

HOUSE BILL 86

Introduced by Kilpatrick, et al.

1/06	Introduced
1/06	Referred to Human Services & Aging
1/10	Fiscal Note Requested
1/11	Hearing
1/13	Hearing
1/14	Fiscal Note Received
1/16	Fiscal Note Printed
1/23	Tabled in Committee

1 House BILL NO. 86  
2 INTRODUCED BY Ralph R. Russell  
3 BY REQUEST OF THE DEPARTMENT OF FAMILY SERVICES  
4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW THE LONG-TERM  
6 CARE OMBUDSMAN ACCESS TO MEDICAL AND SOCIAL RECORDS; TO  
7 PROHIBIT DISCRIMINATORY, DISCIPLINARY, OR RETALIATORY  
8 ACTIONS BY LONG-TERM CARE FACILITIES; TO PROHIBIT WILLFUL  
9 INTERFERENCE WITH THE LAWFUL ACTIONS OF THE LONG-TERM CARE  
10 OMBUDSMAN; TO PROVIDE FOR LIABILITY; AMENDING SECTION  
11 53-5-804, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."  
12  
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
14 **Section 1.** Section 53-5-804, MCA, is amended to read:  
15 "53-5-804. Access to long-term care facilities and  
16 records. (1) The long-term care ombudsman or local ombudsman  
17 shall have access without advance notice to any long-term  
18 care facility, including private access to any resident, for  
19 the purpose of meeting with residents, investigating and  
20 resolving complaints, and advising residents on their  
21 rights.  
22 (2) The long-term care ombudsman or local ombudsman  
23 shall have access to all medical and social records of any  
24 resident of a long-term care facility with the permission of  
25 the resident or the resident's guardian or, if the resident

1 is unable to consent and has no guardian, upon court order  
2 authorizing disclosure.

3 ~~(2)~~(3) Access must be granted to the long-term care  
4 ombudsman or local ombudsman during normal visiting hours (9  
5 a.m. to 6 p.m.) and to the long-term care ombudsman at any  
6 time he considers necessary to perform the duties described  
7 in 53-5-803.

8 ~~(3)~~(4) The ombudsman shall carry out the duties  
9 described in 53-5-803 in a manner that is least disruptive  
10 to resident care and activities."

11 **Section 2.** Discriminatory, disciplinary, or  
12 retaliatory action prohibited. (1) No discriminatory,  
13 disciplinary, or retaliatory action may be taken against an  
14 employee of a facility or against a patient, resident, or  
15 client of a facility for having filed a complaint with or  
16 providing information to the long-term care ombudsman or  
17 local ombudsman. Nothing in this section is intended to  
18 infringe upon the rights of the employer to supervise,  
19 discipline, or terminate an employee for other reasons.

20 (2) Any person who knowingly or willfully violates the  
21 provisions of subsection (1) is guilty of a misdemeanor.

22 **Section 3.** Willful interference prohibited. Any person  
23 who willfully hinders or interferes with the lawful actions  
24 of the long-term care ombudsman or local ombudsman in the  
25 performance of his official duties is guilty of a

1 misdemeanor.

2       **Section 4. Prosecutions by county attorney.** The county  
3 attorney of the county in which the long-term care facility  
4 is located shall investigate and prosecute, if appropriate,  
5 any allegations concerning violations of this part at the  
6 request of the long-term care ombudsman or local ombudsman.

7       **Section 5. Liability.** The long-term care ombudsman or  
8 local ombudsman may not be held liable for the good faith  
9 performance of his duties under this part.

10       **Section 6. Codification instruction.** [Sections 2  
11 through 5] are intended to be codified as an integral part  
12 of Title 53, chapter 5, part 8, and the provisions of Title  
13 53, chapter 5, part 8, apply to [sections 2 through 5].

14       **Section 7. Effective date.** [This act] is effective on  
15 passage and approval.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB086, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

HB86 is a bill to allow the Long-Term Care Ombudsman access to medical and social records; to prohibit discriminatory, disciplinary, or retaliatory actions by long-term care facilities; to prohibit willful interference with the lawful actions of the long-term care ombudsman and to define liability.

ASSUMPTIONS:

1. State statutes regarding the Long-Term Care Ombudsman must reflect the requirements of the federal Older American Act.
2. If the state is determined to be out of compliance with the Older Americans Act, the state may not be eligible for federal Aging Title III funds (approximately \$3,597,526/year).

FISCAL IMPACT:

There will be no fiscal impact if HB86 passes and required language changes are enacted.

*Ray Shackelford*

RAY SHACKLEFORD, BUDGET DIRECTOR  
OFFICE OF BUDGET AND PROGRAM PLANNING

*1/13/89*

DATE

*Thomas E. Kilpatrick*

THOMAS E. KILPATRICK, PRIMARY SPONSOR

*1-14-89*

DATE

Fiscal Note for HB086, as introduced

**HB 86**