

HOUSE BILL NO. 720

2/08 Introduced
2/08 Referred to Human Services & Aging
2/08 Fiscal Note Requested
2/13 Hearing
2/14 Fiscal Note Received
2/18 Committee Report-Bill Pass As Amended
2/20 2nd Reading Pass As Amended
2/20 Fiscal Note Requested
2/20 Rereferred to Appropriations
2/23 Special Action
 On Motion Returned to 3rd
2/25 3rd Reading Pass

Transmitted to Senate

3/04 Referred to public Health, Welfare & Safety
3/13 Hearing
3/28 Comm Report-Bill Concurred As Amended
4/01 2nd Reading Not Concurred
4/01 Bill Killed

1 HOUSE BILL NO. 720
 2 INTRODUCED BY J. Brown Mills *Chen*
 3 *Wally* BY REQUEST OF THE OFFICE OF THE GOVERNOR *John*
 4 *Kadas* *Ream* *Historia*, *Fuller* *arrington* *Fitch* *Adley*
 5 *Keenan* A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH AN OFFICE *Bradley*
 6 OF LONG-TERM CARE OMBUDSMAN WITHIN THE OFFICE OF THE *Long*
 7 GOVERNOR; TO SPECIFY THE POWERS AND DUTIES OF THE OMBUDSMAN;
 8 TO IMPOSE CERTAIN REQUIREMENTS ON LONG-TERM CARE FACILITIES;
 9 TO PROVIDE FOR ACCESS TO AND CONFIDENTIALITY OF RECORDS;
 10 AMENDING SECTIONS 50-5-207 AND 53-5-511, MCA; AND PROVIDING
 11 AN EFFECTIVE DATE."

12
 13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 14 NEW SECTION. Section 1. Purpose. The legislature
 15 finds that a number of disabled and elderly Montanans reside
 16 in long-term care facilities in this state and because of
 17 their isolated and vulnerable condition are dependent on
 18 others for their care and protection. It is the purpose of
 19 the legislature that the quality of care and life for these
 20 residents be monitored through the establishment of an
 21 office of long-term care ombudsman and that, contingent upon
 22 receipt of federal funds for the purpose, legal assistance
 23 services for aging citizens be developed and coordinated. It
 24 is further intended that the office of long-term care
 25 ombudsman assure that a good quality of care and life for

1 such residents is maintained, that necessary investigations
 2 and reports are made, and that corrective action is taken.
 3 NEW SECTION. Section 2. Definitions. As used in
 4 [sections 1 through 9], the following definitions apply:
 5 (1) "Long-term care facility" means:
 6 (a) a skilled nursing facility as defined in section
 7 1861(j) of the Social Security Act (42 U.S.C. 1395x(j));
 8 (b) an intermediate care facility as defined in
 9 section 1905(c) of the Social Security Act (42 U.S.C.
 10 1396d(c));
 11 (c) a nursing home as defined in section 1908(e) of
 12 the Social Security Act (42 U.S.C. 1396g(e)(1));
 13 (d) an institution regulated by Montana under section
 14 1616(e) of the Social Security Act (42 U.S.C. 1382e(e)) for
 15 the purposes of 42 U.S.C. 3027(a)(12); and
 16 (e) a long-term care facility as defined in 50-5-101
 17 that provides skilled nursing care, intermediate nursing
 18 care, or personal care, as defined in 50-5-101.
 19 (2) "Office" means the office of long-term care
 20 ombudsman.
 21 NEW SECTION. Section 3. Office of long-term care
 22 ombudsman. There is an office of long-term care ombudsman,
 23 headed by an ombudsman, attached to the office of the
 24 governor.
 25 NEW SECTION. Section 4. Duties of office. (1) The



1 office is responsible for carrying out the duties of a
 2 long-term care ombudsman and the coordination of legal
 3 assistance for the elderly as required by the Older
 4 Americans Act of 1965 (42 U.S.C. 3027(a)(12), (15)(c), and
 5 (18)) and the regulations adopted pursuant thereto.

