodial parent is a good and fit place for the child, that ought to be the first place where they look if it's in the best interests of the child. Section 4, page 8, line 10 deals with mandatory reporters. There are certain professionals who deal with children routinely who are required as a matter of law to report when they see things with children that may be from abuse or neglect. These include the medical profession, school teachers, counselors and foster parents, and they have been in the list historically for mandatory reporting. The department wants to add those contractual providers who contract with the them directly to provide services to kids who are subjected to abuse and neglect. Oftentimes these are providers who are working for the department, going into the home of families and working with families to try to rectify conditions that have led to abuse and neglect. They're on the department's payroll and are often in a direct place where they can see what is taking place with the kids. Since they are on the state payroll and are working for the protection of kids, it is appropriate that they become part of the mandatory reporting network. Referring to section 5, page 9, lines 13 through 15, he said that the department historically has been responsible for investigating each and every referral that they receive, and they

receive some 10,000 of those in a given year. They know that many of those referrals do not really need to be investigated, because there isn't really abuse and neglect going on. An example would be couples who are separating and involved in a custody dispute, and they make allegations, one against the other, as a means of leveraging where they are in the dispute. The department determines after the first few reports that nothing is going on there, and they'd like the ability to not have to go out and investigate each and every time once they've concluded that there is no risk to the child. They often get reports that are clear from the facts that there isn't an abusive situation, and they'd like to be able to screen them. It would help them manage their workload and be less intrusive in families where intrusion is not warranted. Legislators often hear from families about department involvement in their lives, and the department is held by the confidentiality provisions not to share any details of the case. They'd like to be able to provide information on the case, and Section 6, page 12 would authorize the department to share some details about the investigation and how the case was processed, although not details that are personal about the family or children. At least they would be able to assure the legislators that the case was being handled properly. Section 9, page 19, lines 8 through 14 deals with the kinds of relief that a court may grant to the department as they're working with families.- 7.5 Section 9, page 19, lines 23 and 24, deals with temporary investigative authority, which the court provides to the department to go into a home and investigate whether there is abuse and neglect going on in there. Prior to the previous session, TIA's could be extended at 90-day intervals time after time after time, and many kids stayed out there in state custody under this arrangement. Last session there was a bill to limit it to two 90-day periods, and this bill proposes that it be limited to one 90-day period. Section 13, page 26 deals with the long-term placement of children in foster care. There has been a lot of effort and emphasis during the last couple of years placed on trying to put kids in permanent homes with permanent attachments to families earlier on, but there are still circumstances where for some children, that permanent home is not going to take place or should not take place. Heretofore there's been a restriction of not allowing a long-term foster care setting to be that permanent setting until the child is age 12 or over. They've found some circumstances where long-term placement is more appropriate, so they want to open the door to make that a possibility. Lines 8and 9 include the requirement that there must be a judicial finding made that other more permanent options have been considered and looked at, and the court has found them not to be in the best interests of that child. The department wants a specific finding from the court before they go there for kids under age 12. Sections 17 and 18 on pages 29 and 30 contain changes that would allow the department to define and license transitional living centers. There are two of these centers in Montana, and they are designed to

prepare older teens, typically 16-18, for moving from foster care into adult life as independent individuals. They want to expand the number of centers in the years ahead. The federal government has doubled the amount of money that Montana will receive to provide these services to kids in that age range. Right now there is no specific licensing authority for transitional living centers, there is no particular definition, and the two that are out there are living on kind of cobbled-together licenses that really don't describe the kind of business they're in. Referring to sections 21 to 23, pages 33 and 34, the department for some time has been in a strange position in private adoptions, where a private family is choosing to put their child up for adoption to some other private party, and there is no abuse and neglect. The department has had the strange rule of entering into a contract to provide for the social history to be done by a licensed social worker or a child placement agency, and the legislature has granted authority to licensed social workers to do this, so it is a mystery to him why the department would need to be involved in the process. It is a private transaction between private parties. There is no need for the department's involvement, and it has contributed to their workload with no benefit to them or to the families. Section 30, pages 38 and 39 deals with the placement authority of the department, which was the subject of quite a bit of discussion in the Senate. It clarifies that the department has the statutory responsibility to determine the placement of children and also specifies that kids cannot be placed in detention facilities. It also provides that when there's a dispute about what placement is appropriate, it is the court's role to resolve that. **EXHIBIT(huh58a02)** ***{Tape : 1; Side : B; Approx. Time Counter : 20 - 30} {Tape : 2; Side : A; Approx. Time Counter : 0 - 7.5}***

