

MINUTES OF THE MEETING
PUBLIC HEALTH, WELFARE AND SAFETY COMMITTEE
MONTANA STATE SENATE

January 30, 1987

The meeting of the Senate Public Health, Welfare and Safety Committee was called to order by Chairman Dorothy Eck on January 30, 1987, in Room 410 of the State Capitol.

ROLL CALL: All members of the committee were present.

ACTION ON S.B. 126: Karen Renne reported on the amendment providing immunity to anyone acting on good faith in accordance with the act. Sec. III exempts reporters from the confidentiality requirement. Amendment 2 removes the deputies reporting. Sen. Rassmussen moved that the amendments do pass. The motion carried unanimously. Sen. Rassmussen moved that the bill pass as amended.

Sen. Hager: Couldn't investigations be done on a local basis and then the local officials notify the state fire marshall.

Sen. Himsl: It seems that we are laying a heavy hand on a lot of people. A week later, how effective will it be?

Sen. Meyer: How costly will this be?

Sen. Eck: The Fire Marshall indicated that this will not add greatly to cost.

The motion to pass S.B. 126 carried 8-2. Senators Hager and Himsl voted no.

ACTION ON S.B. 138: Karen Renne had two changes in the amendments to Subsections 10 and 11 to make fees the same in consolidation as well.

Sen. Jacobson: Would two boards merging both be required to pay even if they didn't want to consolidate?

Karen Renne: There is a negligible fee in case of consolidation, but both boards would be required to pay.

Sen. Rassmussen moved that the amendments DO PASS. The motion carried unanimously.

Sen. Hager moved that S.B. 138 DO PASS AS AMENDED.

Sen. Rassmussen: I oppose this bill because it sets up a whole layer of meaningless activity and sets up the legislative audit committee as a little legislature.

Sen. Hager: There is no yardstick now to determine if groups should be licensed. Now we license groups and then end up with a sunset review. This bill would allow for a better study when a group applies for licensing.

Sen. Jacobson: This committee has had groups before it for licensing and these groups could have had much ironed out beforehand, if this kind of bill had existed.

Sen. Himsl: I chaired a sunset review years ago; it won't stop the creation of new boards, but it will slow them down a little.

The motion carried unanimously. Sen. Rassmussen voted no.

ACTION ON S.B. 195: Karen Renne stated that there was no need for amendments to the bill.

Sen. Hager: How should the handicapped places be marked. If you mark only the pavement, there are times you can't see the marking.

Sen. Rassmussen: There are supposed to be signs in hard-to-see locations.

Sen. Rassmussen moved that S.B. 195 DO PASS. The motion carried.

Sen. Norman voted no.

CONSIDERATION OF SENATE BILL NO. 120: Pat Regan, District # 47, sponsor of S.B. 120, stated that the purpose of the bill is to solve third party payments in the drug and alcohol treatment area. Some providers of services do not fall into specific license categories, so they have a problem being reimbursed, and people may not be able to choose to use their services. Section II does clarify that certified counselors are eligible for payment and that outpatient benefits are payable. The report is a result of a two-year study. The bill then allows for payment of services if a group or counselor has been approved by the Department of Institutions.

PROPONENTS: Bill Jensen, Blue Cross-Blue Shield and counselor, stated that he is in support of the bill but suggests some minor changes. There is a difficulty in defining a free-standing in-patient facility. That is not clear. They wish to be sure that they are dealing with appropriately licensed facilities, and they questioned whether chemical dependency counselors could be paid for mental health service, which often are a part of c.d. treatment.

Ken Anderson, Chemical Dependency counselor in Flathead Co., stated that they support the bill.

Ann Scott, Rocky Mountain Treatment Center, Great Falls, supports the amendments proposed by Blue Cross. She stated that it increases the cost of treatment for a patient to have to go to a doctor first before seeing a chemical dependency counselor, so the prescription by a doctor should be stricken.

Mike Murray, lobbyist for the Chemical Dependency Council of Montana, stated that they support the bill, and that an approved list of counselors can be obtained from the Department of Institutions.

There were no opponents to S.B. 120.

DISCUSSION OF S.B. 120: Sen. Rassmussen: Was there language in the bill for a doctor's prescription? Is that a Blue Cross amendment?

Ann Scott: Yes.

Bill Jensen: Blue Cross policy is that they need a doctor's prescription.

Sen. Hager: Will there be an increased cost in licensing?

Sen. Regan: There should be no added expense.

Sen. Himsel: Why do you recommend removal of the chemical dependency counselor? If you take that out, you take out the meat of the bill.

Sen. Regan: Sen. Himsel is taking my closing.

Mike Murry: There is a requirement that C.D. counselors be state-certified. These counselors should be working for a state-approved program.

Sen. Eck: Will these people counseling in state certified programs go into business for themselves?

Huck Butler: The "blues" now pay centers and have to have a doctor's prescription if they use someone in private practice.

Sen. Himsel: We're dealing with out-patient benefits. Social workers are always licensed by the state board of social workers.

Curt Chisholm, Department of Institutions, stated that there are many good programs educationally for c.d. counselors.

Bob Anderson: A C.D. must pass three exams in the field to be certified.

Sen. Regan closed by stating that she resists the necessity for a prescription, that it is not good for cost containment of health care. The intent of the bill is for people to be comfortable with going to counselors first, especially of their own choosing. The "Blues" have had ample opportunity to talk to her, and she does not like the free-standing facility amendment. This is another turf battle, the hospital has a contract with Rocky Mountain treatment Center. Can the "Blues" really define a facility?

