MINUTES

MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY

Call to Order: By **CHAIRMAN JERRY O'NEIL**, on March 12, 2003 at 3:10 P.M., in Room 350 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 493, 3/5/2003; HJ 19, 2/27/2003; HB 647, 2/27/2003
Executive Action: HB 180; HJ 19; HB 493

EXECUTIVE ACTION ON HB 180

SEN. EMILY STONINGTON, SD 15, Bozeman, moved Do Pass on HB 180

Discussion:

Lois Steinbeck, Legislative Fiscal Division was there to answer any questions regarding HB 180.

SEN. STONINGTON asked **Ms. Steinbeck** to attend and wanted to start with questions for her. She pointed out that **Ms. Steinbeck** was staff for HJR 1 which was where the bill came from. **SEN. STONINGTON** asked her to review with the committee why it was decided to forgo using the money for a Medicaid match to guarantee that the counties got their allocation of alcohol tax money.

Ms. Steinbeck said there were several reasons that HJ 1 subcommittee recommended this bill. The first was to actually benefit people who were diagnosed with a mental illness and a chemical dependency and the second step was toward appropriation in making ongoing use of funds, a portion of the chemical dependency funds to treat people who had a dual diagnosis. That was initiated by the legislature last session and the amendment was made temporary. When the committee reviewed the services provided by the pilot programs for chemical dependency and mental illness, they thought they would continue working, which was one reason the appropriation was there. The other reason was that the committee decided to fund the counties first. The alcohol tax statutorily appropriated by this bill, the 20%, went to local chemical dependency programs. It was used to treat persons with income up to 200% of poverty and these people, even though they were low income, many of them had incomes that were too high to qualify for Medicaid or they were not aged, blind, or they did not meet the disability criteria. Local programs used this source of funds to treat that population. Some programs, particularly the programs in Missoula, used this fund as a match to draw down or provide maintenance of effort for federal grants. Originally, when the Appropriations Subcommittee heard of an issue two sessions ago to use this money for medical health Medicaid match or for a medicaid match for the CD program, they opted not to do it because there was a portion of the population who would lose CD services who had no other claiming source. In short, this bill would first fund the counties with the historic amount they have gotten in the past, $1 million up to $1,400,000 depending on the liquor proceeds and depending on the legislative appropriations. It would also allocate an amount to treat dually diagnosed persons. If it was not passed, the money could be used

for the uses approved in Statute and appropriated by the Legislature but it would still require an amendment to use it as a Medicaid match for mental health because of the statute that comes into effect July 1, it will not be an allowable purpose.

SEN. JERRY O'NEIL, SD 42, Columbia falls, asked if this were money that went from the state's hands to the county's hands. **Ms. Steinbeck** said yes, if a portion of the liquor license tax, beer and wine tax, were allocated to DPHHS and it went to the states special revenue account, the statute specified the uses of the account that included funding for state approved chemical dependency programs. She said that was the broad use of it and the statute said whatever the legislature did not appropriate was statutorily appropriated to the counties to use in their local programs that the county commissioners sign off on annually for CD treatment. There were 27 local programs that got allocations of money from this including Rimrock in Billings.

SEN. JOHN ESP, SD 13, Big Timber, asked how much the counties got the last full year before the money was tinkered within the special session. **Ms. Steinbeck** said about $1 - $1.2 million but would need to check to make sure.

SEN. DAN HARRINGTON, SD 19, Butte, asked about the detox center in Butte. **Ms. Steinbeck** said it also got appropriations from the account and that it was funded from the federal block grant and the alcohol tax. **Ms. Steinbeck** added that there was an expansion of Medicaid benefits to cover out patient treatment for CD. The CD funds were also used as match for that. It was a smaller Medicaid expenditure than any other Medicaid programs.

SEN. STONINGTON said a motion was on the floor and she wanted to clarify the whole Medicaid and matching funds and that **Ms. Steinbeck** was the expert.

Motion/Vote: SEN. STONINGTON moved that HB 180 BE CONCURRED IN. Motion carried 7-0.

HEARING ON HB 493

Sponsor: REP. GARY BRANAE, HD 17, Billings

Proponents: Kathy Kenyon, Billings Deaconess Clinic Counsel

Opponents: None.

Opening Statement by Sponsor:

REP. GARY BRANAE, HD 17, Billings said HB 493 was a proposed piece of legislation that would clarify existing statute and put into law what was actually common place presently. He said in our society there was some genuine need for cooperation for sharing those resources and that became more true as our financial situation continued to become more difficult. This was true in the medical field and many other areas that we were exposed to each day. The Deaconess Billings Clinic and Health Care facilities were one example of a medical facility that was very generous in sharing their employees with smaller health care facilities in the region. **REP. BRANAE** said Deaconess Billings Clinic's General Counsel would be one proponent that would give testimony. She would go into detail what this piece of legislation tried to accomplish, not only for her organization, but for all health care facilities in Montana.

