

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

House BILL NO. 86

1 INTRODUCED BY Kipatin Russell

2 BY REQUEST OF THE DEPARTMENT OF FAMILY SERVICES

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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:
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16 "53-5-804. Access to long-term care facilities and
17 records. (1) The long-term care ombudsman or local ombudsman
18 shall have access without advance notice to any long-term
19 care facility, including private access to any resident, for
20 the purpose of meeting with residents, investigating and
21 resolving complaints, and advising residents on their
22 rights.

23
24 (2) The long-term care ombudsman or local ombudsman
shall have access to all medical and social records of any
resident of a long-term care facility with the permission of
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 t27(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 t37(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 Shackleford 1/13/89

RAY SHACKLEFORD, BUDGET DIRECTOR DATE
OFFICE OF BUDGET AND PROGRAM PLANNING

Thomas E. Kilpatrick 1-14-89

THOMAS E. KILPATRICK, PRIMARY SPONSOR DATE

Fiscal Note for HB086 , as introduced

HB 86