



36 S. Last Chance Gulch, Suite A
Helena, Montana 59601

Telephone (406) 443-2876
FAX (406) 443-4614

E-mail: info@mthealthcare.org
Website: www.mthealthcare.org

24 446
SENATE PUBLIC HEALTH, WELFARE & SAFETY

EXHIBIT NO. 2

DATE: 2-16-05

BILL NO. SB 446

SENATE PUBLIC HEALTH COMMITTEE

SB 446 - FAMILY COUNCILS IN NURSING HOMES

February 16, 2005

For the record, I am Rose Hughes, Executive Director of the Montana Health Care Association, an association representing nursing homes and assisted living facilities throughout the state of Montana.

We oppose SB 246 because we believe it is unnecessary – there are federal regulations and guidelines that address issues related to family councils. We also believe the impetus for this legislation is a specific problem between one facility and one family council. Statewide legislation affecting all facilities is not a good way to resolve an individual issue in one community. This bill attempts to micro-manage facility relationships with families and friends of residents.

We have now had an opportunity to seek input from our members throughout the state and have found no support for this proposal. All who responded recognize the value of good, solid relationships with the families and guardians of residents – but strongly believe that the relationship between residents, families and nursing home staff must be one of mutual respect and collaboration if there is to be any benefit to residents. We believe respect and a collaborative attitude cannot be legislated. And, there are a number of reasons the legislation could actually prove detrimental to the appropriate functioning of family groups in our facilities around the state. I'd like to share with you just some of our thinking on this proposal.

1. The legislation is not needed.

- There are ample federal regulatory requirements related to family councils in nursing homes. Federal regulations give residents' families the right to meet in the facility with the families of other residents, require facilities to provide private space for the group to meet, provides that staff and others may attend meetings at the group's invitation, requires facilities to designate a staff member to assist and respond to written requests resulting from group meetings, and requires the facilities to listen to and act upon grievances and recommendations concerning policy and decisions affecting resident care and life in the facility.

- According to federal interpretive guidelines a family group is not required, but if one exists, it meets regularly to discuss and offer suggestions about policies and procedures that affect care, treatment and quality of life; to support each other; to plan resident and family activities; to participate in educational activities; or for other purposes. The facility is required to listen and consider, but "acting upon" the issues does not mean the facility must accede to all group recommendations.
- Enforcement of the federal regulations is already available at the state level. The Dept. of Public Health and Human Services (DPHHS) enforces this and other federal regulations through its annual survey process as well as through its complaint investigation process. Any facility not meeting these regulations will be cited by the department and the facility will be required to correct the situation. Failure to correct a cited deficiency can result in penalties—up to and including loss of Medicare and Medicaid certification.

2. The legislation could hamper efforts of bona fide family councils who function according to the letter and spirit of the federal regulations and guidelines.

- The purpose of *family* councils is to provide an opportunity for the *families* of those who actually are residing in the facility to get together, support each other and make reasonable recommendations about ways the facility can improve the quality of care and life *for their loved ones*. The federal requirement does not impose on facilities an obligation to provide staff, support and space to "community groups" - this is about the special relationships of residents, families and care givers. Interested community members may wish to volunteer their services in the facility to assist with activities, outings, and provide other constructive support. And, community members—and staff— may attend meetings *when invited by the family group*. As the group size increases and includes those that are not part of the "facility family" it is more difficult for families to discuss the issues that are important to them. We hear anecdotally that some actual family members have stopped attending the meetings where the group includes non-family members who seem to have a different agenda than the bona fide family members. This is detrimental to the concept of family groups and support. Also, the larger the group becomes, the greater the demand on facility space and staff time.
- A family council meeting should not be defined as a meeting of family members without the presence of staff because the council has a right to invite staff. Well functioning family councils work hand in hand with facility staff for the good of the residents.

3. The legislation could interfere with the ability of the facility to provide care

and services and to comply with other regulations and standards.

- The "Council" as a whole has the enumerated rights, but "one member" should not be able to call meetings and ask for facility space and staff time. Requests for space and staff assistance must be reasonable and must recognize other demands on facility space and staff time in providing quality care to all residents. Well functioning Councils have policies agreed to by the entire group and the facility.
- There are numerous privacy issues raised by the legislation. For example, only the resident or individuals designated by the resident can be involved in the admission process. Also, involving individuals and organizations "outside the facility" may involve privacy issues - it depends on who they are and what is being discussed. Clearly, it would be detrimental to residents if their HIPAA and other privacy rights were intentionally or unintentionally violated.
- Working with the council and responding to requests takes time and effort on the part of facility staff. The demands made cannot unreasonably interfere with other duties and resident care. And, there can be no arbitrary time frames for written responses to requests and recommendations. Depending on the nature of the recommendation there may be a need for research or the issues may require action by a governing board or other entity. And, facilities juggle issues and staff daily and must be able to do so in a responsible way.
- Any health care entity's quality improvement process is designed to be an *internal* process. The point of this process is to allow the health care facility to honestly evaluate its performance, to identify problems and to correct them. It is well known that anything short of complete privacy of these discussions and records has the detrimental affect of stifling the effort to self-identify problems. And there are serious liability issues as well.

4. There are costs associated with this legislation.

- Any new regulatory burden on a facility has a cost attached for paperwork, documentation and other staff involvement. Nursing homes are very highly regulated. They are also highly dependent on Medicaid reimbursement which does not even cover the actual costs associated with providing care to Medicaid beneficiaries. Costs are shifted to those who pay for their own care. We must consider this before adding to the regulatory burden.

We believe the proposal is not necessary, and may have unintended consequences that are detrimental to residents, families and facilities.

We urge you to vote Do Not Pass on SB 446.