

MINUTES

MONTANA SENATE 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY

Call to Order: By **SEN. JOHN ESP**, on March 4, 2005 at 3:00 P.M.,
in Room 317-A Capitol.

ROLL CALL

Members Present:

Sen. Brent R. Cromley, Chairman (D)
Sen. John Cobb (R)
Sen. John Esp (R)
Sen. Duane Grimes (R)
Sen. Lynda Moss (D)
Sen. Jerry O'Neil (R)
Sen. Trudi Schmidt (D)
Sen. Dan Weinberg (D)
Sen. Carol Williams (D)

Members Excused: None.

Members Absent: None.

Staff Present: David Niss, Legislative Branch
Rita Tenneson, Committee Secretary

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

Committee Business Summary:

Hearing & Date Posted: HB 255, 2/23/2005; HB 318,
2/23/2005; HB 250, 2/23/2005
Executive Action: HB 250; HB 255; HB 318;
HB 138

HEARING ON HB 255

Opening Statement by Sponsor:

REP. DON ROBERTS (R), HD 56, opened the hearing on **HB 255**, Redefine mental disorder to include co-occurring disorders.

The bill allows a patient to be committed to a facility. This does not include addiction to alcohol, drugs, mental retardation or epilepsy, but a mental disorder may co-occur with addiction or chemical dependency. Once the treatment is undertaken for the mental disorder, and treatment for alcohol or chemical addiction is needed, it has to be included as part of the treatment plan.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 2}

Proponents' Testimony:

Don Hargrove, Montana Addiction Services Providers, agrees with the bill, saying it is an appropriate definition and will avoid confusion by the institutions.

Joan Daly, Director of Psychiatric Services, Deaconess Billings Clinic, gave the Committee a handout regarding the bill. She said they initiated the changes to the bill to bring cohesiveness to treatment provided at Deaconess Billings Clinic and at the Hospital. More than half the patients committed to their facility have co-occurring issues, alcohol or drugs, as well as serious mental illness. The statute currently prohibits their commitment to the State Hospital with a chemical dependency component.

EXHIBIT (phs48a01)

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. WEINBERG asked **Mrs. Daly** how the definition coincided with the DSM definition. **Mrs. Daly** said the DSM definition includes alcohol and drug addiction, as part of the diagnostic normal codes to diagnose mental illness. She did not have the DSM with her to address his entire question, but she said it does not conflict.

SENATOR WILLIAMS asked **SEN. WEINBERG** what DSM was. **SEN. WEINBERG** told her it was a statistical manual for mental disorders. He

said people consider what a mental disorder is based upon statistical data or how often these things appear.

Closing by Sponsor:

REP. ROBERTS said the bill will allow for better treatment of patients during the process and a better involvement of resolution in admission situations.

SEN. WEINBERG will carry the bill on the Senate floor, when it leaves Committee.

HEARING ON HB 318

{Tape: 1; Side: A; Approx. Time Counter: 2 - 8.5}

Opening Statement by Sponsor:

REP. JOE MCKENNEY (R), HD 18, opened the hearing on **HB 318**, Revise limited health benefit demonstration project.

REP. MCKENNEY explained that the limited health benefit demonstration project was a pilot program for an affordable health insurance plan. This plan provides insurance under \$100, or less a month, per person, limited to 1000 people. It came out of a legislative subcommittee, several years ago, while they were looking into affordable health insurance. The subcommittee asked the insurance industry to come up with an affordable idea. This bill allows an increase for people uninsured for 90 days. An example being children who age out of their parent's plan. It removes the mandate for diabetes coverage. The intent is not to remove all diabetes coverage, but to get away from a \$6000 medical device. Mandating the \$6000 medical device be included, would put the plan out of operation. The under \$100 a month premium will not cover this device. The bill also removes treatment of inborn errors of metabolism, a rare digestive disease, which is very expensive to cover.

Proponents' Testimony:

Keith Colbo, New West Health Services, told the Committee **Colleen Senterfitt, MSN, New West Health Services**, was detained. He referenced **Mrs. Senterfitt's** testimony which is included in the following exhibit.