Ann Gilkey, Court Assessment Program, said that with the Senate amendments, they support the bill.***{Tape : 2; Side : A; Approx. Time Counter : 7.5 - 8.1}***

Colleen Murphy, Ex. Dir., Mt. Chapter of the Nat. Assn. of Social Workers, said they support the bill. It is carefully crafted and dovetails carefully with some of the programs in HB 2 in the child and family services budget. Things are working together and Mr. Hunter is doing a tremendous job of tightening up the way the state does business in child and family services. She thinks taking the perpetrator out of the home is an innovative idea. Raising the priority of placing children with the non-custodial parent or another family also will do a lot to help with the problem of "foster care drift," which is once kids get in the system, they drift around and can't get a permanent place. The damage that's done by abuse and neglect is significant to children, and the secondary damage occurs when they are moved all over through the

system for years and years, and pretty soon they give up. ***{Tape : 2; Side : A; Approx. Time Counter : 8.1 - 9.5}***

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

Rep. Newman asked the sponsor about the changes in section 5, page 9, lines 12 through 16 of the bill. He thinks one of the problems with an omnibus bill like this is that when substantial changes are made to many different sections of law, he can always find one in which he has a bone to pick. **Sen. Stonington** said that provision came in after she had agreed to carry the bill. It came in as an element of the discussion around the question of how we can stop continuing to ask an agency to do more with less. There has to be a way to give them a tool to say, we can go this far and then we can't go any further. That's what this begins to do. It doesn't go as far as it needs to. This agency is 40 percent underfunded. They requested 24 new FTEs to just be able to get their job done. They were given four. **Rep. Newman** asked if it is good public policy, upon receipt of a report of child abuse, to reduce our government response from an investigation of the alleged abuse to an assessment of whether or not an investigation should occur. **Sen. Stonington** said we are drawing the line here, and it is a fine line to draw. Good public policy would say we do what we say we'll do. Her preference would be to fund the appropriate amount of work, but we aren't, so is it better public policy to say we'll do something and then not be able to afford to do it. We have to make some of these hard decisions, and that is our role as government.

Rep. Noennig asked **Mr. Hunter** if the language on page 8, line 10 is too broad. It refers to an employee of an entity that contracts with the department to provide direct services to children, and he didn't know what direct services are and also wondered if Mr. Hunter was comfortable with everybody who does anything the department contracts to do being covered under this provision. **Mr. Hunter** said that had been discussed at length within the department, including whether it should be limited to the division only, but direct service means that the providers are seeing children directly, and if they see something that looks like abuse and neglect, they should report it.

Rep. Noennig asked about the same thing Rep. Newman had asked about on page 9, and said it seemed like there wasn't any time frame left in there because the bill deletes the word "promptly." He wondered if that word should be inserted on line 13 before the word "assess" so the department could at least react quickly. **Mr. Hunter** said

they would be happy with that amendment. They're in the business of protecting kids and don't want to suggest in any way that they want to be less active and less prompt in doing this. They want to weed out the things that really have no benefit to children in the work they're doing. **Rep. Noennig** asked if they are spending a lot of FTE time investigating claims that they know are false and if it is a big cost factor. **Mr. Hunter** said they are spending a lot of time, and they are thorough in their investigations. They have looked at other states who have heavy workloads and inadequate funding, and some of them will send someone out within 24 hours to make a cut and dried assessment of what's going on in the family. They may find that, based on the assessment, they need to assign services to the families but don't need to go on with an investigation. The department wants to look at each case and assess the appropriate activity based on the circumstances they find. In HB 2 they have a proposal that would allow them to centralize the intake process, which would include a consistent way of screening information, collecting data and putting it back out to the field for investigation.

