MINUTES

MONTANA HOUSE OF REPRES_ENTATIVES
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON HUMAN SERVICES AND AGING

Call to Order: By Stella Jean Hansen, on January 11, 1989, at 3:00 p.m.

ROLL CALL

Members Present: All except

Members Excused: None

Members Absent: Angela Russell

Staff Present: Mary McCue, Legislative Council

Announcements/Discussion: None

HEARING ON HB 86

Presentation and Opening Statement by Sponsor: Rep. Kilpatrick stated that the bill was an act to allow the long-term care ombudsman access to medical and social records; to prohibit discriminatory, disciplinary, or retaliatory actions by long-term care facilities; to prohibit willful interference with the lawful actions of the long-term care ombudsman. The bill was requested by the Department of Family Services to comply with recent changes in the federal regulations contained in the 1987 re-authorization of the Older Americans Act. It gives long-term care of local ombudsman access to all medical and social records of any resident of the long-term care facility. Access would be subject to the condition of the resident or guardian or where the resident is unable to consent and has no guardian or a court order authorizing disclosure. If the Department of Family Services does not comply with the federal regulations, Montana could lose 3.5 million dollars in federal funds used to support senior citizen programs in the state.

List of Testifying Proponents and What Group They Represent:

Doug Blakley, Montana State Ombudsman
Owen Warren, American Association of Retired Persons

List of Testifying Opponents and What Group They Represent:

Rose Hughes, Montana Health Care Association

Testimony:

Doug Blakley supports this legislation and stated the three components to this legislation which include prohibition against retaliation for initiating a complaint or providing information about a complaint; provide ombudsmen access to resident records and prohibition against interference with ombudsman duties. See Exhibit 1.

Owen Warren stated his support and said this legislation would make it possible for the ombudsman to perform his duties in good faith for the residents of long term care facilities. See Exhibit 2.

Rose Hughes in opposition said that she did not object to this legislation because of the concepts embodied in the bill but because it is duplicative of other laws and regulations, and simply not needed. Access is now available to medical records under Montana's Uniform Health Care Information Act. In Section 5, this provision puts facilities at risk by increasing their liability for the activities in their facilities of people over whom they have no control. If an improperly trained local ombudsman inadvertently releases confidential information or if a patient is injured in any manner during the course of a visit by the ombudsman and due to the actions of the ombudsman, instead of the state being liable for the actions of its agent, the facility would end up being liable. See Exhibit 3.

Questions From Committee Members: Rep. Good asked Owen Warren if AARP would have any further comment on this legislation. Mr. Warren stated that the state would like to get in line with the policies of the federal government. Rep. Good then asked Mr. Warren if the policy concerning the releasing of information by written consent of the patient was a good policy and Mr. Warren supported this and felt that medical records should not be hidden because this would possibly mean they were not getting good care.

Rep. Brown then asked Doug Blakley to respond to Rose Hughes testimony that the legislation is not necessary and Mr. Blakley said that in the Older Americans Act that the Department felt that in the specific language in this, the state had responsibility for

those things which were contained in the bill, there is question as to whether these things were truly available at this time. This new legislation would specify and clarify the ombudsmen situation as far as getting access to records.

Rep. Simon then asked Mr. Blakley how pressing a need was there to access these records by this bill and the immediate effective date. Mr. Blakley said that he was not involved in the decision of the effective date and did not know why it was written in this respect. The amendments are now over a year old to the Older Americans Act and we need to comply with these changes. Rep. Simon then asked if access to patients records was a problem to your association at this point in time and would you feel that it was that important to comply with the federal regulations to have legislation go into effect on passage and approval than under a standard form which would be October 1. Persons in his organization would not be certified until the end of March and if the ombudsman were in need of acquiring records, an earlier effective date would be more beneficial. Rep. Simon then asked Mr. Blakley if he could give the committee a scope of the kinds of problems which were encountered to access patients records and Mr. Blakley said that depended on the particular facility. He had difficulty responding to the question because he did not have local ombudsmen doing this type of service and had not had to do this in the past. Mr. Blakley then said that he received approximately 150 complaints per year that he dealt with. Of the three complaints that were received per week, how many of these were regarding patient records and not food problems or cleanliness and Mr. Blakley responded that he felt somewhere between 5-10%

Rep. Good then asked Mr. Blakley if the reception of 3-1/2 million dollars in federal funds predicated on the passage of this bill and Mr. Blakley said that there had never been a question of this.

Rep. Blotkamp asked Mr. Blakley what the discrepancy between the old and the new law was and Mr. Blakley said that in the interpretation of the law of the Older Americans Act it states that there would be assurances that the things which would need to be done would be done. Rep. Blotkamp then asked Rose Hughes for her response and she said that the

state was now in compliance with the Older Americans Act. Access to the medical records, including by an ombudsman, is available.

Rep. Boharski then asked Ms. Hughes if she felt if this legislation was nothing more than reiterating the federal code and if she would have any reason not to be in favor of this legislation. Ms. Hughes said this piece of legislation does not clarify what is on record, it muddies the water because the language is not the same as in the Uniform Health Information Act. Rep. Boharski then questioned the issue of liability and Ms. Hughes said that the question is not included anywhere because a facility must allow these people access.

Closing by Sponsor: Rep. Kilpatrick closed the discussion on this bill.

HEARING ON HB 87

Presentation and Opening Statement by Sponsor: Rep. Kilpatrick stated that this bill was an act to amend certain definitions within the child abuse, neglect, and dependency law.

List of Testifying Proponents and What Group They Represent:

John Madsen, Montana Department of Family Services

List of Testifying Opponents and What Group They Represent:

None

Testimony:

John Madsen supports this legislation and said that the Department of Family Services receives approximately $170,000 per year in federal child abuse and neglect money. Failure to bring these definitions into compliance with the federal "Model Act" will cause the loss of that money. This money is currently used by DFS to improve the child abuse and neglect prevention and treatment components of the program. The loss of this funding would be a substantial one.

Questions From Committee Members: None

Closing by Sponsor: Rep. Kilpatrick closes on this bill.

ADJOURNMENT

Adjournment At: 3:35 p.m.

Stella Jean Hansen, Chairman

SJH:/ajs

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DAILY ROLL CALL

HUMAN SERVICES AND AGING COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date 1/11/89

NAME	PRESENT	ABSENT	EXCUSED
Stella Jean Hansen	✓		
Bill Strizich	✓		
Robert Blotkamp	✓		
Jan Brown	✓		
Lloyd McCormick	✓		
Angela Russell		✓	
Carolyn Squires	✓		
Jessica Stickney	✓		
Timothy Whalen	✓		
William Boharski	✓		
Susan Good	✓		
Budd Gould	✓		
Roger Knapp	✓		
Thomas Lee	✓		
Thomas Nelson	✓		
Bruce Simon	✓		

SENIORS' OFFICE
LEGAL AND OMBUDSMAN SERVICES

TED SCHWINDEN, GOVERNOR

P.O. BOX 232
CAPITOL STATION

STATE OF MONTANA

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

HELENA, MONTANA 59620

January 11, 1989

TO: House Human Services Committee

FROM: Doug Blakley, State Ombudsman

RE: In support of HB 86 - Ombudsman Amendments

As State Long-Term Care Ombudsman, I would like to offer the following comments in support of HB 86.

The primary purpose of the Ombudsman Program is to assist residents in resolving complaints regarding their care in long-term care settings (mainly nursing homes and personal care homes). Local ombudsmen are in facilities on a regular basis, visiting with residents and observing conditions on a daily basis. Our job responsibilities complement the work that the Department of Health and Environmental Sciences does in inspecting facilities.

The proposed bill would amend the current Ombudsman Act (MCA 53-5-800 et seq.). The bill was developed to bring the state into compliance with the 1987 amendments to the Older Americans Act, the federal legislation which outlines the basic requirements the State must meet in operating its statewide Ombudsman Program.

The bill has three components:

1. PROHIBITION AGAINST RETALIATION FOR INITIATING A COMPLAINT OR PROVIDING INFORMATION ABOUT A COMPLAINT This is the most important aspect of the bill because it addresses the major concern that residents and their families have about initiating a complaint or becoming involved in the complaint process - the fear of retaliation. The bill would also provide protection to staff who provide information about complaints.
2. PROVIDE OMBUDSMEN ACCESS TO RESIDENT RECORDS Such access would be limited to those ombudsmen designated as Certified Local Ombudsmen (about 15 people). This designation signifies that the ombudsman has received specific training and passed a certification process in order to investigate complaints. The resident or the legal guardian of the resident would have to consent to access. Access would be limited to a specific set of circumstances, but would not be for the purpose of reviewing such things as medical care or decision making.
3. PROHIBITION AGAINST INTERFERENCE WITH OMBUDSMAN DUTIES This provision would make it unlawful to impede an ombudsman's investigation into any complaints s/he might receive.

EXHIBIT 1
DATE 1-11-89
HB 86

AARP

1988-1989
MONTANA STATE LEGISLATIVE COMMITTEE

CHAIRMAN
Mrs. Molly L. Munro
4022 6th Avenue South
Great Falls, MT 59405
(406) 727-5604

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

January 11, 1989

TO: House Human Services Committee

FROM: Owen Warren, American Association of Retired Persons

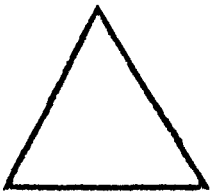
RE: In support of HB 86 - "An act to allow the long-term care Ombudsman access to medical and social records"

The American Association of Retired Persons supports the act as amended making it possible for the Ombudsman to perform his duties in good faith for the residents of long term care facility.