EXHIBIT (phs48a02)

{Tape: 1; Side: A; Approx. Time Counter: 8 - 18.6}

Colleen Senterfitt, New West Health Services, apologized for being late and thanked **Mr. Colbo** for appearing on her behalf. She wanted to show her presence to the Committee and said she is available for questions.

Kathy Kenyon, General Counsel, Deaconess Billings Clinic, said this is an important demonstration program and they would like to see it reintroduced. This legislation reaches out to people who cannot afford health insurance.

Frank Cote, America's Health Insurance Plans, an association of 1300 health care insurers, and **Blue Cross Blue Shield**, who support innovations in the market place allowing more people to be insured, rose in favor. Twenty percent of Montanans are uninsured. People aren't buying full-blown insurance plans. Low-cost plans are an effective way to allow coverage.

Don Allen, Montana Association of Insurance and Financial Advisors, supported the original bill two years ago as an important demonstration project. He said it is difficult to find the right plan for the right family at a price they can afford. This project offers a different approach to insurance coverage.

Erin McGowan-Finchum, State Auditor's Office, stated the State Auditor's office supports the plan. They authorize the plan annually and the changes fall within the intent of what limited health plans are meant to do. She will be available for questions.

Opponents' Testimony:

Helen Amundson, RN, Certified Diabetes Educator, read her testimony in opposition.

EXHIBIT (phs48a03)

{Tape: 1; Side: A; Approx. Time Counter: 18.6 - 28.8}

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. WEINBERG asked **Mr. Cote** why people with diabetes were being singled out. **Mr. Cote** said this is a misconception. When the bill was passed, last session, it excluded mandated benefits from the public. The diabetic pump was not to be covered under this plan. The Auditor's Office determined it wasn't excluded from the mandate so it would have to be covered. The plan isn't intended to be sold to include the pump at a cost of \$6000 under

a policy with a less than \$100 a month premium. It doesn't make financial sense for an insurance company to do that. This plan is being sold only to people who do not have insurance and most people do not have coverage for diabetic services now. This plan gives some coverage for primary care and that is the whole purpose of the bill, which is to help uninsured people become insured. These people, in the future, may step up to a fully insured plan covering all the mandates. **SEN. WEINBERG** asked if the plan had been accepted as widespread as they had hoped. **Mr. Cote** said because of the ruling on the diabetic pump, they have ceased selling the plan further. **SEN. WEINBERG** wanted to know what someone with diabetes would do if this option was removed. **Mr. Cote** answered that a diabetic person can purchase a full-blown plan and have that coverage. Mandates for benefits are not being changed for the fully insured. This plan, designed for people without any coverage, excludes the pump. **SEN. WEINBERG** understood this is a relatively inexpensive plan they can no longer purchase, but they do have the option to buy another very expensive plan. **Mr. Cote** answered if there was no limited benefit plan, which is the case at hand, a person with diabetes has two choices. They can go uninsured, or they can buy a fully insured plan, which is more expensive. They can still purchase the limited coverage plan, but it wouldn't cover the pump, but would cover other costs so they could have some form of insurance. **SEN. WEINBERG** asked if the plan would cover all the illnesses associated with diabetes, or if would they be excluded. **Mr. Cote** passed the question to **New West**. **Ms. Senterfitt** explained they do cover diabetes services such as education, insulin, supplies, unlimited office visits either to primary care or specialists, under the bridge plan. The mandate for pumps was never intended. This is a high cost item.

{Tape: 1; Side: B; Approx. Time Counter: 0 - 9.1}

SEN. GRIMES asked if it was correct that we are talking about the insulin pump needed in the advanced stages. **Mrs. Senterfitt** said that is not always the case. It is becoming more prevalent and used by people in all stages. **SEN. GRIMES** asked if it was a one time cost. **Mrs. Senterfitt** told him not necessarily. It costs \$6000 for a new one which lasts approximately four years. **SEN. GRIMES** figured if you had 1000 people in the demonstration project, at \$100 a month, that would be 1.2 million a year coming in. The pump's cost, with only a quarter of the people using it, would suck up the proceeds. **Mrs. Senterfitt** replied, looking at their membership during the first year, including one insulin pump, they had a net loss. The insulin pump was about a quarter of the loss. The policy is not priced for high-priced items. **SEN. GRIMES** asked **Mrs. Senterfitt** about the people now on the plan who wouldn't have insurance if the insulin pump was

included. **Ms. Senterfitt** said they included pre-natal care, ultrasound, blood testing, diabetics getting supplies and education, types of cancer, high blood pressure, broken bones, cancer diagnoses, pap smears, mamma grams. It allows people having limited insurance to receive care from the provider.