CONSIDERATION OF SENATE BILL NO. 185: Sen. Bob Williams, District # 15, sponsor of S.B. 185, stated that this is a bill to ensure the rights and well-being of elderly people.

PROPOSERS: Charles Briggs, State Aging Coordinator, stated that the bill has been worked on by many people over the past two years and is the result of many compromises and negotiations. The ombudsman program has been attached to SRS, but it is now supervised by the governor's office and is attached to the state plan on aging. This would follow the administration's plan to transfer to SRS, but the Governor will still oversee the program. He would prefer that the bill would not go to appropriations, despite the fiscal note. The appropriation is a very secondary issue and is being dealt with. The Ombudsman program is needed to receive Federal funds for programs under the Older Americans Act.

Doug Blakeslee, State Long-Term Care Ombudsman, stated that the goals of the bill are to ensure the ombudsman access to all long-

term care facilities to address complaints and to provide a specific placement for both programs in the Senior's Office (the Ombudsman and elderly Legal Services Developer Programs). While access to nursing homes has not been a problem, access to personal care homes has, so the ombudsman has not been able to solve complaints for these people. These private business facilities have been resistant to having outsiders visit on a regular basis and work with complaints from residents. The Older Americans Act requires states to establish procedures for appropriate access by the ombudsman. No clear procedure exists and SRS and DHES do not have clear authority to grant access, according to an opinion issued by the assistant attorney general. He stated that it would be better for the legislature to grant clear visiting authority.

The bill then continues the current program placement, in specific language requires access to all ombudsmen and stipulates the granting of access; and enforces requirements through DHES that correspond to other standards that long-term care facilities must meet. Without the bill, residents could be denied assistance necessary to solve problems; and the bill brings the state into compliance with federal statutes. Mr. Blakelee suggested two amendments to the bill that grant access more clearly. Exhibit #1.

Rose Skoog, Montana Health Care Association, stated that their organization supports S.B. 185 and that the ombudsman program has existed for seven years. The current operation has been helpful both to patients and facilities. The facilities have often been able to use the ombudsman to solve certain problems, some of them serious. The purpose of this bill will be to extend that service to all long-term care facilities.

Molly Monroe, American Association of Retired Persons, testified that the bill will provide an advocate for the residents of facilities, and it will provide the elderly access to legal services. Section IV guarantees this service to all long-term care residents. Exhibit # 2.

Hank Judson, legal services developer in the ombudsman office, stated that the access issue is an important one and that they tried to determine if the current statutes provide access. They do not provide clear access. They are in favor of the bill.

Owen Warren, Helena, Montana Senior Citizens, stated that the bill has been well-explained and their group favors its passage.

OPPONENTS: Lenore F. Taliaferro, long-term care ombudsman, 1981-84, testified that the bill presents a clear conflict of interest by placing the office of the LTCO under the authority of SRS, which is the state agency responsible for licensing and certifying skilled, intermediate, and personal care facilities. The 1965 Older Americans Act provides for the services of a LTCO to investigate and re-

and resolve complaints of elderly in long-term care facilities and to advocate on behalf of these residents for or against any agency policy that may have a negative impact upon their quality of care. The OAA specifically prohibits the placement of this program within the state agency responsible for licensing these facilities. Another conflict of interest arises with the proposed transfer of the community services division to family services, if that bill passes. CSD licenses adult foster care homes and has residents receiving SSI. Because of this, it would not be appropriate for this agency to administer the LTCO program.

Since 1978, there have been no safeguards to protect the ombudsman from retaliation in carrying out the LTCO duties. During her tenure, she was charged with the responsibility to develop legislation to remove the placement from SRS to remove the conflict of interest. This bill was killed in 1983, and she was terminated. In 1984 this office was removed to the Governor's office, but still under the control of SRS. This bill still places the office under the control of SRS, although it is unnecessary to do so. If Montana is committed to having an independent program, then the placement should be in a setting that is free of the conflict of interest potential. Exhibit #3.

Douglas B. Olson, Helena Attorney, stated that he advised on the development of the bill and that he is concerned over where the office is housed. He would like to see an amendment to Section 3, lines 19 and 20 that would place this office in the governor's office instead of the DSRS. Otherwise, there is the potential for conflict of interest because SRS licenses the long-term care facilities. The Federal OAA provides that an agency which also licenses the long-term care facilities may not operate the LTCO. The present office of legal and long-term care ombudsman services has been administratively attached to the Governor's office and supervised by the Board of Visitors for Mental Disabilities for the last three years and that has worked well. He urged the continuation of that arrangement. Exhibit # 4.

DISCUSSION OF S.B. 185: Sen. Jacobson: Would you explain how you see this program operating under SRS authority?

Charles Briggs: The Governor moved the program under the Board of Visitors, but the funds go to SRS, and the program has remained under SRS because the funds go there. But it is recognized that the administration is under the Board of Visitors, so the program can remain in these arrangements and prevent conflict of interest. Other states have similar programs and all must provide assurance of access.

Sen. Williams: Briefly touch on the fiscal note.

Charles Briggs: The appropriation is already being dealt with by arranging matching funds regularly with the FOAA, so the bill has no money in it.

Sen. Norman: I never ordered a fiscal note.

Sen. Hims1: Clarify exactly what this bill does?

Charles Briggs: It allows entrance for the LTCO into all long-term care facilities, those which are licensed and those which are private.

