

House Bill 4392
Sponsor: Rep. Virg Bernero
Committee: Health Policy

Complete to 4-19-01

A SUMMARY OF HOUSE BILL 4392 AS INTRODUCED 3-1-01

The bill would create a new act, the “legislative mental health ombudsman act,” to create the office of the legislative mental health ombudsman within the Legislative Council “as a means of monitoring and ensuring compliance with relevant statutes, rules, and policies pertaining to mental health services.”

Legislative mental health ombudsman. The principal executive officer of the proposed office of the legislative mental health ombudsman would be the legislative mental health ombudsman, who would be appointed by, and serve at the pleasure of, the Legislative Council. The office of the ombudsman would be able to do all of the following:

- Upon its own initiative or upon receipt of a complaint, investigate an “administrative act” that was alleged to be either contrary to law or administrative rule or contrary to policy of certain agencies or entities that provided mental health services and imposed without an adequate statement of reason, or based on irrelevant, immaterial, or erroneous grounds. (the bill would define “administrative act” to include an action, omission, decision, recommendation, practice, or other procedure of the department, a community mental health services program [CMHSP], a mental health professional, a facility, or a hospital with respect to a particular applicant for, or recipient of, mental health services);
- Decide, in its discretion, whether to investigate a complaint;
- Upon its own initiative or upon receipt of a complaint, conduct a preliminary investigation to determine whether a mental health professional might have committed an administrative act that were alleged to be contrary to law, rule, the Michigan rules of professional conduct adopted by the Michigan supreme court, or the commonly accepted practice standards of the mental health profession;
- Hold informal hearings and request that individuals appear before the ombudsman and give testimony or produce documentary or other evidence that the ombudsman considered relevant to a matter under investigation; and
- Make recommendations to the governor and the legislature concerning the need for mental health services legislation.

The legislative mental health ombudsman also would establish procedures for receiving and processing complaints, conducting investigations, holding hearings, and reporting findings resulting from investigations.

No effect on other rights of appeal. The authority granted by the bill to the legislative mental health ombudsman would be in addition to any remedies or rights of appeal or objection provided under any other act or rule. The bill also would be in addition to any current legal procedure providing for inquiry into, or investigation of, any matter. Finally, the bill specifies that the authority that it would grant to the ombudsman would not limit or affect a person's remedy or right of appeal or objection and would not be an exclusive remedy or procedure.

Who could make complaints. The bill would allow a specified list of individuals to make a complaint to the ombudsman with respect to a particular applicant for, or recipient of, mental health services, alleging that an administrative act were contrary to law, rule, or policy, imposed without an adequate statement of reason, or based on irrelevant, immaterial, or erroneous grounds. The people who could make complaints to the ombudsman under the bill would include all of the following:

- The “applicant” or “recipient” (defined in the bill as an individual or his or her legal representative who made a request for, or received mental health services from, the Department of Community Health, a CMHSP, a state or private licensed residential mental health facility, or a hospital or from a mental health professional under contract with the department or the CMHSP, if he or she were able to articulate a complaint);
- A minor applicant's or recipient's parent;
- An applicant's or recipient's court-appointed guardian or family member (parent, stepparent, spouse, sibling, child, or grandparent, or individual upon whom the applicant or recipient were dependent for at least 50 percent of his or her financial support);
- A Michigan legislator; or
- An attorney for any of the individuals listed above.

Who would be subject to complaints. The mental health agencies, entities, or individuals that would be subject to complaint and investigation would include

- The Department of Community Health (DCH);
- A community mental health services program (CMHSP) operated under the Mental Health Code as a county community mental health agency, a community mental health authority, or a community mental health organization;
- A residential facility for the care or treatment of individuals with serious mental illness, serious emotional disturbance, or developmental disability that was either a state facility or a “licensed facility” (defined in the bill to mean a facility licensed by the department under the Mental Health Code or an adult foster care facility licensed under the Adult Foster Care Facility Licensing Act);
- An inpatient hospital treatment program for individuals with serious mental illness or serious emotional disturbance (or a licensed psychiatric hospital or psychiatric unit) operated by the DCH; or
- A “mental health professional,” which the bill would define as an individual who was trained and experienced in the area of mental illness or developmental disabilities and who was

either a licensed physician (MD or DO), licensed psychologist, licensed registered professional nurse (RN), registered social worker (including certified social workers and social worker technicians), licensed professional counselor, or licensed marriage and family therapist.

