

HOUSE BILL NO. 473

INTRODUCED BY D. LENZ

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ABILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT THE QUALITY ASSURANCE DIVISION OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES IS RESPONSIBLE FOR INVESTIGATING REPORTS OF ELDER ABUSE IN LONG-TERM CARE FACILITIES; AMENDING SECTIONS 50-5-1104 AND 52-3-811, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

**Section 1.** Section 50-5-1104, MCA, is amended to read:

**"50-5-1104. Rights of long-term care facility residents.** (1) The state adopts by reference for all long-term care facilities the rights for long-term care facility residents applied by the federal government to facilities that provide skilled nursing care or intermediate nursing care and participate in a medicaid or medicare program (42 U.S.C. 1395i-3(a) and 1396r(a), as implemented by regulation).

(2) In addition to the rights adopted under subsection (1), the state adopts for all residents of long-term care facilities the following rights:

(a) A resident or the resident's authorized representative must be informed by the facility at least 30 days in advance of any changes in the cost or availability of services, unless to do so is beyond the facility's control.

(b) Regardless of the source of payment, each resident or the resident's authorized representative is entitled, upon request, to receive and examine an explanation of the resident's monthly bill.

(c) Residents have the right to organize, maintain, and participate in resident advisory councils. The facility shall afford reasonable privacy and facility space for the meetings of the councils.

(d) A resident has the right to present a grievance on the resident's own behalf or that of others to the facility or the resident advisory council. The facility shall establish written procedures for receiving, handling, and informing residents or the resident advisory council of the outcome of any grievance presented.

(e) A resident has the right to ask a state agency or a resident advocate for assistance in resolving grievances, free from restraint, interference, or reprisal.

(f) During a resident's stay in a long-term care facility, the resident retains the prerogative to exercise decisionmaking rights in all aspects of the resident's health care, including placement and treatment issues such



1 as medication, special diets, or other medical regimens.

2 (g) The resident's authorized representative must be notified in a prompt manner of any significant  
3 accident, unexplained absence, or significant change in the resident's health status.

4 (h) A resident has the right to be free from verbal, mental, and physical abuse, neglect, or financial  
5 exploitation. Facility staff shall report to the quality assurance division of the department and the long-term care  
6 ombudsman any suspected incidents of abuse under the Montana Elder and Persons With Developmental  
7 Disabilities Abuse Prevention Act, Title 52, chapter 3, part 8.

8 (i) Each resident has the right to privacy in the resident's room or portion of the room. If a resident is  
9 seeking privacy in the resident's room, staff members should make reasonable efforts to make their presence  
10 known when entering the room.

11 (j) In case of involuntary transfer or discharge, a resident has the right to reasonable advance notice to  
12 ensure an orderly transfer or discharge. Reasonable advance notice requires at least 21 days' written notification  
13 of any interfacility transfer or discharge except in cases of emergency or for medical reasons documented in the  
14 resident's medical record by the attending physician.

15 (k) If clothing is provided to the resident by the facility, it must be of reasonable fit.

16 (l) A resident has the right to reasonable safeguards for personal possessions brought to the facility. The  
17 facility shall provide a means for safeguarding the resident's small items of value in the resident's room or in  
18 another part of the facility where the resident must have reasonable access to the items.

19 (m) The resident has the right to have all losses or thefts of personal possessions promptly investigated  
20 by the facility. The results of the investigation must be reported to the affected resident.

21 (3) The administrator of the facility shall adopt whatever additional measures are necessary to implement  
22 the residents' rights listed in subsections (1) and (2) and meet any other requirements relating to residents' health  
23 and safety that are conditions of participation in a state or federal program of medical assistance."  
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25 **Section 2.** Section 52-3-811, MCA, is amended to read:

26 **"52-3-811. Reports.** (1) When the professionals and other persons listed in subsection (3) know or have  
27 reasonable cause to suspect that an older person or a person with a developmental disability known to them in  
28 their professional or official capacities has been subjected to abuse, sexual abuse, neglect, or exploitation, they  
29 shall:

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

- 1 (i) the department or its local affiliate; or
- 2 (ii) the county attorney of the county in which the person resides or in which the acts that are the subject
- 3 of the report occurred;
- 4 (b) if the person is a resident of a long-term care facility, report the matter to the long-term care
- 5 ombudsman appointed under the provisions of 42 U.S.C. 3027(a)(12) and to the department. The quality
- 6 assurance division of the department shall investigate the matter pursuant to its authority in 50-5-204 and, if it
- 7 finds any allegations of abuse, sexual abuse, neglect, or exploitation contained in the report to be substantially
- 8 true, forward a copy of the report to the county attorney as provided in subsection (1)(a)(ii).
- 9 (2) If the report required in subsection (1) involves an act or omission of the department that may be
- 10 construed as abuse, sexual abuse, neglect, or exploitation, a copy of the report may not be sent to the department
- 11 but must be sent instead to the county attorney of the county in which the older person or the person with a
- 12 developmental disability resides or in which the acts that are the subject of the report occurred.
- 13 (3) Professionals and other persons required to report are:
- 14 (a) a physician, resident, intern, professional or practical nurse, physician assistant, or member of a
- 15 hospital staff engaged in the admission, examination, care, or treatment of persons;
- 16 (b) an osteopath, dentist, denturist, chiropractor, optometrist, podiatrist, medical examiner, coroner, or
- 17 any other health or mental health professional;
- 18 (c) an ambulance attendant;
- 19 (d) a social worker or other employee of the state, a county, or a municipality assisting an older person
- 20 or a person with a developmental disability in the application for or receipt of public assistance payments or
- 21 services;
- 22 (e) a person who maintains or is employed by a roominghouse, retirement home or complex, nursing
- 23 home, group home, adult foster care home, adult day-care center, or assisted living facility or an agency or
- 24 individual that provides home health services or personal care in the home;
- 25 (f) an attorney, unless the attorney acquired knowledge of the facts required to be reported from a client
- 26 and the attorney-client privilege applies;
- 27 (g) a peace officer or other law enforcement official;
- 28 (h) a person providing services to an older person or a person with a developmental disability pursuant
- 29 to a contract with a state or federal agency; and
- 30 (i) an employee of the department while in the conduct of the employee's duties.

1           (4) Any other persons or entities may, but are not required to, submit a report in accordance with  
2 subsection (1)."

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4           NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

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