Sen. Eck: All long-term care homes are in need of ombudsman services. You would also be visting those long-term care facilities as defined by the DHES?

Mr. Hudson: Yes.

Sen. Hims1: Is the program contingent upon the availability of federal funds?

Charles Briggs: Yes, but they are available.

Sen. Hager: Does a district judge order this?

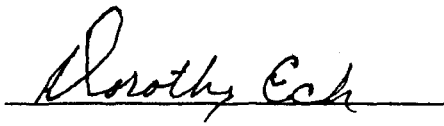
Karen Renne: Yes.

Doug Blakeslee: But that deals only with licensed facilites.

Sen. Williams closed by stating that he would like to work with Lenore Taliaferro to make sure that the bill protects both the consumers and the LTCO.

ACTION ON S.B. 195: Sen. Rassmussen moved that S.B. 195 DO PASS. The motion carried unanimously. Sen. Rassmussen will carry the bill.

The meeting adjourned at 2:55 P.M.


CHAIRMAN

ROLL CALL

Public Health, Welfare and Safety COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date 1-30-87

NAME	PRESENT	ABSENT	EXCUSED
<u>Dorothy Eck</u>	X		
<u>Bill Norman</u>	X		
<u>Bob Williams</u>	X		
<u>Darryl Meyer</u>	X		
<u>Eleanor Vaughn</u>	X		
<u>Tom Rasmussen</u>	X		
<u>Judy Jacobson</u>	X		
<u>Harry H. "Doc" McLane</u>	X		
<u>Matt Himsl</u>	X		
<u>Tom Hager</u>	X		

Each day attach to minutes.

DATE

1-30-87

ON

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VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppo:
Milly Menro	AARP	185	X	
Sam Hansen	AARP	185	X	
Enore F. Taliaferro	Helena	185		X
Shirley Knowlton	Kalispell	120		X
Ken Anderson	Chairman/Dep Pres of Mt	120		X
W. J. J.	PROTESTANT			
Charles Bryn	Governor's Office	185	X	
Robert H. J.	Colborn	185	X	
Queen Warren	M. S. C. A.	185	X	
Doug Blakley	St Ombachman, Helena	185	X	
Ann Hudson	Seniors Office, Helena	185	X	
DOUG OLSON	Helena - self	185	X ^{with} _{amend}	
Betty C Hill	Mt. Assoc of Women for Aging	185	X	
Rose Skoog	Mt. Health Care Assn	185	X	
Don G. Korn	S. R. S.	185	X	

DATE 1-30

COMMITTEE ON SB 120

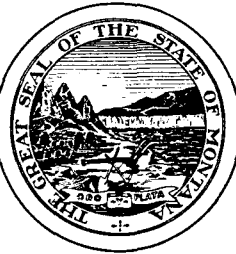
VISITORS' REGISTER

[illegible]

(Please leave prepared statement with Secretary)

SENIORS' OFFICE
LEGAL AND OMBUDSMAN SERVICES

TED SCHWINDEN, GOVERNOR



STATE OF MONTANA

(406) 444-4676
1-(800) 332-2272

HELENA, MONTANA 59620

January 30, 1987

TO: Senate Public Health, Welfare & Safety Committee

FROM: Doug Blakley, State Long-Term Care Ombudsman

RE: Seniors' Office of Legal and Ombudsman Services Bill

Major objectives of the bill

1. To provide a specific placement for both programs in the Seniors' Office (ie., the Ombudsman and Elderly Legal Services Developer Programs).
2. To ensure ombudsman access to all long-term care facilities.

Rationale for requesting the bill

First, the bill would provide a permanent placement for the office which would allow it to maintain its current placement. This is important for program continuity and independence.

Access to residents is the most basic prerequisite for the Ombudsman Program. Without guaranteed access, ombudsmen would not be able to meet their basic requirements of receiving, investigating and resolving complaints on behalf of residents.

While access to nursing homes has not been a problem, it has been a problem in personal care homes. These facilities are typically family-operated businesses, and have been resistant to having "outsiders" visiting on a regular basis and working on complaints from residents.

The Older Americans Act requires states to "establish procedures for appropriate access by the ombudsman to long-term care facilities." No such procedure currently exists. We have been unable to gain access through SRS or DHES laws or regulations because of lack of clear authority by either department to grant access.

Components of the bill

- * language to continue the current program placement;
- * specific language requiring access for all ombudsmen
- * stipulations for the granting of access;
- * enforcement requirements through DHES that correspond to other standards that long-term care facilities must meet.

It constitutes NO expansion of either program and requires no additional state dollars.

The bill does not grant access to resident medical records for state or local ombudsmen.

Without the bill, residents could be denied assistance necessary to resolve problems. The bill also would bring the state into compliance with federal requirements which can only be done through state statute.

SENIORS' OFFICE

LEGAL AND OMBUDSMAN SERVICES

TED SCHWINDEN, GOVERNOR

STATE OF MONTANA

(406) 444-4676
1-(800) 332-2272

HELENA, MONTANA 59620

THE ELDERLY LEGAL SERVICES DEVELOPER

The Seniors Office of Legal and Ombudsman Services is a State office consisting of the State Long-Term Care Ombudsman and the Legal Services Developer. The Seniors Office is administratively attached to the Governors Office. The activities of this office are funded through grants under the Older Americans Act, these grant funds are administered by the State Unit on Aging of the Department of Social and Rehabilitation Services.

