

HOUSE BILL NO. 773

Introduced: 02/12/83

Referred to Committee on Human Services: 02/12/83

Hearing: 2/17/83

Report: 02/18/83, Do Pass

2nd Reading: 02/19/83, Do Pass

3rd Reading: 02/22/83, Do Not Pass

3rd Reading: 02/23/83, Do Not Pass

Bill Killed

1 *J. Jansen* *House* BILL NO. *273*  
 2 INTRODUCED BY *Farris* *Don Baudoune* *Farris*  
 3 *Vincent* *Berg* *Alvin* *Quintana* *John Berg* *Alvin*

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH A  
 5 LONG-TERM CARE OMBUDSMAN PROGRAM; TO SPECIFY THE POWERS AND  
 6 DUTIES; TO IMPOSE CERTAIN REQUIREMENTS ON LONG-TERM CARE  
 7 FACILITIES; TO PROVIDE PENALTIES; AND PROVIDING AN EFFECTIVE  
 8 DATE."

9  
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Purpose. The legislature finds that a  
 12 significant number of disabled and elderly Montanans reside  
 13 in long-term care facilities in this state and, because of  
 14 their isolated and vulnerable condition, they are dependent  
 15 on others for their protection and care. It is the purpose  
 16 of the legislature to monitor the quality of care and life  
 17 for these residents through the promotion of community  
 18 involvement in long-term care facilities and by the  
 19 establishment of a long-term care ombudsman program to  
 20 resolve complaints and problems of these residents. It is  
 21 further intended that the long-term care ombudsman program  
 22 will assure that a good quality of care and life for such  
 23 residents is maintained, that necessary investigations and  
 24 reports are made, and that corrective action is taken as  
 25 required pursuant to the Older Americans Act, 42 U.S.C.

1 3027(a)(12), and regulations adopted thereunder.

2 Section 2. Definitions. As used in [this act], the  
 3 following definitions apply:

4 (1) "Board" means the long-term care ombudsman  
 5 oversight board established in [section 5].

6 (2) "Long-term care facility" means any facility  
 7 defined in the Older Americans Act, 42 U.S.C. 3022(3),  
 8 including but not limited to those long-term care facilities  
 9 defined in 50-5-101(20) and including boardinghouses,  
 10 roominghouses, retirement homes, or similar accommodations  
 11 defined in Title 50, chapter 51, part 1.

12 Section 3. Powers and duties of ombudsman. (1) The  
 13 ombudsman shall serve as an advocate for Montana's disabled  
 14 and elderly citizens residing in long-term care facilities,  
 15 regardless of age or source of payment for their care, to  
 16 insure that their rights are protected and that they receive  
 17 quality care and reside in safe environments.

18 (2) The ombudsman shall carry out the responsibilities  
 19 assigned to the state under the Older Americans Act to  
 20 maintain an effective long-term care ombudsman program.

21 (3) The ombudsman, on behalf of the board, is  
 22 responsible for encouraging local community organizations to  
 23 become involved with long-term care facility residents and  
 24 their activities.

25 (4) The ombudsman may appear at public hearings held

before state and federal agencies, as a representative of long-term care facility residents, on all matters that in any way affect them, and he has all rights and powers of any party in interest appearing before such agencies.

(5) The ombudsman may, on behalf of the board, institute, intervene in, or otherwise participate in appropriate proceedings in the state and federal courts and administrative agencies in the name of and on behalf of the class of long-term care facility residents in the state that may be affected.

(6) The ombudsman must be notified of the number and nature of complaints received by other statewide agencies involved with the resolution and investigation of complaints related to long-term care facilities for the purpose of developing a uniform statewide complaint reporting system.