EXHIBIT 2
DATE 1-11-89
HB 86

MONTANA HEALTH CARE ASSOCIATION

HB 86



36 South Last Chance Gulch, Suite A
Helena, Montana 59601
406-443-2876

For the record, I am Rose Hughes, Executive Director for the MHCA, an organization representing 80 of Montana's 93 skilled and intermediate care facilities.

We ask that you oppose HB 86 -- not because of the concepts embodied in the bill -- but because it is duplicative of other laws and regulations, and simply not needed.

HB 86 purports to grant the long term care ombudsman access to medical records. However, such access is available now under Montana's Uniform Health Care Information Act passed by the 1987 Legislature, under the Federal Omnibus Budget Reconciliation Act of 1987.

HB 86 also purports to prohibit discriminatory, disciplinary, or retaliatory actions by facilities against residents and employees of facilities. However, such activities against residents are specifically prohibited by the Omnibus Budget Reconciliation Act and implementing regulations. Also, health care employees are required to provide information about patient abuse, neglect or exploitation under Montana's Elder Abuse Act, and failure to make such reports is punishable by a fine not to exceed $500, or imprisonment in the county jail for up to 6 months or both. Too, employers under Montana law are required to deal with their employees in good faith and may dismiss them only for a good cause.

With respect to enforcement, enforcement provisions relating to issues covered by HB 86 are contained in the Montana Health Information Act, the Montana Elder Abuse Act, and in the current Montana Ombudsman Services Act. In addition, failure to comply with the provisions of the Federal Omnibus Budget Reconciliation Act includes a variety of remedies such as civil fines and penalties, loss of Medicaid and Medicare payments, and appointment of temporary management of the non-complying facility.

Section 5 of HB 86 relating to liability is not currently required by state or by federal law, nor should it be. This provision puts facilities at risk by increasing <u>their</u> liability for the activities <u>in their facilities</u> of people over whom they have no control. If an improperly trained local ombudsman inadvertently releases confidential information or if a patient is injured in any manner during the course of a visit by the Ombudsman and due to the actions of the Ombudsman, instead of the state being liable for the actions of its agent, the facility would end up being liable.

An Affiliate of
ahca
American Health Care Association

EXHIBIT 3
DATE 1-11-89
HB 86

In summary, we simply do not believe that HB 86 is necessary, nor do we believe that it provides assistance or protection of nursing homes residents that is not already available through other laws or regulations.

The Montana Health Care Association supports the Ombudsman program and other programs designed to assist our residents. We do not, however, support this particular piece of legislation because it is duplicative and unnecessary. We urge you to vote no on HB 86

MONTANA
HEALTH
CARE
ASSOCIATION

36 South Last Chance Gulch, Suite A
Helena, Montana 59601
406-443-2876

EXCERPTS FROM CURRENT STATE AND FEDERAL LAW
RELATING TO ISSUES ADDRESSED IN HB 86

Access to facility and residents: Provided by Ombudsman law, 53-5-804.

Enforcement included in 53-5-805 and 806 allows for both civil fines and penalties, and restraining orders to prevent violation.

Access to records:

Uniform Health Care Information Act, passed by the 1987 Legislature:

This law specifies how health care information is to be dealt with in Montana--by all health care providers, and was adopted for the protection of patients and providers of health care. Ombudsman program now has access to records under this law.

The Health Care Information Act also includes enforcement provisions for any violations of the act.

Federal Omnibus Budget Reconciliation Act (OBRA):

Condition of Participation relating to Resident Rights included:

"Confidentiality. The right to confidentiality of personal and clinical records."

"Grievances. The right to voice grievances with respect to treatment or care that is (or fails to be) furnished, without discrimination or reprisal for voicing the grievances and the right to prompt efforts by the facility to resolve grievances the resident may have including those with respect to the behavior of other residents."

"Notice of rights and services." All residents must receive both written and oral notice of his legal rights while in the facility, including "a statement that a resident may file a complaint with a State survey and certification agency respecting resident abuse and neglect and misappropriation of resident property in the facility."

"Pre-transfer and Pre-discharge Notice." Notice of any transfer must be given and must include "the name, mailing address, and telephone number of the State long-term care ombudsman..."

"Access and visitation rights. A...nursing facility must...permit immediate access to any resident...by an ombudsman..." and must "permit representatives of the State Ombudsman, with the permission of the resident (or the resident's legal representative) and consistent with state law, to examine a resident's clinical records."

"Management of personal funds." "The facility must assure a full and complete separate accounting of each resident's personal funds, maintain a written record of all financial transactions involving the personal funds of a resident...and afford the resident (or a legal representative of the resident) reasonable access to such records."

Enforcement of Residents' Rights (OBRA):

Each standard survey shall include " a review of compliance with residents' rights under subsection (c)." Subsection (c) is the entire list of residents rights, which includes all of the ones mentioned previously.

"Notice to Ombudsman." State agency must notify State Long term Care Ombudsman of any noncompliance with any requirements relating to provision of services, residents' rights, or administration and other matters.

"Enforcement Process": includes civil fines and penalties, denial of Medicare and Medicaid payment, and appointment of temporary management. It provides that "The Secretary shall specify criteria, as to when and how each of such remedies is to be applied, the amounts of any fines, and the severity of each of these remedies, to be used in the imposition of such remedies. Such criteria shall be designed so as to minimize the time between the identification of violations and final imposition of the remedies and shall provide for the imposition of incrementally more severe fines for repeated or uncorrected deficiencies. In addition, the Secretary may provide for other specified remedies, such as directed plans of correction."

"Assuring Prompt Compliance." "If a nursing facility has not complied with any of the requirements...within 3 months after the date the facility is found to be out of compliance with such requirements, the Secretary shall impose the remedy described in subparagraph (b) (i) [denial of payment] for all individuals who are admitted to the facility after such date.

Rights of Incompetent Residents (OBRA):

"In the case of a resident adjudged incompetent under the laws of a State, the rights of the resident under this title shall devolve upon, and, to the extend judged necessary by a court of competent jurisdiction, be exercised by, the person appointed under State law to act on the resident's behalf."

TO: PATIENTS and/or AUTHORIZED REPRESENTATIVES AND FACILITY STAFF

SUBJECT: PATIENT RIGHTS and RESPONSIBILITIES

This facility has established written policies and procedures which are on file in the administrator's office, and which have been approved by this facility's governing body. Our written patient rights have been and will continue to be made available for review to patients, guardians, next of kin, sponsoring agencies or representative payees, to our staff and to the public.

Information relating to patient rights, conduct and responsibilities is included in our Admission Agreement and other admission documents, and in the state and federal rights enumerated below.

Under federal law, this facility must ensure that each patient admitted to the facility:

(1) Is fully informed, as evidenced by the patient's written acknowledgment, prior to or at the time of admission and during stay, of these rights and of all rules and regulations governing patient conduct and responsibilities;

(2) Is fully informed, prior to or at the time of admission and during stay, of services available in the facility, and of related charges including any charges for services not covered under titles XVIII or XIX of the Social Security Act, or not covered by the facility's basic per diem rate;

(3) Is fully informed, by a physician, of his or her medical condition unless medically contraindicated (as documented, by a physician, in the medical record), and is afforded the opportunity to participate in the planning of his or her medical treatment and to refuse to participate in experimental research;

(4) Is transferred or discharged only for medical reasons, or for his or her welfare or that of other patients, or for nonpayment for his or her stay (except as prohibited by titles XVIII or XIX of the Social Security Act), and is given reasonable advance notice to ensure orderly transfer or discharge, and such actions are documented in the medical record;

(5) Is encouraged and assisted, throughout the period of stay, to exercise rights as a patient and as a citizen, and to this end may voice grievances and recommend changes in policies and services to facility staff and/or to outside representatives of his or her choice, free from restraint, interference, coercion, discrimination, or reprisal;

(Continued on back)

Patient Acknowledgment

The undersigned acknowledges that they have been informed of the patient rights policies of this facility, have received a copy of this document and have additionally received an explanation and a copy of the admission agreement (and related documents) which contain information concerning rules and regulations governing patient conduct and responsibilities.

Signature of Patient _____ Date _____

Signature of Authorized Representative _____ Date _____

Staff Acknowledgment

The undersigned acknowledges that s/he has been informed of the patient rights policies of this facility, understands the same, and has received a copy of this document.

Signature of Staff _____ Date _____

Physician Statement

Resident is able to sign and understand this Resident Bill of Rights. Yes ☐ No ☐

Signature of Attending Physician _____ Date _____

(6) May manage his or her personal financial affairs, or is given at least a quarterly accounting of financial transactions made on his or her behalf should the facility accept his or her written delegation of this responsibility to the facility for any period of time in conformance with state law;

(7) Is free from mental and physical abuse, and free from chemical and (except in emergencies) physical restraints except as authorized in writing by a physician for a specified and limited period of time, or when necessary to protect the patient from injury to self or to others;

(8) Is assured confidential treatment of personal and medical records, and may approve or refuse their release to any individual outside the facility, except, in case of transfer to another health care institution, or as required by law or third-party payment contract;

(9) Is treated with consideration, respect, and full recognition of his or her dignity and individuality, including privacy in treatment and in care for personal needs;

(10) Is not required to perform services for the facility that are not included for therapeutic purposes in the plan of care;

(11) May associate and communicate privately with persons of his or her choice, and send and receive personal mail unopened, unless medically contraindicated (as documented by his or her physician in the medical record);

(12) May meet with, and participate in activities of, social, religious, and community groups at his or her discretion, unless medically contraindicated (as documented by his or her physician in the medical record);

(13) May retain and use personal clothing and possessions as space permits, unless to do so would infringe upon rights of other patients, and unless medically contraindicated (as documented by his or her physician in the medical record); and

(14) If married, is assured privacy for visits by his/her spouse; if both are inpatients in the facility, they are permitted to share a room, unless medically contraindicated (as documented by the attending physician in the medical record).

