

Senate Bill 46- House Human Services Committee
Testimony submitted by Bonnie Adee, Mental Health Ombudsman
Monday, March 14, 2005

In April 1999 the 56th Montana Legislature created the Office of the Mental Health Ombudsman, giving the office the duty to “represent the interests of individuals with regard to the need for public mental health services”. In August 1999 Governor Marc Racicot appointed me to a four-year term as Montana’s first Mental Health Ombudsman.

Two years later, the 57th Montana Legislature clarified the legislative intent regarding the Mental Health Ombudsman’s office, adding the requirement of an annual report with recommendations regarding the mental health system, plus the instruction not to provide legal advocacy.

Last session the 58th Montana Legislature considered a bill to change the law to make the office of the Mental Health Ombudsman discretionary, allowing the Governor the option of not appointing an ombudsman. This bill died in committee. Governor Martz reappointed me to another four-year term in August 2003.

Senate Bill 46, before you now, is a bill requested by the Children, Families and Health Human Services Interim Committee. It’s intent is to further clarify the duties of the Mental Health Ombudsman, as well as to indicate legislative intent regarding access to confidential and protected health information.

The need for a bill arose because in April 2003, when portions of the federal privacy act (HIPAA) took effect, the Department of Public Health and Human Services (DPHHS)

In the original version of this bill was language that stated the duties of the mental health ombudsman are directly connected to the administration of the Medicaid program. This language was in the original bill with the hope that it would assist the ombudsman to access eligibility information in the Medicaid database when needed to assist someone in need of mental health services. However, CMS has determined that the ombudsman cannot have access to the Medicaid database, with or without this language. Currently, DPHHS and the Mental Health Ombudsman's office have worked out an acceptable arrangement for me to request Medicaid eligibility information with an individual's verbal authorization, with written authorization to follow. The bill, as now amended, requires us to describe that arrangement formally in a Memo of Understanding.

Next Monday the House Judiciary Committee will hear Senate Bill 385, sponsored by Senator Esp. That bill does not currently contain the same language about access to confidential information as is appears in SB 46 before you today. One reason for that Senator Esp's bill adds duties to the ombudsman office in the child welfare system. The ability and the need for the ombudsman to access confidential health information in the child welfare system is different from the ability and need for a health oversight entity to access protected health information. Clarification and coordination instructions are necessary if the House of Representatives pass both bills.

Feel free to contact me with your questions at: 444-9669