

HOUSE BILL NO. 783

2/11 Introduced
2/11 Referred to Human Services & Aging
2/11 Fiscal Note Requested
2/15 Fiscal Note Received
2/20 Hearing
2/22 Committee Report-Bill Pass As Amended
2/25 2nd Reading Pass As Amended
2/26 3rd Reading Pass

Transmitted to Senate

3/04 Referred to Public Health, Welfare & Safety
3/11 Hearing
3/28 Adverse Committee Report
3/29 Bill Killed

HOUSE BILL NO. 783

INTRODUCED BY *Miles Vincent Taylor* *J. Janger*
J. Honan BY REQUEST OF THE DEPARTMENT OF SOCIAL *Chapman*
W. C. Brown *Pack* *Bergoni* AND REHABILITATION SERVICES *Fuller*,
Connelly *Bradley* *W. M. Maguire*

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6 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE RIGHTS
7 OF RESIDENTS OF LONG-TERM CARE FACILITIES; PROVIDING THAT A
8 RESIDENT MUST BE INFORMED OF HIS RIGHTS; REQUIRING POSTING
9 OF THESE RIGHTS BY LONG-TERM CARE FACILITIES; AND PROVIDING
10 PENALTIES."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 Section 1. Short title. [This act] may be cited as the
14 "Montana Long-Term Care Residents' Bill of Rights Act".

15 Section 2. Purpose. The purpose of [this act] is to
16 recognize and establish certain fundamental civil and human
17 rights to which all residents of a long-term care facility
18 are entitled and to provide penalties for violation of these
19 rights.

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

22 (1) "Long-term care facility" means a facility
23 licensed as a long-term care facility as defined in
24 50-5-101(19).

25 (2) "Long-term care ombudsman" means a person

1 appointed under the provisions of 42 U.S.C. 3027(a)(12) to
2 serve as an advocate for residents of long-term care
3 facilities.

4 (3) "Resident" means a person residing in a long-term
5 care facility.

6 Section 4. Facility to adopt and post residents' bill
7 of rights. (1) The governing body of each licensed
8 long-term care facility shall adopt a written statement of
9 rights applicable to all residents of its facility, which
10 statement shall include as a minimum those rights enumerated
11 in [section 6].

12 (2) Each long-term care facility shall provide each
13 resident of its facility with a written statement of the
14 resident's rights at the time of his admission to the
15 facility. If the facility amends its policies on residents'
16 rights, each resident must be informed of the amendments at
17 the time implemented.

18 (3) Each resident must acknowledge in writing receipt
19 of the statement of rights and any amendments to it.

20 (4) The administrator of each long-term care facility
21 shall post in a conspicuous place visible to the public a
22 copy of the statement of residents' rights that the facility
23 has adopted.

24 Section 5. Rights and responsibilities devolve to
25 guardian -- when. All rights and responsibilities specified

1 in [sections 4 and 6] which pertain to a resident devolve to
2 such resident's guardian, next of kin, sponsoring agency, or
3 representative payee, unless the long-term care facility is
4 the resident's representative payee, if the resident has
5 been adjudicated incompetent, found by his physician to be
6 medically incapable of understanding his rights, or
7 otherwise exhibits a significant communication barrier.

8 Section 6. Residents' bill of rights. The following
9 enumerated rights constitute the Montana long-term care
10 residents' bill of rights:

11 (1) Each resident has the right to be fully informed
12 as evidenced by the resident's written acknowledgment, pri
13 to or at the time of admission and during stay, of the
14 statement of rights adopted by the facility and of the rules
15 governing resident conduct and responsibilities.

16 (2) Each resident has the right to be fully informed,
17 prior to or at the time of admission and during stay, of
18 service available in the facility and of related charges,
19 including any charges for services not covered under Titles
20 XVIII or XIX of the Social Security Act or not covered by
21 the facility's basic per diem rate.

22 (3) Each resident has the right to be fully informed,
23 by a physician, of his medical condition unless medically
24 contraindicated, as documented by his attending physician in
25 his medical record, to be afforded the opportunity to

1 participate in the planning of his medical treatment, and to
2 refuse to participate in experimental research. This right
3 to participate in the planning of his medical treatment
4 includes the right to refuse medication and treatment if the
5 resident has not been adjudicated incompetent and has been
6 informed of the consequences of refusing such medication or
7 treatment.

8 (4) Each resident has the right to be transferred or
9 discharged only for medical reasons, for his welfare or that
10 of other patients, or for nonpayment for his stay. Each
11 resident has the right to be given reasonable advance notice
12 to ensure orderly transfer or discharge. Reasonable advance
13 notice requires at least 30 days' advanced written notice of
14 any interfacility transfer or any discharge, except in the
15 case of emergency as documented by the resident's attending
16 physician in his medical record.