Under state law:

(a) A resident or his authorized representative must be informed by the facility at least 30 days in advance of any changes in the cost or availability of services, unless to do so is beyond the facility's control.

(b) Regardless of the source of payment, each resident or his authorized representative is entitled, upon request, to receive and examine an explanation of his monthly bill.

(c) Residents have the right to organize, maintain, and participate in resident advisory councils. The facility shall afford reasonable privacy and facility space for the meetings of such councils.

(d) A resident has the right to present a grievance on his own behalf or that of others to the facility or the resident advisory council. The facility shall establish written procedures for receiving, handling, and informing residents or the resident advisory council of the outcome of any grievance presented.

(e) A resident has the right to ask a state agency or a resident advocate for assistance in resolving grievances, free from restraint, interference, or reprisal.

(f) During his stay in a long-term care facility, a resident retains the prerogative to exercise decisionmaking rights in all aspects of his health care, including placement and treatment issues such as medication, special diets, or other medical regimens.

(g) The resident's authorized representative must be notified in a prompt manner of any significant accident, unexplained absence, or significant change in the resident's health status.

(h) A resident has the right to be free from verbal, mental, and physical abuse, neglect, or financial exploitation. Facility staff shall report to the department and the long-term care ombudsman any suspected incidents of abuse under the Montana Elder Abuse Prevention Act, Title 53, Chapter 5, part 5.

(i) Each resident has the right to privacy in his room or portion of the room. If a resident is seeking privacy in his room, staff members should make reasonable efforts to make their presence known when entering the room.

(j) In case of involuntary transfer or discharge, a resident has the right to reasonable advance notice to ensure an orderly transfer or discharge. Reasonable advance notice requires at least 21 days' written notification of any interfacility transfer or discharge except in cases of emergency or for medical reasons documented in the resident's medical record by the attending physician.

(k) If clothing is provided to the resident by the facility, it must be of reasonable fit.

(l) A resident has the right to reasonable safeguards for his personal possessions brought to the facility. The facility shall provide a means for safeguarding the resident's small items of value in his room or in another part of the facility where he must have reasonable access to the items.

(m) The resident has the right to have all losses or thefts of personal possessions promptly investigated by the facility. The results of the investigation must be reported to the affected resident.

TO: PATIENTS and/or AUTHORIZED REPRESENTATIVES AND FACILITY STAFF

SUBJECT: PATIENT RIGHTS and RESPONSIBILITIES

This facility has established written policies and procedures which are on file in the administrator's office, and which have been approved by this facility's governing body. Our written patient rights have been and will continue to be made available for review to patients, guardians, next of kin, sponsoring agencies or representative payees, to our staff and to the public.

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(3) Is fully informed, by a physician, of his or her medical condition unless medically contraindicated (as documented, by a physician, in the medical record), and is afforded the opportunity to participate in the planning of his or her medical treatment and to refuse to participate in experimental research;

(4) Is transferred or discharged only for medical reasons, or for his or her welfare or that of other patients, or for nonpayment for his or her stay (except as prohibited by titles XVIII or XIX of the Social Security Act), and is given reasonable advance notice to ensure orderly transfer or discharge, and such actions are documented in the medical record;

(5) Is encouraged and assisted, throughout the period of stay, to exercise rights as a patient and as a citizen, and to this end may voice grievances and recommend changes in policies and services to facility staff and/or to outside representatives of his or her choice, free from restraint, interference, coercion, discrimination, or reprisal;

(Continued on back)

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_____ _____

Signature of Authorized Representative Date

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Resident is able to sign and understand this Resident Bill of Rights. Yes ☐ No ☐

_____ _____

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(7) Is free from mental and physical abuse, and free from chemical and (except in emergencies) physical restraints except as authorized in writing by a physician for a specified and limited period of time, or when necessary to protect the patient from injury to self or to others;

(8) Is assured confidential treatment of personal and medical records, and may approve or refuse their release to any individual outside the facility, except, in case of transfer to another health care institution, or as required by law or third-party payment contract;

(9) Is treated with consideration, respect, and full recognition of his or her dignity and individuality, including privacy in treatment and in care for personal needs;

(10) Is not required to perform services for the facility that are not included for therapeutic purposes in the plan of care;

(11) May associate and communicate privately with persons of his or her choice, and send and receive personal mail unopened, unless medically contraindicated (as documented by his or her physician in the medical record);

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(d) A resident has the right to present a grievance on his own behalf or that of others to the facility or the resident advisory council. The facility shall establish written procedures for receiving, handling, and informing residents or the resident advisory council of the outcome of any grievance presented.

(e) A resident has the right to ask a state agency or a resident advocate for assistance in resolving grievances, free from restraint, interference, or reprisal.

(f) During his stay in a long-term care facility, a resident retains the prerogative to exercise decisionmaking rights in all aspects of his health care, including placement and treatment issues such as medication, special diets, or other medical regimens.

(g) The resident's authorized representative must be notified in a prompt manner of any significant accident, unexplained absence, or significant change in the resident's health status.

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(m) The resident has the right to have all losses or thefts of personal possessions promptly investigated by the facility. The results of the investigation must be reported to the affected resident.

such material only for the purpose of evaluating matters of medical care, therapy, and treatment for research and statistical purposes. Neither such in-hospital medical staff committee nor the members, agents, or employees thereof shall disclose the name or identity of any patient whose records have been studied in any report or publication of findings and conclusions of such committee, but such in-hospital medical staff committee, its members, agents, or employees shall protect the identity of any patient whose condition or treatment has been studied and shall not disclose or reveal the name of any such in-hospital patient.

History: En. Sec. 2, Ch. 104, L. 1969; R.C.M. 1947, 69-6302.

50-16-205. Data confidential — inadmissible in judicial proceedings. All data shall be confidential and shall not be admissible in evidence in any judicial proceeding, but this section shall not affect the admissibility in evidence of records dealing with the patient's hospital care and treatment.

History: En. Sec. 3, Ch. 104, L. 1969; R.C.M. 1947, 69-6303.

Cross-References

Montana Rules of Evidence, Title 26, ch. 10.

Part 3

Confidentiality of Health Care Information (Repealed. Sec. 31, Ch. 632, L. 1987)

Part Compiler's Comments

Histories of Repealed Sections:

50-16-301. En. Sec. 1, Ch. 578, L. 1979.
50-16-302. En. Sec. 2, Ch. 578, L. 1979.
50-16-303. En. Sec. 6, Ch. 578, L. 1979.
50-16-304. En. Sec. 8, Ch. 578, L. 1979.
50-16-305. En. Sec. 7, Ch. 578, L. 1979.
50-16-306 through 50-16-310 reserved.
50-16-311. En. Sec. 3, Ch. 578, L. 1979; amd. Sec. 1, Ch. 725, L. 1985.
50-16-312. En. Sec. 4, Ch. 578, L. 1979.
50-16-313. En. Sec. 4, Ch. 578, L. 1979.
50-16-314. En. Sec. 5, Ch. 578, L. 1979.

Part 4

Health Information Center

50-16-401. Repealed. Sec. 1, Ch. 66, L. 1987.

History: En. Sec. 1, Ch. 628, L. 1983.

Part 5

Uniform Health Care Information

Part Cross-References

Right of privacy guaranteed, Art. II, sec. 10, Mont. Const.

50-16-501. Short title. This part may be cited as the "Uniform Health Care Information Act".

History: En. Sec. 1, Ch. 632, L. 1987.

50-16-502. Legislative findings. The legislature finds that:

(1) health care information is personal and sensitive information that if improperly used or released may do significant harm to a patient's interests in privacy and health care or other interests;

(2) patients need access to their own health care information as a matter of fairness, to enable them to make informed decisions about their health care and to correct inaccurate or incomplete information about themselves;

(3) in order to retain the full trust and confidence of patients, health care providers have an interest in assuring that health care information is not improperly disclosed and in having clear and certain rules for the disclosure of health care information;

(4) persons other than health care providers obtain, use, and disclose health record information in many different contexts and for many different purposes. It is the public policy of this state that a patient's interest in the proper use and disclosure of his health care information survives even when the information is held by persons other than health care providers.

(5) the movement of patients and their health care information across state lines, access to and exchange of health care information from automated data banks, and the emergence of multistate health care providers creates a compelling need for uniform law, rules, and procedures governing the use and disclosure of health care information.

History: En. Sec. 2, Ch. 632, L. 1987.

50-16-503. Uniformity of application and construction. This part must be applied and construed to effectuate their general purpose to make uniform the laws with respect to the treatment of health care information among states enacting them.

History: En. Sec. 3, Ch. 632, L. 1987.

50-16-504. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Audit" means an assessment, evaluation, determination, or investigation of a health care provider by a person not employed by or affiliated with the provider, to determine compliance with:

(a) statutory, regulatory, fiscal, medical, or scientific standards;

(b) a private or public program of payments to a health care provider; or

(c) requirements for licensing, accreditation, or certification.

(2) "Directory information" means information disclosing the presence and the general health condition of a patient who is an inpatient in a health care facility or who is receiving emergency health care in a health care facility.

(3) "General health condition" means the patient's health status described in terms of critical, poor, fair, good, excellent, or terms denoting similar conditions.

(4) "Health care" means any care, service, or procedure provided by a health care provider, including medical or psychological diagnosis, treatment, evaluation, advice, or other services that affect the structure or any function of the human body.