Proponents' Testimony:

Kathy Kenyon, Billings Deaconess Clinic Counsel, said HB 493 was a simple bill that offered a simple purpose. It amended the Montana Professional Employer Organization in Groups Licensing Act or the PEO Act as it was called in 1995 when enacted. The proposed amendment would make it clear that Montana health care facilities provided a few of their own employees to help manage other health care facilities that were never intended to be licensed under this law. The PEO Act was initially designed to regulate businesses that were coming into Montana in 1995 from outside the state. They were in the business of having the employees that existed in a small business take over the management of employees in a co-employment of that relationship. Because of the possibility of the abuse of practices, we needed regulation and the department waiver now regulated them. Ms. Kenyon thought there was about 23 currently regulated in the state. The problem was that the PEO Act did not clearly exclude health care facilities that provided management services to small facilities. According to several attorneys, it could possibly be read to include them. She said looking at the definition of a professional employer organization that was on Page 2, starting at the end of Line 22, it included either an Employee Leasing Arrangement or a Professional Employer Arrangement. The definition of an Employee Leasing Arrangement on Page 1, Line 23, was an arrangement by contractor of a law under which a Professional Employer Organization hired its own employees and assigned the employees to work for another person to staff and manage or to assist in staffing and managing a facility function project within a clause on an ongoing basis. What attorneys had told them, in her opinion as an attorney, was that Deaconess

Billings Clinic or other health care facilities could be regarded that chance, through a broad reading of this language, as a Profession Employer Organization. The purpose was to make certain that reading, in which the department was so far not engaged in, did not occur in the future. At DBC and other larger health care facilities, management contracts in smaller health care facilities, such as smaller hospitals, needed specialized financial knowledge to operate in health care. Because they did not need, nor could they afford it on a full time basis, DBC as an employee, moved from facility to facility offering expert financial advice. **Ms. Kenyon** said that in other instances they provided a CEO to a smaller facility and other large health care facilities provided the same kind of helpful management service to other smaller health care facilities and Montana law should not discourage this. She said they discussed their concerns with those from the Department of Labor and Industry and they suggested additional language that would make it clear the health care facility was the employer and that the city had no objection to it. It was in the bill and the department did not oppose it.

Opponents' Testimony: None.

Informational Testimony:

Jerry Keck, Department of Labor & Industry, Administrator of the Employment Relations Division in the Department of Labor and Industry said they did the licensing of the Professional Employer Organizations. They agreed with **MS. Kenyon** that it was never the intent of the PEO law to provide any regulation to the circumstance she described and said they supported the bill.

Questions from Committee Members and Responses: None.

Closing by Sponsor:

REP. BRANAE said HB 493 would solve a problem and make things better. He said they were trying to encourage cooperation in sharing resources and it would help the medical situation. It was a good way to bring services to people.

SEN. ESP asked **SEN. BRENT CROMLEY, SD 9, Billings** about Page 2, Lines 10-20 and what it meant in laymen's terms. **SEN. CROMLEY** said he did not think he could and said the sponsor could probably answer that better.

SEN. ESP said he was trying to see how the amendment fit in. **SEN. CROMLEY** said they were looking at the definition of professional arrangement and using that term implied they were professional in the business of supplying personnel and that Part

D took out a series of groups. **SEN. ESP** said it was saying the term Professional Employer arrangement did not mean arrangements by the health care facility as defined in statute.

SEN. CROMLEY said yes, this would be the fourth exception under Part D.

HEARING ON HJ 19

Sponsor: **REP. HOLLY RASER, HD 70, Missoula**

Proponents: **Hank Hudson, DPHHS,**
Bonnie Adee, Mental Health Ombudsman
Steve Yeakel, MT Council for Maternal & Child Health
Beda Lovitt, MT Psychiatrists Association, MT Medical Association

Opponents: None.

Opening Statement by Sponsor:

REP. HOLLY RASER, HD 70, Missoula said the idea for the resolution was a result of a meeting she had with some constituents who had a child with disabilities. In their conversation they told her of the time consuming and repetitive process of applying for Medicaid, SSI, and CHIP. She did some research after talking with them and found that many states were currently using web and software-based tools to help enroll in programs to reduce the time necessary for enrollment, streamlining the application process, providing additional avenues of access for applicants, and centralizing applications for available social services. Ms. Raser went to Helena and approached the department with some questions about how the process currently worked for enrolling people and if they use electronic methods of application. She also asked if they planned to pursue electronic application. The conversation that she had with the department was exciting. They envisioned a people friendly application process that would turn them into state offices, where applications could be picked up at food banks, hospitals, and schools. The department said federal funds were potentially available to help states move toward this system. The resolution did four things. She said looking at Lines 24 through 28 it requested the department to identify and examine all existing eligibility determination and information systems. It requested the department to identify the cost of acquiring these systems and modifying them. She said they had amended this to include information by the tribes. On Page 2, Lines 4 through 12 said to identify and examine the eligibility requirements, identify the cost, explore the possibility of finding federal

funds and other alternative funding sources, and then finally to report to the interim committees and prepare a report for the Fifty-ninth Legislature.