Section 4. Long-term care ombudsman -- qualifications. There is a long-term care ombudsman, who must have the following minimum qualifications and such additional qualifications as the board determines appropriate:

(1) a bachelor's degree or equivalent from an accredited college or university with a major or minor in social work, nursing, psychology, gerontology, or an allied field; and

(2) a master's degree or doctorate degree or equivalent from an accredited college or university in

social work, nursing, psychology, public administration, law, or an allied field.

#### Section 5. Long-term care ombudsman oversight board.

(1) The governor shall appoint a long-term care ombudsman oversight board.

(2) The board consists of five persons representing but not limited to consumers and health care professionals. At least three of the members must be persons who are not health care professionals and at least one must be a representative of an organization concerned with the care and welfare of residents of a nursing home or personal care home. No one may be a member of the board who is a full-time agent or employee of the department of health and environmental sciences, department of institutions, or department of social and rehabilitation services or of a long-term care facility as that term is defined in [section 2].

(3) The board is attached to the office of governor for administrative purposes only as provided in 2-15-121.

(4) The board is designated as a quasi-judicial board for purposes of 2-15-124.

Section 6. Powers and duties of board. (1) The board shall:

(a) meet at least quarterly and as often as it considers necessary;

(b) employ staff to assist it in carrying out its duties and responsibilities, including the hiring of a state long-term care ombudsman;

(c) direct the operation of a long-term care ombudsman program for Montana;

(d) with the assistance of the ombudsman, prepare an annual report on the conditions and issues in Montana's long-term care facilities for submission to the governor and the legislature; and

(e) be granted access to any long-term care facility and appropriate private access to any resident whenever necessary to investigate and resolve complaints concerning the quality of care and the protection of residents' rights.

(2) The board may:

(a) receive for carrying out its responsibilities any money available to the state under the Older Americans Act to conduct a long-term care ombudsman program pursuant to 42 U.S.C. 3024(d)(1)(B), 3027(a)(18), 3035b, and 3035c;

(b) seek and receive other private and federal funds in its own name;

(c) determine all matters of policy concerning the use of its budget;

(d) recommend to the governor and the legislature the repeal, amendment, or adoption of any law or rule; and

(e) with the written permission of any resident or the

resident's legal representative, obtain access to the resident's medical and personal records for purposes of investigating and resolving complaints.

(3) The board may employ its own legal counsel for advice and representation. If federal funding is provided under the Older Americans Act for legal services advocacy and the hiring of an attorney-legal services developer, the board shall hire this person with these funds and utilize his services.

#### Section 7. Confidentiality of records and complaints.

(1) All records, complaints, and information concerning residents and all investigations of the board and ombudsman and their agents are confidential and not subject to public inspection.

(2) It is a misdemeanor for the board or ombudsman or an agent of either of them to disclose the identity of any complainant or resident unless:

(a) the complainant or resident or his legal representative consents in writing to the disclosure and specifies to whom the identity may be disclosed; or

(b) a court orders the disclosure.

Section 8. Immunity from civil and criminal suit. No civil or criminal liability may be imposed on any person who makes a complaint or provides information as authorized in [this act] that is relevant to a complaint received or an

1 investigation or activity conducted pursuant to [this act]  
 2 unless such complaint or information is false and the person  
 3 providing such information knew or had reason to believe  
 4 that such complaint or information was false.

5 Section 9. Discrimination or retaliation prohibited --  
 6 presumption. (1) No long-term care facility may discriminate  
 7 or retaliate in any manner against a resident or employee  
 8 because such resident or employee or other person has  
 9 initiated or filed a complaint or provided information in  
 10 good faith to the board, the ombudsman, an agent of either  
 11 of them, or the department of health and environmental  
 12 sciences concerning the care of a resident or condition of  
 13 such long-term care facility.

14 (2) Any attempt to expel a resident from a long-term  
 15 care facility or any type of discriminatory treatment of a  
 16 resident by whom or upon whose behalf a complaint or  
 17 information has been submitted to the board, the ombudsman,  
 18 an agent of either of them, or the department of health and  
 19 environmental sciences within 120 days of the date the  
 20 complaint or information was submitted gives rise to a  
 21 rebuttable presumption that such action was taken by the  
 22 long-term care facility in retaliation for submitting the  
 23 complaint or information.

