

SENATE BILL NO. 313

INTRODUCED BY TOWE, WANZENRIED, KEATING, KASTEN
BY REQUEST OF THE DEPARTMENT OF FAMILY SERVICES

IN THE SENATE

FEBRUARY 4, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON PUBLIC HEALTH, WELFARE, & SAFETY. FIRST READING.
FEBRUARY 15, 1993	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
FEBRUARY 16, 1993	PRINTING REPORT. ON MOTION, CONSIDERATION PASSED TILL THE 41ST LEGISLATIVE DAY.
FEBRUARY 19, 1993	SECOND READING, DO PASS.
FEBRUARY 20, 1993	ENGROSSING REPORT. THIRD READING, PASSED. AYES, 50; NOES, 0. TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 23, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON HUMAN SERVICES & AGING. FIRST READING.
MARCH 13, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 29, 1993	SECOND READING, CONCURRED IN.
MARCH 31, 1993	THIRD READING, CONCURRED IN. AYES, 89; NOES, 8. RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 5, 1993	SECOND READING, AMENDMENTS CONCURRED IN.
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APRIL 6, 1993

THIRD READING, AMENDMENT'S
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 Senate BILL NO. 313
 2 INTRODUCED BY Dave Hansen
 3 Foster BY REQUEST OF THE DEPARTMENT OF FAMILY SERVICES

4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT CONCERNING DISABLED
 6 ADULTS; AUTHORIZING THE DEPARTMENT OF FAMILY SERVICES TO
 7 LICENSE IN CERTAIN CIRCUMSTANCES ADULT FOSTER FAMILY CARE
 8 HOMES FOR MORE THAN LIGHT PERSONAL CARE OR CUSTODIAL CARE;
 9 SPECIFYING WHO MAY SERVE ON PROTECTIVE SERVICE TEAMS;
 10 SPECIFYING PERSONS REQUIRED TO REPORT SUSPECTED CASES OF
 11 ABUSE, NEGLECT, OR EXPLOITATION; DESIGNATING PERSONS WHO MAY
 12 ACCESS CERTAIN GOVERNMENT RECORDS OF ABUSED, NEGLECTED, OR
 13 EXPLOITED PERSONS; AND AMENDING SECTIONS 52-3-305, 52-3-805,
 14 52-3-811, AND 52-3-813, MCA."

15
 16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17 **Section 1.** Section 52-3-305, MCA, is amended to read:

18 "52-3-305. Limitation on care offered. The (1) Except
 19 as provided in this section, the type of care offered by
 20 adult foster family care homes for the purposes of this part
 21 is light personal care or custodial care and does not
 22 include skilled nursing care.

23 (2) An adult foster family care home may be licensed to
 24 provide care for a disabled adult who resided in the home
 25 for at least 1 year before reaching 18 years of age, even

1 though the adult is:

2 (a) in need of skilled nursing care;

3 (b) in need of medical, physical, or chemical
 4 restraint;

5 (c) nonambulatory or bedridden;

6 (d) incontinent to the extent that bowel or bladder
 7 control is absent; or

8 (e) unable to self-administer medications.

9 (3) A home applying for a license under subsection (2)
 10 must have a signed statement from a physician agreeing that
 11 the care needed by the adult may be provided in the home."

12 **Section 2.** Section 52-3-805, MCA, is amended to read:

13 "52-3-805. Adult protective service teams. The county
 14 attorney or the department of family services may convene
 15 one or more temporary or permanent interdisciplinary adult
 16 protective service teams. These teams may assist in
 17 assessing the needs of, formulating and monitoring a
 18 treatment plan for, and coordinating services to older
 19 persons and developmentally disabled persons who are victims
 20 of abuse, neglect, or exploitation. The supervisor of adult
 21 protective services of the department of family services or
 22 his a designee shall serve as the team's coordinator.
 23 Members must include a social worker, a member of a local
 24 law enforcement agency, a representative of the medical
 25 profession, and a county attorney or his a designee, who is

an attorney. Members may include other appropriate persons designated by the county attorney or the department."