The Legal Services Developer has the responsibility to develop, co-ordinate and monitor legal assistance to senior citizens in cooperation with the Area Agencies on Aging. In addition to developing direct legal assistance, other goals of the Legal Services Developer are; provide educational activities directed at senior citizens and those who provide services to senior citizens, assistance and advocacy within other State and Federal programs, and the collection and dissemination of information regarding the legal rights of senior citizens.

The Older Americans Act requires that the Legal Services Developer include the private bar, particularly any programs providing pro bono or reduced fee services, and Legal Service Corporation programs in its planning and coordination. Through this coordination the activities of the Legal Services Developer are designed to augment and not supplant currently available services. This act also requires that services be targeted to those senior citizens with the greatest social and economic need.

SUGGESTED AMENDMENT

Amend Section 4 (1) and (2) to read as follows:

(1) The long-term care ombudsman or local ombudsman shall have access without advance notice to any long-term care facility, including private access to any resident, for the purpose of meeting with residents, investigating and resolving complaints, and advising residents on their rights. Access must be granted during normal visiting hours (from 9 A.M. to 6 P.M.).

(2) ~~Access must be granted during normal visiting hours or at any time~~ The long-term care ombudsman shall also be granted access at any time he considers necessary to perform the duties described in (Section 3).

DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES
LEGAL DIVISION

DATE

BILL NO.

COGSWELL BUILDING

TED SCHWINDEN, GOVERNOR

STATE OF MONTANA

HELENA, MONTANA 59620

October 23, 1986

George Fenner, Administrator
Health Services Division
Department of Health & Environmental Sciences
Cogswell Building
Helena, MT 59620

Re: LTCO Access - DHES Licensing Rules

Dear George:

The Long Term Care Ombudsman (LTCO) has requested a legal opinion from this agency concerning the authority of DHES to require that long term care providers, as a condition of their licensure, be required to allow the LTCO access to facilities and to patient medical records. Because I recommended that DHES not take action to require even physical LTCO access to facilities, I have not addressed the more complex issue of LTCO access to medical records.

I have reviewed each of the provisions of Title 50, Chapter 5, Parts 1 through 4, particularly Sections 50-5-103, MCA, (Rules and Standards), 50-5-106, MCA, (Confidentiality of Records), 50-5-201, MCA, (License Requirements), 50-5-203, MCA, (Application for License), 50-5-204, MCA, (License Issuance and Renewal Inspections), and 50-5-207, MCA, (Denial or Revocation of License). I am unable to find any clear legal authority currently on the books which authorizes DHES to condition a facility's licensure upon open access to the LTCO.

Initially it occurred to me that mandatory LTCO access would advance the goals of DHES licensing - the protection of patient care, safety, and well being. However, such similarity of functions does not make the LTCO the agent of DHES for purposes of Section 50-5-204, MCA (Inspections) nor does the LTCO perceive itself as an agent of the DHES.

Second, while laws for the protection of public health and safety are to be liberally construed, the authority to

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enter into a facility to conduct an inspection, is not inferred lightly. Because the right to enter, particularly if unannounced, is one of the most intrusive components of government regulation, the authority to enter and inspect should be explicitly and unambiguously stated in statute. In the case of the LTCO under DHES statutes, any inspection authority would be based purely on inference.

Third, a longstanding legal maxim is that a specific statute governs a general statute touching upon the same subject matter. In the Montana Codes, Title 53, Chapter 5, Part 5 (Elder Abuse) and Part 6 (State Plan on Aging) set forth a specific series of statutes governing in part the implementation (by SRS) of the Older American's Act, 42 USC 3001, et seq., the federal law under which the LTCO has been created. Since the Legislature has not provided explicit authority for LTCO access under this law which specifically deals with the Older American's Act, such authority may not therefore be inferred from the broad language for health care facility licensing found in DHES' statutes which make no mention whatsoever of the LTCO or the Older American's Act.

Since the public policies and concerns associated with the safety and well being of nursing home patients are so strong, I cannot make an absolute statement that current statutes commissioning DHES to establish minimum standards and conditions for patient well being are obviously void of any authority to impose some type of LTCO access as a condition of licensure for long term care facilities. However, the DHES licensing statutes provide, at best, a shaky foundation for conditioning licensure upon LTCO access.

Strong legal arguments can be made that explicit authority should be provided under Title 53, Chapter 5, Part 6, MCA (State Plan on Aging). Enactment of such specific legislation is clearly superior to any attempt by DHES to "find" such authority somewhere in its existing authority and, if such enactment occurred, DHES might then consider imposing such access as a condition of licensure.

This opinion is advisory only and does not convey the full force and effect of an Attorney General's Opinion.

Sincerely,



Frank C. Crowley, Special
Assistant Attorney General

FCC:cu

cc: Doug Blakley, LTCO



SERIAL FILE
EXHIBIT 2
DATE 1-30-87
BILL NO. SB 185

1986-1987
MONTANA STATE LEGISLATIVE COMMITTEE

CHAIRMAN
Mr. Joseph W. Upshaw
2016 Highland
Helena, MT 59601
(406) 442-5956

VICE CHAIRMAN
Mr. Wilbur Swenson
806 6th Street
Havre, MT 59501
(406) 265-9067

SECRETARY
Mr. John C. Bower
1405 West Story Street
Bozeman, MT 59715
(406) 587-7535

January 30, 1987

HEARING BEFORE SENATE PUBLIC HEALTH COMMITTEE

RE: SB 185

BY: Molly Munro (442-3090)

SB 185 is a priority item of the American Association of Retired Persons. It places in Montana statutes the office of legal and long-term care ombudsman services and places it in the Department of Social and Rehabilitation Services.