24 Section 10. Notice to residents required. (1) The  
 25 ombudsman shall prepare and distribute to each licensed

1 long-term care facility a written notice, giving information  
 2 about the board and describing the ombudsman program and the  
 3 procedure to follow in seeking additional information on the  
 4 program or making a complaint.

5 (2) Each licensed long-term care facility shall post  
 6 such notice in a conspicuous public place in its facility.  
 7 In addition, at the time a new resident moves in, each  
 8 facility shall advise the new resident or the resident's  
 9 legal representative of the existence of the board and the  
 10 ombudsman program and how the ombudsman may be contacted.

11 Section 11. Penalty -- enforcement. (1) A long-term  
 12 care facility violating [section 6(1)(e), section 9, or  
 13 section 10] is subject to a civil penalty of not less than  
 14 \$50 or more than \$1,000 for each violation.

15 (2) The board may, through its own counsel or upon  
 16 request to the county attorney or the attorney general, seek  
 17 to recover the civil penalty provided in subsection (1) and  
 18 may bring an action to enjoin a violation of [section  
 19 6(1)(e), section 9, or section 10].

20 (3) Any penalties recovered must be deposited in the  
 21 state general fund.

22 Section 12. Severability. If a part of this act is  
 23 invalid, all valid parts that are severable from the invalid  
 24 part remain in effect. If a part of this act is invalid in  
 25 one or more of its applications, the part remains in effect

LC 2343/01

1 In all valid applications that are severable from the  
2 invalid applications.

3 Section 13. Effective date. This act is effective July  
4 1, 1983.

-End-

## STATE OF MONTANA

REQUEST NO. 401-83

## FISCAL NOTE

Form BD-15

In compliance with a written request received February 16, , 19 83 , there is hereby submitted a Fiscal Note for House Bill 773 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA).

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

House Bill 773 establishes an Ombudsman Program and an Oversight Board for the purpose of investigating and resolving complaints on behalf of residents/patients in long term care facilities.

ASSUMPTIONS:

- 1) Five members of the board will be reimbursed for travel costs for four meetings per year (average reimbursement per member per meeting = \$277).
- 2) The Ombudsman will receive full-time salary of \$24,500 and benefits of \$4,101.
- 3) There will be two additional full-time staff, an attorney, and secretary (grade 10).
- 4) Local Ombudsmen for each county will be reimbursed for mileage incurred as a result of their regular, monthly visitation to long-term care facilities.
- 5) Five training sessions will be conducted by Ombudsman on a statewide basis.
- 6) Approximately \$70,000 should be available to the program from federal funds Title IIIB and Title IVC, Older Americans Act for Ombudsman and Advocacy activities.
- 7) Operating costs for the board will increase 6% each year.
- 8) Full-time staff will receive .04% increase in salary for 1985.
- 9) The Information and Referral Program will stay under SRS.

FISCAL IMPACT:

	<u>FY 84</u>	<u>FY 85</u>
Personal Services	\$ 77,194	\$ 80,282
Operating Expenses	57,192	57,525
Equipment	4,500	-0-
Total	<u>\$138,886</u>	<u>\$137,807</u>
Funding:		
Federal Grants to State	\$ 70,000	\$ 70,000
State Funds	68,887	67,807
Total	<u>\$138,886</u>	<u>\$137,807</u>