6 (2) The office is responsible to serve as an advocate
 7 for Montana citizens residing in a long-term care facility,
 8 regardless of age or source of payment for care, to ensure
 9 that their rights are protected and that they receive
 10 quality care and reside in a safe environment.

11 (3) The office shall prepare and distribute to each
 12 licensed long-term care facility a written notice giving
 13 information describing the office of long-term care
 14 ombudsman and the name of the office's local agent, if any,
 15 and the procedures to follow in seeking additional
 16 information about the office or making a complaint.

17 NEW SECTION. Section 5. Access to long-term care
 18 facility and resident records. (1) The office must be
 19 granted access to any long-term care facility and private
 20 access to any resident to resolve complaints concerning the
 21 quality of care and the protection of a resident's rights.

22 (2) With the written permission of any resident or the
 23 resident's legal guardian or attorney, the office must be
 24 given access to the resident's medical and personal records
 25 in the possession of any long-term care facility for

1 purposes of investigating and resolving complaints.

2 (3) The ombudsman is responsible for investigating
 3 allegations concerning the abuse, neglect, or exploitation
 4 of the elderly in long-term care facilities that have been
 5 reported pursuant to the Montana Elder Abuse Prevention Act,
 6 Title 53, chapter 5, part 5.

7 NEW SECTION. Section 6. Confidentiality of records
 8 and complaints. (1) All records, complaints, and
 9 investigations in the possession of the ombudsman and his
 10 agents concerning residents and complainants are
 11 confidential and not subject to public inspection. The
 12 legislature finds that the demands of individual privacy of
 13 the individuals noted in these records clearly exceeds the
 14 merit of public disclosure.

15 (2) Nothing in this section prohibits the office from
 16 disclosing information contained in its records to
 17 representatives of the department of revenue responsible for
 18 enforcement of medicaid fraud and abuse laws or to other
 19 agencies concerned with the enforcement of laws providing
 20 for the care of the residents, to the extent that the
 21 information disclosed is needed to properly enforce the law.

22 NEW SECTION. Section 7. Immunity from civil and
 23 criminal suit. No civil or criminal liability may be imposed
 24 on any person who makes a complaint or provides information
 25 as authorized in [sections 1 through 9] that is relevant to

1 a complaint received or an investigation or activity
 2 conducted pursuant to [sections 1 through 9] unless such
 3 complaint or information is false and the person providing
 4 such information knew or had reason to believe that such
 5 complaint or information was false.

6 NEW SECTION. Section 8. Discrimination or retaliation
 7 prohibited -- presumption -- penalty. (1) No long-term care
 8 facility may discriminate or retaliate in any manner against
 9 a resident or employee because such resident or employee or
 10 other person has initiated or filed a complaint or provided
 11 information to the office or to the department of health and
 12 environmental sciences concerning the care of a resident or
 13 condition of 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 office or the
 18 department of health and environmental sciences within 120
 19 days of the date the complaint or information was submitted
 20 creates a rebuttable presumption that the action was taken
 21 by the long-term care facility in retaliation for submitting
 22 the complaint or information.

23 (3) A long-term care facility convicted of violating
 24 this section shall be fined not less than \$50 or more than
 25 \$500 for each incident. The county attorney shall at the

1 request of the office investigate and prosecute, as
 2 appropriate, any allegations concerning violations of this
 3 section.

4 NEW SECTION. Section 9. Notice to residents required.
 5 Each licensed long-term care facility shall post the notice
 6 described in [section 4(3)] in a conspicuous public place in
 7 its facility. In addition, at the time a new resident moves
 8 in, each facility shall advise the new resident or the
 9 resident's legal guardian or attorney of the existence of
 10 the state long-term care ombudsman program and the method by
 11 which the ombudsman may be contacted.

12 Section 10. Section 50-5-207, MCA, is amended to read:
 13 "50-5-207. Denial, suspension, or revocation of health
 14 care facility license -- provisional license. (1) The
 15 department may deny, suspend, or revoke a health care
 16 facility license if any of the following circumstances
 17 exist:

18 (a) The facility fails to meet the minimum standards
 19 pertaining to it prescribed under 50-5-103.