Investigation of complaints. When the ombudsman received a complaint and decided to investigate it, he or she would notify (a) the complainant of the decision to investigate the complaint and (b) the Department of Community Health, CMHSP, mental health professional, facility, or hospital of the intention to investigate the complaint. If the ombudsman declined to investigate a complaint or continue an investigation, he or she would have to notify the complainant, the DCH, CMHSP, mental health professional, facility, or hospital of the decision and reason for the ombudsman's action.

The ombudsman could advise a complainant to pursue all administrative remedies or channels of complaint open to him or her before pursuing a complaint with the ombudsman. However, after the administrative processing of a complaint, the ombudsman could conduct a further investigation of the complaint either upon the request of the complainant or upon the ombudsman's own initiative.

If, in the course of an investigation, the ombudsman found that an individual's action were in violation of state or federal criminal law, the ombudsman would immediately report that fact to the county prosecutor or the attorney general.

Reports and notices. The bill would require the legislative mental health ombudsman to make reports and recommendations to agencies and individuals he or she investigated, notify the complainant, and submit an annual report to the Legislative Council, Department of Community Health, and the legislature.

The ombudsman would have to prepare a report of the findings of an investigation and make a recommendation to the Department of Community Health, CMHSP, mental health professional, facility, or hospital if the ombudsman found one or more of the following:

- A matter should be further considered by the department, CMHSP, mental health professional, facility, or hospital;
- An administrative act should be modified or canceled;
- Reasons should be given for an administrative act; or
- Other action should be taken by the department, CMHSP, mental health professional, facility, or hospital.

The bill also would allow the ombudsman to ask the agency or individual investigated to notify the ombudsman, within a specified time, of any action taken on any recommendation made by the ombudsman to the department, CMHSP, mental health professional, facility, or hospital.

The ombudsman would be required to notify the complainant of the action taken by the ombudsman and by the DCH, CMHSP, mental health professional, facility, or hospital, as well as provide the complainant with a copy of the ombudsman's recommendation on a complaint.

Finally, the ombudsman would have to submit an annual report on the ombudsman's conduct and any recommendations regarding the need for legislation or for administrative rules changes to the Legislative Council, the director of the Department of Community Health, and the legislature.

Confidentiality. The ombudsman would treat a matter under investigation, including the identity of an applicant or recipient or individual from whom information were acquired, as confidential, except as necessary to enable the ombudsman to perform the duties of the office and to support a recommendation resulting from an investigation. A record of the office of the ombudsman would be confidential, would be used only for purposes set forth in the bill, and would not be subject to court subpoena. A record of the office of the legislative mental health ombudsman would be exempt from disclosure under the Freedom of Information Act.

Prohibitions and requirements. The Department of Community Health, a CMHSP, a mental health professional, a facility, or a hospital would not be allowed to penalize any person for filing a complaint or for cooperating with the ombudsman in investigation a complaint. The bill also would prohibit an individual, the DCH, a CMHSP, mental health professional, facility, or hospital from hindering the lawful actions of the legislative mental health ombudsman or his or her employees.

The bill would require the DCH, CMHSP, mental health professional, facility, and hospital to do all of the following:

- Upon the ombudsman's request, grant him or her (or his or her designee) access to all relevant information, records, and documents in their possession that the ombudsman considered necessary in an investigation;
- Assist the ombudsman to obtain the necessary releases of documents that were specifically restricted;
- Provide the ombudsman, upon request, with progress reports concerning the administrative processing of a complaint;
- Provide information regarding the bill's provisions to an applicant for, or recipient of, mental health services, or to their parent, guardian, attorney, or family member.

Role of the Legislative Council. The Legislative Council would be required to establish procedures for approving the budget for the office of the legislative ombudsman, expending funds, and employing sufficient personnel, subject to annual appropriations, to carry out the duties and powers prescribed by the bill.

Effective date. If enacted, the bill would take effect on January 1, 2002.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.