Rep. Noennig asked about changes made on page 20, lines 14 through 16 regarding rules of evidence and if they had been coordinated with a bill by Sen. Halligan that concerned hearsay statements by children. **Mr. Hunter** said that had been discussed and whether some new kind of specific rule should be created for hearsay on child abuse and neglect. In working with primarily Judge Larson and some other judges, the judges convinced the department that the Montana Rules of Evidence right now specify how that evidence can be allowed in and when it shouldn't be allowed in. **Rep. Noennig** asked if the bill should include guidelines for licensing requirements for transitional living programs. **Mr. Hunter** said guidelines for licensing the other facilities listed in this section are contained in administrative rules, and they'd propose the same for this.

Rep. Noennig asked about the amendments added to new section 32 on page 39, and said the one on line 23 dealing with stipulations didn't make much sense to him. **Mr. Hunter** explained that language was adopted last session that said a treatment plan had to be court ordered, but they've found that sometimes parents will stipulate to things in a treatment plan and the stipulation will be adopted but there was never a finding by the court that there truly was abuse and neglect; it was never adjudicated. If parents don't follow through on the stipulated treatment plan, the department has to move to some other option. Since there had been no adjudication, the department has to go all the way back to the beginning. The amendments to the bill say that if parents want to stipulate to things and have the department move forward with the treatment plan, it can be done if the parents stipulate that there was abuse and neglect. If they won't go through the adjudication process but

want to stipulate to those things, it will be contained in the stipulation. The department worked with judges on this language. **Rep. Noennig** said he still didn't understand what line 23 means. **Mr. Hunter** said it means that the child meets the definition of a youth in need of care, and the evidentiary standard used is preponderance of the evidence.

Rep. Facey asked **Mr. Hunter** if the 10,000 allegations per year of abuse or neglect rounds out to about 30 a day. **Mr. Hunter** said yes, that's pretty close. **Rep. Facey** asked how long it takes from the time a report is received for the state worker to start and complete the investigation. **Mr. Hunter** said it depends upon the nature of the allegation. If it seems that the child is at risk, they investigate immediately. Cases lower on the priority list in terms of risk may take a couple of days to investigate. **Rep. Facey** asked where the workers are located. **Mr. Hunter** said there are 53 separate locations throughout the state. There are more workers in the large metropolitan areas, but there are many single workers in the small towns. There are some places in some counties without a resident worker, and itinerant services are provided. **Rep. Facey** asked if the department has adopted a triage system in case this bill passes, or will they do it between now and the effective date. **Mr. Hunter** said they have investigated a couple of triage systems and have piloted one in Gallatin County. The proposed centralized intake system would include some triage components. That would be done within a nine month time frame if they got funding for it. **Rep. Facey** asked if the state is facing a liability issue now or would if the bill passes. **Mr. Hunter** said the bill wouldn't increase or decrease liability. As the entity responsible for investigating these reports, the department has liability today.

Rep. Schrumpf asked **Mr. Hunter** for more information about the transitional living program for youth aged 16-21 talked about on page 29, line 23. **Mr. Hunter** said they are set up as facilities in which there is supervised living in a center or group of apartments where the youth live as individuals but under the supervision of an adult. **Rep. Schrumpf** asked how long it takes for a youth to adjust to this situation so they feel they can enter society and the work force and feel comfortable about living alone. **Mr. Hunter** said it varies based on the individual but averages 12-18 months. **Rep. Schrumpf** asked where the two homes are located. **Mr. Hunter** said there is one in Missoula and one in Great Falls, and they would like to expand to four or five other locations.