20 (b) The staff is insufficient in number or unqualified
 21 by lack of training or experience.

22 (c) The applicant or any person managing it has been
 23 convicted of a felony and denial of a license on that basis
 24 is consistent with 37-1-203 or the applicant otherwise shows
 25 evidence of character traits inimical to the health and

1 safety of patients or residents.

2 (d) The applicant does not have the financial ability
3 to operate the facility in accordance with law or rules or
4 standards adopted by the department.

5 (e) There is cruelty or indifference affecting the
6 welfare of the patients or residents.

7 (f) There is misappropriation of the property or funds
8 of a patient or resident.

9 (g) There is conversion of the property of a patient
10 or resident without his consent.

11 (h) Any provision of parts 1 through 3 is violated.

12 (2) The department may deny, suspend, or revoke a
13 license for a long-term care facility if it finds that the
14 facility has failed to comply with the notice requirements
15 found in [section 9].

16 ~~(2)(3)~~ The department may reduce a license to
17 provisional status if as a result of an inspection it is
18 determined minimum standards are not being met.

19 ~~(3)(4)~~ The denial, suspension, or revocation of a
20 health care facility license is not subject to the
21 certificate of need requirements of part 3."

22 Section 11. Section 53-5-511, MCA, is amended to read:

23 "53-5-511. Reports. (1) When the professionals and
24 other persons listed in subsection (3) know or have
25 reasonable cause to suspect that an older person known to

1 them in their professional or official capacities has been
2 subjected to abuse, exploitation, or neglect, they shall,
3 within 72 hours:

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

6 (i) the department of social and rehabilitation
7 services or its local affiliate;

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

11 (b) if the older person is a resident of a long-term
12 care facility, report the matter to the long-term care
13 ombudsman appointed under the provisions of 42 U.S.C.
14 3027(a)(12) and to the department of health and
15 environmental sciences. The department long-term care
16 ombudsman shall investigate or refer for investigation the
17 matter pursuant--to-its-authority-in-50-5-204 reported and,
18 if it finds any allegations of abuse, exploitation, or
19 neglect contained in the report are found to be
20 substantially true, forward a copy of the report to the
21 department of social and rehabilitation services and to the
22 county attorney as provided in subsection (1)(a)(ii).

23 (2) If the report required in subsection (1) involves
24 an act or omission of the department of social and
25 rehabilitation services which may be construed as abuse,

1 exploitation, or neglect, a copy of the report may not be
 2 sent to the department but must be sent instead to the
 3 county attorney of the county in which the older person
 4 resides or in which the acts that are the subject of the
 5 report occurred.

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

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

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

15 (c) an ambulance attendant;

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

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

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

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

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

4 NEW SECTION. Section 12. Severability. If a part of
 5 this act is invalid, all valid parts that are severable from
 6 the invalid part remain in effect. If a part of this act is
 7 invalid in one or more of its applications, the part remains
 8 in effect in all valid applications that are severable from
 9 the invalid applications.

10 NEW SECTION. Section 13. Effective date. This act is
 11 effective July 1, 1985.

-End-

STATE OF MONTANA

FISCAL NOTE

REQUEST NO. FNN372-85

Form BD-15

In compliance with a written request received February 8 19 85, there is hereby submitted a Fiscal Note for H.B. 720 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 720 establishes the Office of Long-Term Care Ombudsman in the Office of the Governor. (Program is currently located in the Department of Social and Rehabilitation Services).

ASSUMPTIONS:

SRS

1. The position of Long-Term Care Ombudsman and Legal Services Developer will be funded.
2. Funding within the SRS budget of \$20,000 in Title III B with general fund match of \$3,530 plus \$50,000 from the Title IV C grant will be transferred to the Governor's Office.
3. IV C grant funds cannot pay for the ombudsman salary but may pay for the legal developers salary.