(5) "Health care facility" means a hospital, clinic, nursing home, laboratory, office, or similar place where a health care provider provides health care to patients.

(6) "Health care information" means any information, whether oral or recorded in any form or medium, that identifies or can readily be associated with the identity of a patient and relates to the patient's health care. The term includes any record of disclosures of health care information.

(7) "Health care provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state to provide health care in the ordinary course of business or practice of a profession. The term does not include a person who provides health care solely through the sale or dispensing of drugs or medical devices.

(8) "Institutional review board" means a board, committee, or other group formally designated by an institution or authorized under federal or state law to review, approve the initiation of, or conduct periodic review of research programs to assure the protection of the rights and welfare of human research subjects.

(9) "Maintain", as related to health care information, means to hold, possess, preserve, retain, store, or control that information.

(10) "Patient" means an individual who receives or has received health care. The term includes a deceased individual who has received health care.

(11) "Peer review" means an evaluation of health care services by a committee of a state or local professional organization of health care providers or a committee of medical staff of a licensed health care facility. The committee must be:

(a) authorized by law to evaluate health care services; and

(b) governed by written bylaws approved by the governing board of the health care facility or an organization of health care providers.

(12) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

History: En. Sec. 4, Ch. 632, L. 1987.

50-16-505 through 50-16-510 reserved.

50-16-511. Duty to adopt security safeguards. A health care provider shall effect reasonable safeguards for the security of all health care information it maintains.

History: En. Sec. 21, Ch. 632, L. 1987.

50-16-512. Content and dissemination of notice. (1) A health care provider who provides health care at a health care facility that the provider operates and who maintains a record of a patient's health care information shall create a notice of information practices, in substantially the following form:

NOTICE

"We keep a record of the health care services we provide for you. You may ask us to see and copy that record. You may also ask us to correct that record. We will not disclose your record to others unless you direct us to do so or unless the law authorizes or compels us to do so. You may see your record or get more information about it at ....."

(2) The health care provider shall post a copy of the notice of information practices in a conspicuous place in the health care facility and upon request provide patients or prospective patients with a copy of the notice.

History: En. Sec. 18, Ch. 632, L. 1987.

50-16-513. Retention of record. A health care provider shall maintain a record of existing health care information for at least 1 year following receipt of an authorization to disclose that health care information under 50-16-526 and during the pendency of a request for examination and copying under 50-16-541 or a request for correction or amendment under 50-16-543.

History: En. Sec. 22, Ch. 632, L. 1987.

50-16-514 through 50-16-520 reserved.

50-16-521. Health care representatives. (1) A person authorized to consent to health care for another may exercise the rights of that person under this part to the extent necessary to effectuate the terms or purposes of the grant of authority. If the patient is a minor and is authorized under 41-1-402 to consent to health care without parental consent, only the minor may exclusively exercise the rights of a patient under this part as to information pertaining to health care to which the minor lawfully consented.

(2) A person authorized to act for a patient shall act in good faith to represent the best interests of the patient.

History: En. Sec. 19, Ch. 632, L. 1987.

50-16-522. Representative of deceased patient. A personal representative of a deceased patient may exercise all of the deceased patient's rights under this part. If there is no personal representative or upon discharge of the personal representative, a deceased patient's rights under this part may be exercised by persons who are authorized by law to act for him.

History: En. Sec. 20, Ch. 632, L. 1987.

50-16-523 and 50-16-524 reserved.

50-16-525. Disclosure by health care provider. (1) Except as authorized in 50-16-529 and 50-16-530 or as otherwise specifically provided by law or the Montana Rules of Civil Procedure, a health care provider, an individual who assists a health care provider in the delivery of health care, or an agent or employee of a health care provider may not disclose health care information about a patient to any other person without the patient's written authorization. A disclosure made under a patient's written authorization must conform to the authorization.

(2) A health care provider shall maintain, in conjunction with a patient's recorded health care information, a record of each person who has received or examined, in whole or in part, the recorded health care information during the preceding 3 years, except for an agent or employee of the health care provider or a person who has examined the recorded health care information under 50-16-529(2). The record of disclosure must include the name, address, and institutional affiliation, if any, of each person receiving or examining the recorded health care information, the date of the receipt or examination, and to the extent practicable a description of the information disclosed.

History: En. Sec. 5, Ch. 632, L. 1987.

50-16-526. Patient authorization to health care provider for disclosure. (1) A patient may authorize a health care provider to disclose the patient's health care information. A health care provider shall honor an authorization and, if requested, provide a copy of the recorded health care information unless the health care provider denies the patient access to health care information under 50-16-542.

(2) A health care provider may charge a reasonable fee, not to exceed his actual cost for providing the health care information, and is not required to honor an authorization until the fee is paid.

(3) To be valid, a disclosure authorization to a health care provider must:

(a) be in writing, dated, and signed by the patient;

(b) identify the nature of the information to be disclosed; and

(c) identify the person to whom the information is to be disclosed.

(4) Except as provided by this part, the signing of an authorization by a patient is not a waiver of any rights a patient has under other statutes, the Montana Rules of Evidence, or common law.

History: En. Sec. 6, Ch. 632, L. 1987.

50-16-527. Patient authorization — retention — effective period. (1) A health care provider shall retain each authorization or revocation in conjunction with any health care information from which disclosures are made.

(2) Except for authorizations to provide information to third-party health care payors, an authorization may not permit the release of health care information relating to health care that the patient receives more than 6 months after the authorization was signed.

(3) An authorization in effect on October 1, 1987, remains valid for 30 months after October 1, 1987, unless an earlier date is specified or it is revoked under 50-16-528. Health care information disclosed under such an authorization is otherwise subject to this part. An authorization written after October 1, 1987, becomes invalid after the expiration date contained in the authorization, which may not exceed 30 months. If the authorization does not contain an expiration date, it expires 6 months after it is signed.

History: En. Sec. 7, Ch. 632, L. 1987.

50-16-528. Patient's revocation of authorization for disclosure. A patient may revoke a disclosure authorization to a health care provider at any time unless disclosure is required to effectuate payments for health care that has been provided or other substantial action has been taken in reliance on the authorization. A patient may not maintain an action against the health care provider for disclosures made in good-faith reliance on an authorization if the health care provider had no notice of the revocation of the authorization.

History: En. Sec. 8, Ch. 632, L. 1987.

50-16-529. Disclosure without patient's authorization based on need to know. A health care provider may disclose health care information about a patient without the patient's authorization, to the extent a recipient needs to know the information, if the disclosure is:

(1) to a person who is providing health care to the patient;

(2) to any other person who requires health care information for health care education; to provide planning, quality assurance, peer review, or administrative, legal, financial, or actuarial services to the health care provider; or for assisting the health care provider in the delivery of health care and if the health care provider reasonably believes that the person will:

(a) not use or disclose the health care information for any other purpose; and

(b) take appropriate steps to protect the health care information;

(3) to any other health care provider who has previously provided health care to the patient, to the extent necessary to provide health care to the patient, unless the patient has instructed the health care provider not to make the disclosure;

(4) to immediate family members of the patient or any other individual with whom the patient is known to have a close personal relationship, if made in accordance with the laws of the state and good medical or other professional practice, unless the patient has instructed the health care provider not to make the disclosure;

(5) to a health care provider who is the successor in interest to the health care provider maintaining the health care information;

(6) for use in a research project that an institutional review board has determined:

(a) is of sufficient importance to outweigh the intrusion into the privacy of the patient that would result from the disclosure;

(b) is impracticable without the use or disclosure of the health care information in individually identifiable form;

(c) contains reasonable safeguards to protect the information from improper disclosure;

(d) contains reasonable safeguards to protect against directly or indirectly identifying any patient in any report of the research project; and

(e) contains procedures to remove or destroy at the earliest opportunity, consistent with the purposes of the project, information that would enable the patient to be identified, unless an institutional review board authorizes retention of identifying information for purposes of another research project;

(7) to a person who obtains information for purposes of an audit, if that person agrees in writing to:

(a) remove or destroy, at the earliest opportunity consistent with the purpose of the audit, information that would enable the patient to be identified; and

(b) not disclose the information further, except to accomplish the audit or to report unlawful or improper conduct involving fraud in payment for health care by a health care provider or patient or other unlawful conduct by a health care provider; and

(8) to an official of a penal or other custodial institution in which the patient is detained.

History: En. Sec. 9, Ch. 632, L. 1987.

Cross-References

Duty of mental health professionals to warn of violent patients, 27-1-1102.

Nonliability for peer review, 37-2-201.

Pharmacists not liable for peer review, 37-7-1101.

50-16-530. Disclosure without patient's authorization — other bases. A health care provider may disclose health care information about a patient without the patient's authorization if the disclosure is:

(1) directory information, unless the patient has instructed the health care provider not to make the disclosure;

(2) to federal, state, or local public health authorities, to the extent the health care provider is required by law to report health care information or when needed to protect the public health;

(3) to federal, state, or local law enforcement authorities to the extent required by law;

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

(5) pursuant to compulsory process in accordance with 50-16-535 and 50-16-536.

History: En. Sec. 10, Ch. 632, L. 1987.

50-16-531 through 50-16-534 reserved.