Section 3. Section 52-3-811, MCA, is amended to read:

"52-3-811. Reports. (1) When the professionals and other persons listed in subsection (3) know or have reasonable cause to suspect that an older person or a developmentally disabled person known to them in their professional or official capacities has been subjected to abuse, exploitation, or neglect, they shall:

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

(i) the department of family services or its local affiliate;

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

(b) if the person is a resident of a long-term care facility, report the matter to the long-term care ombudsman appointed under the provisions of 42 U.S.C. 3027(a)(12) and to the department of health and environmental sciences. The department shall investigate the matter pursuant to its authority in 50-5-204 and, if it finds any allegations of abuse, exploitation, or neglect contained in the report to be substantially true, forward a copy of the report to the department of family services and to the county attorney as

provided in subsection (1)(a)(ii).

(2) If the report required in subsection (1) involves an act or omission of the department of family services which may be construed as abuse, exploitation, or neglect, a copy of the report may not be sent to the department but must be sent instead to the county attorney of the county in which the older person or the developmentally disabled person resides or in which the acts that are the subject of the report occurred.

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

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

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

(c) an ambulance attendant;

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

(e) a person who maintains or is employed by a roominghouse, retirement home, nursing home, group home, or

1 adult foster care home;

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

5 (g) a peace officer or other law enforcement official;
6 and

7 (h) a person providing services to an older person or a
8 developmentally disabled person pursuant to a contract with
9 a state or federal agency.

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

12 **Section 4.** Section 52-3-813, MCA, is amended to read:

13 "52-3-813. Confidentiality. (1) The case records of the
14 departments of social and rehabilitation services and family
15 services, their local affiliate, the county attorney, and
16 the court, concerning actions taken under this part, and all
17 reports made pursuant to 52-3-811 ~~shall~~ must be kept
18 confidential except as provided by this section.

19 (2) The records and reports required to be kept
20 confidential by subsection (1) may be disclosed, upon
21 request, to the following persons or entities in this or any
22 other state:

23 (a) a physician who has in ~~his~~ the physician's care an
24 older person or a developmentally disabled person who ~~he~~ the
25 physician reasonably believes was abused, neglected, or

1 exploited;

2 (b) a legal guardian or conservator of the older person
3 or the developmentally disabled person if the identity of
4 the person who made the report is protected and the legal
5 guardian or conservator is not the person suspected of the
6 abuse, neglect, or exploitation;

7 (c) the person named in the report as allegedly being
8 abused, neglected, or exploited if that person is not
9 legally incompetent;

10 (d) any person engaged in bona fide research if the
11 person alleged in the report to have committed the abuse,
12 exploitation, or neglect is later convicted of an offense
13 constituting abuse, exploitation, or neglect and if the
14 identity of the older person or the developmentally disabled
15 person who is the subject of the report is not disclosed to
16 the researcher; and

17 (e) an adult protective service team. Members of the
18 team are required to keep information about the subject
19 individuals confidential.

20 (f) an authorized representative of a provider of
21 services to a person alleged to be an abused, neglected, or
22 exploited older person or developmentally disabled person,
23 if:

24 (i) the department and the provider are parties to a
25 contested case proceeding under Title 2, chapter 4, part 6,

1 resulting from action by the department adverse to the
 2 license of the provider and if information contained in the
 3 records or reports of the department is relevant to the
 4 case; or

5 (ii) disclosure to the provider is determined by the
 6 department to be necessary to protect an interest of a
 7 person alleged to be an abused, neglected, or exploited
 8 older person or developmentally disabled person;

9 (g) an employee of the department or the department of
 10 social and rehabilitation services if disclosure of the
 11 record or report is necessary for administration of a
 12 program designed to benefit a person alleged to be an
 13 abused, neglected, or exploited older person or
 14 developmentally disabled person; and

15 (h) an authorized representative of a guardianship
 16 program approved by the department if the department
 17 determines that disclosure to the program or to a person
 18 designated by the program is necessary for the proper
 19 provision of guardianship services to a person alleged to be
 20 an abused, neglected, or exploited older person or
 21 developmentally disabled person.