Rep. Schmidt asked **Mr. Hunter** if he was concerned about removing the word "promptly" on page 9, line 16 and whether there would be any liability or if it is covered in other sections. **Mr. Hunter** said he wasn't concerned because he knew the workers would conduct

the investigations promptly when the circumstances warrant. He would agree with the suggestion to add the word "promptly" in front of the word "assess." **Rep. Schmidt** asked **Mr. Hunter** if cuts had been made in HB 2 in the child abuse area. **Mr. Hunter** said in the Racicot budget the department had funding for 26 new workers and a lot of new in-home services that would be contracted. Those were reduced in the Martz budget to the proportional amount that other budgets were reduced, so they were reduced to 6 workers, and from a million dollars of new in-home services down to about $200,000.

Rep. Newman asked **Mr. Hunter** how the workers in the field would deal with section 5 and if he believed that adding the assessment level before the investigative level is a good statement of public policy and something that should be added to the statute rather than leaving the language the way it is, recognizing that some investigations take a short amount of time and some take a great deal of time. **Mr. Hunter** said he believes it is a good statement of public policy to say that the department ought to be using its professional judgment in each and every case in deciding how it ought to conduct those cases. That should be based upon professional expertise and looking at the case and looking at the facts and making a case by case judgment. That is where he thinks this takes us. It gives him the ability to control at the front end what comes into the system and what doesn't as opposed to just throwing the doors open wide and saying any phone call they get, they'll go out on.

Rep. Noennig asked **Mr. Hunter** to address the suggestion of leaving in the word "promptly" on page 9 as well as inserting it before the word "assessment" as had been suggested previously. **Mr. Hunter** said he thinks that hinders a little bit what they are trying to accomplish. He concurs that any time they get a referral, they ought to look at it right away and assess it when they get it to determine its nature. If they're doing assessments, there may be a case where an investigation isn't warranted for some period of time. He thinks they could live with leaving in the word "promptly" but he doesn't think it grants the department the full kind of flexible use of judgment they're trying to achieve.

Rep. Lee asked **Mr. Hunter** how they do an assessment and what steps they take. **Mr. Hunter** said that if this were put into the code and they were operating under the statute, they would need to develop a more formal assessment method than they have today. Today what comes in over the phone or by letter is typically screened according to a formal or informal risk assessment, and the department uses several of those that are written in a grid form. There are other more informal methods used by workers who have been in the system for a number of years and really know their way around this subject. If they're going to an assessment like this,

a triage system, and centralized intake, they will develop a very formal process by which these things will be assessed and subsequently assigned out to the field.

Rep. Facey said there's a fish and game statute that states if a landowner reports a damage to their property by wildlife, FWP must respond within 48 hours, and they told him that if they make a phone call to the landowner, that is considered a response and they started their response within 48 hours. He asked **Mr. Hunter** if that would be appropriate for his department. **Mr. Hunter** said that existing language that isn't being changed states that the worker shall promptly conduct a thorough investigation into the circumstances. He is saying that they'll do an assessment and if an investigation is warranted, they'll do that same thorough investigation that they've always done. Going to the 48 hour response or a shorter response, he'd like to say that might be sufficient in a number of cases, but when they feel like an investigation is going to be done, they are really into a thorough investigation where they talk to the family, the parents, and the child.***{Tape : 2; Side : A; Approx. Time Counter : 9.5 - 30} {Tape : 2; Side : B; Approx. Time Counter : 0 - 12.5}***

Closing by Sponsor:

Rep. Stonington said this is a difficult arena, and she appreciated the very good, probing questions. She said that on page 3, line 13, the Senate had amended back in something the initial bill had taken out, to say that the agency is responsible for investigating reports of child abuse or neglect in a day care center. They were inundated with e-mails. The department was willing to amend that back in and say they would still take it on. They were going to say it should be a licensing issue and if there is a problem, then it should be a law enforcement issue, but they'll go ahead and take it back on again. The compromise was the wording that was put in on page 9, to try to give them greater authority to assess rather than to have to thoroughly investigate every single case. She hoped the committee would give them the leeway to manage this well. ***{Tape : 2; Side : B; Approx. Time Counter : 12.5 - 14.3}***