Proponents' Testimony:

Hank Hudson, DPHHS, Division Administrator, said they handled the eligibility process for most programs including Medicaid, Food Stamps, LEAP, and Temporary Assistance for Needy Families, also known as the TANF program. He said the department did not request the resolution but when it was brought forward and they met with **REP. RASER**, they realized that it sounded like a good idea and he was there to support it. He said eligibility was one of the most important duties done in his division and that it was a complicated activity. They tried to balance accuracy and held that accuracy as very important. The departments realized there was little of the taxpayers' dollars available and were attempting to provide benefits to those who truly deserved them. They did not want to provide them to people who were not eligible and were trying to make the process a more positive experience for people without making it complicated and intrusive. **Mr. Hudson** said eligibility was undergoing many changes. The questions they were currently asking themselves were: Who would do the eligibility in the future, how could they use technology to make the eligibility process work better, where was eligibility going to be done, where physically was it going to occur, and how were often they going to ask people to prove they are eligible. Simultaneously, the programs themselves were changing rapidly. He referred to how strong Resolution 13 was by **REP. HURWITZ**, which looked at the whole Medicaid and health care systems in the state. **Mr. Hudson** said that HJ 19 was a good companion to HJ 13 because as they looked at how to reconstruct Montana's public health care system, they would be asking themselves how they were going to do eligibility for those services. He said the resolution was timely and useful and one that they could take seriously in getting the reports to the interim committees. The department thought it was a good time to focus on eligibility and welcomed it. He said we needed a new vision in Montana and one for eligibility that was more respectful. They tried to be as respectful as possible to people who came to them for services. They heard many complicated complaints, many personal questions, while they were short of money, which was why they wanted to be careful where they spent it.

Bonnie Adee, Mental Health Ombudsman, said a picture was worth a thousand words, so she was going to skip most of the words heard already and paint a picture. She said the resolution had a slant toward the population of Montanans with serious emotional

disturbances. She held up a drawing **EXHIBIT(phs52a01)** done by a parent of a seriously emotionally disturbed child and said on the front of the picture was a replication of what our current public system would seem like to a user of it. She said it was a system with some holes in it. In the sea of need which people often feel they are in, when they had a child with a serious emotional disturbance, heading toward a boat would be natural. Of course they would then have to become eligible to get onto that boat and would have to maintain that eligibility to be able to stay on the boat, which in crude terms, would be what motivated them to go in the water, struggling to stay a float. She said currently we did not have in place a system that let people go from one boat to the next and avoid falling into the water for different reasons. On the other side of the picture was a more idyllic system that contemplated transitions from public programs for children with serious emotional disturbance and life lines between those programs. She supported HJR 19 and hoped to get closer to the second side of the picture.

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Steve Yeakel, MT Council for Maternal & Child Health, said the resolution was another good step in simplifying and making the eligibility process smoother.

Beda Lovitt, MT Psychiatrists Association, MT Medical Association said the members were in support of the resolution. It seemed like good sense to avail us of more technology and find better ways to look at eligibilities, look at the system and make them more user-friendly, and make sure that we were spending our very scarce resources in the best possible ways. She urged support.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. STONINGTON referred to **Mr. Hudson's** earlier comments about how the resolution would make a good companion to HJ 13. She wondered why the two could not work merged. **Mr. Hudson** said that was correct and that HJ 19 was broader and addressed health care as well. In the department's discussion with **REP. RASER,** they explored that possibility and then decided that pursuing it independently would be better because it was broader programmatically and it was really a separate issue from the actual design from the service system. It was a distinct issue and he thought **REP. RASER** had constituents that had raised it as a distinct issue.

SENATOR GRIMES expressed concern about the resources necessary for it and the other study. **Mr. Hudson** said he had gone back to his staff and found that they could do it within their own resources. He said we needed to look at what other states were doing and that we had the vehicles of doing that through professional associations that can do that at no charge. He said we needed to keep working on our eligibility system and knew we were on the edge of moving into something.

SENATOR ESP asked why the resolution was needed if they planned to do it anyway. **Mr. Hudson** said one purpose it served was to direct some of their accountability and some of their communication to an interim legislative committee. It was useful for him in working with his staff and particularly those around the state when looking at what a fair test eligibility system could do. It served as a statement for the people of Montana because they had many demands. He said that communicating was important and that this was a legislative priority also. **Mr. Hudson** said he started in State Government in the Senior Citizen Program and spent years helping elderly people navigate Medicaid eligibility, spend downs, need to program, and meeting in state recovery, made him aware. After working in State Government for so long, he came to understand all those things and they no longer seemed that complicated. He said it was good to be reminded often how complicated it was the first time a person looked at it. He said the resolution was a statement that said there was a way we could make it more accessible and understandable.

SEN. ESP said the focus of the study was on eligibility and that **Ms. Adee's** handout did not seem to be about eligibility necessarily. He asked what her concerns were about eligibility. **Ms. Adee** said he was correct in that her picture was a broader picture of things beyond the joint resolution, but that there was an eligibility piece within it. She said **MR. HUDSON** addressed the knowing and understanding on how to access something that a person might be in fact eligible for, and then the understanding of when they become ineligible for it and what other options there are at that point.