22 (3) The records and reports required to be kept
 23 confidential by subsection (1) ~~shall~~ must be disclosed, upon
 24 request, to the following persons or entities in this or any
 25 other state:

1 (a) a county attorney or other law enforcement official
 2 who requires the information in connection with an
 3 investigation of a violation of this part;

4 (b) a court which has determined, in camera, that
 5 public disclosure of the report, data, information, or
 6 record is necessary for the determination of an issue before
 7 it;

8 (c) a grand jury upon its determination that the
 9 report, data, information, or record is necessary in the
 10 conduct of its official business.

11 (4) If the person who is reported to have abused,
 12 neglected, or exploited an older person or a developmentally
 13 disabled person is the holder of a license, permit, or
 14 certificate issued by the department of commerce under the
 15 provisions of Title 37 or issued by any other entity of
 16 state government, the report may be submitted to the entity
 17 that issued the license, permit, or certificate."

-End-

APPROVED BY COMMITTEE
ON PUBLIC HEALTH, WELFARE
& SAFETY

INTRODUCED BY Senate BILL NO. 313
Porter UNZERR Leahy
BY REQUEST OF THE DEPARTMENT OF FAMILY SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT CONCERNING DISABLED ADULTS; AUTHORIZING THE DEPARTMENT OF FAMILY SERVICES TO LICENSE IN CERTAIN CIRCUMSTANCES ADULT FOSTER FAMILY CARE HOMES FOR MORE THAN LIGHT PERSONAL CARE OR CUSTODIAL CARE; SPECIFYING WHO MAY SERVE ON PROTECTIVE SERVICE TEAMS; SPECIFYING PERSONS REQUIRED TO REPORT SUSPECTED CASES OF ABUSE, NEGLECT, OR EXPLOITATION; DESIGNATING PERSONS WHO MAY ACCESS CERTAIN GOVERNMENT RECORDS OF ABUSED, NEGLECTED, OR EXPLOITED PERSONS; AND AMENDING SECTIONS 52-3-305, 52-3-805, 52-3-811, AND 52-3-813, MCA."

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

Section 1. Section 52-3-305, MCA, is amended to read:

"52-3-305. Limitation on care offered. The (1) Except as provided in this section, the type of care offered by adult foster family care homes for the purposes of this part is light personal care or custodial care and does not include skilled nursing care.

(2) An adult foster family care home may be licensed to provide care for a disabled adult who resided in the home for at least 1 year before reaching 18 years of age, even

though the adult is:

(a) in need of skilled nursing care;

(b) in need of medical, physical, or chemical restraint;

(c) nonambulatory or bedridden;

(d) incontinent to the extent that bowel or bladder control is absent; or

(e) unable to self-administer medications.

(3) A home applying for a license under subsection (2) must have a signed statement from a physician agreeing that the care needed by the adult may be provided in the home."

Section 2. Section 52-3-805, MCA, is amended to read:

"52-3-805. Adult protective service teams. The county attorney or the department of family services may convene one or more temporary or permanent interdisciplinary adult protective service teams. These teams may assist in assessing the needs of, formulating and monitoring a treatment plan for, and coordinating services to older persons and developmentally disabled persons who are victims of abuse, neglect, or exploitation. The supervisor of adult protective services of the department of family services or his a designee shall serve as the team's coordinator. Members must include a social worker, a member of a local law enforcement agency, a representative of the medical profession, and a county attorney or his a designee, who is

an attorney. Members may include other appropriate persons designated by the county attorney or the department."