17 (5) Each resident has the right to exercise his rights
18 as a patient and as a citizen and to this end may voice
19 grievances and recommend changes in policies and services to
20 the facility staff or to outside representatives of his
21 choice, or to both, free from restraint, interference,
22 coercion, discrimination, or reprisal.

23 (6) Each resident has the right to manage his personal
24 financial affairs, to designate another person to manage
25 them, or to authorize the facility, in writing, to hold,

1 safeguard, and account for his personal funds.

2 (7) Each resident has the right to be free from mental
3 and physical abuse and free from chemical and physical
4 restraints, except as authorized in writing by his attending
5 physician for a specified and limited period of time or in
6 emergency situations when necessary to protect the resident
7 from injury to himself or to others. Restraints may not be
8 used in lieu of staff supervision or merely for staff
9 convenience or punishment. The use of restraints in
10 emergency situations must be fully documented in the
11 resident's medical record, giving the reason for their use,
12 the duration of their use, and the steps taken to ensure the
13 resident's safety during their use.

14 (8) Each resident has the right to confidential
15 treatment of his personal and medical records and to approve
16 or refuse the release of these records to any individual
17 outside the facility, except in the case of his transfer to
18 another health care institution or as required by law or
19 third party payment contracts. Each resident has the right
20 to review his records and to request copies thereof.

21 (9) Each resident has the right to be treated with
22 consideration, respect, and full recognition of his dignity
23 and individuality, including privacy in treatment and in
24 care for his personal needs.

25 (10) Each resident has the right not to be required to

1 perform services for the facility that are not included for
2 therapeutic purposes in his plan of care.

3 (11) Each resident may associate and communicate
4 privately with persons of his choice and may send and
5 receive his personal mail unopened unless medically
6 contraindicated, as documented by his attending physician in
7 his medical record.

8 (12) Each resident may meet with and participate in
9 social, religious, and community groups at his discretion,
10 unless medically contraindicated, as documented by his
11 physician in his medical record.

12 (13) Each resident may retain and use his personal
13 clothing and possessions as space permits, unless to do so
14 would infringe upon the rights of other patients or unless
15 contraindicated, as documented by his physician in his
16 medical record. The resident's right to retain and use his
17 personal property includes the provision of a means to
18 secure his possessions.

19 (14) Each resident has the right of privacy for visits
20 with his spouse. If both spouses are inpatients in the
21 facility, they must be permitted to share a room unless
22 medically contraindicated, as documented by the attending
23 physician in their medical records.

24 (15) Each resident has the right to reasonable access
25 to a telephone for private communications and the right to

1 have private visits at any reasonable hour.

2 (16) Each resident has the right to have the door of
3 his room closed and not opened by the facility's staff
4 without knocking prior to opening, except in the case of
5 emergency or unless medically contraindicated, as documented
6 in his medical record by his attending physician.

7 (17) Each resident has the right to be informed of the
8 facility's policies regarding loss, theft, or destruction of
9 a resident's property retained at the facility.

10 (18) Each resident and his family have the right to
11 organize, maintain, and participate in resident advisor
12 councils and family advisory councils.

13 (19) Each resident has the right to discharge himself
14 from the facility upon providing the facility written notice
15 of his desire to be discharged. If a guardian has been
16 appointed for the resident or if the resident is a minor,
17 the resident may be discharged upon written consent of the
18 guardian or parents. In such cases, the facility is relieved
19 from any responsibility for the resident's care, safety, or
20 well-being upon the resident's discharge.

21 Section 7. Enforcement of residents' bill of rights.

22 (1) The long-term care ombudsman shall investigate and seek
23 to resolve any complaints alleging that a facility has
24 violated a resident's right recognized under [this act] or
25 refer such matter to the county attorney of the county in

1 which the older person resides.

2 (2) A resident who has been deprived of his rights as
3 specified in [section 6] or whose rights are infringed upon
4 has a cause of action against the long-term care facility
5 responsible for the violation. The action may be brought by
6 the resident or his guardian or his parents if he is a
7 minor. The action may be brought in the district court to
8 enforce such rights and to recover actual and punitive
9 damages for any deprivation or infringement of the rights of
10 the resident, including reasonable attorney fees and costs
11 of the action. The remedies provided in this section are in
12 addition to any other legal or administrative remedies
13 available.

14 Section 8. Civil penalty. (1) A long-term care
15 facility that is found to have failed to comply with the
16 requirements of [sections 4 through 6] is subject to a civil
17 penalty of not less than \$50 or more than \$500 per
18 violation.

19 (2) Upon request of the long-term care ombudsman or
20 any resident, the county attorney shall investigate an
21 alleged violation of [sections 4 through 6] and shall
22 petition the court to recover the civil penalty provided in
23 subsection (1) whenever appropriate. Fines collected
24 pursuant to this section must be deposited in the county
25 general fund.