More importantly, it provides an advocate for those Montana citizens residing in long-term care facilities to ensure the protection of their rights and the receipt of quality care in a safe environment. It also provides, for the elderly access to legal services.

However, these provisions are of no consequence if the ombudsman does not have access to a facility or the residents therein and this access is guaranteed in Section 4 of the bill.

AARP wholeheartedly supports passage of this bill. It provides our frailest elderly citizens with the support and advocacy they should have.

We strongly urge your consideration and passage of SB 185.
Thank you.

SENATE HEALTH & WELFARE

EXHIBIT NO. 3

DATE 1-30-87

BILL NO. SB185

TESTIMONY ON SB185
"AN ACT TO ESTABLISH LEGAL AND LONG-TERM CARE SERVICES
WITHIN THE DEPARTMENT OF SOCIAL AND REHABILITATION; . . ."
AT THE REQUEST OF SRS.

SUBMITTED BY: LENORE F. TALIAFERRO, FORMER LONG-TERM CARE
OMBUDSMAN, 11/81-1/84.

POSITION ON BILL: OPPOSE

THE 1965 OLDER AMERICANS ACT, AS AMENDED IN 1978 PROVIDES FOR THE SERVICES OF A LONG-TERM CARE OMBUDSMAN TO INVESTIGATE AND RESOLVE COMPLAINTS OF ELDERLY IN LONG-TERM CARE FACILITIES, AND, TO ADVOCATE ON BEHALF OF THESE RESIDENTS FOR OR AGAINST ANY AGENCY POLICY, RULE, REGULATION, OR LAW THAT MAY HAVE A NEGATIVE IMPACT UPON THEIR QUALITY OF CARE AND QUALITY OF LIFE.

THE OLDER AMERICANS ACT SPECIFICIALLY PROHIBITS THE PLACEMENT OF THIS PROGRAM WITHIN THE STATE AGENCY RESPONSIBLE FOR LICENSING AND CERTIFYING SKILLED, INTERMEDIATE, AND PERSONAL CARE FACILITIES. IN MONTANA THAT IS THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES DEPARTMENT. THE RATIONALE FOR THIS EXCLUSION IS BECAUSE OF THE POTENTIAL CONFLICT OF INTEREST ISSUE SINCE THE LTCO IS RESPONSIBLE TO THE RESIDENTS OF THESE FACILITIES.

IN 1981, THE OLDER AMERICANS ACT WAS AMENDED TO INCLUDE SERVICES TO THOSE PERSONS RECEIVING SSI WHO MAY BE RESIDENTS OF FACILITIES LICENSED BY MONTANA'S DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES. SRS IN MONTANA ADMINISTERS MEDICAID AND SSI. COMMUNITY SERVICES DIVISION OF SRS WOULD BE TRANSFERRED TO THE PROPOSED DEPARTMENT OF FAMILY SERVICES IF THAT BILL PASSES. CSD LICENSES ADULT FOSTER CARE HOMES FOR THIS STATE AND HAS RESIDENTS RECEIVING SSI. BECAUSE OF THIS, IT WOULD NOT BE APPROPRIATE FOR THIS AGENCY TO ADMINISTER THE LONG-TERM CARE OMBUDSMAN PROGRAM.

SINCE 1978, SRS HAS ADMINISTERED THE LONG-TERM CARE OMBUDSMAN PROGRAM AND SINCE THERE HAVE BEEN NO SAFEGUARDS TO PROTECT THE OMBUDSMAN FROM RETALIATION IN CARRYING OUT LTCO OLDER AMERICANS ACT RESPONSIBILITIES, IT HAS NOT BEEN A SUITABLE PLACEMENT FOR THIS PROGRAM. DURING MY TENURE, I WAS CHARGED WITH THE RESPONSIBILITY TO RESEARCH AND EVALUATE PROGRAMS AND LEGISLATION FOR THIS PROGRAM IN OTHER STATES AND TO DEVELOP LEGISLATION FOR INTRODUCTION DURING THE 1983 SESSION. BASED UPON THE INTENT OF THE LAW AND THE AMENDMENTS OF 1978 AND 1981, A BILL WAS INTRODUCED THAT REMOVED THE PLACEMENT FROM UNDER THE ADMINISTRATION OF SRS. THE PURPOSE IN DOING SO WAS TO REMOVE THE POTENTIAL OF THE

CONFLICT OF INTEREST ISSUE THAT WAS OMITTED FROM THE 1981
AMENDMENTS TO THE OAA TO ASSURE PROTECTION FOR THE ELDERLY
AND FOR THE OMBUDSMAN AGAINST ADMINISTRATIVE RETALIATION.

BILL NO.

3
1-30-87
SB185

THIS BILL WAS KILLED AND ACTIONS BY THE LTCO WERE CENSURED
THROUGH TERMINATION IN 1/84. PRIOR TO THIS THE ELDERLY
GROUPS IN MONTANA MADE THEIR DESIRES KNOWN THROUGH
PROPOSALS REQUESTING THAT THE PROGRAM BE INDEPENDENT OF
SRS. THE PROPOSALS DEVELOPED BY AARP, LISCA, AND OTHERS
WERE ADOPTED BY THE GOVERNOR'S COUNCIL ON AGING IN THE FALL
OF 1983. AS A RESULT OF THIS PROPOSAL THE PROGRAM WAS
MOVED PHYSICALLY IN JANUARY OF 1984 THOUGH THE POSITIONS
HAVE REMAINED WITHIN THE CONTROL OF SRS.