Section 3. Section 52-3-811, MCA, is amended to read:

"52-3-811. **Reports.** (1) When the professionals and other persons listed in subsection (3) know or have reasonable cause to suspect that an older person or a developmentally disabled person known to them in their professional or official capacities has been subjected to abuse, exploitation, or neglect, they shall:

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

(i) the department of family services or its local affiliate;

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

(b) if the person is a resident of a long-term care facility, report the matter to the long-term care ombudsman appointed under the provisions of 42 U.S.C. 3027(a)(12) and to the department of health and environmental sciences. The department shall investigate the matter pursuant to its authority in 50-5-204 and, if it finds any allegations of abuse, exploitation, or neglect contained in the report to be substantially true, forward a copy of the report to the department of family services and to the county attorney as

provided in subsection (1)(a)(ii).

(2) If the report required in subsection (1) involves an act or omission of the department of family services which may be construed as abuse, exploitation, or neglect, a copy of the report may not be sent to the department but must be sent instead to the county attorney of the county in which the older person or the developmentally disabled person resides or in which the acts that are the subject of the report occurred.

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

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

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

(c) an ambulance attendant;

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

(e) a person who maintains or is employed by a roominghouse, retirement home, nursing home, group home, or

adult foster care home;

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

(g) a peace officer or other law enforcement official; and

(h) a person providing services to an older person or a developmentally disabled person pursuant to a contract with a state or federal agency.

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

Section 4. Section 52-3-813, MCA, is amended to read:

"52-3-813. Confidentiality. (1) The case records of the departments of social and rehabilitation services and family services, their local affiliate, the county attorney, and the court, concerning actions taken under this part, and all reports made pursuant to 52-3-811 ~~shall~~ must be kept confidential except as provided by this section.

(2) The records and reports required to be kept confidential by subsection (1) may be disclosed, upon request, to the following persons or entities in this or any other state:

(a) a physician who has in his the physician's care an older person or a developmentally disabled person who he the physician reasonably believes was abused, neglected, or

exploited;

(b) a legal guardian or conservator of the older person or the developmentally disabled person if the identity of the person who made the report is protected and the legal guardian or conservator is not the person suspected of the abuse, neglect, or exploitation;

(c) the person named in the report as allegedly being abused, neglected, or exploited if that person is not legally incompetent;

(d) any person engaged in bona fide research if the person alleged in the report to have committed the abuse, exploitation, or neglect is later convicted of an offense constituting abuse, exploitation, or neglect and if the identity of the older person or the developmentally disabled person who is the subject of the report is not disclosed to the researcher; and

(e) an adult protective service team. Members of the team are required to keep information about the subject individuals confidential.

(f) an authorized representative of a provider of services to a person alleged to be an abused, neglected, or exploited older person or developmentally disabled person, if:

(i) the department and the provider are parties to a contested case proceeding under Title 2, chapter 4, part 6,

1 resulting from action by the department adverse to the
 2 license of the provider and if information contained in the
 3 records or reports of the department is relevant to the
 4 case; or

5 (ii) disclosure to the provider is determined by the
 6 department to be necessary to protect an interest of a
 7 person alleged to be an abused, neglected, or exploited
 8 older person or developmentally disabled person;

9 (g) an employee of the department or the department of
 10 social and rehabilitation services if disclosure of the
 11 record or report is necessary for administration of a
 12 program designed to benefit a person alleged to be an
 13 abused, neglected, or exploited older person or
 14 developmentally disabled person; and

15 (h) an authorized representative of a guardianship
 16 program approved by the department if the department
 17 determines that disclosure to the program or to a person
 18 designated by the program is necessary for the proper
 19 provision of guardianship services to a person alleged to be
 20 an abused, neglected, or exploited older person or
 21 developmentally disabled person.

22 (3) The records and reports required to be kept
 23 confidential by subsection (1) ~~shall~~ must be disclosed, upon
 24 request, to the following persons or entities in this or any
 25 other state:

1 (a) a county attorney or other law enforcement official
 2 who requires the information in connection with an
 3 investigation of a violation of this part;

4 (b) a court which has determined, in camera, that
 5 public disclosure of the report, data, information, or
 6 record is necessary for the determination of an issue before
 7 it;

8 (c) a grand jury upon its determination that the
 9 report, data, information, or record is necessary in the
 10 conduct of its official business.