Closing by Sponsor:

REP. RASER acknowledged that it did go along well with HJ 13, but that it did address other issues that were distinct from that. She said HJ 13 was a review of the overall system and HJ 19 was specific to access and eligibility. The issue that she wanted to have the department focus on were to look for information systems that could be used to help access, stream line, and look into the federal funding that was available. She said in the

conversations, a potential there could be a 90-10 match for acquiring some systems that they wanted to update. **REP. RASER** agreed with **Mr. Hudson**'s comments regarding eligibility and the difficulty a person had of knowing when he or she was eligible and when he or she was not, and the redundancy of some information that was required. It was a definite problem for their constituents including families who were in need in the first place and this would be a way that they could consolidate and streamline their services, allowing those in the department to work more with people rather than with the paper they were producing.

EXECUTIVE ACTION ON HJ 19

Motion: SEN. GRIMES moved HJ 19 .

SEN. CROMLEY asked what funds were available to determine which ones would be done. **SENATOR GRIMES** said there were interim studies and that this was an agency study. It was a resolution requesting the Department to review and report to an interim committee as opposed to an interim committee study that would have to be ranked and then prioritized.

SEN. GRIMES asked **Dave Bohyer, Legislative Services Division**, to go into detail on that because they would not be putting a great deal of time into it. **Mr. Bohyer** said they would just be reviewing the statutes and then reviewing any proposed legislation that would come out of it from the agency.

SEN. ESP did not think he would support the motion. He thought their time could be better spent doing something else. He said it was a time when they were looking at trying to refinance and had other things to which they were committing resources. He thought that time could be better spent trying to figure out how to get more money, and less state money.

SEN. GRIMES said he understood his concern, which was why he asked that question. **SEN. GRIMES** said his understanding was that it was on their agenda anyway and having some experience with past issues, he thought the other thing that was not mentioned was that a resolution would add a level of seriousness to the issue within the department and that was what caused the bill in the first place.

SEN. SCHMIDT thought that doing those things were important, but it bothered her that the department had not done this on their own to access and look for systems to streamline, which should be part of the process anyway. She said if it took the legislature

to get them off the dime, then that was what should be done because it was important.

SEN. ESP wanted an idea what the cost would be. He said if this was about computer systems and it was about trying to change the way they did paper work, he thought that including in the resolution to consult with the IT people in the Department of Administration and coordinate would be important that expertise into it too.

SEN. HARRINGTON said that if the department felt that coming to us was important enough, then he thought it important to give them the OK and do it.

SEN. BOHLINGER said the outcome of the study might produce some benefits in that a great source of federal assistance might be found in funding programs and he encouraged the committee to move it out.

SEN. O'NEIL asked **SEN. ESP** if he would feel better about the bill if it had an amendment requiring them to consult with us.

SEN. ESP said he would vote against the bill anyway.

Motion/Vote: SEN. GRIMES moved that HJ 19 BE CONCURRED IN. Motion carried 6-2 with ESP and O'NEIL voting no. SEN. DEPRATU voted by PROXY.

HEARING ON HB 647

Sponsor: REP. BILL THOMAS, HD 93, Hobson

Proponents: Bob Olson, Mental Health Association
Pat Melby, MT Medical Association
Jeanne Cannon, MT Health Information Act Association
Kathy Kenyon, General Counsel, Deaconess Billings Clinic
Julie Mariani, MT Health Information Act Association
Al Smith, MT Trial Lawyers Association
Jacqueline Lenmark, American Insurance Association

Opponents: None.

Opening Statement by Sponsor:

REP. BILL THOMAS, HD 93, Hobson, read and submitted written testimony that touched on the highlights of the bill.
EXHIBIT(phs52a02)

Proponents' Testimony:

Bob Olson, Mental Health Association said his organization brought HB 647 forward and the reason for that was the Federal Statute imposed in 1996 and became activated in April of this year as it pertained to privacy standards and there were electronic transactions standards that took effect this October. Since 1996 until this year, we had been working on federal regulations and adjusting our own operations at hospitals and other medical institutions, insurance companies and others to compart with these federal laws. The federal laws were born out of the Health Reform discussion from the mid 1990's and one of the ways the Federal government believed they could reign in health care costs was to put the health care administration up to technology. That was electronic transaction. Imagine trying to get everybody on one sheet of paper for electronic transactions and the first thing that came to mind was making sure everybody had the same privacy standards, which was why the federal government wrote extensive statutes, to guarantee a consistent nationwide privacy standard for all Americans. The way that came back to Montana was Montana had always followed the Uniform Health Care Information Act, which was not much different from the federal statute except a few things that were a little different. The federal government decided to leave things to the state's own design and we did not change Montana law. There were areas dealing with youth for example, or dealing with trust estates and representatives. Not every health care provider was subject to the federal standards and the approach in the bill was to state those organizations that were subject to federal law follow federal law with a few exceptions, and those exceptions were at the last half of the bill, Sections 16-24. This was where an individual or small organization was not required to follow law, but continue to follow existing Montana law. He pointed out the areas, section by section, maintenance types of amendments and the areas related to Health Insurance Portability and Accountability Act, HIPAA. He said they had a series of amendments to the bill. When they brought it forward in the House, they had widely distributed the bill to many other parties interested in HIPAA and invited them to come in with their concerns and comments. Over the last several weeks they had been working on amendments addressing their concerns and he believed they had nearly all the amendments that people needed to see in order to make the bill workable for all organizations. The first section dealt with emancipation of minors, when a health care provider dealt with a minor who sought medical care. In some circumstances the minor could be an emancipated minor and consent to health care provider on their own. The first three sections of the bill made modifications and it was their attempt to clarify the conditions on which a health care could rely on that assertion of emancipation. Mr. Olson said those were

housekeeping amendments intended to clarify the issue of emancipation. Section 4 was also a housekeeping amendment and through Section 5 and 6 as well. Section 6 had an amendment and