HEARING ON SB 171

Sponsor: SEN. BILL GLASER, SD 8, Huntley

Proponents: Amy Pfeifer, Acting Administrator, Child Support Enforcement Division

Opponents: None

Opening Statement by Sponsor:

SEN. BILL GLASER, SD 8, Huntley, said this bill was requested by the Child Support Enforcement Division of DPHHS. It was very controversial until the department made some arrangements with some other folks, particularly the retired folks who were originally involved in the bill. They made an agreement with the folks who handle that area as to how they're going to handle it, and the bill was amended so it is a fairly easy bill. He said that representatives of the department will explain the provisions of the bill.***{Tape : 2; Side : B; Approx. Time Counter : 12.5 - 19.1}***

Proponents' Testimony:

Amy Pfeifer, Acting Administrator, Child Support Enforcement Division, distributed a section-by-section description of the bill and copies of the current parts of the code that they are proposing to repeal in the bill. She said that in each legislative session CSED introduces an omnibus bill that is intended to improve and fine tune some of the laws regarding child support enforcement. Many provisions of the bill are very simple and straightforward. She explained Sen. Glaser's opening comments, saying that there were some provisions in the bill initially that concerned some individuals, and CSED did come to an agreement with PERS and TERS to take out what were sections 1 and 2 of the bill. They had wanted to be able to issue a notice of support lien to those systems, because the problem they were having was when they learned that someone might be taking a payout of their PERS, more commonly when they quit, not when they retired, by the time CSED could get a warrant for distraint served to seize the payout, PERS or TERS may have already paid it out. With a support lien, they would have been able to tie it up and then serve the appropriate legal documents. PERS and TERS suggested instead that they would be willing to acknowledge service of the warrants for distraint, so CSED could send them to them directly, rather than having them served by a sheriff or process server, so that's what they did in the bill. Ms. Pfeifer explained each of the bill's sections as described in Exhibit 3. **EXHIBIT(huh58a03) EXHIBIT(huh58a04)*{Tape : 2; Side : B; Approx. Time Counter : 19.2 - 28.2} {Tape : 3; Side : A; Approx. Time Counter : 0 - 7.2}***

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

Rep. Esp asked **Ms. Pfeifer** why they would amend out all of the language in 40-6-216. She said the first part of the language says

a parent is not bound to compensate the other parent or a relative for the voluntary support of the child, and that is not true in Montana. A parent is bound to pay child support to the other parent when that child is no longer living with both parents. That language is outdated. It is a public policy decision of the state whether to say that parents should have a continuing responsibility to support their children when a third party, such as a grandmother or aunt, has taken on the responsibility of supporting the children. The language CSED has rewritten in 215 expresses more clearly the state's public policy statement that parents do have a responsibility to support their children. The last part of 216 says a parent is not bound to compensate a stranger for the support of a child who has abandoned the parent without just cause. Part of the problem with this is that there really is no case law in Montana defining what's abandonment in this instance and what's abandonment without just cause. So it's hard for CSED and parents and third parties who've assumed the care of a child, most commonly of family members, to know if they're entitled to receive some support from the parents or not. There is very little guidance. This is very old statutory structure, it doesn't tell how to go about getting the support, and it isn't clear. **Rep. Esp** asked if somebody volunteered to take care of the child, why they should be entitled to child support. **Ms. Pfeifer** said the situations aren't always that clear. An example is when a child shows up on grandma's doorstep with some injuries, grandma takes the child in, the child doesn't want to go back home so stays and lives with grandma. Grandma has consented, but a lot of these are family situations and they're not going to throw the child out. They're assuming responsibility for the child, although perhaps not total financial responsibility, by continuing to care for the child. **Rep. Esp** asked what if they were assuming total financial responsibility. **Ms. Pfeifer** said if they've told the parents that they've made that arrangement that they'll only take the child in if they don't have to pay support. **Rep. Esp** asked what if the other parent or a grandparent or other aunt or uncle said they'll take care of the child, period. Why should the parent be responsible to pay them for it if they volunteered to take care of the child. **Ms. Pfeifer** said in those situations, if the relative has volunteered to take care of the child, CSED may never know about the situation if the relative doesn't ever determine that they need assistance in caring for the child. If the relative believes they need assistance, they would go to CSED or the court. **Rep. Esp** asked about page 27, line 4, where it says "and recover the reasonable value," if it could say "and recover at their option." **Ms. Pfeifer** said she thought that would be fine.