11 (4) If the person who is reported to have abused,
 12 neglected, or exploited an older person or a developmentally
 13 disabled person is the holder of a license, permit, or
 14 certificate issued by the department of commerce under the
 15 provisions of Title 37 or issued by any other entity of
 16 state government, the report may be submitted to the entity
 17 that issued the license, permit, or certificate."

-End-

1 *Senate* BILL NO. *313*
 2 INTRODUCED BY *DWC* *UNZUNERED* *Spating*
 3 *Forster* BY REQUEST OF THE DEPARTMENT OF FAMILY SERVICES
 4

5 A BILL FOR AN ACT ENTITLED: "AN ACT CONCERNING DISABLED
 6 ADULTS; AUTHORIZING THE DEPARTMENT OF FAMILY SERVICES TO
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 24 provide care for a disabled adult who resided in the home
 25 for at least 1 year before reaching 18 years of age, even

1 though the adult is:

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 20 of abuse, neglect, or exploitation. The supervisor of adult
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 23 Members must include a social worker, a member of a local
 24 law enforcement agency, a representative of the medical
 25 profession, and a county attorney or his a designee, who is

an attorney. Members may include other appropriate persons designated by the county attorney or the department."

Section 3. Section 52-3-811, MCA, is amended to read:

"52-3-811. Reports. (1) When the professionals and other persons listed in subsection (3) know or have reasonable cause to suspect that an older person or a developmentally disabled person known to them in their professional or official capacities has been subjected to abuse, exploitation, or neglect, they shall:

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

(i) the department of family services or its local affiliate;

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

(b) if the person is a resident of a long-term care facility, report the matter to the long-term care ombudsman appointed under the provisions of 42 U.S.C. 3027(a)(12) and to the department of health and environmental sciences. The department shall investigate the matter pursuant to its authority in 50-5-204 and, if it finds any allegations of abuse, exploitation, or neglect contained in the report to be substantially true, forward a copy of the report to the department of family services and to the county attorney as

provided in subsection (1)(a)(ii).

(2) If the report required in subsection (1) involves an act or omission of the department of family services which may be construed as abuse, exploitation, or neglect, a copy of the report may not be sent to the department but must be sent instead to the county attorney of the county in which the older person or the developmentally disabled person resides or in which the acts that are the subject of the report occurred.

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

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

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

(c) an ambulance attendant;

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

(e) a person who maintains or is employed by a roominghouse, retirement home, nursing home, group home, or

1 adult foster care home;

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

5 (g) a peace officer or other law enforcement official;
6 and

7 (h) a person providing services to an older person or a
8 developmentally disabled person pursuant to a contract with
9 a state or federal agency.

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

12 **Section 4.** Section 52-3-813, MCA, is amended to read:

13 "52-3-813. Confidentiality. (1) The case records of the
14 departments of social and rehabilitation services and family
15 services, their local affiliate, the county attorney, and
16 the court, concerning actions taken under this part, and all
17 reports made pursuant to 52-3-811 ~~shall~~ must be kept
18 confidential except as provided by this section.

19 (2) The records and reports required to be kept
20 confidential by subsection (1) may be disclosed, upon
21 request, to the following persons or entities in this or any
22 other state:

23 (a) a physician who has in his the physician's care an
24 older person or a developmentally disabled person who he the
25 physician reasonably believes was abused, neglected, or

1 exploited;

2 (b) a legal guardian or conservator of the older person
3 or the developmentally disabled person if the identity of
4 the person who made the report is protected and the legal
5 guardian or conservator is not the person suspected of the
6 abuse, neglect, or exploitation;

7 (c) the person named in the report as allegedly being
8 abused, neglected, or exploited if that person is not
9 legally incompetent;

10 (d) any person engaged in bona fide research if the
11 person alleged in the report to have committed the abuse,
12 exploitation, or neglect is later convicted of an offense
13 constituting abuse, exploitation, or neglect and if the
14 identity of the older person or the developmentally disabled
15 person who is the subject of the report is not disclosed to
16 the researcher; and

17 (e) an adult protective service team. Members of the
18 team are required to keep information about the subject
19 individuals confidential.