{Tape: 1; Side: B; Approx. Time Counter: 9.1 - 15.8}

SEN. MOSS asked **Ms. Amundson** asked if she could address how the Committee could financially address her problems. **Mrs. Amundson** said there are a lot of nineteen-year-olds who can't buy insulin, etc., and have suffered from this. It is important to people in the community to have access to oral medication, monitors, insulin, etc. **SEN. ESP** said line 3, page 2 says they may limit it. It does not say they have to cover the different things. He said it will cover things for diabetes but not the pump. **SEN. WILLIAMS** thought she understood that, as well. That it covered everything except the pump for diabetics.

SEN. CROMLEY asked **Mrs. Senterfitt**, regarding the pumps, if the language on page 2, line 14 was too broad. **Ms. Senterfitt** said they would strongly oppose having any amendments.

{Tape: 1; Side: B; Approx. Time Counter: 15.8 - 22.8}

SEN. GRIMES asked **Mr. Cote** to clarify the list, (a) through (h). **Mr. Cote** said (a) through (f) are mandated benefits in the current statute, (g) (h) are also mandated in current statutes. By adding (g) and (h), it allows the limited benefit health plan not to have the coverage, if they choose. Currently, New West covers everything except the pumps.

Closing by Sponsor:

REP. MCKENNEY told the committee that the title of the bill, lines 4 and 5 tell what is being done. It is a private sector attempt to get at the uninsured. It is a test program limited to 1000 people. It sunsets in 2009 and each year the state auditor can put a stop to it.

{Tape: 1; Side: B; Approx. Time Counter: 22.8 - 26.6}

SEN. GRIMES will carry the bill on the Senate floor.

HEARING ON HB 250

SEN. CROMLEY returned and welcomed **REP. BECKER**.

Opening Statement by Sponsor:

REP. ARLENE BECKER (D), HD 52, opened the hearing on **HB 250**,
Revise privacy in communications for emergency calls.

REP. BECKER explained the bill makes an exception for emergency calls. It adds language so that a government agency dealing with health care, in an emergency communication made to the facility, does not have to play a message saying they are being recorded.

Proponents' Testimony:

Kathy Kenyon, Deaconess Billings Clinic, saying they have doctors in rural Montana dealing with heart attacks and trauma. When they call in for an airplane there is delay while listening to the taped message. Some of these calls are extremely critical. The bill simply asks to dispense with that message.

Jani McCall, Montana Hospital Association, and Saint Vincent Health Care, both supported the bill.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. GRIMES asked **Ms. Kenyon** if this violates any federal requirements regarding funding. **Ms. Kenyon** told him it did not.

Closing by Sponsor:

REP. BECKER asked the Committee to look at the seriousness of the bill and asked for concurrence on the bill.

{Tape: 2; Side: A; Approx. Time Counter: 0 - 5.4}

EXECUTIVE ACTION ON HB 250

{Tape: 2; Side: A; Approx. Time Counter: 5.4 - 6.1}

Motion/Vote: **SEN. GRIMES** moved that **HB 250 BE CONCURRED IN**.
Motion carried unanimously by voice vote.

SEN. MOSS will carry the bill on the Senate floor.

EXECUTIVE ACTION ON HB 255

{Tape: 2; Side: A; Approx. Time Counter: 6.1 - 7.6}

Motion/Vote: **SEN. WEINBERG** moved that HB 255 BE CONCURRED IN.
Motion carried unanimously by voice vote.

SEN. WEINBERG will carry the bill on the Senate floor.

EXECUTIVE ACTION ON HB 318

Motion: **SEN. O'NEIL** moved that HB 318 BE CONCURRED IN.

Discussion: **SEN. CROMLEY** said this is a policy for people with no insurance.