Governor's Office

1. The current state match requirement of 15% of the Title III B Grant will increase to 25% of the total program starting in FY86.

FISCAL IMPACT:

	FY86			FY87		
<u>SRS:</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Increase (Decrease)</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Increase (Decrease)</u>
<u>Expenditures</u>						
Personal Services						
(2FTE)	\$ 49,220	(\$49,220)	0	\$ 49,239	(\$ 49,239)	0
Operating	24,310	(24,310)	0	24,291	(24,291)	0
TOTAL	<u>\$ 73,530</u>	<u>(\$73,530)</u>	<u>0</u>	<u>\$ 73,530</u>	<u>(\$ 73,530)</u>	<u>0</u>

David L Hunter

BUDGET DIRECTOR
Office of Budget and Program Planning

Date: Feb 14, 1985
HB 720

FISCAL IMPACT (continued)

	FY1986			FY1987		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Increase (Decrease)</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Increase (Decrease)</u>
Funding:						
General Fund	\$ 3,530	(\$ 3,530)	0	\$ 3,530	(\$ 3,530)	0
Federal Fund	<u>70,000</u>	<u>(70,000)</u>	<u>0</u>	<u>70,000</u>	<u>(70,000)</u>	<u>0</u>
TOTAL	\$ <u>73,530</u>	(\$ <u>73,530</u>)	0	\$ <u>73,530</u>	(\$ <u>73,530</u>)	0
Governor's Office						
Expenditures						
Personal Services (2FTE)	\$ 0	\$ 49,220	\$ 49,220	\$ 0	\$ 49,239	\$ 49,239
Operating	<u>0</u>	<u>44,080</u>	<u>44,080</u>	<u>0</u>	<u>44,061</u>	<u>44,061</u>
TOTAL	\$ <u>0</u>	\$ <u>93,300</u>	\$ <u>93,300</u>	\$ <u>0</u>	\$ <u>93,300</u>	\$ <u>93,300</u>
Funding						
Federal Funds	\$ 0	\$ 70,000	\$ 70,000	\$ 0	\$ 70,000	\$ 70,000
General Fund	<u>0</u>	<u>23,300</u>	<u>23,300</u>	<u>0</u>	<u>23,300</u>	<u>23,300</u>
TOTAL	0	\$ <u>93,300</u>	\$ <u>93,300</u>	\$ <u>0</u>	\$ <u>93,300</u>	\$ <u>93,300</u>
Net Impact						
General Fund						
SRS reduction		(\$ 3,530)	(\$ 3,530)			
Governor's Office Increase		<u>23,300</u>	<u>23,300</u>			
Net Increase		\$ <u>19,770</u>	\$ <u>19,770</u>			
Federal		No difference				

STATE OF MONTANA
FISCAL NOTE

Amended
REQUEST NO. FNN372-85
Form BD-15

In compliance with a written request received February 20 19 85, there is hereby submitted a Fiscal Note for H.B. 720 Amended 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 720 establishes the Office of Long-Term Care Ombudsman in the Office of the Governor. (Program is currently located in the Department of Social and Rehabilitation Services).

ASSUMPTIONS:

1. The position of Long-Term Care Ombudsman and Legal Services Developer, which are currently funded within the SRS budget at \$20,000 in Title III B with general fund match of \$3,530 plus \$50,000 from the Title IV C grant, will be transferred to the Governor's Office.
2. IV C grant funds cannot pay for the ombudsman salary but may pay for the legal developers salary.