20 (f) an authorized representative of a provider of
21 services to a person alleged to be an abused, neglected, or
22 exploited older person or developmentally disabled person,
23 if:

24 (i) the department and the provider are parties to a
25 contested case proceeding under Title 2, chapter 4, part 6,

1 resulting from action by the department adverse to the
 2 license of the provider and if information contained in the
 3 records or reports of the department is relevant to the
 4 case; or

5 (ii) disclosure to the provider is determined by the
 6 department to be necessary to protect an interest of a
 7 person alleged to be an abused, neglected, or exploited
 8 older person or developmentally disabled person;

9 (g) an employee of the department or the department of
 10 social and rehabilitation services if disclosure of the
 11 record or report is necessary for administration of a
 12 program designed to benefit a person alleged to be an
 13 abused, neglected, or exploited older person or
 14 developmentally disabled person; and

15 (h) an authorized representative of a guardianship
 16 program approved by the department if the department
 17 determines that disclosure to the program or to a person
 18 designated by the program is necessary for the proper
 19 provision of guardianship services to a person alleged to be
 20 an abused, neglected, or exploited older person or
 21 developmentally disabled person.

22 (3) The records and reports required to be kept
 23 confidential by subsection (1) shall must be disclosed, upon
 24 request, to the following persons or entities in this or any
 25 other state:

1 (a) a county attorney or other law enforcement official
 2 who requires the information in connection with an
 3 investigation of a violation of this part;

4 (b) a court which has determined, in camera, that
 5 public disclosure of the report, data, information, or
 6 record is necessary for the determination of an issue before
 7 it;

8 (c) a grand jury upon its determination that the
 9 report, data, information, or record is necessary in the
 10 conduct of its official business.

11 (4) If the person who is reported to have abused,
 12 neglected, or exploited an older person or a developmentally
 13 disabled person is the holder of a license, permit, or
 14 certificate issued by the department of commerce under the
 15 provisions of Title 37 or issued by any other entity of
 16 state government, the report may be submitted to the entity
 17 that issued the license, permit, or certificate."

-End-

HOUSE STANDING COMMITTEE REPORT

March 13, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Human Services and Aging report that Senate Bill 313 (third reading copy -- blue) be concurred in as amended .

Signed: _____

Wm E Boharski

Bill Boharski, Chair

And, that such amendments read:

Carried by: Rep. Hansen

1. Page 2.

Following: line 11

Insert: "(4) A resident of an adult foster family care home licensed under subsection (2) must have a signed statement, renewed on an annual basis, from a physician assistant-certified, a nurse practitioner, or a registered nurse, whose work is unrelated to the operation of the home and who:

(a) actually visited the home within the year covered by the statement;

(b) has certified that the particular needs of the resident can be adequately met in the home; and

(c) has certified that there has been no significant change in health care status that would require another level of care."

-END-

HOUSE

Committee Vote:
Yes 16, No 0.

SB 313
571200SC.Hpf

SENATE BILL NO. 313

INTRODUCED BY TOWE, WANZENRIED, KEATING, KASTEN
BY REQUEST OF THE DEPARTMENT OF FAMILY SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT CONCERNING DISABLED
ADULTS; AUTHORIZING THE DEPARTMENT OF FAMILY SERVICES TO
LICENSE IN CERTAIN CIRCUMSTANCES ADULT FOSTER FAMILY CARE
HOMES FOR MORE THAN LIGHT PERSONAL CARE OR CUSTODIAL CARE;
SPECIFYING WHO MAY SERVE ON PROTECTIVE SERVICE TEAMS;
SPECIFYING PERSONS REQUIRED TO REPORT SUSPECTED CASES OF
ABUSE, NEGLECT, OR EXPLOITATION; DESIGNATING PERSONS WHO MAY
ACCESS CERTAIN GOVERNMENT RECORDS OF ABUSED, NEGLECTED, OR
EXPLOITED PERSONS; AND AMENDING SECTIONS 52-3-305, 52-3-805,
52-3-811, AND 52-3-813, MCA."