Rep. Facey asked **Ms. Pfeifer** what if they had a widow or widower who lives next door to the grandparents and the widow or widower is addicted to drugs, so the child of this widow or widower goes next

door to the grandparent and asks if they'll take care of the child, and the grandparents agree. Is it correct that 40-6-216 right now would indicate that the widow or widower would not have to pay child support? **Ms. Pfeifer** said that is correct. ***{Tape : 2; Side : B; Approx. Time Counter : 19.1 - 30.}{Tape : 3; Side : A; Approx. Time Counter : 0 - 12}***

Closing by Sponsor:

Sen. Glaser closed. ***{Tape : 3; Side : A; Approx. Time Counter : 12. -15.}***

HEARING ON SB 290

Sponsor: **SEN. EVE FRANKLIN, SD 21, Great Falls**

Proponents: **Laurel Andrechak, Fort Benton, APRN**
Stephanie Catron, Fairfield, Family Nurse Practitioner
Sami Butler, Ex. Dir., Mt. Nurses' Assn.
Susan Rathman, RN, Shelby
Jim Ahrens, President, Mt. Hospital Assn.

Opponents: None

Opening Statement by Sponsor:

SEN. EVE FRANKLIN, SD 21, Great Falls, said SB 290 is a bill that she is carrying on behalf of advanced practice registered nurses. It allows certified APRNs to essentially sign death certificates, which under law they cannot do now. A specific set of events got this in motion. The medical director of a critical care access hospital in Choteau is an APRN, and when her patients die, they have to get a physician to drive up from Great Falls to sign the death certificates, someone who doesn't have a professional relationship with the patients, someone who hasn't seen or treated the patients, and it just seemed inappropriate. This is within the scope of practice. These are folks who have been responsible for the care of an individual, but when the person passes away, they have to delegate signing the death certificate. The bill would allow them under law to be able to perform that function. ***{Tape : 3; Side : A; Approx. Time Counter : 15 - 19.5}***

Proponents' Testimony:

Laurel Andrechak, Fort Benton, APRN and Family Nurse Practitioner, said she supports the bill. She provides primary care for all ages,

from shortly after birth to the elderly, and frequently elderly patients pass away. Many times she is the only health care provider that they have and have had for many years. She is the reasonable person to sign their death certificate. The certificates are a necessary document for the family of the deceased. Often a timely receipt of the document can reduce stress, begin the process of continuing life without the deceased and reduce undue expenses for the surviving family. If the survivors have to wait for a physician, who may never have even seen this patient, to sign the death certificate, there is often a delay in the processing of the death certificate. Without the certificate, the survivors cannot seek any death or burial insurance benefits, Social Security, life insurance or pension benefits to which they are entitled. They also cannot gain access to a safe deposit box or obtain a title to a mortgage. This bill can appropriately speed up the process and lessen the effects of a traumatic situation for the grieving family. This is a reasonable bill, and she hopes the committee will support it. ***{Tape : 3; Side : A; Approx. Time Counter : 19.5 - 21.2}***

Stephanie Catron, **Fairfield**, **Family Nurse Practitioner**, said she supports the bill. She recently had a patient die of stomach cancer whom she had taken care of for two years, and she was unable to sign his death certificate. She provided his end-of-life care and felt that she should have been able to sign the death certificate rather than a physician who had not cared for him. ***{Tape : 3; Side : A; Approx. Time Counter : 21.2 - 22.2}***