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Section 7 concerned legislative findings. On Page 5 of the bill, Numbers 6 and 7 were the pertinent parts. It talked about the enactment of the standards that would require health care providers be subject to federal legislation. Because the provisions did not apply to everybody, it was important that those that were exempt from federal law continued to follow the state part. Sections 8-14 was cleanup. Section 11, Page 8, there was an amendment that reworded the information requested by the State of Montana agencies to amend it to the Government Health Information Act which was their ruling statute. The new section 16 was important because it discussed HIPAA and that was a new set of legislative findings that basically stated that we were now going to be following federal law. In most aspects that would delineate the remaining parts of Montana policy or Statute. It gave Montana's health care providers a consistent way to deal with local law enforcement and the local judicial system. Section 19 was the first section where instead of following federal law, we continued to follow Montana's statute when it dealt with deceased patients' estates. Section 20 was Workers Compensation. Mr. Olson said they had an arrangement already in place for workers comp. insurers and employers on how to transfer health information when there was an injured worker, so they left that section of the law in the books. New Section 21 dealt with the compulsory processes. That basically dealt with the courts judicial processes when dealing with administrative proceedings, etc. Those were inherently unique to Montana and we would continue to follow those and all health care providers would follow it as well. This section was a repeat of statute in the Public Health Care Information Act. That particular act was repeated for this purpose. He said they wanted to make sure all health care providers followed the same standard in dealing with the Judges in the courts with an administrative law rather than have some following one method and another set following another. They retained the limitation charge of $.50 a page plus $15.00 and then the new Section 23 were civil remedies that were also current health law. He said those were the amendments they worked out and believed the amendments were already distributed to the committee. **EXHIBIT(phs52a03)** Mr. Olson pointed out a few amendments because they were substantial additions to the bill. There was clean up in the title because they dropped amendments in Section 6. The second amendment added physician assistants, professional counselors, and social workers to the bill and under the title of Health practitioners, the term "medical treatment" was dropped and the term "health services," was inserted in three

places on Page 1 and 2 of the bill. New Section 21 was going to be inserted on page 13, which was an amendment dealing with the method of compulsion process. This again was a current state statute upon how health care providers released records when there was a lawsuit or a legal issue raised by an individual's retained counsel.

Pat Melby, MT Medical Association, supported HB 647 and the amendments proposed. Last summer he had the chore of preparing what was called the preemption analysis comparison of the privacy standards with the Montana Uniform Health Care Information Act. One was done independently for the Montana Hospital Association and both came up with a comparison of those two requirements for managing, using, and disclosing health care information of patients of health care providers. **Mr. Melby** said theirs was very complicated. There were times when telling which requirement was more stringent was difficult or which one would take precedence over the other. He had a psychologist call and ask for help. The psychologist had to meet HIPAA privacy standards and he could not tell whether he should comply with HIPAA or the Uniform Health Care Information Act. He said this bill would make it much easier for health care providers who were going to be covered by different privacy standards and they would not have to try to balance and compare HIPAA privacy standards with Uniform Health Care Information Act standards in determining with which one they should comply.

Jeanne Cannon, MT Health Information Act Association, said they supported this bill and urged the committee for support as well.

Kathy Kenyon, General Counsel, Deaconess Billings Clinic, said Deaconess Billings Clinic supported the bill and the amendments. She said she was responsible for HIPAA in her organization. Federal law provided enormous protection for privacy of information. Anybody who came to Deaconess Billings Clinic as of April 2 would be getting a document that in its current form was eight 1/2 pages long. All privacy practices of Deaconess Billings Clinic were described in a very thorough way. Every hospital and physician would be providing similar documents to their patients unless they were exempt from the law. She said that the federal law here was a very comprehensive thorough law that would substantially in many areas conclude the protections that patients had for the privacy of their health care information and they supported the bill.

Julie Mariani, MT Health Information Act Association, Director of Business Operations, said they supported the bill and the amendments stated.

Al Smith, MT Trial Lawyers Association,
said they supported this, especially the amendments. They were concerned with Page 4, Lines 22-24. One reading of that could have been "would not have access to any health care information for one of the malpractice claims." The amendment returned it to traditional language data that was confidential under the statute, staying that way to review protection. It stayed that way but could access the other information. They were also supportive of the sections regarding workers compensation which started at the bottom of Page 11. At the top of Page 12 was an agreement that they worked out with the insurers, work comp., state fund, unions, and trial lawyers over several years.