FISCAL NOTE 14:K/1

  
 BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-17-83

Approved by Comm. on Human Services

1 *J. Jensen* *House* BILL No. *273*  
 2 INTRODUCED BY *Farris, Sen. Bauman, Farris*  
 3 *Vincent, Bergne, Blundie, Rappaport*  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH A  
 5 LONG-TERM CARE OMBUDSMAN PROGRAM; TO SPECIFY THE POWERS AND  
 6 DUTIES; TO IMPOSE CERTAIN REQUIREMENTS ON LONG-TERM CARE  
 7 FACILITIES; TO PROVIDE PENALTIES; AND PROVIDING AN EFFECTIVE  
 8 DATE."  
 9  
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
 11 Section 1. Purpose. The legislature finds that a  
 12 significant number of disabled and elderly Montanans reside  
 13 in long-term care facilities in this state and, because of  
 14 their isolated and vulnerable condition, they are dependent  
 15 on others for their protection and care. It is the purpose  
 16 of the legislature to monitor the quality of care and life  
 17 for these residents through the promotion of community  
 18 involvement in long-term care facilities and by the  
 19 establishment of a long-term care ombudsman program to  
 20 resolve complaints and problems of these residents. It is  
 21 further intended that the long-term care ombudsman program  
 22 will assure that a good quality of care and life for such  
 23 residents is maintained, that necessary investigations and  
 24 reports are made, and that corrective action is taken as  
 25 required pursuant to the Older Americans Act, 42 U.S.C.

1 3027(a)(12), and regulations adopted thereunder.  
 2 Section 2. Definitions. As used in [this act], the  
 3 following definitions apply:  
 4 (1) "Board" means the long-term care ombudsman  
 5 oversight board established in [section 5].  
 6 (2) "Long-term care facility" means any facility  
 7 defined in the Older Americans Act, 42 U.S.C. 3022(3),  
 8 including but not limited to those long-term care facilities  
 9 defined in 50-5-101(20) and including boardinghouses,  
 10 roominghouses, retirement homes, or similar accommodations  
 11 defined in Title 50, chapter 51, part 1.  
 12 Section 3. Powers and duties of ombudsman. (1) The  
 13 ombudsman shall serve as an advocate for Montana's disabled  
 14 and elderly citizens residing in long-term care facilities,  
 15 regardless of age or source of payment for their care, to  
 16 insure that their rights are protected and that they receive  
 17 quality care and reside in safe environments.  
 18 (2) The ombudsman shall carry out the responsibilities  
 19 assigned to the state under the Older Americans Act to  
 20 maintain an effective long-term care ombudsman program.  
 21 (3) The ombudsman, on behalf of the board, is  
 22 responsible for encouraging local community organizations to  
 23 become involved with long-term care facility residents and  
 24 their activities.  
 25 (4) The ombudsman may appear at public hearings held



1 before state and federal agencies, as a representative of  
2 long-term care facility residents, on all matters that in  
3 any way affect them, and he has all rights and powers of any  
4 party in interest appearing before such agencies.

5 (5) The ombudsman may, on behalf of the board,  
6 institute, intervene in, or otherwise participate in  
7 appropriate proceedings in the state and federal courts and  
8 administrative agencies in the name of and on behalf of the  
9 class of long-term care facility residents in the state that  
10 may be affected.

11 (6) The ombudsman must be notified of the number and  
12 nature of complaints received by other statewide agencies  
13 involved with the resolution and investigation of complaints  
14 related to long-term care facilities for the purpose of  
15 developing a uniform statewide complaint reporting system.

16 Section 4. Long-term care ombudsman -- qualifications.

17 There is a long-term care ombudsman, who must have the  
18 following minimum qualifications and such additional  
19 qualifications as the board determines appropriate:

20 (1) a bachelor's degree or equivalent from an  
21 accredited college or university with a major or minor in  
22 social work, nursing, psychology, gerontology, or an allied  
23 field; and

24 (2) a master's degree or doctorate degree or  
25 equivalent from an accredited college or university in

1 social work, nursing, psychology, public administration,  
2 law, or an allied field.

3 Section 5. Long-term care ombudsman oversight board.

4 (1) The governor shall appoint a long-term care ombudsman  
5 oversight board.