Sami Butler, **Ex. Dir.**, **Mt. Nurses' Assn.**, said they support the bill. APRNs are registered nurses with advanced degrees and national certification, and determining death is certainly within the scope of their expertise. Many counties are without physicians, so sometimes the only primary health care provider is an APRN. They provide care to persons who often have a terminal diagnosis or chronic health conditions such as kidney failure, heart disease or lung disease that hasten their death. When these patients die, it's most logical and appropriate that the APRN that provided the end-of-life care file the death certificate. APRNs attend and deliver births, provide well and ill baby care, give immunizations to children, prescribe antibiotics for childhood infections, provide sports physicals for adolescents, provide primary care for adults and manage the care for the elderly population. There is no incongruity in recognizing the competency of APRNs to complete the journey by attending end of life and filing the death certificate. She said that the **Mt. Medical Assn.** had testified in support of the bill in the Senate, but **Jerry Loendorf**, their lobbyist, had to leave and asked her to submit their name for the record in support of the bill. She presented other letters supporting the bill.

EXHIBIT(huh58a05) ***{Tape : 3; Side : A; Approx. Time Counter : 22.2 - 24.8}***

Susan Raph, RN, Shelby, said she is a public health nurse and a member of the faculty of MSU Bozeman College of Nursing, Great Falls campus. She presented written testimony from **Cathy Caniparoli, Family Nurse Practitioner Coordinator for the College of Nursing,** which is included in Exhibit 5. ***{Tape : 3; Side : A; Approx. Time Counter : 24.8 - 27.5}***

Jim Ahrens, President, Mt. Hospital Assn., said this bill makes a lot of sense. Since 1993, physician assistants, who are one of the primary care givers in critical access hospitals, have been able to do this. It often is the case today that APRNs are the primary care givers in these facilities also. Since PAs have done this for a number of years, it makes sense to extend it to the primary care giver who is with the person when they die. ***{Tape : 3; Side : A; Approx. Time Counter : 27.5 - 28.8}***

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

Rep. Thomas asked **Sami Butler** what professional qualifications a coroner has. **Ms. Butler** said the qualifications per MCA 7-4-2201 are voting age, citizen of Montana and elector of the county; with 7-4-2904, a high school graduate or holder of equivalency of completion and has taken the basic coroner's course, which is a 40-hour course that is offered every two years. In that course, there is no anatomy and physiology. **Rep. Thomas** asked **Ms. Butler** what the qualification are of an APRN. **Ms. Butler** said they are advanced degree prepared, meaning they'd have a bachelor's and a master's in nursing, and they are certified by their national body, depending on what type of specialty they go into. There are nurse practitioners, certified registered nurse anesthetists, APRNs with a psych certification, and certified nurse midwives.

Rep. Noennig asked **Ms. Butler** if what she said about an APRN having a master's degree was inconsistent with what the code says in 37-8-202 or if he is reading it incorrectly. **Ms. Butler** said it isn't in the code but is in rule. Prior to 1995, an APRN without a master's degree could be grandmothered or grandfathered in. Since 1995, they must have a master's degree to be an APRN.

Rep. Whitaker asked the sponsor what happens if a nurse overdoses a patient and where the quality check is. **Sen. Franklin** said an

APRN is subject to all of the quality controls under her scope of practice, under her license, as any other health care professional would be. **Rep. Whitaker** asked when the coroner would be called. **Sen. Franklin** redirected the question to **Ms. Catron**, who said in the case she described, the patient died at home. As far as she knows, whether or not the APRN signs the death certificate, the coroner has to be notified of a death. ***{Tape : 3; Side : A; Approx. Time Counter : 28.8 - 30.6} {Tape : 3; Side : B; Approx. Time Counter : 0 - 4.5}***

Closing by Sponsor:

Sen. Franklin thanked the committee for a good hearing. **Rep. Dell** will carry the bill. ***{Tape : 3; Side : B; Approx. Time Counter : 4.5 - 4.6}***

ADJOURNMENT

Adjournment: 5:25 P.M.

_____
REP. BILL THOMAS, Chairman

_____
PATI O'REILLY, Secretary

BT/PO/JB Transcribed by Jan Brown

EXHIBIT(huh58aad)