Montana State Legislature

Exhibit Number: 6

The following exhibit is several assorted documents that exceeds the 10-page limit therefore it cannot be scanned. A small portion has been scanned to aid in your research for information. The exhibit is on file at the Montana Historical Society and can be viewed there.

Montana Historical Society Archives, 225 N. Roberts, Helena, MT 59620-1201; phone (406) 444-4774. For minutes in paper format, please contact the Montana State Law Library, Justice Building, 215 N. Sanders, Helena, MT 59620; (406) 444-3660. Tapes and exhibits are also available at the Historical Society (tapes are retained for five years). Scanning done by: Susie Hamilton

SENATE PUBLIC HEALTH, WELFARE & SAFETY
EXHIBIT NO. 6
DATE: 4-1-5
BILL NO. HB 704

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BEFORE THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

* * * * * *

In the matter of the Certification	)	IDR No. 04-03-275XXX
	)	
Survey of LTC Facility, AnyTown.	)	**OPINION AND RECOMMENDATION**
	)	
	)	
	)	

An in-person Informal Dispute Resolution Conference was held on the above-entitled matter on August 5, 2004, in Helena Montana. From a review of the file, the Presiding Official provides the following:

I. PROCEDURAL BACKGROUND

On May 20, 2004, the Department of Public Health and Human Services acting as the State Survey Agency (hereinafter Department) completed a Health Re-certification Survey of Long Term Care Facility (hereinafter Facility). On June 1, 2004, the Department sent a letter to Facility informing the Facility that the enclosed Statement of Deficiencies (hereinafter SOD) recorded on the federal form CMS-2567, contained deficiencies that required a Plan of Correction (POC). Facility was also given notice of its right to request an IDR pursuant to 42 CFR § 488.331 and ARM §37.5.601 et seq. to contest the deficiencies cited. On June 9, 2004, Facility requested an in-person IDR conference in order to refute the survey findings and citation of deficiency TAGs F225, F253 and F324. Subsequently an IDR conference was scheduled and held. Those who appeared in person for Facility were: Regional Executive

Director of Facility; Regional Operations Manager of Facility; and Executive Director of Facility. One person appeared for the Department: Surveyor Supervisor of the Certification Bureau of the Department of Public Health and Human Services' Quality Assurance Division. The Presiding Official was from the Department's Office of Fair Hearings.

At the Conference Facility withdrew its request to dispute TAG F225.

From the presentations made and documents and supporting regulations referenced, the Presiding Official provides the following:

II. OVERVIEW OF THE REGULATION OF LONG-TERM CARE FACILITIES

A. Medicare Certification

The Social Security Act (hereinafter Act) provides that skilled nursing facilities participating in Medicare must meet certain specified requirements.[i] The provisions of part 483 of Title 42 of the Code of Federal Regulations contain the requirements. They serve as the basis for survey activities for the purpose of determining whether a facility meets the requirements for participation.[ii] Certification is a recommendation made by the survey agencies to CMS based upon the compliance of the skilled nursing facilities with the requirements for coverage.[iii]

B. Medicare Survey Process

Section 1864(a) of the Act directs the Secretary of the U.S. Department of Health and Humans Services[iv] to use the help of state health agencies (hereinafter SSA standing for State Survey Agency) when determining if health care entities meet federal standards. The Montana Department of Public Health and Human Services is the SSA for Montana. To assist SSAs the Center for Medicare and Medicaid Services (hereinafter CMS) issued a State Operations Manual (Publication 100-07) (hereinafter SOM) explaining the

federal standards. The most recent version was released in May of 2004. "Chapter 7 implements the nursing home survey, certification, and enforcement regulations 42 CFR Part 488."[v] Survey procedural guidelines are found at 42 CFR § 488.110. This survey protocol provides guidance to surveyors conducting surveys. SSAs are directed to follow the protocol that consists of survey procedures, worksheets and interpretive guidelines.[vi] The seven survey tasks are described in detail in Appendix P[vii] of the SOM. "A standard survey is composed of Tasks 1 - 7, and is a resident-centered, outcome-oriented inspection which relies on a case-mix stratified sample of residents to gather information about the facility's compliance with participation requirements. Outcomes include both actual and potential negative outcomes, as well as failure of a facility to help residents achieve their highest practicable level of well-being.[viii]

If after gathering the information the SSA determines that a deficiency exists (defined as a facility's failure to meet a participation requirement specified in the Social Security Act or in Part 483 Subpart B) the SSA assesses the effect on resident outcome (severity level) and determines the number of residents potentially or actually affected (scope level). There are four severity levels and three scope levels. The SSA issues a Statement of Deficiencies (hereinafter SOD) using the CMS Form 2567. These statements indicate the data prefix TAG[ix] and regulatory citation followed by a summary of the evidence and supporting observations using resident identifiers.[x] All of the TAGs and the full regulatory identifying information are found in Appendix PP of the SOM.

A facility may request an informal dispute resolution to refute a deficiency citation made by the SSA.[xi]

III. DEFICIENCIES CITED IN DISPUTE

After completion of the 2004 re-certification survey the Department determined Facility did not meet some certification requirements. Facility disputes the deficiency citations of the following TAGs.

A. TAG F253

TAG F253 is cited if a facility fails to meet the standards set in 42 CFR § 483.15(h)(2) which provides: "The facility must provide - housekeeping and maintenance services necessary to maintain a sanitary, orderly, and comfortable interior."

The Department cited Facility for this deficiency based on the following conditions observed by the surveyors: odor throughout the facility; grass, paper, string, dust, debris and cigarette butts on carpeted floors; stained and damaged carpet; chairs in a varying states of disrepair; cracked and missing floor tile in a tub room; traction strips in a tub in poor condition and covered with fuzz and lint; mold and mildew growing in the shower grout in a shower room; damaged floor tiles; numerous unclean floors; opened window missing screen; patio concrete surface cracked; unused furniture stored against outside wall of building; and dirty entrance threshold and baseboards. The Department found this practice to be widespread with no actual harm resulting but with the potential for more than minimal harm that is not immediate jeopardy and determined the scope and severity of this deficiency was an F.

Facility disputed this finding. Facility argued that the Department needed to use specific descriptors in the examples such as dirt, mud, or coffee instead of "brown chunks of matter" or "unidentified brown liquid" or "black matter". Facility argued the descriptions were inflammatory and that readers