IF MONTANA IS COMMITTED TO HAVING AN INDEPENDENT PROGRAM
WITH THE ABILITY TO IMPARTIALLY ADVOCATE ON BEHALF OF THE
FRAIL AND VULNERABLE, THEN IT IS EQUALLY IMPORTANT THAT THE
PLACEMENT AND STRUCTURE OF THE PROGRAM BE PLACED IN A
SETTING THAT IS FREE OF ANY CONFLICT OF INTEREST POTENTIAL.

IT IS NOT MANDATED THAT SRS ADMINISTER THIS PROGRAM. IN
FACT, MONTANA HAD TO RECEIVE A WAIVER FROM THE
ADMINISTRATION ON AGING TO RECEIVE FUNDS FOR THIS PROGRAM
SINCE MONTANA HAD NO DISTINCT AND SEPARATE ENTITY FOR AGING
PROGRAMS. VERY FEW OTHER STATES HAVE AN AGENCY THAT IS A
COMBINED MEDICAID AND AGING SERVICES PROGRAM. THOSE STATES
THAT DO HAVE HAD SIMILAR PROBLEMS IN RELATION TO THE
ABILITY OF THE OMBUDSMAN PROGRAM TO EFFECTIVELY CARRY OUT
RESPONSIBILITIES THAT OFTENTIMES ARE IN CONFLICT WITH OTHER
AGENCY PROGRAM ADMINISTRATION.

I DO SUPPORT THE SECTIONS IN THIS BILL THAT PROVIDE FOR
ACCESS TO FACILITIES. I ALSO SUPPORT THE SECTION WHICH
ALLOWS DHES TO INITIATE CIVIL PROCEEDINGS AND TO COLLECT
FINES FOR NON-COMPLIANCE. I DO NOT SEE A SIMILAR SECTION
FOR NON-COMPLIANCE WITHIN ADULT FOSTER CARE HOMES WHERE
RESIDENTS RECEIVE SSI, OR TO RESIDENTS COVERED UNDER THE
MEDICAID WAIVER PROGRAM.

THIS STATUTE PROVIDES FOR THE ESTABLISHMENT OF AN OFFICE
"CONTINGENT UPON RECEIPT OF FEDERAL FUNDS." UNLESS FEDERAL
FUNDING FOR ALL AGING PROGRAMS IS IN JEOPARDY AND TO BE
ELIMINATED, THEN THIS PROVISION DOES NOT MAKE SENSE. A
PERCENTAGE OF AGING DOLLARS UNDER TITLE III-B MUST BE SET
ASIDE FOR THE OMBUDSMAN PROGRAM. TITLE IV-C FUNDING
PROVIDES FOR THE LEGAL SERVICES POSITION AND FOR SUPPORTIVE
SERVICES TO THE LONG-TERM CARE OMBUDSMAN PROGRAM.

SINCE THIS PROPOSED BILL DOES NOT RESOLVE THE CONFLICT OF
INTEREST ISSUES, I URGE YOU TO VOTE NO PASS ON SB185.

IN CONCLUSION, I HAVE ALWAYS SUPPORTED THE NEED FOR
EFFECTIVE AND APPROPRIATE LEGISLATION FOR THE OMBUDSMAN
PROGRAM, CONTINUE TO DO SO, AND WILL BE COMMITTED TO THAT
IN THE FUTURE. IT IS WITH REGRET THAT I CANNOT SUPPORT
THIS LEGISLATION. IT DOES NOT ADEQUATELY SPECIFY THE

REQUIREMENTS OF THE OLDER AMERICANS ACT, NOR DOES IT
CLARIFY THE AUTHORITY FOR THE LONG-TERM CARE OMBUDSMAN.

RESPECTFULLY SUBMITTED,

Lenore F. Taliaferro

LENORE F. TALIAFERRO
1026 NINTH AVENUE
HELENA, MONTANA

DATE 1-30-87
BILL NO. SB 185

DOUGLAS B. OLSON
ATTORNEY AT LAW
P.O. BOX 1695
HELENA, MONTANA 59624

SENATE HEALTH & WELFARE
EXHIBIT NO. 4
DATE 1-30-87
BILL NO. SB 185

January 30, 1987

Members:
Senate Public Health Committee
1987 Montana Legislature

re: Senate Bill 185
Establishing Long-term Care
Ombudsman Office

Dear Senators:

I am an attorney residing in Helena who served for the years 1981-1985 as the attorney-legal services developer for the elderly for the State of Montana pursuant to the federal Older Americans Act. In that capacity, I served as a contracted employee of the State for a couple of years and finally as a classified state employee assigned to the Governor's Office. While serving in this position, I also functioned as the attorney for the state long-term care ombudsman program. At the present time, I am employed as the business manager for one of the local Helena church parishes. I am appearing today on my own behalf and representing only myself.

Basically, I am in support of Senate Bill 185 which would establish an office of legal and long-term care ombudsman services. Most state legislatures statutorily established and recognized such offices years ago and the State of Montana is long overdue for taking similar action.