Jacqueline Lenmark, American Insurance Association, spoke for **George Wood** who was the Executive Director of the Association and said they stood generally in support of the bill. The sponsor introduced the bill indicating that the theme here was coordination and she was glad he chose that theme. Her testimony was directed to a narrow piece of the bill as it related to workers' compensation insurance because another bill was moving through the legislature and if both bills passed unamended, a conflict would be created. She pointed out duplications in the two bills and the potential conflict. She believed the interested parties agreed among themselves about how to solve that problem with the technical input of legislative services and Montana bill drafting requirements. Workers' compensation was to be regulated only under state law and currently we have instate law, the provision heard by **MR. SMITH** and **MR. OLSEN** regarding Workers Compensation insurance. SB 450 also contained amendments in it directed to those provisions of the law. In HB 647, there was no amendment to the current statute in Title 50-16-527 and there was a new Section 20 in HB 647 that was to address Workers Compensation Insurance. In SB 450 were two sections. The amendments to 39-71-604, which was Section 1 of that bill and amendments to 50-16-527, which was Section 5 of that bill. She believed that all of the parties agreed that as those sections read in SB 450, those were appropriate amendments to this portion of the law. The question was whether they should be duplicated in both titles and in both bills. The suggested fix she proposed was for Section 20 of HB 647 be stricken because as to noncovered entities, they would be treated under SB 450 in Section 1 and then Section 5 had in SB 450 dealing with the non-covered entities. An alternative would be to leave SB 450 unamended and delete Section 20 from HB 647. A different alternative would be to strike Section 5 from SB 450 also so that assuming both bills passed, only one Section addressing Workers Compensation Insurance would exist in law and it would be in the Workers Compensation Act where it was state law governing that line of insurance. She asked for the appropriate way to do that. She

said there was no absolute guarantee that both bills would pass and it was very important that the section be preserved.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SENATOR ESP asked for an explanation of the differences between the facilities that would fall under one set of rules and facilities that would fall under the other set of rules. **Mr. OLSON** said that every health care provider was subject to Federal law. Every health insurance company, every medical provider and all other medical companies that dealt with medical providers had a stake in what the Federal law said. Then, the Federal Government realized that what they were trying to do was to standardize privacy when organizations were engaged in electronic transactions. Those electronic transactions were when claims were sent in or if someone inquired about eligibility and that was done electronically. That information was out on the wires so they created a carve out in the Federal law and they said that they would exempt small organizations and that was commonly referred to as the "County Crock Exception." It was going to affect Montana's dentists most directly because if someone were not doing electronic transactions and he or she had fewer than 25 employees, there were many small clinics, physicians, dentists, and therapists, people who did not have to follow those federal laws. What that meant to them was that they did not have to develop a very extensive privacy protection and security protection that were normally required when thought in terms of electronic transactions. That was how who was in or out was differentiated.

SENATOR ESP asked how many facilities were considered in. **MR. OLSON** said he would venture to say that every hospital, every nursing home, and every home health agency facility of that type were all going to be subject. The exemption was most likely to be in small groups or individual solo practices: dentists, physical therapy, and occupational speech therapists that were in small practices that would generally be exempt from impact.

SEN. GRIMES asked about the psychologist who called **Mr. Melby** wanting to know which program to comply with, which one did he fall under and why. **MR. MELBY** said because it was a small office he was a sole practitioner and he was not sure the man had any staff. The man submitted claims electronically so he fell under HIPAA.

SEN. GRIMES was trying to understand the Page 4, Section 6 regarding admissibility. He had looked up the definition of data and found it exhaustive. Written reports noted virtually everything was then discoverable with the reinsertion of the language proposed to be stricken. **SEN. GRIMES** asked what the rationale was behind the original purpose of amending the language in that way. Was it to make all that information unavailable through discovery and admissibility. **MR. OLSON** said no. They were not trying to change the ground rules for discovery. They had worked hard last session on this section of statute and came to an understanding. What they thought they were doing was making a clarifying amendment on when that particular section of statute would or would not be subject to discovery and admissibility. They thought they were clarifying it but since the trial they were a little uneasy about making any changes to that statute and decided to leave it alone. It really did not need house keeping and it had nothing to do with HIPAA, so they just agreed yes, they were not helping themselves by confusing the issue.

SEN. GRIMES asked if the new sections in the last half of the bill were from current Health Information Act and was it in Montana code anywhere.

{Tape: 1; Side: B}

MR. OLSON said information in Montana law, the Uniform Health Care Information Act, was the current Montana Statute. There were bits and pieces of that act and they had reused it in this bill. They were making little change to current Montana Statute. Nevertheless, it was the statute referring to what they were saying. The Montana law, Uniform Health Care Information Act, and the Federal privacy standards were what most facilities would have to follow, so they left those alone. There were now parts of those State laws that were unique to Montana process. He said they did not have a national application and that every state had its own way of dealing with the local judicial and law enforcement agencies. Every state had its own way of dealing with the State and trust, etc. No national laws governed that, so they reproduced those sections specifically so that a health care facility that was subject to federal standards would fall under all the federal standards but when it came to those five or six items that were similar. **Mr. Olson** said it would duplicate what everybody else in the state was doing and the Judge would have only one way to do business with health care issues.