FISCAL IMPACT:

	FY1986			FY1987		
<u>Expenditures:</u>	<u>SRS</u>	<u>Governor's Office</u>	<u>Difference</u>	<u>SRS</u>	<u>Governor's Office</u>	<u>Difference</u>
Personal Services (2FTE)	\$ 49,220	\$49,220	\$ 0	\$ 49,239	\$ 49,239	\$ 0
Operating	24,310	24,310	0	24,291	24,291	0
TOTAL	\$ 73,530	\$73,530	\$ 0	\$ 73,530	\$ 73,530	\$ 0

David L. Hunter

BUDGET DIRECTOR
Office of Budget and Program Planning
Date: Feb 21, 1985
HB 720 Amended

<u>FISCAL IMPACT (continued)</u>	FY1986			FY1987		
	<u>SRS</u>	<u>Governor's Office</u>	<u>Difference</u>	<u>SRS</u>	<u>Governor's Office</u>	<u>Difference</u>
Funding:*						
General Fund	\$ 3,530	\$ 3,530	\$ 0	\$ 3,530	\$ 3,530	\$ 0
Federal Fund	70,000	70,000	0	70,000	70,000	0
TOTAL	<u>\$ 73,530</u>	<u>\$73,530</u>	<u>\$ 0</u>	<u>\$ 73,530</u>	<u>\$ 73,530</u>	<u>\$ 0</u>

* If a change is made in the federal matching rate and it is increased to 25% for this program, an additional \$14,852 in General Fund will be required whether the program is located in the Governor's Office or SRS.

APPROVED BY COMM. ON
HUMAN SERVICES AND AGING

HOUSE BILL NO. 720

INTRODUCED BY J. BROWN, MILES, COHEN,
HANSEN, ECK, ADDY, BRADLEY, LORY, CONNELLY,
KADAS, REAM, PISTORIA, FULLER, HARRINGTON,
FRITZ, KEENAN, CHRISTIAENS

BY REQUEST OF THE OFFICE OF THE GOVERNOR

A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH AN OFFICE
OF LONG-TERM CARE OMBUDSMAN WITHIN THE OFFICE OF THE
GOVERNOR; TO SPECIFY THE POWERS AND DUTIES OF THE OMBUDSMAN;
TO IMPOSE CERTAIN REQUIREMENTS ON LONG-TERM CARE FACILITIES;
TO PROVIDE FOR ACCESS TO AND CONFIDENTIALITY OF RECORDS;
AMENDING SECTIONS 50-5-207 AND 53-5-511, MCA; AND PROVIDING
AN EFFECTIVE DATE."

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

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finds that a number of disabled and elderly Montanans reside
in long-term care facilities in this state and because of
their isolated and vulnerable condition are dependent on
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the legislature that the quality of care and life for these
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services for aging citizens be developed and coordinated. It
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ombudsman assure that a good quality of care and life for
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[sections 1 through 9], the following definitions apply:

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section 1905(c) of the Social Security Act (42 U.S.C.
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the Social Security Act (42 U.S.C. 1396g(e)(1));

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1616(e) of the Social Security Act (42 U.S.C. 1382e(e)) for
the purposes of 42 U.S.C. 3027(a)(12); and

(e) a long-term care facility as defined in 50-5-101
that provides skilled nursing care, intermediate nursing
care, or personal care, as defined in 50-5-101.

(2) "Office" means the office of long-term care
ombudsman.

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ombudsman. There is an office of long-term care ombudsman,

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6 to operate the facility in accordance with law or rules or
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15 (2) The department may deny, suspend, or revoke a
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17 facility WILLFULLY has failed to comply with the notice
18 requirements found in [section 9].

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12 older person resides or in which the acts that are the
13 subject of the report occurred;

14 (b) if the older person is a resident of a long-term
15 care facility, report the matter to the long-term care
16 ombudsman appointed under the provisions of 42 U.S.C.
17 3027(a)(12) and to the department of health and
18 environmental sciences. The department long-term care
19 ombudsman shall investigate or refer for investigation the
20 matter pursuant--to-its-authority-in-50-5-204 reported and,
21 if it finds any allegations of abuse, exploitation, or
22 neglect contained in the report are found to be
23 substantially true, forward a copy of the report to the
24 department of social and rehabilitation services and to the
25 county attorney as provided in subsection (1)(a)(ii).