6 (2) The board consists of five persons representing  
7 but not limited to consumers and health care professionals.  
8 At least three of the members must be persons who are not  
9 health care professionals and at least one must be a  
10 representative of an organization concerned with the care  
11 and welfare of residents of a nursing home or personal care  
12 home. No one may be a member of the board who is a  
13 full-time agent or employee of the department of health and  
14 environmental sciences, department of institutions, or  
15 department of social and rehabilitation services or of a  
16 long-term care facility as that term is defined in [section  
17 2].

18 (3) The board is attached to the office of governor  
19 for administrative purposes only as provided in 2-15-121.

20 (4) The board is designated as a quasi-judicial board  
21 for purposes of 2-15-124.

22 Section 6. Powers and duties of board. (1) The board  
23 shall:

24 (a) meet at least quarterly and as often as it  
25 considers necessary;

1 (b) employ staff to assist it in carrying out its  
2 duties and responsibilities, including the hiring of a state  
3 long-term care ombudsman;

4 (c) direct the operation of a long-term care ombudsman  
5 program for Montana;

6 (d) with the assistance of the ombudsman, prepare an  
7 annual report on the conditions and issues in Montana's  
8 long-term care facilities for submission to the governor and  
9 the legislature; and

10 (a) be granted access to any long-term care facility  
11 and appropriate private access to any resident whenever  
12 necessary to investigate and resolve complaints concerning  
13 the quality of care and the protection of residents' rights.

14 (2) The board may:

15 (a) receive for carrying out its responsibilities any  
16 money available to the state under the Older Americans Act  
17 to conduct a long-term care ombudsman program pursuant to 42  
18 U.S.C. 3024(d)(1)(B), 3027(a)(10), 3035b, and 3035c;

19 (b) seek and receive other private and federal funds  
20 in its own name;

21 (c) determine all matters of policy concerning the use  
22 of its budget;

23 (d) recommend to the governor and the legislature the  
24 repeal, amendment, or adoption of any law or rule; and

25 (e) with the written permission of any resident or the

1 resident's legal representative, obtain access to the  
2 resident's medical and personal records for purposes of  
3 investigating and resolving complaints.

4 (3) The board may employ its own legal counsel for  
5 advice and representation. If federal funding is provided  
6 under the Older Americans Act for legal services advocacy  
7 and the hiring of an attorney-legal services developer, the  
8 board shall hire this person with these funds and utilize  
9 his services.

10 Section 7. Confidentiality of records and complaints.

11 (1) All records, complaints, and information concerning  
12 residents and all investigations of the board and ombudsman  
13 and their agents are confidential and not subject to public  
14 inspection.

15 (2) It is a misdemeanor for the board or ombudsman or  
16 an agent of either of them to disclose the identity of any  
17 complainant or resident unless:

18 (a) the complainant or resident or his legal  
19 representative consents in writing to the disclosure and  
20 specifies to whom the identity may be disclosed; or

21 (b) a court orders the disclosure.

22 Section 8. Immunity from civil and criminal suit. No  
23 civil or criminal liability may be imposed on any person who  
24 makes a complaint or provides information as authorized in  
25 [this act] that is relevant to a complaint received or an

1 investigation or activity conducted pursuant to [this act]  
 2 unless such complaint or information is false and the person  
 3 providing such information knew or had reason to believe  
 4 that such complaint or information was false.

5 Section 9. Discrimination or retaliation prohibited --  
 6 presumption. (1) No long-term care facility may discriminate  
 7 or retaliate in any manner against a resident or employee  
 8 because such resident or employee or other person has  
 9 initiated or filed a complaint or provided information in  
 10 good faith to the board, the ombudsman, an agent of either  
 11 of them, or the department of health and environmental  
 12 sciences concerning the care of a resident or condition of  
 13 such long-term care facility.