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

Section 1. Section 52-3-305, MCA, is amended to read:

"52-3-305. Limitation on care offered. The (1) Except
as provided in this section, the type of care offered by
adult foster family care homes for the purposes of this part
is light personal care or custodial care and does not
include skilled nursing care.

(2) An adult foster family care home may be licensed to
provide care for a disabled adult who resided in the home
for at least 1 year before reaching 18 years of age, even

though the adult is:

(a) in need of skilled nursing care;

(b) in need of medical, physical, or chemical
restraint;

(c) nonambulatory or bedridden;

(d) incontinent to the extent that bowel or bladder
control is absent; or

(e) unable to self-administer medications.

(3) A home applying for a license under subsection (2)
must have a signed statement from a physician agreeing that
the care needed by the adult may be provided in the home.

(4) A RESIDENT OF AN ADULT FOSTER FAMILY CARE HOME
LICENSED UNDER SUBSECTION (2) MUST HAVE A SIGNED STATEMENT,
RENEWED ON AN ANNUAL BASIS, FROM A PHYSICIAN
ASSISTANT-CERTIFIED, A NURSE PRACTITIONER, OR A REGISTERED
NURSE, WHOSE WORK IS UNRELATED TO THE OPERATION OF THE HOME
AND WHO:

(A) ACTUALLY VISITED THE HOME WITHIN THE YEAR COVERED
BY THE STATEMENT;

(B) HAS CERTIFIED THAT THE PARTICULAR NEEDS OF THE
RESIDENT CAN BE ADEQUATELY MET IN THE HOME; AND

(C) HAS CERTIFIED THAT THERE HAS BEEN NO SIGNIFICANT
CHANGE IN HEALTH CARE STATUS THAT WOULD REQUIRE ANOTHER
LEVEL OF CARE."

Section 2. Section 52-3-805, MCA, is amended to read:

"52-3-805. Adult protective service teams. The county attorney or the department of family services may convene one or more temporary or permanent interdisciplinary adult protective service teams. These teams may assist in assessing the needs of, formulating and monitoring a treatment plan for, and coordinating services to older persons and developmentally disabled persons who are victims of abuse, neglect, or exploitation. The supervisor of adult protective services of the department of family services or his a designee shall serve as the team's coordinator. Members must include a social worker, a member of a local law enforcement agency, a representative of the medical profession, and a county attorney or his a designee, who is an attorney. Members may include other appropriate persons designated by the county attorney or the department."

Section 3. Section 52-3-811, MCA, is amended to read:

"52-3-811. Reports. (1) When the professionals and other persons listed in subsection (3) know or have reasonable cause to suspect that an older person or a developmentally disabled person known to them in their professional or official capacities has been subjected to abuse, exploitation, or neglect, they shall:

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

(i) the department of family services or its local

affiliate;

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

(b) if the person is a resident of a long-term care facility, report the matter to the long-term care ombudsman appointed under the provisions of 42 U.S.C. 3027(a)(12) and to the department of health and environmental sciences. The department shall investigate the matter pursuant to its authority in 50-5-204 and, if it finds any allegations of abuse, exploitation, or neglect contained in the report to be substantially true, forward a copy of the report to the department of family services and to the county attorney as provided in subsection (1)(a)(ii).

(2) If the report required in subsection (1) involves an act or omission of the department of family services which may be construed as abuse, exploitation, or neglect, a copy of the report may not be sent to the department but must be sent instead to the county attorney of the county in which the older person or the developmentally disabled person resides or in which the acts that are the subject of the report occurred.