SEN. WEINBERG thought the bill wasn't clear. He thought it could exclude certain benefits, but it didn't say what is and is not covered. They may limit or exclude and, under the list, is education, treatment, services and supplies.

SEN. MOSS said when mandates are written, things like insulin pumps are acknowledged, but now insulin pumps are excluded but not all the other things.

SEN. O'NEIL said there are new advances in medicine every day. Mandating diabetic education may require a computer, website, etc., and eventually DNA testing may enter into this. There needs to be some type of limit. He thought mandating what they are covering would eventually have serious consequences. Instead of the company charging \$56-\$100 a policy, they will be out of business. He resisted changing the bill.

SEN. CROMLEY, was looking at the mandate in 33-22-129, sub. 3, which says each group disability policy, etc., as delivered, must provide coverage for diabetic equipment and supplies that is limited to insulin, syringes, injection aids, devices for self monitoring of glucose levels (including those for the visually impaired), test strips, visual reading and urine test strips, one insulin pump for each warranty period, accessories to insulin pumps, one prescriptive oral agent for controlling blood sugar levels for each class of drug approved by the United States food and drug administration, and glucagon emergency kits.

SEN. GRIMES commented it does say coverage of these things as provided in 33-22-129. He asked **Mr. Niss** about the way line 14 is written, did it mean coverage for diabetic education to the

extent it is provided for in 33-22-129 is excluded, or coverage for treatment, services or supplies to the extent it is provided for. **Mr. Niss** thought a lot of descriptions in subsections (a) through (h) suffer from the same problem. They are not a verbatim repetition of what is in each one of the statutes cited in lines 5 through 15. They are a characterization of what is in the cited statutes. What becomes more important is the citation of the language "as provided in", rather than the language itself which, in this case is education, treatment, services and supplies. This is a summary of all the things **SEN. CROMLEY** read, he added. **SEN. GRIMES** replied that there has been years of debate over partial parity.

SEN. CROMLEY said the statute clearly says equipment and supplies. The bill says education, treatment, services and supplies. He said it would seem more appropriate to take out education, treatment, services and insert diabetic equipment and supplies, and leave in "as provided in". **SEN. GRIMES** wondered why the bill was drafted with those things in it. **Mr. Niss** said the sponsor provided the language for the draft. **SEN. GRIMES** responded, if that was the case, in some way the treatment, services, and education applies to someone advocating that it is an open door. He wanted the sponsor to comment on this.

SEN. WEINBERG said they were trying to benefit people and still listen to the needs of the companies. He thought omitting the pumps and leaving the rest intact would benefit a lot of people. **SEN. CROMLEY** said the only thing in the mandate was equipment and supplies. The group policy is not mandated to have education. They are mandated to equipment and supplies, so we can say yes or no to equipment and supplies. We cannot say anything about diabetic education. **SEN. WILLIAMS** thought the pumps were included. **SEN. CROMLEY** answered no, because there is no insurance now. **SEN. WILLIAMS** thought it was in the statutes. **SEN. CROMLEY** said equipment and supplies, including pumps, are mandated. They issued policies which they thought didn't cover pumps. The auditor said yes, pumps are mandated so companies have to cover them. The insurance companies said they can't afford to sell insurance policies in this demonstration program, so the program is at an end. They will still sell regular policies. The demonstration program is for people not able to get insurance. There are 1000 people who won't be able to get insurance if the bill doesn't pass.

SEN. GRIMES told **Mr. Cote**, he and the Chairman assumed diabetic education in the statement, on line 14, would be found in 33-32-129, which it is not. The Chairman characterizes that section as referring to equipment and supplies. **Mr. Niss**, who drafted this, said the reason the language was put in was because it was

brought to him specifically that way. **SEN. GRIMES** felt that referring to 33-32-129 would be more accurate to describe it as equipment and supplies, so we're not inferring diabetic education is included or excluded. **Mr. Cote** said he wasn't involved in the drafting so was not sure how it came about. From his standpoint, 33-32-129, under sub 1, there is a mandate benefit for training and education for treatment of diabetes. Instead of trying to recopy the entire section dealing with mandates and benefits, they summarized it to say this is not required. **SEN. CROMLEY** wanted to know if mammograms were mandated. **Mr. Cote** wasn't sure but he thought, because it was not an excluded benefit, it was a mandated benefit in the current plan.