My support for this bill is conditioned upon an amendment to Section 3, lines 19 and 20 that would place this office in the Governor's Office instead of the Department of Social and Rehabilitation Services. I urge your consideration of this amendment due to the conflict of interest that would arise if the Senate Bill 185 is not amended in this respect for the Department of Social and Rehabilitation Services at present licenses adult foster care homes pursuant to Section 53-5-303, Montana Codes Annotated. Federal law creating the long-term care ombudsman program (federal Older Americans Act found in Title 42 United States Code Sections 3022 (3), and 3027(a)(12)) provides that an agency which also licenses long-term care facilities may not also operate the long-term care ombudsman program. It is my opinion that the definition of "long-term care facility" in federal law is intentionally broad and would include the adult foster family care homes licensed by the Department of SRS.

Finally, the present office of legal and long-term care ombudsman services in Montana has been administratively attached to the Governor's Office and supervised by the Board of Visitors for Mental Disabilities for the last three years. This arrangement has worked well over all and I would encourage your support to continue it.

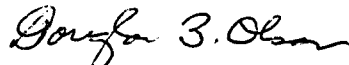
DATE 1-30-87

BILL NO. SB 185

Letter to Senate Public Health Committee
re: Senate Bill 185
January 30, 1987
Page 2

If you have any questions concerning my testimony, I will do my best to answer you or to provide additional information in support of my positions. Thank you for the opportunity to express my opinions and suggestions on this bill.

Sincerely,


Douglas B. Olson

January 30, 1987

MEMORANDUM:

TO: Senate Committee on Public Health, Welfare, and
Safety

FROM: Karen Renne, staff researcher

SUBJECT: Senate Bill 170 (expanding optometrists' scope of
practice)

This memo addresses three issues that emerged during the hearing on January 26:

- (1) the amendment of 37-2-101 in which optometrists are defined as medical practitioners;
- (2) the implications of expanding optometrists' scope of practice to include diagnosis and treatment of disease;
- (3) the educational requirements that accompany this expanded scope of practice.

(1) Senator Himsl's concern about the consequences of defining optometrists as medical practitioners appears to be unfounded. Optometrists already appear in the insurance code as medical professionals (33-19-104) and health service providers (33-22-111), and in the medicare statute as providers of medical care (53-6-101), though medicaid coverage of their services is not mandatory.

What this definition does do is allow optometrists to "administer and prescribe" drugs, along with physicians, dentists, and podiatrists. Optometrists were allowed to use drugs for diagnostic purposes in 1977 and should have been included in 37-2-101 at that time. The definition applies only to part 1 of chapter 2 in Title 37. Most of that part consists of restrictions on medical practitioners, who cannot own or have an interest in a pharmacy, or dispense drugs.

(2) "Ocular disease" and "ocular treatment" are not defined in this bill, but they should be. Under this bill, optometrists could legally treat any disease that could or might affect the eye, and prescribe any drug effective for any disease.

The optometrists have proposed an amendment to page 4, line 2, which would add to "ocular treatment" the phrase "limited to the anterior segment of the eye and adnexa." This appears to restrict the administration, dispensing, and prescription of drugs by optometrists to drugs appropriate for treating diseases that immediately affect the eye. (Note that the definition of "drug" in section 1 of the bill, amending Title 37, chapter 2, does not apply to section 2, which amends Title 37, chapter 10.)

(3) The bill requires no specific academic preparation or clinical training on the diagnosis, treatment, and management of ocular disease. Section 3 amends the 1977 provision that required a single course on diagnostic drugs by simply adding "and therapeutic" to the catchline.

Section 3 also adds a provision that all new licensees, and all optometrists already licensed and wishing to expand their practice, either take examination on the diagnosis, treatment, and management of ocular disease, given by the "international association of boards of optometry," or take a course and pass an examination on the diagnosis and treatment of ocular disease, given by any accredited institution. In theory, an applicant who had had no college-level coursework on diagnosis and treatment of disease, and no clinical exposure, could pass an exam designed by and for optometrists and thereby qualify for a license to prescribe and administer drugs for the treatment of ocular disease.

January 30, 1987

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Safety

FROM: Karen Renne, staff researcher

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ROLL CALL VOTE

SENATE COMMITTEE Public Health, Welfare and Safety

Date 1-30-87 Bill No. 126 Time 1:13

NAME	YES	NO
Dorothy Eck	X	
Bill Norman	X	
Bob Williams	X	
Darryl Meyer	X	
Eleanor Vaughn	X	
Tom Rasmussen	X	
Judy Jacobson	X	
Harry H. "Doc" McLane	X	
Matt Himsel		X
Tom Hager		X

Ellen Nehring
Secretary

Dorothy Eck
Chairman

Motion: That S. B. 126 DO PASS AS AMENDED.

STANDING COMMITTEE REPORT

SB126

Page 1 of 3

.....January 31,..... 19...87...

MR. PRESIDENT

PUBLIC HEALTH, WELFARE AND SAFETY

We, your committee on.....

Senate Bill

126

having had under consideration..... No.....

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white

reading copy (.....)

color

REQUIRE PHYSICIANS AND ADMINISTRATORS TO REPORT BURN INJURIES

Respectfully report as follows: That.....Senate Bill..... No...126.....

BE AMENDED AS FOLLOWS:

1. Title, line 10.

Strike: "SECTION"

Insert: "SECTIONS 50-16-311 AND"

2. Page 2, line 12.

Following: "reported"

Strike: "immediately"

3. Page 2, line 15.

Following: "provided to the"

Strike: "department of justice"

Insert: "state fire marshal"

4. Page 1, following line 20.

Insert: "NEW SECTION. Section 1. Immunity from liability. A person who acts in good faith in accordance with the provisions of 50-63-203 is not liable for damages in any civil proceeding or subject to prosecution in any criminal proceeding that might result from this action."