14 (2) Any attempt to expel a resident from a long-term  
 15 care facility or any type of discriminatory treatment of a  
 16 resident by whom or upon whose behalf a complaint or  
 17 information has been submitted to the board, the ombudsman,  
 18 an agent of either of them, or the department of health and  
 19 environmental sciences within 120 days of the date the  
 20 complaint or information was submitted gives rise to a  
 21 rebuttable presumption that such action was taken by the  
 22 long-term care facility in retaliation for submitting the  
 23 complaint or information.

24 Section 10. Notice to residents required. (1) The  
 25 ombudsman shall prepare and distribute to each licensed

1 long-term care facility a written notice, giving information  
 2 about the board and describing the ombudsman program and the  
 3 procedure to follow in seeking additional information on the  
 4 program or making a complaint.

5 (2) Each licensed long-term care facility shall post  
 6 such notice in a conspicuous public place in its facility.  
 7 In addition, at the time a new resident moves in, each  
 8 facility shall advise the new resident or the resident's  
 9 legal representative of the existence of the board and the  
 10 ombudsman program and how the ombudsman may be contacted.

11 Section 11. Penalty -- enforcement. (1) A long-term  
 12 care facility violating [section 6(1)(e), section 9, or  
 13 section 10] is subject to a civil penalty of not less than  
 14 \$50 or more than \$1,000 for each violation.

15 (2) The board may, through its own counsel or upon  
 16 request to the county attorney or the attorney general, seek  
 17 to recover the civil penalty provided in subsection (1) and  
 18 may bring an action to enjoin a violation of [section  
 19 6(1)(e), section 9, or section 10].

20 (3) Any penalties recovered must be deposited in the  
 21 state general fund.

22 Section 12. Severability. If a part of this act is  
 23 invalid, all valid parts that are severable from the invalid  
 24 part remain in effect. If a part of this act is invalid in  
 25 one or more of its applications, the part remains in effect

LC 2343/01

1 In all valid applications that are severable from the  
2 invalid applications.

3 Section 13. Effective date. This act is effective July  
4 1, 1983.

-End-

1 *J. Jansen* *House* BILL NO. *773*  
 2 INTRODUCED BY *Farris, Rep. Barabangue, Zappa*  
*Vincent, Berghne, Alndor, Dystaine*  
*Berg, Kuttan*  
 3  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH A  
 5 LONG-TERM CARE OMBUDSMAN PROGRAM; TO SPECIFY THE POWERS AND  
 6 DUTIES; TO IMPOSE CERTAIN REQUIREMENTS ON LONG-TERM CARE  
 7 FACILITIES; TO PROVIDE PENALTIES; AND PROVIDING AN EFFECTIVE  
 8 DATE."  
 9

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Purpose. The legislature finds that a  
 12 significant number of disabled and elderly Montanans reside  
 13 in long-term care facilities in this state and, because of  
 14 their isolated and vulnerable condition, they are dependent  
 15 on others for their protection and care. It is the purpose  
 16 of the legislature to monitor the quality of care and life  
 17 for these residents through the promotion of community  
 18 involvement in long-term care facilities and by the  
 19 establishment of a long-term care ombudsman program to  
 20 resolve complaints and problems of these residents. It is  
 21 further intended that the long-term care ombudsman program  
 22 will assure that a good quality of care and life for such  
 23 residents is maintained, that necessary investigations and  
 24 reports are made, and that corrective action is taken as  
 25 required pursuant to the Older Americans Act, 42 U.S.C.

1 3027(a)(12), and regulations adopted thereunder.

2 Section 2. Definitions. As used in [this act], the  
 3 following definitions apply:

4 (1) "Board" means the long-term care ombudsman  
 5 oversight board established in [section 5].

6 (2) "Long-term care facility" means any facility  
 7 defined in the Older Americans Act, 42 U.S.C. 3022(3),  
 8 including but not limited to those long-term care facilities  
 9 defined in 50-5-101(20) and including boardinghouses,  
 10 roominghouses, retirement homes, or similar accommodations  
 11 defined in Title 50, chapter 51, part 1.