{Tape: 2; Side: A; Approx. Time Counter: 7.6 - 29}

{Tape: 2; Side: B; Approx. Time Counter: 0 - 5.9}

SEN. WEINBERG still wasn't clear on the exclusions. He wanted to know if we could exclude the pumps because the insurance companies said they were expensive. **SEN. CROMLEY** said he was wrong before when he said it doesn't make sense to have it in there, but it does. He said if they were concerned about the pumps, why did they have all the other language in the bill.

SEN. ESP said the key word, on line 3 is "may limit or exclude" and it looked like the bill was within the parameters of the premium for getting a program which will work for the people.

SEN. CROMLEY suggested on line 14, making it coverage for diabetic equipment and supplies as provided in section 33-22-129-3. That excludes responsibility for equipment and supplies but, under 33-22-129-1, there is a mandate for the education and treatment for diabetes. **SEN. GRIMES** said this should be a mandate free policy and not a piecemeal mandated policy. If there is a problem with the education or treatment of diabetes, the bill will be back in two years. He thought we should go ahead with the bill as it is. **SEN. CROMLEY** disagreed because of the references to the exclusions because they are in the statutes.

SEN. ESP said the company and the auditor's office put the bill together to work for everybody. They have the flexibility to do what is best for the consumer within the parameters. He thought we should leave the bill the way it is, as it has been working the past three years.

SEN. MOSS requested information on the number of people using the pumps. **Mary Hernandez, American Diabetes Association**, said there are 54,000 Montanans with diabetes. Only 5% have type 1 diabetes, which are the people we are talking about. Only about

20% of type 1 adults are using a pump; that would be about 3 to 4 thousand people. Including other plans, in Montana, there are less than 1200 people of all ages on pumps. They will be on other plans, so she didn't think it would affect this plan very often. **SEN. GRIMES** said the committee felt people would gravitate toward the pumps once they knew this plan was out there. **SEN. CROMLEY** said, once the pumps were covered, there would be no insurance.

{Tape: 3; Side: A; Approx. Time Counter: 5.9 - 19.3}

SEN. WEINBERG suggested an amendment to limit the exclusion of pumps. The amendment would be coverage for insulin pumps as provided in 33-22-129, sub 3.

SEN. O'NEIL resisted the amendment, saying this is an affordable policy for people. He thought the Committee was making a severe mistake and killing the program. He said the Committee can look at this insurance in two years and decide what to do. This plan is reviewed annually by the auditor and the company. We should leave this alone.

SEN. CROMLEY said the amendment, line 14, would read the coverage for insulin pumps as provided in 33-22-129 (3).

SEN. GRIMES asked if it could be changed to equipment and supplies, to be more inclusive of the provisions the code.

SEN. WEINBERG replied that it is his understanding the supplies were generally inexpensive and a great benefit. Testimony said the pump was expensive and escalated the cost of the policy making it prohibitively expensive for the people. Supplies were not the problem, the pump is the problem.

{Tape: 3; Side: A; Approx. Time Counter: 0 - 9.1}

Motion/Vote: **SEN. WEINBERG** moved TO AMEND HB 318 ON PAGE 2, LINE 14, STRIKE "DIABETIC EDUCATION, TREATMENT, SERVICES AND SUPPLIES" INSERT "INSULIN PUMPS" , INSERT (3). MOTION FAILED 5-4 BY ROLL CALL VOTE. **SEN. ESP**, **SEN. GRIMES**, **SEN. COBB** and **SEN. O'NEIL** voting no.

MOTION/VOTE: **SEN. COBB** MOVED THAT HB 318 BE CONCURRED IN AS AMENDED. Motion carried unanimously.

SEN. GRIMES will carry the bill on the Senate floor.

EXECUTIVE ACTION ON HB 68

Motion: SEN. COBB moved that HB 68 BE CONCURRED IN.

Motion/Vote: SEN. COBB moved that AMENDMENT HB006801.ASB BE ADOPTED. Motion carried unanimously.

EXHIBIT (phs48a04)

Motion: SEN. COBB moved that AMENDMENT HB0068001.ADN BE ADOPTED.