50-16-535. When health care information available by compulsory process. Health care information may not be disclosed by a health care provider pursuant to compulsory legal process or discovery in any judicial, legislative, or administrative proceeding unless:

(1) the patient has consented in writing to the release of the health care information in response to compulsory process or a discovery request;

(2) the patient has waived the right to claim confidentiality for the health care information sought;

(3) the patient is a party to the proceeding and has placed his physical or mental condition in issue;

(4) the patient's physical or mental condition is relevant to the execution or witnessing of a will or other document;

(5) the physical or mental condition of a deceased patient is placed in issue by any person claiming or defending through or as a beneficiary of the patient;

(6) a patient's health care information is to be used in the patient's commitment proceeding;

(7) the health care information is for use in any law enforcement proceeding or investigation in which a health care provider is the subject or a party, except that health care information so obtained may not be used in any proceeding against the patient unless the matter relates to payment for his health care or unless authorized under subsection (9);

(8) the health care information is relevant to a proceeding brought under 50-16-551 through 50-16-553; or

(9) a court has determined that particular health care information is subject to compulsory legal process or discovery because the party seeking the information has demonstrated that there is a compelling state interest that outweighs the patient's privacy interest.

History: En. Sec. 11, Ch. 632, L. 1987.

50-16-536. Method of compulsory process. (1) Unless the court for good cause shown determines that the notification should be waived or modified, if health care information is sought under 50-16-535(2), (4), or (5) or in

a civil proceeding or investigation under 50-16-535(9), the person seeking discovery or compulsory process shall mail a notice by first-class mail to the patient or the patient's attorney of record of the compulsory process or discovery request at least 10 days before presenting the certificate required under subsection (2) to the health care provider.

(2) Service of compulsory process or discovery requests upon a health care provider must be accompanied by a written certification, signed by the person seeking to obtain health care information or his authorized representative, identifying at least one subsection of 50-16-535 under which compulsory process or discovery is being sought. The certification must also state, in the case of information sought under 50-16-535(2), (4), or (5) or in a civil proceeding under 50-16-535(9), that the requirements of subsection (1) for notice have been met. A person may sign the certification only if the person reasonably believes that the subsection of 50-16-535 identified in the certification provides an appropriate basis for the use of discovery or compulsory process. Unless otherwise ordered by the court, the health care provider shall maintain a copy of the process and the written certification as a permanent part of the patient's health care information.

(3) Production of health care information under 50-16-535 and this section does not in itself constitute a waiver of any privilege, objection, or defense existing under other law or rule of evidence or procedure.

History: En. Sec. 12, Ch. 632, L. 1987.

50-16-537 through 50-16-540 reserved.

50-16-541. Requirements and procedures for patient's examination and copying. (1) Upon receipt of a written request from a patient to examine or copy all or part of his recorded health care information, a health care provider, as promptly as required under the circumstances but no later than 10 days after receiving the request, shall:

(a) make the information available to the patient for examination during regular business hours or provide a copy, if requested, to the patient;

(b) inform the patient if the information does not exist or cannot be found;

(c) if the health care provider does not maintain a record of the information, inform the patient and provide the name and address, if known, of the health care provider who maintains the record;

(d) if the information is in use or unusual circumstances have delayed handling the request, inform the patient and specify in writing the reasons for the delay and the earliest date, not later than 21 days after receiving the request, when the information will be available for examination or copying or when the request will be otherwise disposed of; or

(e) deny the request in whole or in part under 50-16-542 and inform the patient.

(2) Upon request, the health care provider shall provide an explanation of any code or abbreviation used in the health care information. If a record of the particular health care information requested is not maintained by the health care provider in the requested form, he is not required to create a new record or reformulate an existing record to make the information available in the requested form. The health care provider may charge a reasonable fee, not

to exceed the health care provider's actual cost, for providing the health care information and is not required to permit examination or copying until the fee is paid.

History: En. Sec. 13, Ch. 632, L. 1987.

50-16-542. Denial of examination and copying. (1) A health care provider may deny access to health care information by a patient if the health care provider reasonably concludes that:

(a) knowledge of the health care information would be injurious to the health of the patient;

(b) knowledge of the health care information could reasonably be expected to lead to the patient's identification of an individual who provided the information in confidence and under circumstances in which confidentiality was appropriate;

(c) knowledge of the health care information could reasonably be expected to cause danger to the life or safety of any individual;

(d) the health care information was compiled and is used solely for litigation, quality assurance, peer review, or administrative purposes;

(e) the health care provider obtained the information from a person other than the patient; or

(f) access to the health care information is otherwise prohibited by law.

(2) Except as provided in 50-16-521, a health care provider may deny access to health care information by a patient who is a minor if:

(a) the patient is committed to a mental health facility; or

(b) the patient's parents or guardian have not authorized the health care provider to disclose the patient's health care information.

(3) If a health care provider denies a request for examination and copying under this section, the provider, to the extent possible, shall segregate health care information for which access has been denied under subsection (1) from information for which access cannot be denied and permit the patient to examine or copy the disclosable information.

(4) If a health care provider denies a patient's request for examination and copying, in whole or in part, under subsection (1)(a) or (1)(c), he shall permit examination and copying of the record by another health care provider who is providing health care services to the patient for the same condition as the health care provider denying the request. The health care provider denying the request shall inform the patient of the patient's right to select another health care provider under this subsection.

History: En. Sec. 14, Ch. 632, L. 1987.

50-16-543. Request for correction or amendment. (1) For purposes of accuracy or completeness, a patient may request in writing that a health care provider correct or amend its record of the patient's health care information to which he has access under 50-16-541.

(2) As promptly as required under the circumstances but no later than 10 days after receiving a request from a patient to correct or amend its record of the patient's health care information, the health care provider shall:

(a) make the requested correction or amendment and inform the patient of the action and of the patient's right to have the correction or amendment sent to previous recipients of the health care information in question;

(b) inform the patient if the record no longer exists or cannot be found;

(c) if the health care provider does not maintain the record, inform the patient and provide him with the name and address, if known, of the person who maintains the record;

(d) if the record is in use or unusual circumstances have delayed the handling of the correction or amendment request, inform the patient and specify in writing the earliest date, not later than 21 days after receiving the request, when the correction or amendment will be made or when the request will otherwise be disposed of; or

(e) inform the patient in writing of the provider's refusal to correct or amend the record as requested, the reason for the refusal, and the patient's right to add a statement of disagreement and to have that statement sent to previous recipients of the disputed health care information.

History: En. Sec. 15, Ch. 632, L. 1987.

50-16-544. Procedure for adding correction, amendment, or statement of disagreement. (1) In making a correction or amendment, the health care provider shall:

(a) add the amending information as a part of the health record; and

(b) mark the challenged entries as corrected or amended entries and indicate the place in the record where the corrected or amended information is located, in a manner practicable under the circumstances.

(2) If the health care provider maintaining the record of the patient's health care information refuses to make the patient's proposed correction or amendment, the provider shall:

(a) permit the patient to file as a part of the record of his health care information a concise statement of the correction or amendment requested and the reasons therefor; and

(b) mark the challenged entry to indicate that the patient claims the entry is inaccurate or incomplete and indicate the place in the record where the statement of disagreement is located, in a manner practicable under the circumstances.

History: En. Sec. 16, Ch. 632, L. 1987.

50-16-545. Dissemination of corrected or amended information or statement of disagreement. (1) A health care provider, upon request of a patient, shall take reasonable steps to provide copies of corrected or amended information or of a statement of disagreement to all persons designated by the patient and identified in the health care information as having examined or received copies of the information sought to be corrected or amended.

(2) A health care provider may charge the patient a reasonable fee, not exceeding the provider's actual cost, for distributing corrected or amended information or the statement of disagreement, unless the provider's error necessitated the correction or amendment.

History: En. Sec. 17, Ch. 632, L. 1987.

50-16-546 through 50-16-550 reserved.

50-16-551. Criminal penalty. (1) A person who by means of bribery, theft, or misrepresentation of identity, purpose of use, or entitlement to the

information examines or obtains, in violation of this part, health care information maintained by a health care provider is guilty of a misdemeanor and upon conviction is punishable by a fine not exceeding $10,000 or imprisonment for a period not exceeding 1 year, or both.

(2) A person who, knowing that a certification under 50-16-536(2) or a disclosure authorization under 50-16-526 and 50-16-527 is false, purposely presents the certification or disclosure authorization to a health care provider is guilty of a misdemeanor and upon conviction is punishable by a fine not exceeding $10,000 or imprisonment for a period not exceeding 1 year, or both.

History: En. Sec. 23, Ch. 632, L. 1987.

50-16-552. Civil enforcement. The attorney general or appropriate county attorney may maintain a civil action to enforce this part. The court may order any relief authorized by 50-16-553.

History: En. Sec. 24, Ch. 632, L. 1987.

50-16-553. Civil remedies. (1) A person aggrieved by a violation of this part may maintain an action for relief as provided in this section.

(2) The court may order the health care provider or other person to comply with this part and may order any other appropriate relief.

(3) A health care provider who relies in good faith upon a certification pursuant to 50-16-536(2) is not liable for disclosures made in reliance on that certification.

(4) No disciplinary or punitive action may be taken against a health care provider or his employee or agent who brings evidence of a violation of this part to the attention of the patient or an appropriate authority.

(5) In an action by a patient alleging that health care information was improperly withheld under 50-16-541 and 50-16-542, the burden of proof is on the health care provider to establish that the information was properly withheld.

(6) If the court determines that there is a violation of this part, the aggrieved person is entitled to recover damages for pecuniary losses sustained as a result of the violation and, in addition, if the violation results from willful or grossly negligent conduct, the aggrieved person may recover not in excess of $5,000, exclusive of any pecuniary loss.

(7) If a plaintiff prevails, the court may assess reasonable attorney fees and all other expenses reasonably incurred in the litigation.

(8) An action under this part is barred unless the action is commenced within 3 years after the cause of action accrues.

History: En. Sec. 25, Ch. 632, L. 1987.