12 Section 3. Powers and duties of ombudsman. (1) The  
 13 ombudsman shall serve as an advocate for Montana's disabled  
 14 and elderly citizens residing in long-term care facilities,  
 15 regardless of age or source of payment for their care, to  
 16 insure that their rights are protected and that they receive  
 17 quality care and reside in safe environments.

18 (2) The ombudsman shall carry out the responsibilities  
 19 assigned to the state under the Older Americans Act to  
 20 maintain an effective long-term care ombudsman program.

21 (3) The ombudsman, on behalf of the board, is  
 22 responsible for encouraging local community organizations to  
 23 become involved with long-term care facility residents and  
 24 their activities.

25 (4) The ombudsman may appear at public hearings held

1 before state and federal agencies, as a representative of  
2 long-term care facility residents, on all matters that in  
3 any way affect them, and he has all rights and powers of any  
4 party in interest appearing before such agencies.

5 (5) The ombudsman may, on behalf of the board,  
6 institute, intervene in, or otherwise participate in  
7 appropriate proceedings in the state and federal courts and  
8 administrative agencies in the name of and on behalf of the  
9 class of long-term care facility residents in the state that  
10 may be affected.

11 (6) The ombudsman must be notified of the number and  
12 nature of complaints received by other statewide agencies  
13 involved with the resolution and investigation of complaints  
14 related to long-term care facilities for the purpose of  
15 developing a uniform statewide complaint reporting system.

16 Section 4. Long-term care ombudsman -- qualifications.  
17 There is a long-term care ombudsman, who must have the  
18 following minimum qualifications and such additional  
19 qualifications as the board determines appropriate:

20 (1) a bachelor's degree or equivalent from an  
21 accredited college or university with a major or minor in  
22 social work, nursing, psychology, gerontology, or an allied  
23 field; and

24 (2) a master's degree or doctorate degree or  
25 equivalent from an accredited college or university in

1 social work, nursing, psychology, public administration,  
2 law, or an allied field.

3 Section 5. Long-term care ombudsman oversight board.

4 (1) The governor shall appoint a long-term care ombudsman  
5 oversight board.

6 (2) The board consists of five persons representing  
7 but not limited to consumers and health care professionals.  
8 At least three of the members must be persons who are not  
9 health care professionals and at least one must be a  
10 representative of an organization concerned with the care  
11 and welfare of residents of a nursing home or personal care  
12 home. No one may be a member of the board who is a  
13 full-time agent or employee of the department of health and  
14 environmental sciences, department of institutions, or  
15 department of social and rehabilitation services or of a  
16 long-term care facility as that term is defined in [section  
17 2].

18 (3) The board is attached to the office of governor  
19 for administrative purposes only as provided in 2-15-121.

20 (4) The board is designated as a quasi-judicial board  
21 for purposes of 2-15-124.

22 Section 6. Powers and duties of board. (1) The board  
23 shall:

24 (a) meet at least quarterly and as often as it  
25 considers necessary;

(b) employ staff to assist it in carrying out its duties and responsibilities, including the hiring of a state long-term care ombudsman;

(c) direct the operation of a long-term care ombudsman program for Montana;

(d) with the assistance of the ombudsman, prepare an annual report on the conditions and issues in Montana's long-term care facilities for submission to the governor and the legislature; and

(a) be granted access to any long-term care facility and appropriate private access to any resident whenever necessary to investigate and resolve complaints concerning the quality of care and the protection of residents' rights.