Discussion: This amendment defines penalties and refers back to the code. SEN. GRIMES asked if we are tying this to the criminal codes. SEN. ESP asked if this would become some other offense by tying it to that definition, or if the Committee is defining it by code. Mr. Niss replied that the amendment brings in an already existing definition. It ties it to pre-existing definition. Nothing is being changed. SEN. COBB said bodily injury, in Title 45, says physical pain, illness or impairment of physical condition, which includes mental illness or impairment. On serious bodily injuries, it causes substantial risk of death, causes serious permanent disfigurement, etc.

Vote: Motion carried unanimously.

EXHIBIT (phs48a05)

Motion: SEN. COBB moved that HB 68 BE CONCURRED IN AS AMENDED.

Discussion: SEN. GRIMES asked who the person being convicted was, as stated in the bill. SEN. CROMLEY said it would be all the people employed. SEN. GRIMES asked if there was a mental state in the bill. If a person gave an aspirin to a child for a headache and hadn't looked at the chart, what would happen. SEN. ESP said you can't give anything without written authorization and, if you do knowingly or purposely, then you are liable. SEN. WILLIAMS said, during the hearing, it was said sometimes people are using drugs to get the children to go to sleep. There are forms for every child at daycare centers, about what medications, allergies, and food they can eat. These charts are mandated so if the person didn't abide by them, they were negligent. SEN. GRIMES asked if the daycare provider inadvertently administered aspirin, and the parent reacted, but the administration does not cause death, if this would rise to the level of purposely or knowingly. Mr. Niss replied that we don't have a definition of purposely or knowingly in the bill. There is probably a definition in 45-2-101. If the day care worker did not know, factually, it was medicine and thought it was a sugar pill and

had some legitimate reason to think that, no, it would not be purposely or knowingly. **SEN. O'NEIL** commented that the bill says they will be imprisoned for six months and he mentioned there are always deferred sentences, so the terms wouldn't be that long.

SEN. CROMLEY thought if a provider gave a cough drop to a child, they could be in prison for six months or have a \$1000 fine.

SEN. GRIMES responded that is already part of the licensing requirements and there will be repercussions. The Committee is talking about criminalizing to a very high level. **SEN. CROMLEY** thought the penalty was pretty shocking for a first offense.

SEN. GRIMES suggested holding off on executive action on the bill until discussing it with **SEN. RYAN**.

{Tape: 3; Side: A; Approx. Time Counter: 9.1 - 29.8}

SEN. COBB withdrew his motion.

EXECUTIVE ACTION ON HB 138

Motion: **SEN. ESP** moved that HB 138 BE CONCURRED IN.

Discussion: **SEN. O'NEIL** presented amendment HB013801.adn.

EXHIBIT (phs48a06)

SEN. O'NEIL'S purpose for the amendment was to include nonlicensee members of the public in the program. He considered this a secret program for illegal use of alcohol or drugs. He thought other people should have this same privilege. He asked to add a severability clause to the amendment saying, "If part of the bill is found to be unlawful, the rest of the bill survives."

SEN. WEINBERG said what sets the treatment aside is that they are dealing with professionals. The reason they are successful with the program is that professionals have a lot to lose, They make a lot of money, they have social standing, so it is easier to get their attention. That is why the success rate is in the 80 and 90 percent. This type of treatment is aimed at that population. If we do as **SEN. O'NEIL** is suggesting, we are changing the whole scope of the treatment and there would be a severe consequence to the program.

Motion/Vote: **SEN. O'NEIL** moved that AMENDMENT HB013801.adn BE ADOPTED. Vote: Motion failed 2-7 by voice vote with **SEN. GRIMES** and **SEN. O'NEIL** voting aye.

Motion/Vote: SEN. ESP moved that HB 138 BE CONCURRED IN. Motion passed unanimously by voice vote.

SEN. ESP will carry the bill on the Senate floor.

ADJOURNMENT

Adjournment: 4:25 P.M.

SEN. BRENT R. CROMLEY, Chairman

RITA TENNESON, Secretary

BC/rt

Additional Exhibits:

EXHIBIT ([phs48aad0.PDF](#))