CHAPTER 17

TUBERCULOSIS CONTROL

Part 1 — General Provisions

(4) It is the intent of the legislature that available federal, state, regional, and local resources be used to strengthen the economic, social, and general well-being of older Montanans and that the state:

(a) develop appropriate programs for older Montanans;

(b) coordinate and integrate all levels of service, with emphasis on the whole person; and

(c) promote alternative forms of service that will create options for older Montanans.

History: En. Sec. 3, Ch. 67, L. 1987.

53-5-704. Services to be provided. Subject to available funding, the department, in conjunction with other state, local, and private agencies and organizations, shall identify and may provide for older Montanans, in addition to existing services:

(1) a directory of available services;

(2) transportation that provides access to services;

(3) housing, nutrition, education, homemaker, escort, respite, hospice, and other programs that facilitate self-care;

(4) physical and mental health care, including inpatient and outpatient services, screening, appliances and supplies, and home health care;

(5) placement in adult day care, foster care, personal care, supervisory care, and nursing homes;

(6) protective advocacy and legal programs;

(7) job training, job development, and income maintenance;

(8) adult education; and

(9) training and research in aging.

History: En. Sec. 4, Ch. 67, L. 1987.

53-5-705. Role of department. The department shall develop a plan to coordinate the services identified in 53-5-704, facilitate cooperation among agencies, avoid duplication, and increase efficiency.

History: En. Sec. 5, Ch. 67, L. 1987.

53-5-706. Coordination with federal legislation. Nothing in this part shall be construed to prevent the department from complying with the rules and regulations promulgated by the U.S. department of health and human services pursuant to the "Older Americans Act of 1965", as amended.

History: En. Sec. 6, Ch. 67, L. 1987.

Part 8

Ombudsman Services

53-5-801. Purpose. The legislature finds that many disabled and elderly Montana citizens reside in long-term care facilities in Montana and because of their isolated and vulnerable condition are dependent on others for care and protection. It is the intent of the legislature that, contingent on receipt of federal funds for the purpose, the office of legal and long-term care ombudsman services:

(1) monitor the quality of care and life for residents of long-term care facilities;

(2) develop and coordinate legal services for elderly citizens; and

(3) through necessary investigations, reports, and corrective action, ensure that a good quality of care and life be maintained for residents of long-term care facilities.

History: En. Sec. 1, Ch. 223, L. 1987.

53-5-802. Definitions. In this part, the following definitions apply:

(1) "Local ombudsman" means a person officially designated by the long-term care ombudsman to act as his local representative.

(2) "Long-term care facility" means a facility or part thereof that provides skilled nursing care, intermediate nursing care, or personal care, as these terms are defined in 50-5-101.

(3) "Long-term care ombudsman" means the individual appointed under 42 U.S.C. 3027(a)(12) to fulfill the federal requirement that the state provide an advocate for residents of long-term care facilities.

History: En. Sec. 2, Ch. 223, L. 1987.

53-5-803. Office of legal and long-term care ombudsman services. Contingent on receipt of federal funds for the purpose, there is an office of legal and long-term care ombudsman services in the department of social and rehabilitation services. As required by the Older Americans Act of 1965, as amended (42 U.S.C. 3001, et seq.), and the regulations adopted pursuant thereto, the office:

(1) serves as an advocate for Montana citizens residing in long-term care facilities, regardless of their age or source of payment for care, to ensure that their rights are protected, that they receive quality care, and that they reside in a safe environment; and

(2) coordinates legal services for the elderly.

History: En. Sec. 3, Ch. 223, L. 1987.

53-5-804. Access to long-term care facilities. (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.

(2) Access must be granted to the long-term care ombudsman or local ombudsman during normal visiting hours (9 a.m. to 6 p.m.) and to the long-term care ombudsman at any time he considers necessary to perform the duties described in 53-5-803.

(3) The ombudsman shall carry out the duties described in 53-5-803 in a manner that is least disruptive to resident care and activities.

History: En. Sec. 4, Ch. 223, L. 1987.

53-5-805. Enforcement of access. (1) A person who violates the provisions of 53-5-804 is subject to a civil penalty not to exceed $1,000. Each day of violation constitutes a separate violation. The department of health and environmental sciences or, upon request of that department, the county attorney of the county in which the long-term care facility in question is located may petition the district court to impose, assess, and recover the civil penalty. Money collected as a civil penalty must be deposited in the state general fund.

(2) The department of health and environmental sciences or, upon request of that department, the county attorney of the county in which the long-term care facility in question is located may bring an action to enjoin a violation of any provision of 53-5-804 in addition to or exclusive of the remedy in subsection (1).

History: En. Sec. 5, Ch. 223, L. 1987.

CHAPTER 6

HEALTH CARE SERVICES

Part 1 — Medical Assistance—Medicaid

Part 2 — Renal Disease Treatment Program

Part 3 — Montana State Hospital

Part 4 — Community-Based Long-Term Care Medicaid Services

One-step licensing inspection by other department, Title 50, ch. 8.

Duty of person maintaining or employed by adult foster care home to report violations of Montana Elder Abuse Prevention Act, 53-5-511.

53-5-305. Limitation on care offered. The type of care offered by adult foster family care homes for the purposes of this part is light personal care or custodial care and does not include skilled nursing care.

History: En. 71-2307 by Sec. 5, Ch. 364, L. 1975; R.C.M. 1947, 71-2307.

Cross-References

"Skilled nursing care" defined, 50-5-101.

Part 4
Old-Age Assistance Recovery

53-5-401. Old-age assistance recovery. (1) Upon the death of any recipient of old age assistance, the department of social and rehabilitation services shall execute and present a claim against the estate of such person within the time specified in the published notice to creditors in the estate matter for the total amount of assistance paid under Chapter 82, Laws of 1937, as amended. No claim shall be enforced against any real estate of a recipient while it is occupied by the surviving spouse or dependent as a home.

(2) Every transfer of property made by deed, grant, bargain, sale, or gift by any recipient of old age assistance and recorded subsequent to his having received such assistance shall be presumed to have been made without fair consideration, as the term "fair consideration" is defined by 31-2-303, and with the intent to defeat the purposes of this section. These presumptions are disputable and may be controverted by competent evidence.

(3) If the federal law so requires, the federal government shall be entitled to a share of any amounts collected from recipients or their estates in proportion to the amount which it has contributed to the grants recovered, and the amount due the United States shall be promptly paid by the state to the United States government. The remaining portion of the amount collected shall be distributed to the state and county in proportion to the total amount paid by each.

History: En. Sec. 11, Part 3, Ch. 82, L. 1937; amd. Sec. 1, Ch. 178, L. 1943; amd. Sec. 1, Ch. 63, L. 1947; amd. Sec. 1, Ch. 234, L. 1953; R.C.M. 1947, 71-412.

Cross-References

Recovery from recipient's estate, 53-2-611.

Claims against estate, Title 72, ch. 3, part 8.

Part 5
Montana Elder Abuse Prevention Act

53-5-501. Short title. This part may be cited as the "Montana Elder Abuse Prevention Act".

History: En. Sec. 1, Ch. 623, L. 1983.

53-5-502. Legislative findings and purpose. The legislature finds that a need exists to provide for cooperation among law enforcement officials and agencies, courts, and state and county agencies providing human services

in preventing the abuse, neglect, and exploitation of Montana's elderly through the identification and reporting of acts of such abuse, neglect, and exploitation.

History: En. Sec. 2, Ch. 623, L. 1983.

53-5-503. Definitions. As used in this part, the following definitions apply:

(1) "Abuse" means the infliction of physical or mental injury or the deprivation of food, shelter, clothing, or services necessary to maintain the physical or mental health of an older person without lawful authority. A declaration made pursuant to 50-9-103 constitutes lawful authority.

(2) "Exploitation" means the unreasonable use of an older person, his money, or his property to the advantage of another by means of duress, menace, fraud, or undue influence.

(3) "Long-term care facility" means a facility defined in 50-5-101.

(4) "Mental injury" means an identifiable and substantial impairment of an older person's intellectual or psychological functioning or well-being.

(5) "Neglect" means the failure of a guardian, employee of a public or private residential institution, facility, home, or agency, or any other person legally responsible in a residential setting for an older person's welfare to care for an older person by failing to provide food, shelter, clothing, or services necessary to maintain the physical or mental health of the older person.

(6) "Older person" means a person who is at least 60 years of age. For purposes of prosecution under 53-5-525(2), the person 60 years of age or older must be unable to protect himself from abuse, neglect, or exploitation because of a mental or physical impairment or because of frailties or dependencies brought about by advanced age.

(7) "Physical injury" means death, permanent or temporary disfigurement, or impairment of any bodily organ or function.

History: En. Sec. 3, Ch. 623, L. 1983; amd. Sec. 1, Ch. 668, L. 1985; amd. Sec. 111, Ch. 370, L. 1987; amd. Sec. 2, Ch. 450, L. 1987.

Compiler's Comments

1987 Amendments: Chapters 370 and 450 at end of (3) deleted reference to subsection (20) of 50-5-101.

53-5-504. Duties of department of family services. (1) The department of family services shall prepare an annual report of the information obtained pursuant to the reporting requirement of this part.

(2) The department shall, when appropriate, provide protective services under Title 53, chapter 5, part 2, for an older person alleged to have been abused, neglected, or exploited.

History: En. Sec. 9, Ch. 623, L. 1983; amd. Sec. 11, Ch. 609, L. 1987.