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

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

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

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

18 (c) an ambulance attendant;

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

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

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

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

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

7 NEW SECTION. Section 12. Severability. If a part of
 8 this act is invalid, all valid parts that are severable from
 9 the invalid part remain in effect. If a part of this act is
 10 invalid in one or more of its applications, the part remains
 11 in effect in all valid applications that are severable from
 12 the invalid applications.

13 NEW SECTION. Section 13. Effective date. This act is
 14 effective July 1, 1985.

-End-

1 HOUSE BILL NO. 720

2 INTRODUCED BY J. BROWN, MILES, COHEN,
 3 HANSEN, ECK, ADDY, BRADLEY, LORY, CONNELLY,
 4 KADAS, REAM, PISTORIA, FULLER, HARRINGTON,
 5 FRITZ, KEENAN, CHRISTIAENS

6 BY REQUEST OF THE OFFICE OF THE GOVERNOR
 7

8 A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH AN OFFICE
 9 OF LONG-TERM CARE OMBUDSMAN WITHIN THE OFFICE OF THE
 10 GOVERNOR; TO SPECIFY THE POWERS AND DUTIES OF THE OMBUDSMAN;
 11 TO IMPOSE CERTAIN REQUIREMENTS ON LONG-TERM CARE FACILITIES;
 12 TO PROVIDE FOR ACCESS TO AND CONFIDENTIALITY OF RECORDS;
 13 AMENDING SECTIONS 50-5-207 AND 53-5-511, MCA; AND PROVIDING
 14 AN EFFECTIVE DATE."
 15

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

17 NEW SECTION. Section 1. Purpose. The legislature
 18 finds that a number of disabled and elderly Montanans reside
 19 in long-term care facilities in this state and because of
 20 their isolated and vulnerable condition are dependent on
 21 others for their care and protection. It is the purpose of
 22 the legislature that the quality of care and life for these
 23 residents be monitored through the establishment of an
 24 office of long-term care ombudsman and that, contingent upon
 25 receipt of federal funds for the purpose, legal assistance

1 services for aging citizens be developed and coordinated. It
 2 is further intended that the office of long-term care
 3 ombudsman assure that a good quality of care and life for
 4 such residents is maintained, that necessary investigations
 5 and reports are made, and that corrective action is taken.

6 NEW SECTION. Section 2. Definitions. As used in
 7 [sections 1 through 9], the following definitions apply:

8 (1) "Long-term care facility" means:

9 (a) a skilled nursing facility as defined in section
 10 1861(j) of the Social Security Act (42 U.S.C. 1395x(j));

11 (b) an intermediate care facility as defined in
 12 section 1905(c) of the Social Security Act (42 U.S.C.
 13 1396d(c));

14 (c) a nursing home as defined in section 1908(e) of
 15 the Social Security Act (42 U.S.C. 1396g(e)(1));

16 (d) an institution regulated by Montana under section
 17 1616(e) of the Social Security Act (42 U.S.C. 1382e(e)) for
 18 the purposes of 42 U.S.C. 3027(a)(12); and

19 (e) a long-term care facility as defined in 50-5-101
 20 that provides skilled nursing care, intermediate nursing
 21 care, or personal care, as defined in 50-5-101.

22 (2) "Office" means the office of long-term care
 23 ombudsman.

24 NEW SECTION. Section 3. Office of long-term care
 25 ombudsman. There is an office of long-term care ombudsman,

1 headed by an ombudsman, ~~attached-to~~ WITHIN the office of the
2 governor.

3 NEW SECTION. Section 4. Duties of office. (1) The
4 office is responsible for carrying out the duties of a
5 long-term care ombudsman and the coordination of legal
6 assistance for the elderly as required by the Older
7 Americans Act of 1965 (42 U.S.C. 3027(a)(12), (15)(c), and
8 (18)) and the regulations adopted pursuant thereto.

9 (2) The office is responsible to serve as an advocate
10 for Montana citizens residing in a long-term care facility,
11 regardless of age or source of payment for care, to ensure
12 that their rights are protected and that they receive
13 quality care and reside in a safe environment.