SEN. GRIMES asked if it were duplicative, was that why we did not have any repealers or was this an existing law being amended or was language being pulled out of other codes. **MR. OLSON** said the

option for them would have been to get in it and say all facilities would follow federal law except Section 50-16-527 and just reference them. Since there was at least a bet that eventually the Federal Government might like an ink stain on the issue, would require everybody to comply eventually to the same standard. He said they just wrote them that way so that they were already there.

SEN. GRIMES asked if **Mr. Olson** would explain the Civil Remedy Section, new Section 23. Was that existing law as well. **MR. OLSON** asked if he could refer that to **Kathy Kenyon** for explanation.

Ms. Kenyon said existing law did have a civil penalty in the Uniform Health Care Information Act of the Montana law. That particular provision would create a State Civil Penalty for those sections of law that were Montana specific sections. An example would be the sections in the bill that would still apply to those of who were going to be under HIPAA, under federal law, and were also going to have to follow Montana Law. She said if we violated the section of Montana law, that would be the limit.

SEN. GRIMES asked what remedies **Ms. Kenyon** would have under HIPAA. **Ms. Kenyon** said the remedies under HIPAA were administrative-process. If there was a violation of the law that was an honest mistake, a civil type thing, then we paid a penalty. There were also criminal penalties in the federal law that required very large mandatory payments for organizations and would put many individuals in jail.

SEN. GRIMES said he heard the amendments were friendly but an option was given on Page 12, Section 20 on the coordination with Workers Cost. Did MHA have a preference on how that was handled. **MR. OLSON** said they did not have a preference on where it appears. Those in the Workers Comp. world would prefer to have it in Workers Comp. Statutes so a person could keep an eye on it, and those who were in the Health Care Information World, might be more comfortable having it there but the standard was the standard. It was one that balanced many interested parties. Its location was not of consequence to them, since it said the same thing, and they all maintained their agreements on how to do business, and how to conduct business among the Workers Comp., providers, insurers and lawyers.

SEN. ESP asked about Page 8, in Section 11, where Subsection 2 was being stricken. He asked if that was because the amendment was being inserted in Subsection 1 and did it cover everything that needed to be covered. **MR. OLSON** said that was exactly right. Subsection 2 was amended, stricken, and replaced by the

sentence of Section 1 at the request of the Department of Public Health.

SEN. O'NEIL asked about the bill going through the legislature for a study on people killed by spousal abuse. Would the investigating body be able to look at hospital records of those people and would the bill leave that possible. **MR. SMITH** said it had been a long time since he looked at that. **Mr. Smith** said if he were talking about the study committee through the Attorney General's office, he thought it would be fine. He did not think there was anything to be changed there that would prohibit what was being asked for in the bill, but it had been a long time since he had read that one. **Mr. Smith** said there was a section in Federal Statute that provided access to health care records, personal health information for state agencies for their contractors and their agents, when they were authorized to engage in those types of conducts by law. The kinds of entities that would have access to the records would be the Department of Public Health as a Medicaid contractor, the Attorney General for the State of Montana, the Board of Medical Examiners, and the Board of Visitors. He believed the Ombudsmen's offices could probably continue the conduct of their business under the federal standard which guaranteed their access to that information.

SEN. O'NEIL asked about surviving immediate members of family, such as the spouse, adult child, or any other person who was authorized by law to act for the deceased person, were they authorized by law to actually receive information about the deceased person. **MR. OLSON** said the short answer was that it was true under current Montana law if someone were deceased and he had surviving kin, they could come in and access his personal health information. They can do that, but it was limited to accessing the health information such as receiving copies of medical records and dealing with his health care as a matter of an agency relationship. An example would be paying the last of his bills, making sure the services were delivered and the like, but that was true under current Montana law so this was current standard.

Mr. Melby said the question **SEN. O'NEIL** asked was about Section 20 where they talked about the workers comp. section, if a determination were made to remove the workers' comp. language. **Mr. Melby** wanted to see Subsection 2 of that part remain. Right now under the HIPAA privacy standards an entity may show health care information to law enforcement who was investigating, but nothing more. Currently under Montana law, the law enforcement would at least be able to get an investigative subpoena and if Subsection 2 were left in, it would retain that protection to get an individual's health care information. For a hospital, if

Subsection 2 were deleted, and Subsection 1, then it was going to be left wide open.

SEN. GRIMES said Page 12, line 16 felt a little loose regarding disclosure of health care information. Would that include only patients' injuries occurred by another and not by themselves for some reason and would that be cleared up in the other bill under the standard Worker's Comp. law. **MR. OLSON** did not know the answer to that question.

Ms. Lenmark said her understanding was that the Health care providers and the people who were primarily interested in the bill wanted to delete Subsection 2 from Section 20. We have no objection to **Mr. Melby's** suggestion that the languages in Subsection 2 remain and not duplicated in SB 450.