Compiler's Comments

1987 Amendment: Substituted "department of family services" for "department of social and rehabilitation services".

53-5-505. Adult protective service teams. The county attorney or the department of family services may convene one or more temporary or permanent interdisciplinary adult protective service teams. These teams may assist

in assessing the needs of, formulating and monitoring a treatment plan for, and coordinating services to older persons who are victims of abuse, neglect, or exploitation. The supervisor of adult protective services of the department of family services or his designee shall serve as the team's coordinator. Members must include a social worker, a member of a local law enforcement agency, a representative of the medical profession, and a county attorney or his designee, who is an attorney.

History: En. Sec. 1, Ch. 662, L. 1985; amd. Sec. 12, Ch. 609, L. 1987.

Compiler's Comments

1987 Amendment: Substituted "department of family services" for "county welfare department".

Cross-References

Office of County Attorney, Title 7, ch. 4, part 27.

Local government law enforcement, Title 7, ch. 32.

Licensing of medical doctors, Title 37, ch. 3.

Licensing of social workers, Title 37, ch. 22.

County departments of public welfare, Title 53, ch. 2, part 3.

53-5-506 through 53-5-510 reserved.

53-5-511. Reports. (1) When the professionals and other persons listed in subsection (3) know or have reasonable cause to suspect that an older person known to them in their professional or official capacities has been subjected to abuse, exploitation, or neglect, they shall:

(a) if the older person is not a resident of a long-term care facility, report the matter to:

(i) the department of family services or its local affiliate;

(ii) the county attorney of the county in which the older person resides or in which the acts that are the subject of the report occurred;

(b) if the older person is a resident of a long-term care facility, report the matter to the long-term care ombudsman appointed under the provisions of 42 U.S.C. 3027(a)(12) and to the department of health and environmental sciences. The department shall investigate the matter pursuant to its authority in 50-5-204 and, if it finds any allegations of abuse, exploitation, or neglect contained in the report to be substantially true, forward a copy of the report to the department of family services and to the county attorney as provided in subsection (1)(a)(ii).

(2) If the report required in subsection (1) involves an act or omission of the department of family services which may be construed as abuse, exploitation, or neglect, a copy of the report may not be sent to the department but must be sent instead to the county attorney of the county in which the older person resides or in which the acts that are the subject of the report occurred.

(3) Professionals and other persons required to report are:

(a) a physician, resident, intern, professional or practical nurse, physician's assistant, or member of a hospital staff engaged in the admission, examination, care, or treatment of persons;

(b) an osteopath, dentist, denturist, chiropractor, optometrist, podiatrist, medical examiner, coroner, or any other health or mental health professional;

(c) an ambulance attendant;

(d) a social worker or other employee of the state, a county, or a municipality assisting an older person in the application for or receipt of public assistance payments or services;

(e) a person who maintains or is employed by a roominghouse, retirement home, nursing home, group home, or adult foster care home;

(f) an attorney, unless he acquired knowledge of the facts required to be reported from a client and the attorney-client privilege applies; and

(g) a peace officer or other law enforcement official.

(4) Any other person may submit a report as provided in subsection (1).

History: En. Sec. 4, Ch. 623, L. 1983; amd. Sec. 13, Ch. 548, L. 1985; amd. Sec. 11, Ch. 609, L. 1987.

Compiler's Comments

1987 Amendment: Substituted "department of family services" for "department of social and rehabilitation services".

Cross-References

Long-term care facilities — licensing, Title 50, ch. 5, part 2.

53-5-512. Content of report. (1) The report required by 53-5-511 may be made in writing or orally, by telephone or in person. A person who receives an oral report must prepare it in writing as soon as possible.

(2) The report referred to under this section shall contain:

(a) the names and addresses of the older person and the person, if any, responsible for his care;

(b) the name and address, if available, of the person who is alleged to have abused, neglected, or exploited the older person;

(c) to the extent known, the person's age and the nature and extent of the abuse, neglect, or exploitation, including any evidence of previous injuries sustained by the older person; and

(d) the name and address of the person making the report.

History: En. Sec. 5, Ch. 623, L. 1983.

53-5-513. Confidentiality. (1) The case records of the department of social and rehabilitation services and its local affiliate, the county welfare department, the county attorney, and the court, concerning actions taken under this part, and all reports made pursuant to 53-5-511 shall be kept confidential except as provided by this section.

(2) The records and reports required to be kept confidential by subsection (1) may be disclosed, upon request, to the following persons or entities in this or any other state:

(a) a physician who has in his care an older person who he reasonably believes was abused, neglected, or exploited;

(b) a legal guardian or conservator of the older person if the identity of the person who made the report is protected and the legal guardian or conservator is not the person suspected of the abuse, neglect, or exploitation;

(c) the person named in the report as allegedly being abused, neglected, or exploited if that person is not legally incompetent;

(d) any person engaged in bona fide research if the person alleged in the report to have committed the abuse, exploitation, or neglect is later convicted of an offense constituting abuse, exploitation, or neglect and if the identity of the older person who is the subject of the report is not disclosed to the researcher; and

(e) an adult protective service team. Members of the team are required to keep information about the subject individuals confidential.

(3) The records and reports required to be kept confidential by subsection (1) shall be disclosed upon request to the following persons or entities in this or any other state:

(a) a county attorney or other law enforcement official who requires the information in connection with an investigation of a violation of this part;

(b) a court which has determined, in camera, that public disclosure of the report, data, information, or record is necessary for the determination of an issue before it;

(c) a grand jury upon its determination that the report, data, information, or record is necessary in the conduct of its official business.

(4) If the person who is reported to have abused, neglected, or exploited an older person is the holder of a license, permit, or certificate issued by the department of commerce or any other entity of state government under the provisions of Title 37, the report may be submitted to the entity that issued the license, permit, or certificate.

History: En. Sec. 6, Ch. 623, L. 1983; amd. Sec. 2, Ch. 662, L. 1985.

Cross-References

Guardianship and conservatorship, Title 72, ch. 5.

53-5-514. Immunity from civil and criminal liability. Any person who makes a report required or authorized to be made under 53-5-511 is immune from civil or criminal liability which might otherwise be incurred or imposed as a result of such a report unless the report is false in any material respect and the person acted in bad faith or with malicious purpose.

History: En. Sec. 7, Ch. 623, L. 1983.

Cross-References

Unsworn falsification to authorities, 45-7-203.

53-5-515 through 53-5-520 reserved.

53-5-521. Admissibility of evidence. In any proceeding resulting from a report made pursuant to the provisions of this part or in any proceeding where the report or its content is sought to be introduced into evidence, the report or its content or any other fact related to the report or to the condition of the older person who is the subject of the report may not be excluded on the ground that the matter is or may be the subject of a privilege granted in Title 26, chapter 1, part 8, except the attorney-client privilege granted by 26-1-803.

History: En. Sec. 8, Ch. 623, L. 1983.

53-5-522 through 53-5-524 reserved.

53-5-525. Penalties. (1) Any person who purposely or knowingly fails to make a report required by 53-5-511 or discloses or fails to disclose the contents of a case record or report in violation of 53-5-513 is guilty of an offense and upon conviction is punishable as provided in 46-18-212.

(2) Any individual who purposely or knowingly abuses, neglects, or exploits an older person is guilty of an offense and upon a first conviction may be fined an amount not to exceed $500 or be imprisoned in the county

jail for a term not to exceed 6 months, or both, and upon a second or succeeding conviction may be imprisoned for a term not to exceed 10 years and may be fined an amount not to exceed $10,000, or both."

History: En. Sec. 10, Ch. 623, L. 1983; amd. Sec. 2, Ch. 668, L. 1985; amd. Sec. 1, Ch. 444, L. 1987.

Compiler's Comments

1987 Amendment: In (1) substituted "an offense" for "a misdemeanor offense"; in (2), after "guilty of", substituted "an offense" for "a misdemeanor", before "conviction" inserted "a first", and added last provision relating to a second or succeeding conviction.

Part 6

State Plan on Aging

Part Cross-References

Area agencies for aging services, 53-5-103.

53-5-601. Definitions. As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Department" means the department of family services.

(2) "Older Americans Act" means the Older Americans Act of 1965, as amended, 42 U.S.C. 3001, et seq.

(3) "Planning and service area" means a geographic area of the state that is designated for purposes of planning, development, delivery, and overall administration of services under the Older Americans Act.

(4) "Services to the aged" means those services the department administers pursuant to the Older Americans Act.

(5) "State plan" means a plan developed by the department to coordinate and administer delivery of services under the Older Americans Act.

History: En. Sec. 1, Ch. 645, L. 1983; amd. Sec. 11, Ch. 609, L. 1987.

Compiler's Comments

1987 Amendment: Substituted "department of family services" for "department of social and rehabilitation services".

53-5-602. Purpose. The purpose of this part is to grant the department authority to develop and administer the state plan on aging, to coordinate services to the aged pursuant to the Older Americans Act, and to establish or redesignate planning and service areas pursuant to section 305 of that act. It is the intent of the legislature that the number of planning and service areas be limited so that unnecessary administrative costs are eliminated.

History: En. Sec. 2, Ch. 645, L. 1983.

53-5-603. Existing planning and service areas grandfathered — exception. The 11 planning and service areas existing on April 27, 1983, are grandfathered in for a period of not less than 4 years. However, the department may accept and consider requests from such existing planning and service areas that the requesting area be divided into two new areas and may grant one request and divide the area into two new areas. If the department grants a request and divides the requesting area into two new areas, this section's grandfather clause applies to the two new areas.

History: En. Sec. 3, Ch. 645, L. 1983.

50-5-601. Short title. This part may be cited as the "Family Practice Training Act of 1985".

History: En. Sec. 1, Ch. 649, L. 1985.

50-5-602. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of health and environmental sciences provided for in 2-15-2101.