14 (3) The office shall prepare and distribute to each
15 licensed long-term care facility a written notice giving
16 information describing the office of long-term care
17 ombudsman and the name of the office's local agent, if any,
18 and the procedures to follow in seeking additional
19 information about the office or making a complaint.

20 NEW SECTION. Section 5. Access to long-term care
21 facility and resident records. (1) The office must be
22 granted access to any long-term care facility and private
23 access to any resident to resolve complaints concerning the
24 quality of care and the protection of a resident's rights.

25 (2) With the written permission of any resident or the

1 resident's legal guardian or attorney, the office must be
2 given access to the resident's medical and personal records
3 in the possession of any long-term care facility for
4 purposes of investigating and resolving complaints.

5 (3) The ombudsman is responsible for investigating
6 allegations concerning the abuse, neglect, or exploitation
7 of the elderly in long-term care facilities that have been
8 reported pursuant to the Montana Elder Abuse Prevention Act,
9 Title 53, chapter 5, part 5.

10 NEW SECTION. Section 6. Confidentiality of records
11 and complaints. (1) All records, complaints, and
12 investigations in the possession of the ombudsman and his
13 agents concerning residents and complainants are
14 confidential and not subject to public inspection. The
15 legislature finds that the demands of individual privacy of
16 the individuals noted in these records clearly exceeds the
17 merit of public disclosure.

18 (2) Nothing in this section prohibits the office from
19 disclosing information contained in its records to
20 representatives of the department of revenue responsible for
21 enforcement of medicaid fraud and abuse laws or to other
22 agencies concerned with the enforcement of laws providing
23 for the care of the residents, to the extent that the
24 information disclosed is needed to properly enforce the law.

25 NEW SECTION. Section 7. Immunity from civil and

1 criminal suit. No civil or criminal liability may be imposed
 2 on any person who makes a complaint or provides information
 3 as authorized in [sections 1 through 9] that is relevant to
 4 a complaint received or an investigation or activity
 5 conducted pursuant to [sections 1 through 9] unless such
 6 complaint or information is false and the person providing
 7 such information knew or had reason to believe that such
 8 complaint or information was false.

9 NEW SECTION. Section 8. Discrimination or retaliation
 10 prohibited -- presumption -- penalty. (1) No long-term care
 11 facility may discriminate or retaliate in any manner against
 12 a resident or employee because such resident or employee or
 13 other person has initiated or filed a complaint or provided
 14 information to the office or to the department of health and
 15 environmental sciences concerning the care of a resident or
 16 condition of such long-term care facility.

17 (2) Any attempt to expel a resident from a long-term
 18 care facility or any type of discriminatory treatment of a
 19 resident by whom or upon whose behalf a complaint or
 20 information has been submitted to the office or the
 21 department of health and environmental sciences within 120
 22 days of the date the complaint or information was submitted
 23 creates a rebuttable presumption that the action was taken
 24 by the long-term care facility in retaliation for submitting
 25 the complaint or information.

1 (3) A long-term care facility convicted of violating
 2 this section shall be fined not less than \$50 or more than
 3 \$500 for each incident. The county attorney shall at the
 4 request of the office investigate and prosecute, as
 5 appropriate, any allegations concerning violations of this
 6 section.

7 NEW SECTION. Section 9. Notice to residents required.
 8 Each licensed long-term care facility shall post the notice
 9 described in [section 4(3)] in a conspicuous public place in
 10 its facility. In addition, at the time a new resident moves
 11 in, each facility shall advise the new resident or the
 12 resident's legal guardian or attorney of the existence of
 13 the state long-term care ombudsman program and the method by
 14 which the ombudsman may be contacted.

15 Section 10. Section 50-5-207, MCA, is amended to read:
 16 "50-5-207. Denial, suspension, or revocation of health
 17 care facility license -- provisional license. (1) The
 18 department may deny, suspend, or revoke a health care
 19 facility license if any of the following circumstances
 20 exist: .

21 (a) The facility fails to meet the minimum standards
 22 pertaining to it prescribed under 50-5-103.

