

SENATE BILL NO. 43

INTRODUCED BY A. WITTICH

BY REQUEST OF THE CHILDREN, FAMILIES, HEALTH, AND HUMAN SERVICES INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS GOVERNING THE INVESTIGATION OF ALLEGED MISTREATMENT, NEGLECT, OR ABUSE OF RESIDENTS AT A RESIDENTIAL FACILITY; REQUIRING THAT REPORTS BE SUBMITTED TO THE STATE PROTECTION AND ADVOCACY PROGRAM; PROVIDING THAT INVESTIGATORS ARE EMPLOYEES OF INVESTIGATIONS BE CONDUCTED BY THE DEPARTMENT OF JUSTICE; AND AMENDING SECTION 53-20-163, MCA."

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

**Section 1.** Section 53-20-163, MCA, is amended to read:

**"53-20-163. Abuse of residents prohibited.** (1) ~~Every residential facility shall prohibit mistreatment, neglect, or abuse in any form of any resident~~ Any form of mistreatment, neglect, or abuse of a resident is prohibited.

(2) A residential facility shall publish in each cottage and building and circulate to staff a written policy statement that defines the facility's requirements for reporting and investigating allegations of mistreatment, neglect, or abuse AND INJURIES FROM AN UNKNOWN SOURCE.

(3) ~~Alleged violations~~ Each allegation of mistreatment, neglect, or abuse AND EACH INJURY FROM AN UNKNOWN SOURCE must be reported immediately to the superintendent of the facility AND TO THE DEPARTMENT OF JUSTICE, and ~~there must be~~ THE RESIDENTIAL FACILITY SHALL MAINTAIN a written record that:

(A) EACH ALLEGATION AND EACH INJURY FROM AN UNKNOWN SOURCE HAS BEEN REPORTED TO THE DEPARTMENT OF JUSTICE;

~~(a)~~(B) ~~each alleged violation~~ allegation AND EACH INJURY FROM AN UNKNOWN SOURCE has been thoroughly investigated and findings stated; ~~and~~

~~(b)~~(C) the investigation into the ~~alleged violation~~ allegation OR INJURY FROM AN UNKNOWN SOURCE was initiated within 24 hours of the report of the incident; ~~and~~

(D) the results were reported to the director of the department of public health and human services.

~~(2)~~(4) ~~The reports~~ The residential facility shall report the details of each reported allegation, including

1 providing the written record created pursuant to this section, must also be made to the mental disabilities board  
2 of visitors monthly and the state protection and advocacy program for individuals with developmental disabilities,  
3 as authorized by 42 U.S.C. 15043(a)(2), WITHIN 5 BUSINESS DAYS OF THE INCIDENT. THE RESIDENTIAL FACILITY MAY  
4 NOT REDACT ANY INFORMATION THAT IS PROVIDED PURSUANT TO THIS SUBSECTION. The mental disabilities board of  
5 visitors and the state protection and advocacy program shall maintain the confidentiality of any report received  
6 under this section TO THE SAME EXTENT THAT THE REPORTS ARE CONFIDENTIAL UNDER STATE AND FEDERAL LAWS  
7 APPLICABLE TO THE RESIDENTIAL FACILITY. Each facility shall cause a written statement of this policy to be posted  
8 in each cottage and building and circulated to all staff members.

9 (5) The person responsible for conducting an investigation into an allegation under this section is an  
10 employee of the department of justice and is under the supervision and control of the attorney general.

11 (5) UPON RECEIVING A REPORT OF AN ALLEGATION OF MISTREATMENT, NEGLECT, OR ABUSE OR OF AN INJURY  
12 FROM AN UNKNOWN SOURCE, THE DEPARTMENT OF JUSTICE SHALL CONDUCT A THOROUGH INVESTIGATION OF EACH  
13 ALLEGATION OR EACH INJURY FROM AN UNKNOWN SOURCE AND PROVIDE A WRITTEN REPORT OF ITS INVESTIGATION AND  
14 FINDINGS TO THE SUPERINTENDENT OF THE RESIDENTIAL FACILITY WITHIN 5 BUSINESS DAYS OF THE INCIDENT.

15 (6) THE RESIDENTIAL FACILITY SHALL PROVIDE THE DEPARTMENT OF JUSTICE WITH ACCESS TO RECORDS AND  
16 OTHER INFORMATION NECESSARY TO CONDUCT INVESTIGATIONS UNDER THIS SECTION. THE DEPARTMENT OF JUSTICE  
17 SHALL MAINTAIN THE CONFIDENTIALITY OF ANY INFORMATION RECEIVED IN THE COURSE OF CONDUCTING INVESTIGATIONS  
18 UNDER THIS SECTION TO THE SAME EXTENT THAT THE INFORMATION IS CONFIDENTIAL UNDER STATE AND FEDERAL LAWS  
19 APPLICABLE TO THE RESIDENTIAL FACILITY.

20 (7) IF A STATE LICENSING AUTHORITY OR FEDERAL MEDICAID CERTIFICATION AUTHORITY ISSUES A STATEMENT  
21 OF DEFICIENCY INDICATING THAT THE RESIDENTIAL FACILITY HAS FAILED TO MEET LICENSING OR CERTIFICATION  
22 STANDARDS DUE TO THE THOROUGHNESS OR TIMELINESS OF AN INVESTIGATION CONDUCTED UNDER THIS SECTION, THE  
23 DEPARTMENT OF JUSTICE SHALL PARTICIPATE IN PREPARING A PLAN OF CORRECTION TO RESTORE THE RESIDENTIAL  
24 FACILITY'S COMPLIANCE WITH LICENSING OR CERTIFICATION STANDARDS.

25 (8) IF IN THE COURSE OF CONDUCTING AN INVESTIGATION UNDER THIS SECTION THE DEPARTMENT OF JUSTICE  
26 DEVELOPS REASONABLE CAUSE TO BELIEVE THAT A CRIMINAL OFFENSE HAS OCCURRED, THE DEPARTMENT OF JUSTICE  
27 SHALL REFER THE MATTER TO THE APPROPRIATE LOCAL LAW ENFORCEMENT AGENCY."

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