(2) "Family practice" means comprehensive medical care with particular emphasis on the family unit, in which the physician's continuing responsibility for health care is not limited by the patient's age or sex or by a particular organ system or disease entity.

(3) "Residency training" means a community-based family practice program to train family practice resident physicians, sponsored by one or more community hospitals and physicians in Montana, for inpatient and outpatient training.

(4) "Resident physician" means any physician in advanced medical specialty training.

History: En. Sec. 2, Ch. 649, L. 1985.

50-5-603. Montana family practice training program. (1) There is created a Montana family practice training program to train resident physicians in family practice.

(2) The program is under the authority of the department, and the department shall contract with a nonprofit corporation organized under the laws of Montana or certified to do business in Montana, to coordinate the training of family practice resident physicians. The officers and directors of the corporation must be qualified by education, experience, and interest to administer and oversee family practice resident physician training activity.

(3) No resident physician may train more than 2 months in any one community in any 12-month period.

History: En. Sec. 3, Ch. 649, L. 1985.

50-5-604 through 50-5-610 reserved.

50-5-611. Funding limitations. (1) Money appropriated for residency training is in addition to any other money appropriated for medical educational programs and may not supplant funds for existing medical educational programs.

(2) No funds appropriated by the legislature to fund residency training may subsidize the cost incurred by patients.

History: En. Sec. 4, Ch. 649, L. 1985.

Parts 7 through 10 reserved

Part 11
Long-Term Health Care Facilities

50-5-1101. Short title. This part may be cited as the "Montana Long-Term Care Residents' Bill of Rights".

History: En. Sec. 1, Ch. 582, L. 1987.

50-5-1102. Findings and purpose. (1) The legislature finds and declares that many residents of long-term care facilities are isolated from the community and lack the means to assert their rights.

(2) The purpose of this part is to:

(a) establish and recognize the fundamental civil and human rights to which residents of long-term care facilities are entitled; and

(b) provide for the education of residents and staff regarding these rights.

History: En. Sec. 2, Ch. 582, L. 1987.

50-5-1103. Definitions. In this part the following definitions apply:

(1) "Administrator" means a person who is licensed as a nursing home administrator under Title 37, chapter 9, and who administers, manages, or supervises a long-term care facility.

(2) "Authorized representative" means:

(a) a person holding a general power of attorney for a resident;

(b) a person appointed by a court to manage the personal or financial affairs of a resident;

(c) a representative payee;

(d) a resident's next of kin; or

(e) a sponsoring agency.

(3) "Department" means the department of health and environmental sciences.

(4) "Facility" or "long-term care facility" means a facility or part thereof licensed under Title 50, chapter 5, to provide skilled nursing care, intermediate nursing care, or personal care.

(5) "Long-term care ombudsman" means the individual appointed to fulfill the requirement of 42 U.S.C. 3027(a)(12) that the state provide an advocate for residents of long-term care facilities.

(6) "Resident" means a person who lives in a long-term care facility.

History: En. Sec. 3, Ch. 582, L. 1987.

50-5-1104. Rights of long-term care facility residents. (1) The state adopts by reference for all long-term care facilities the rights for long-term care facility residents applied by the federal government to facilities that provide skilled nursing care or intermediate nursing care and participate in a medicaid or medicare program (42 U.S.C. 1395x(j) and 1396d(c), as implemented by regulation).

(2) In addition to the rights adopted under subsection (1), the state adopts for all residents of long-term care facilities the following rights:

(a) A resident or his authorized representative must be informed by the facility at least 30 days in advance of any changes in the cost or availability of services, unless to do so is beyond the facility's control.

(b) Regardless of the source of payment, each resident or his authorized representative is entitled, upon request, to receive and examine an explanation of his monthly bill.

(c) Residents have the right to organize, maintain, and participate in resident advisory councils. The facility shall afford reasonable privacy and facility space for the meetings of such councils.

(d) A resident has the right to present a grievance on his own behalf or that of others to the facility or the resident advisory council. The facility shall

establish written procedures for receiving, handling, and informing residents or the resident advisory council of the outcome of any grievance presented.

(e) A resident has the right to ask a state agency or a resident advocate for assistance in resolving grievances, free from restraint, interference, or reprisal.

(f) During his stay in a long-term care facility, a resident retains the prerogative to exercise decisionmaking rights in all aspects of his health care, including placement and treatment issues such as medication, special diets, or other medical regimens.

(g) The resident's authorized representative must be notified in a prompt manner of any significant accident, unexplained absence, or significant change in the resident's health status.

(h) A resident has the right to be free from verbal, mental, and physical abuse, neglect, or financial exploitation. Facility staff shall report to the department and the long-term care ombudsman any suspected incidents of abuse under the Montana Elder Abuse Prevention Act, Title 53, chapter 5, part 5.

(i) Each resident has the right to privacy in his room or portion of the room. If a resident is seeking privacy in his room, staff members should make reasonable efforts to make their presence known when entering the room.

(j) In case of involuntary transfer or discharge, a resident has the right to reasonable advance notice to ensure an orderly transfer or discharge. Reasonable advance notice requires at least 21 days' written notification of any interfacility transfer or discharge except in cases of emergency or for medical reasons documented in the resident's medical record by the attending physician.

(k) If clothing is provided to the resident by the facility, it must be of reasonable fit.

(l) A resident has the right to reasonable safeguards for his personal possessions brought to the facility. The facility shall provide a means for safeguarding the resident's small items of value in his room or in another part of the facility where he must have reasonable access to the items.

(m) The resident has the right to have all losses or thefts of personal possessions promptly investigated by the facility. The results of the investigation must be reported to the affected resident.

(3) The administrator of the facility shall adopt whatever additional measures are necessary to implement the residents' rights listed in subsections (1) and (2) and meet any other requirements relating to residents' health and safety that are conditions of participation in a state or federal program of medical assistance.

History: En. Sec. 4, Ch. 582, L. 1987.

50-5-1105. Long-term care facility to adopt and post residents' rights. (1) The administrator of each long-term care facility shall:

(a) adopt a written statement of rights applicable to all residents of its facility, including as a minimum the rights listed in 50-5-1104;

(b) provide each resident, at the time of his admission to the facility, a copy of the facility's statement of residents' rights, receipt of which the resident or his authorized representative shall acknowledge in writing;

(c) provide each resident with a written statement of any change in residents' rights at the time the change is implemented, receipt of which the resident or his authorized representative shall acknowledge in writing; and

(d) train and involve staff members in the implementation of residents' rights as expressed in the statement adopted by the facility.

(2) Each staff member shall affirm in writing that he has read and understands the facility's statement of residents' rights.

(3) The administrator of the facility shall post in a conspicuous place visible to the public a copy of the facility's statement of residents' rights, presented in a format that can be read easily by the residents and by the public.

History: En. Sec. 5, Ch. 582, L. 1987.

50-5-1106. Resident's rights devolve to authorized representative. The rights and responsibilities listed in 50-5-1104 and 50-5-1105 devolve to the resident's authorized representative when the resident:

(1) exhibits a communication barrier;

(2) has been found by his physician to be medically incapable of understanding these rights; or

(3) has been adjudicated incompetent by a district court.

History: En. Sec. 6, Ch. 582, L. 1987.

50-5-1107. Enforcement of residents' rights. The requirements of 50-5-1104 through 50-5-1106 are included in the minimum standards considered by the department in reviewing applications for license, as provided in 50-5-204.

History: En. Sec. 7, Ch. 582, L. 1987.

CHAPTER 6

EMERGENCY MEDICAL SERVICES

Part 1 — Development of Program

Part 2 — Emergency Medical Technicians

Part 3 — Ambulance Service Licensing

January 11, 1989

TESTIMONY IN SUPPORT OF HB87

"AN ACT TO AMEND CERTAIN DEFINITIONS WITHIN THE CHILD ABUSE, NEGLECT AND DEPENDENCY LAW; AMENDING SECTION 41-3-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

John Madsen, Department of Family Services

The Department requests these changes to comply with provisions of Public Law 93-247, the Child Abuse Prevention and Treatment Act ("Model Act").

Montana DFS receives approximately $170,000 per year in federal child abuse and neglect money. Failure to bring these definitions into compliance with the federal "Model Act" will cause the loss of that $170,000. This money is currently used by DFS to improve the child abuse and neglect prevention and treatment components of our program. For example, the money is used to train social workers, law enforcement officers, county attorneys, and medical professionals in all aspects of sexual abuse. The loss would be a substantial one to our program.

There are many changes in the bill, most of them technical in nature, to clean up the act.

EXHIBIT 4
DATE 1-11-87
HB 87

The first change I would like to note is that dealing with child sexual abuse and exploitation. This change will provide a clearer definition of the problem.

The most substantial and far reaching change found in the bill is that adding day care providers to the list of persons responsible. This change was brought about because of the child sexual abuse that has been discovered to be occurring nationwide in day care facilities. As has already been noted, Montana DFS already investigates complaints in day care facilities as part of its regulatory function.

The other changes are technical in nature. I would be happy to answer questions about any of the changes in the bill.

VISITORS' REGISTER

HUMAN SERVICES AND AGING COMMITTEE

BILL NO. HB 86 DATE 1/11/89

SPONSOR Rep. Kilpatrick

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
~~Walt Madsen~~	~~County Services~~	X	
Doug Blakley	St Ombudsman, DFS	X	
Owen Warren	AARP Helena	X	
Rose Hughes	MHCA, Helena		X

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

HUMAN SERVICES AND AGING COMMITTEE

BILL NO. HB 87 DATE 1/11/89

SPONSOR Rep. Kilpatrick

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
John Madsen	Family Services	X	
~~Carol Edwards~~	~~MWRP, Helena~~	~~X~~	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.