1 Section 9. Saving clause. This act does not affect
2 rights and duties that matured, penalties that were
3 incurred, or proceedings that were begun before the
4 effective date of this act.

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

-End-

STATE OF MONTANA

REQUEST NO. FNN 394-85

FISCAL NOTE

Form BD-15

In compliance with a written request received February 11, 19 85, there is hereby submitted a Fiscal Note for House Bill 783 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 783 establishes a position of Long-Term Care Ombudsman to investigate and seek to resolve any complaints alleging that a long-term care facility has violated a resident's rights.

ASSUMPTIONS:

1. The position of Long-Term Care Ombudsman is currently funded within the Social and Rehabilitation Services budget.
2. The funds will be \$20,000 of Title IIIB with general fund match of \$3,530 plus \$10,990 from the Title IV-C grant.
3. If there are no Title IV-C funds available to supplement the ombudsman program, then an additional \$10,990 per year will be needed from general fund.

FISCAL IMPACT:Expenditures:

	Fiscal Year 1986			Fiscal Year 1987		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
Personal Services	\$23,451	\$23,451	-0-	\$23,451	\$23,451	-0-
Operating	\$11,069	\$11,069	-0-	\$11,069	\$11,069	-0-
TOTAL	\$34,520	\$34,520	-0-	\$34,520	\$34,520	-0-

Revenue:

General Fund	\$ 3,530	\$ 3,530	-0-	\$ 3,530	\$ 3,530	-0-
Federal	\$30,990	\$30,990	-0-	\$30,990	\$30,990	-0-
TOTAL	\$34,520	\$34,520	-0-	\$34,520	\$34,520	-0-

David L. Hunter

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: Feb 15, 1985
HB 783

APPROVED BY COMM. ON
HUMAN SERVICES AND AGING

HOUSE BILL NO. 783

INTRODUCED BY MILES, VINCENT, REGAN, HARPER, J. HAMMOND,
ECK, J. BROWN, CONNELLY, PECK, BERGENE, FULLER,
CHRISTIAENS, BRADLEY, WALLIN, MAZUREK
BY REQUEST OF THE DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES

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recognize and establish certain fundamental civil and human
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are entitled and to provide penalties for violation of these
rights.

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

(1) "Long-term care facility" means a facility
licensed as a long-term care facility as defined in

50-5-101(19), EXCEPT FOR THOSE STATE-OPERATED LONG-TERM CARE
FACILITIES FOR THE MENTALLY DISABLED THAT ALREADY MUST
RECOGNIZE RESIDENTS' RIGHTS PURSUANT TO TITLE 53, CHAPTER 20
OR 21.

(2) "Long-term care ombudsman" means a person
appointed under the provisions of 42 U.S.C. 3027(a)(12) to
serve as an advocate for residents of long-term care
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long-term care facility shall adopt a written statement of
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(2) Each long-term care facility shall provide each
resident of its facility with a written statement of the
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facility. If the facility amends its policies on residents'
rights, each resident must be informed of the amendments at
the time implemented.

(3) Each resident must acknowledge in writing receipt
of the statement of rights and any amendments to it.

(4) The administrator of each long-term care facility



1 shall post in a conspicuous place visible to the public a
2 copy of the statement of residents' rights that the facility
3 has adopted.

4 Section 5. Rights and responsibilities devolve to
5 guardian -- when. All rights and responsibilities specified
6 in [sections 4 and 6] which pertain to a resident devolve to
7 such resident's guardian, next of kin, sponsoring agency, or
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24 grievances and recommend changes in policies and services to
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2 coercion, discrimination, or reprisal.

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4 financial affairs, to designate another person to manage
5 them, or to authorize the facility, in writing, to hold,
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13 used in lieu of staff supervision or merely for staff
14 convenience or punishment. The use of restraints in
15 emergency situations must be fully documented in the
16 resident's medical record, giving the reason for their use,
17 the duration of their use, and the steps taken to ensure the
18 resident's safety during their use. NO RESIDENT MAY BE
19 CONFINED TO A LOCKED ROOM.

20 (8) Each resident has the right to confidential
21 treatment of his personal and medical records and to approve
22 or refuse the release of these records to any individual
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24 another health care institution or as required by law or
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12 from injury to himself or to others. Restraints may not be
13 used in lieu of staff supervision or merely for staff
14 convenience or punishment. The use of restraints in
15 emergency situations must be fully documented in the
16 resident's medical record, giving the reason for their use,
17 the duration of their use, and the steps taken to ensure the
18 resident's safety during their use. NO RESIDENT MAY BE
19 CONFINED TO A LOCKED ROOM.