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

(a) a physician, resident, intern, professional or

1 practical nurse, physician's assistant, or member of a
2 hospital staff engaged in the admission, examination, care,
3 or treatment of persons;

4 (b) an osteopath, dentist, denturist, chiropractor,
5 optometrist, podiatrist, medical examiner, coroner, or any
6 other health or mental health professional;

7 (c) an ambulance attendant;

8 (d) a social worker or other employee of the state, a
9 county, or a municipality assisting an older person or a
10 developmentally disabled person in the application for or
11 receipt of public assistance payments or services;

12 (e) a person who maintains or is employed by a
13 roominghouse, retirement home, nursing home, group home, or
14 adult foster care home;

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

18 (g) a peace officer or other law enforcement official;
19 and

20 (h) a person providing services to an older person or a
21 developmentally disabled person pursuant to a contract with
22 a state or federal agency.

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

25 **Section 4.** Section 52-3-813, MCA, is amended to read:

1 **"52-3-813. Confidentiality.** (1) The case records of the
2 departments of social and rehabilitation services and family
3 services, their local affiliate, the county attorney, and
4 the court, concerning actions taken under this part, and all
5 reports made pursuant to 52-3-811 shall must be kept
6 confidential except as provided by this section.

7 (2) The records and reports required to be kept
8 confidential by subsection (1) may be disclosed, upon
9 request, to the following persons or entities in this or any
10 other state:

11 (a) a physician who has in his the physician's care an
12 older person or a developmentally disabled person who he the
13 physician reasonably believes was abused, neglected, or
14 exploited;

15 (b) a legal guardian or conservator of the older person
16 or the developmentally disabled person if the identity of
17 the person who made the report is protected and the legal
18 guardian or conservator is not the person suspected of the
19 abuse, neglect, or exploitation;

20 (c) the person named in the report as allegedly being
21 abused, neglected, or exploited if that person is not
22 legally incompetent;

23 (d) any person engaged in bona fide research if the
24 person alleged in the report to have committed the abuse,
25 exploitation, or neglect is later convicted of an offense.

1 constituting abuse, exploitation, or neglect and if the
 2 identity of the older person or the developmentally disabled
 3 person who is the subject of the report is not disclosed to
 4 the researcher; and

5 (e) an adult protective service team. Members of the
 6 team are required to keep information about the subject
 7 individuals confidential.

8 (f) an authorized representative of a provider of
 9 services to a person alleged to be an abused, neglected, or
 10 exploited older person or developmentally disabled person,
 11 if:

12 (i) the department and the provider are parties to a
 13 contested case proceeding under Title 2, chapter 4, part 6,
 14 resulting from action by the department adverse to the
 15 license of the provider and if information contained in the
 16 records or reports of the department is relevant to the
 17 case; or

18 (ii) disclosure to the provider is determined by the
 19 department to be necessary to protect an interest of a
 20 person alleged to be an abused, neglected, or exploited
 21 older person or developmentally disabled person;

22 (g) an employee of the department or the department of
 23 social and rehabilitation services if disclosure of the
 24 record or report is necessary for administration of a
 25 program designed to benefit a person alleged to be an

1 abused, neglected, or exploited older person or
 2 developmentally disabled person; and

3 (h) an authorized representative of a guardianship
 4 program approved by the department if the department
 5 determines that disclosure to the program or to a person
 6 designated by the program is necessary for the proper
 7 provision of guardianship services to a person alleged to be
 8 an abused, neglected, or exploited older person or
 9 developmentally disabled person.

10 (3) The records and reports required to be kept
 11 confidential by subsection (1) ~~shall~~ must be disclosed, upon
 12 request, to the following persons or entities in this or any
 13 other state:

14 (a) a county attorney or other law enforcement official
 15 who requires the information in connection with an
 16 investigation of a violation of this part;

17 (b) a court which has determined, in camera, that
 18 public disclosure of the report, data, information, or
 19 record is necessary for the determination of an issue before
 20 it;

21 (c) a grand jury upon its determination that the
 22 report, data, information, or record is necessary in the
 23 conduct of its official business.

24 (4) If the person who is reported to have abused,
 25 neglected, or exploited an older person or a developmentally

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1 disabled person is the holder of a license, permit, or
2 certificate issued by the department of commerce under the
3 provisions of Title 37 or issued by any other entity of
4 state government, the report may be submitted to the entity
5 that issued the license, permit, or certificate."

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