(2) The board may:

(a) receive for carrying out its responsibilities any money available to the state under the Older Americans Act to conduct a long-term care ombudsman program pursuant to 42 U.S.C. 3024(d)(1)(B), 3027(a)(10), 3035b, and 3035c;

(b) seek and receive other private and federal funds in its own name;

(c) determine all matters of policy concerning the use of its budget;

(d) recommend to the governor and the legislature the repeal, amendment, or adoption of any law or rule; and

(a) with the written permission of any resident or the

resident's legal representative, obtain access to the resident's medical and personal records for purposes of investigating and resolving complaints.

(3) The board may employ its own legal counsel for advice and representation. If federal funding is provided under the Older Americans Act for legal services advocacy and the hiring of an attorney-legal services developer, the board shall hire this person with these funds and utilize his services.

#### Section 7. Confidentiality of records and complaints.

(1) All records, complaints, and information concerning residents and all investigations of the board and ombudsman and their agents are confidential and not subject to public inspection.

(2) It is a misdemeanor for the board or ombudsman or an agent of either of them to disclose the identity of any complainant or resident unless:

(a) the complainant or resident or his legal representative consents in writing to the disclosure and specifies to whom the identity may be disclosed; or

(b) a court orders the disclosure.

Section 8. Immunity from civil and criminal suit. No civil or criminal liability may be imposed on any person who makes a complaint or provides information as authorized in [this act] that is relevant to a complaint received or an

1 investigation or activity conducted pursuant to [this act]  
 2 unless such complaint or information is false and the person  
 3 providing such information knew or had reason to believe  
 4 that such complaint or information was false.

5 Section 9. Discrimination or retaliation prohibited --  
 6 presumption. (1) No long-term care facility may discriminate  
 7 or retaliate in any manner against a resident or employee  
 8 because such resident or employee or other person has  
 9 initiated or filed a complaint or provided information in  
 10 good faith to the board, the ombudsman, an agent of either  
 11 of them, or the department of health and environmental  
 12 sciences concerning the care of a resident or condition of  
 13 such long-term care facility.

14 (2) Any attempt to expel a resident from a long-term  
 15 care facility or any type of discriminatory treatment of a  
 16 resident by whom or upon whose behalf a complaint or  
 17 information has been submitted to the board, the ombudsman,  
 18 an agent of either of them, or the department of health and  
 19 environmental sciences within 120 days of the date the  
 20 complaint or information was submitted gives rise to a  
 21 rebuttable presumption that such action was taken by the  
 22 long-term care facility in retaliation for submitting the  
 23 complaint or information.

24 Section 10. Notice to residents required. (1) The  
 25 ombudsman shall prepare and distribute to each licensed

1 long-term care facility a written notice, giving information  
 2 about the board and describing the ombudsman program and the  
 3 procedure to follow in seeking additional information on the  
 4 program or making a complaint.

5 (2) Each licensed long-term care facility shall post  
 6 such notice in a conspicuous public place in its facility.  
 7 In addition, at the time a new resident moves in, each  
 8 facility shall advise the new resident or the resident's  
 9 legal representative of the existence of the board and the  
 10 ombudsman program and how the ombudsman may be contacted.

11 Section 11. Penalty -- enforcement. (1) A long-term  
 12 care facility violating [section 6(1)(e), section 9, or  
 13 section 10] is subject to a civil penalty of not less than  
 14 \$50 or more than \$1,000 for each violation.

15 (2) The board may, through its own counsel or upon  
 16 request to the county attorney or the attorney general, seek  
 17 to recover the civil penalty provided in subsection (1) and  
 18 may bring an action to enjoin a violation of [section  
 19 6(1)(e), section 9, or section 10].

20 (3) Any penalties recovered must be deposited in the  
 21 state general fund.

22 Section 12. Severability. If a part of this act is  
 23 invalid, all valid parts that are severable from the invalid  
 24 part remain in effect. If a part of this act is invalid in  
 25 one or more of its applications, the part remains in effect.



LC 2343/01

1 in all valid applications that are severable from the  
2 invalid applications.

3 Section 13. Effective date. This act is effective July  
4 1, 1983.

-End-