23 (b) The staff is insufficient in number or unqualified
 24 by lack of training or experience.

25 (c) The applicant or any person managing it has been

1 convicted of a felony and denial of a license on that basis
 2 is consistent with 37-1-203 or the applicant otherwise shows
 3 evidence of character traits inimical to the health and
 4 safety of patients or residents.

5 (d) The applicant does not have the financial ability
 6 to operate the facility in accordance with law or rules or
 7 standards adopted by the department.

8 (e) There is cruelty or indifference affecting the
 9 welfare of the patients or residents.

10 (f) There is misappropriation of the property or funds
 11 of a patient or resident.

12 (g) There is conversion of the property of a patient
 13 or resident without his consent.

14 (h) Any provision of parts 1 through 3 is violated.

15 (2) The department may deny, suspend, or revoke a
 16 license for a long-term care facility if it finds that the
 17 facility WILLFULLY has failed to comply with the notice
 18 requirements found in [section 9].

19 ~~†2†~~(3) The department may reduce a license to
 20 provisional status if as a result of an inspection it is
 21 determined minimum standards are not being met.

22 ~~†3†~~(4) The denial, suspension, or revocation of a
 23 health care facility license is not subject to the
 24 certificate of need requirements of part 3."

25 Section 11. Section 53-5-511, MCA, is amended to read:

1 "53-5-511. Reports. (1) When the professionals and
 2 other persons listed in subsection (3) know or have
 3 reasonable cause to suspect that an older person known to
 4 them in their professional or official capacities has been
 5 subjected to abuse, exploitation, or neglect, they shall,
 6 within 72 hours:

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

9 (i) the department of social and rehabilitation
 10 services or its local affiliate;

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

14 (b) if the older person is a resident of a long-term
 15 care facility, report the matter to the long-term care
 16 ombudsman appointed under the provisions of 42 U.S.C.
 17 3027(a)(12) and to the department of health and
 18 environmental sciences. The department long-term care
 19 ombudsman shall investigate or refer for investigation the
 20 matter pursuant-to-its-authority-in-50-5-204 reported and,
 21 if ~~it--finds~~ any allegations of abuse, exploitation, or
 22 neglect contained in the report are found to be
 23 substantially true, forward a copy of the report to the
 24 department of social and rehabilitation services and to the
 25 county attorney as provided in subsection (1)(a)(ii).

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

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

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

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

18 (c) an ambulance attendant;

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

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

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

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

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

7 NEW SECTION. Section 12. Severability. If a part of
 8 this act is invalid, all valid parts that are severable from
 9 the invalid part remain in effect. If a part of this act is
 10 invalid in one or more of its applications, the part remains
 11 in effect in all valid applications that are severable from
 12 the invalid applications.

13 NEW SECTION. Section 13. Effective date. This act is
 14 effective July 1, 1985.

-End-

STANDING COMMITTEE REPORT

SENATE

March 27 19 85

MR. PRESIDENT

We, your committee on Public Health, Welfare and Safety

having had under consideration House Bill No. 720

third reading copy (blue)
color

ESTABLISHING A LONG-TERM CARE OMBUDSMAN

J. BROWN (ECK)

Respectfully report as follows: That House Bill No. 720

be amended as follows:

1. Page 1, line 22.

Following: "that"

Insert: ", contingent upon the receipt of federal funds for
this purpose,"

2. Page 1, lines 24 and 25.

Following: "that" on line 24

Strike: remainder of line 24 through "purpose," on line 25

3. Page 4, line 4.

Following: "complaints."

Insert: "The ombudsman shall consult with the attending
physician, or with another licensed physician if the
attending physician is not available, concerning his
interpretation of the resident's medical record and
any action that should be taken in response to a complaint."

KB
~~XXXXXXXXXX~~

~~XXXXXXXXXX~~

AND AS AMENDED
BE CONCURRED IN

Judy Jacobson
SENATOR JUDY JACOBSON, Chairman.