SEN. GRIMES asked **MR. MELBY** if he cared to respond. **Mr. Melby** said Subsection 2(b) allowed a health care facility or health care provider to provide health care information to a law enforcement officer who was investigating a patient being treated at that health care facility if the patient was injured by a possible criminal act. However, if they were investigating a crime, the health care facility can reveal health care information regarding that prime act.

SEN. GRIMES asked if the language were taken from somewhere else or was it new. **Mr. Melby** said it came out of the current Uniform Health Care Information Act, from 50-16-530.

SEN. GRIMES asked about the civil remedies section on Page 13 regarding pecuniary losses. Was it the same as actual physical loss and physical cost. Was the $5,000 on Line 29 punitive. **MR. OLSON** said the remedy was the $5,000 that could be recovered for punitive plus the actual damages.

SENATOR ESP asked if it were meant to read "disclosure of information for law enforcement purposes" for the title of that section. **Mr. Melby** said yes. Right now it read "disclosure for Workers Compensation and Occupational disease claims and law enforcement purposes." He said to delete out "for workers compensation and occupational disease claims" and then delete Subsection 1 and leave the rest.

Mr. Smith said they would not agree to leave Section 20 out and they did not agree with SB 450 as it violated, in their opinion, privacy rights of indigent workers. This was the current law that was in Section 20. SB 450 sought to amend it, to allow insurance adjusters to contact the physicians without giving notice to the patient, or to the patient's attorney, and they

felt that it went too far. **Mr. Smith** said they preferred it stayed in. He said they could do coordination if SB 450 passed in its present form. It had not been heard in the House yet to look at that, and he urged for Section 20 to be left in.

SENATOR GRIMES asked when SB 450 would be heard in the House. **Mr. Smith** did not know if it had been scheduled yet.

Closing by Sponsor:

REP. THOMAS said he retired from his dental practice in 1994. He kept his membership in the Montana Dental Association and continued to receive their journals. Several years later he received a journal and could not understand the cover or what was inside it. It brought to his mind all the changes in the health care environment and what was happening today. He said we were working with the 1996 Act and wondered what it was going to be in 2046 and then in 2096, that it evolved almost daily. **REP. THOMAS** asked **Mr. Melby** what was going to be done with the information. **Mr. Melby** said the Montana Medical Association would put in its bulletin and advise all of its members that these changes had been made and lay out the ground rules for who should be under the HIPAA privacy standards and who should be under the Uniform Health Care Information Act. He believed over time, between 5-10 years, all providers, or at least those who dealt with Medicare and Medicaid and probably some larger insurance companies like Blue Cross Blue Shield would ultimately fall under the HIPAA privacy standards because those entities were going to require claims to be submitted electronically. **REP. THOMAS** said he anticipated that this would probably be as some a type of book that would go to the practitioners. This would be something they could just flip through when they did not understand what they had to do. This was essential. Practitioners had enough on their mind keeping up with their professions without worrying about either Uncle Sam or whoever. He said we needed this.

{Tape: 2; Side: B}

EXECUTIVE ACTION ON HB 493

Motion: **SEN. ESP moved HB 493.**

Discussion:

SEN. ESP asked **SEN. CROMLEY** what the bill said in laymen's terms. Did it say that a health care facility could not be a professional employer arrangement or a professional employer group. **SEN. CROMLEY** said it did not say that. What he thought it

was saying was that in their activity in terms of suppling medical personnel to outlying areas, rural areas, or the same town. He said it was saying that by that action they did not become an employment agency. And there were right now, on Page 2 as was talked about before the special employee arrangement A and then B, the term was not included. Some things were not included there now. There was 1, 2, and 3 and then this added 4, so taking it out of the definition of professional employee arrangement in what a professional employee arrangement was. This bill just took them out so they would not be under that term, professional and employer arrangement.

SEN. O'NEIL asked **Mr. Bohyer** if he understood what was going on. **Mr. Bohyer** said the bill alleviated the requirement for the entities identified on Page 2, Lines 17-19 and Lines 27-30 from having to get a license.

SEN. O'NEIL asked if this would apply to an out-of-state hospital that was managing a smaller health care facility in Montana. **Mr. Bohyer** said he did not believe it would because the health care facilities had a definition here that said Montana law.

SEN. GRIMES asked **MR. FLINK** if he knew of one in the Helena area that would fall in that category. **JOHN FLINK, MIHA** said he represented hospitals and nursing homes. He said the kind of situation that the bill was designed to address was Benefis Health Care in Great Falls that supplied the CEO for the hospital in White Sulphur Springs. They supplied the administrator for the hospitals in Choteau and Fort Benton. Those were the kinds of people they were talking about that were not temporary employees. They were not talking about being a temporary employment agency here.

SEN. ESP asked if that would be just management positions or emergency room positions. **Mr. Flink** said he thought the intent of the bill was for management personnel. Emergency room physicians were dealt with separately by facilities.

Motion/Vote: **SEN. ESP moved that HB 493 BE CONCURRED IN. Motion carried 7-0.**

ADJOURNMENT

Adjournment: 4:55 P.M.

_____
SEN. JERRY O'NEIL, Chairman

_____
ANDREA GUSTAFSON, Secretary

JO/AG

EXHIBIT(phs52aad)