20 (8) Each resident has the right to confidential
21 treatment of his personal and medical records and to approve
22 or refuse the release of these records to any individual
23 outside the facility, except in the case of his transfer to
24 another health care institution or as required by law or
25 third party payment contracts. Each resident has the right

1 to review his records and to request copies thereof.

2 (9) Each resident has the right to be treated with
3 consideration, respect, and full recognition of his dignity
4 and individuality, including privacy in treatment and in
5 care for his personal needs.

6 (10) Each resident has the right not to be required to
7 perform services for the facility that are not included for
8 therapeutic purposes in his plan of care.

9 (11) Each resident may associate and communicate
10 privately with persons of his choice and may send and
11 receive his personal mail unopened unless medically
12 contraindicated, as documented by his attending physician in
13 his medical record.

14 (12) Each resident may meet with and participate in
15 social, religious, and community groups at his discretion,
16 unless medically contraindicated, as documented by his
17 physician in his medical record.

18 (13) Each resident may retain and use his personal
19 clothing and possessions as space permits, unless to do so
20 would infringe upon the rights of other patients or unless
21 contraindicated, as documented by his physician in his
22 medical record. The resident's right to retain and use his
23 personal property includes the provision of a means to
24 secure his possessions. EACH RESIDENT HAS THE RIGHT TO BE
25 INFORMED OF THE FACILITY'S POLICIES REGARDING LOSS, THEFT,

1 OR DESTRUCTION OF A RESIDENT'S PROPERTY RETAINED AT THE
 2 FACILITY.

3 (14) Each resident has the right of privacy for visits
 4 with his spouse. If both spouses are inpatients in the
 5 facility, they must be permitted to share a room unless
 6 medically contraindicated, as documented by the attending
 7 physician in their medical records.

8 (15) Each resident has the right to reasonable access
 9 to a telephone for private communications and the right to
 10 have private visits at any reasonable hour.

11 (16) Each resident has the right to have the door of
 12 his room closed and not opened by the facility's staff
 13 without knocking prior to opening, except in the case of
 14 emergency or unless medically contraindicated, as documented
 15 in his medical record by his attending physician.

16 ~~(17) Each resident has the right to be informed of the~~
 17 ~~facility's policies regarding loss, theft, or destruction of~~
 18 ~~a resident's property retained at the facility.~~

19 ~~(18)~~ (17) Each resident and his family have the right to
 20 organize, maintain, and participate in resident advisory
 21 councils and family advisory councils.

22 ~~(19)~~ (18) Each resident has the right to discharge
 23 himself from the facility upon providing the facility
 24 written notice of his desire to be discharged. If a
 25 guardian has been appointed for the resident or if the

1 resident is a minor, the resident may be discharged upon
 2 written consent of the guardian or parents. In such cases,
 3 the facility is relieved from any responsibility for the
 4 resident's care, safety, or well-being upon the resident's
 5 discharge.

6 Section 7. Enforcement of residents' bill of rights.
 7 (1) The long-term care ombudsman shall investigate and seek
 8 to resolve any complaints alleging that a facility has
 9 violated a resident's right recognized under [this act] or
 10 refer such matter to the county attorney of the county in
 11 which the older person resides.

12 (2) A resident who has been deprived of his rights as
 13 specified in [section 6] or whose rights are infringed upon
 14 has a cause of action against the long-term care facility
 15 responsible for the violation. The action may be brought by
 16 the resident or his guardian or his parents if he is a
 17 minor. ~~The action may be brought in the district court to~~
 18 ~~enforce such rights and to recover actual and punitive~~
 19 ~~damages for any deprivation or infringement of the rights of~~
 20 ~~the resident, including reasonable attorney fees and costs~~
 21 ~~of the action. The remedies provided in this section are in~~
 22 ~~addition to any other legal or administrative remedies~~
 23 ~~available.~~

24 Section 8. Civil penalty. (1) A long-term care
 25 facility that is found to have failed to comply with the

1 requirements of [sections 4 through 6] is subject to a civil
2 penalty of not less than \$50 or more than ~~\$500~~ \$2,000 per
3 violation.

4 (2) Upon request of the long-term care ombudsman or
5 any resident, the county attorney shall investigate an
6 alleged violation of [sections 4 through 6] and shall
7 petition the court to recover the civil penalty provided in
8 subsection (1) whenever appropriate. Fines collected
9 pursuant to this section must be deposited in the county
10 general fund.

11 Section 9. Saving clause. This act does not affect
12 rights and duties that matured, penalties that were
13 incurred, or proceedings that were begun before the
14 effective date of this act.

15 Section 10. Severability. If a part of this act is
16 invalid, all valid parts that are severable from the invalid
17 part remain in effect. If a part of this act is invalid in
18 one or more of its applications, the part remains in effect
19 in all valid applications that are severable from the
20 invalid applications.

-End-