XXXXXX

XXXXXX

CONTINUED

Chairman.

January 31, 1987

Section 3. Section 50-16-311, MCA, is amended to read:

"50-16-311. When consent is required to release or transfer confidential health care information. (1) Except as provided in subsection (2) or as otherwise specifically provided by law or the Montana Rules of Civil Procedure, confidential health care information relating to a person may not be released or transferred without the written consent of the person or his authorized representative.

(2) Consent is not required for release or transfer of confidential health care information:

(a) to a physician, dentist, or other medical person for diagnosis or treatment of an individual in a medical or dental emergency;

(b) to a peer review committee if the information concerns matters within the scope of the licensed professional practice of the committee members;

(c) to qualified persons for the purpose of conducting scientific research, management audits, financial audits, program evaluations, or similar studies. However, qualified persons may not directly or indirectly identify an individual patient in a research report, audit, or evaluation or disclose a patient's identity in any manner.

(d) to a health care provider:

(i) as may be reasonably necessary to provide health care services to the individual about whom the information relates; or

(ii) in the administration of the office, practice, or operation in connection with the providing of health care services to the individual about whom the information relates;

(e) to an employer as may be reasonably necessary in the administration of a group insurance plan or to a workers' compensation insurer, the division of workers' compensation, or the workers' compensation judge, as is necessary in the administration of Title 39, chapters 71 and 72;

(f) when a person's insurance coverage obligates more than one insurer with respect to a claim or benefit;

(g) to a state insurance department for the purpose of reviewing an insurance claim or complaint made to such department by an insured or his authorized representative or by a beneficiary or his authorized representative of a deceased insured;

CONTINUED

STANDING COMMITTEE REPORT

SB138

Page 1 of 3

January 31, 1987

MR. PRESIDENT

Public Health, Welfare and Safety

We, your committee on.....
Senate Bill 138

having had under consideration..... No.....

first white
reading copy ()
color

SUNRISE FOR LICENSING BOARDS

Respectfully report as follows: That..... Senate Bill..... No..... 138.....
BE AMENDED AT FOLLOWS:

1. Title, line 3.
Following: "COMMITTEE;"
Insert: "PROVIDING FOR AN APPLICATION FEE;"

2. Page 3, line 18.
Following: "at least"
Strike: "90"
Insert: "180"

3. Page 4, line 4.
Following: "within"
Strike: "60"
Insert: "90"

4. Page 4, line 5.
Following: "prepare a"
Insert: "draft"

5. Page 4, line 17.
Following: "within"
Strike: "60"
Insert: "90"

6. Page 4, line 18.
Following: "maximum of"
Strike: "90"
Insert: "120"

~~DO NOT PASS~~

~~DO NOT PASS~~

CONTINUED

Chairman.

January 31, 1987

7. Page 7, line 16.

Following: "At least"

Strike: "10"

Insert: "21"

8. Page 7, line 22.

Following: "legislative"

Strike: "council"

Insert: "auditor"

9. Page 7.

Following: line 23

Insert: "Section 6. Application fee. An application for review under [section 3] must include an application fee established by the committee in an amount not to exceed \$6,500. The fee must be used by the committee to pay the cost of the review, and any unused portion must be refunded to the applicant."

Renumber: subsequent sections

10. Page 8, following line 1.

Strike: "5"

Insert: "6"

11. Page 8, line 7.

Following: "through"

Strike: "5"

Insert: "6"

12. Page 10, line 8.

Following: "add"

Strike: "a new licensing responsibility"

13. Page 10, line 9.

Following: "board"

Insert: "responsibility for licensing another occupation or profession"

14. Page 10, line 12.

Following: "through"

Strike: "7"

Insert: "8"

15. Page 10, line 14.

Following: "through"

Strike: "7"

Insert: "8"

CONTINUED

January 31, 1987

16. Page 18, line 15.
Following: "Section"
Strike: "8"
Insert: "9"

17. Page 18, line 17.
Following: "section"
Strike: "8"
Insert: "9"

AND AS AMENDED,
DO PASS

Senator Eck

STANDING COMMITTEE REPORT

.....January 30..... 1927.....

MR. PRESIDENT

We, your committee on...**PUBLIC HEALTH, WELFARE, AND SAFETY**.....

having had under consideration.....**SENATE BILL**..... No. **195**.....

first reading copy (white)
color

SPECIFY PENALTY FOR ILLIGALLY PARKING IN HANDICAPPED PARKING ZONE

Respectfully report as follows: That.....**SENATE BILL**..... No. **195**.....

DO PASS

~~DO NOT PASS~~

.....**Dorothy Eck**.....

Chairman.

January 31, 1987

(h) to a law enforcement officer about the general physical condition of a person being treated in a health care facility if such person was injured on a public roadway or was injured by the possible criminal act of another;

(i) to the state fire marshal in reporting a second- or third-degree burn as provided in 50-63-203; or

(j) to the news media about the general physical condition of an injured person being treated in a health care facility, provided the existence of the hospitalization is publicly known.

(3) For the purpose of this section, the term "general physical condition" is limited to a description of the condition as "satisfactory", "serious", or "critical".

Renumber: subsequent section.

AND AS AMENDED,

DO PASS

Senator Dick Chapman