

HOUSE BILL No. 4392

March 1, 2001, Introduced by Reps. Bernero, Bob Brown, DeWeese, Anderson, Rocca, Gielegem, Jamnick, Minore, Waters, Julian, Schauer, Jacobs, Howell, Dennis, Hale, Woodward, Kolb, Garza, Lipsey, Basham, Pestka, Bovin, Richardville, Hardman, Thomas, Zelenko, Wojno, Sheltroun, Stallworth, Mans, O'Neil, Spade, Neumann, Rich Brown, McConico, Plakas, Quarles, Toy, Vander Veen, Reeves, Williams, Adamini, Clarke, Rivet, Phillips, Rison, Frank, Lockwood, Bogardus, Kilpatrick, Kowall, Callahan, Lemmons, Whitmer, Switalski and Stewart and referred to the Committee on Health Policy.

A bill to create the office of the legislative mental health ombudsman; to prescribe the powers and duties of the legislative mental health ombudsman, the legislative council, certain state departments and officers, and certain county and private agencies serving children; and to provide remedies from certain administrative acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "legislative mental health ombudsman act".

3 Sec. 2. As used in this act:

4 (a) "Administrative act" includes an action, omission, deci-
5 sion, recommendation, practice, or other procedure of the depart-
6 ment, a CMHSP, a mental health professional, a facility, or a
7 hospital with respect to a particular applicant for or recipient
8 of mental health services.

1 (b) "Applicant" means an individual or his or her legal
2 representative who makes a request for mental health services
3 from the department, a CMHSP, a facility, or a hospital or from a
4 provider or mental health professional operating under contract
5 with the department or a CMHSP.

6 (c) "CMHSP" means a community mental health services program
7 operated under chapter 2 of the mental health code, 1974 PA 258,
8 MCL 330.1200a to 330.1245, as a county community mental health
9 agency, a community mental health authority, or a community
10 mental health organization.

11 (d) "Complainant" means an individual who makes a complaint
12 as provided in section 5.

13 (e) "Department" means the department of community health.

14 (f) "Facility" means a residential facility for the care or
15 treatment of individuals with serious mental illness, serious
16 emotional disturbance, or developmental disability that is either
17 a state facility or a licensed facility.

18 (g) "Family member" means a parent, stepparent, spouse, sib-
19 ling, child, or grandparent of an applicant or recipient or an
20 individual upon whom an applicant or recipient is dependent for
21 at least 50% of his or her financial support.

22 (h) "Guardian" means a person appointed by the court to
23 exercise specific powers over an individual who is a minor,
24 legally incapacitated, or developmentally disabled.

25 (i) "Hospital" or "psychiatric hospital" means an inpatient
26 program operated by the department for the treatment of
27 individuals with serious mental illness or serious emotional

1 disturbance or a psychiatric hospital or psychiatric unit
2 licensed under section 137 of the mental health code, 1974
3 PA 258, MCL 330.1137.

4 (j) "Legislative council" means the legislative council
5 established under section 15 of article IV of the state constitu-
6 tion of 1963.

7 (k) "Legislator" means a member of the senate or the house
8 of representatives of this state.

9 (l) "Licensed facility" means a facility licensed by the
10 department under section 137 of the mental health code, 1974 PA
11 258, MCL 330.1137, or an adult foster care facility licensed
12 under the adult foster care facility licensing act, 1979 PA 218,
13 MCL 400.701 to 400.737.

14 Sec. 2a. As used in this act:

15 (a) "Mental health professional" means an individual who is
16 trained and experienced in the area of mental illness or develop-
17 mental disabilities and who is 1 of the following:

18 (i) A physician who is licensed to practice medicine or
19 osteopathic medicine and surgery in this state under article 15
20 of the public health code, 1978 PA 368, MCL 333.16101 to
21 333.18838.

22 (ii) A psychologist licensed to practice in this state under
23 article 15 of the public health code, 1978 PA 368, MCL 333.16101
24 to 333.18838.

25 (iii) A registered professional nurse licensed to practice
26 in this state under article 15 of the public health code, 1978
27 PA 368, MCL 333.16101 to 333.18838.

1 (iv) A certified social worker, a social worker, or a social
2 worker technician registered in this state under article 15 of
3 the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

4 (v) A licensed professional counselor licensed to practice
5 in this state under article 15 of the public health code, 1978
6 PA 368, MCL 333.16101 to 333.18838.

7 (vi) A marriage and family therapist licensed under article
8 15 of the public health code, 1978 PA 368, MCL 333.16101 to
9 333.18838.

10 (b) "Minor" means an individual under the age of 18 years.

11 (c) "Office" means the office of the legislative mental
12 health ombudsman created under this act.

13 (d) "Ombudsman" means the mental health ombudsman created in
14 section 3.

15 (e) "Recipient" means an individual who receives mental
16 health services from the department, a community mental health
17 services program, a facility, or a hospital or from a provider or
18 mental health professional operating under contract with the
19 department or a CMHSP.

20 Sec. 3. (1) As a means of monitoring and ensuring compli-
21 ance with relevant statutes, rules, and policies pertaining to
22 mental health services, the office of the legislative mental
23 health ombudsman is created within the legislative council.

24 (2) The principal executive officer of the office of the
25 legislative mental health ombudsman is the legislative mental
26 health ombudsman, who shall be appointed by and serve at the
27 pleasure of the legislative council.

1 Sec. 4. (1) The legislative council shall establish
2 procedures for approving the budget for the office, expending
3 funds, and employing personnel. Subject to annual appropria-
4 tions, the office shall employ sufficient personnel to carry out
5 the duties and powers prescribed by this act.

6 (2) The ombudsman shall establish procedures for receiving
7 and processing complaints from complainants, conducting investi-
8 gations, holding hearings, and reporting findings resulting from
9 investigations.

10 Sec. 5. All of the following individuals may make a com-
11 plaint to the ombudsman with respect to a particular applicant or
12 recipient, alleging that an administrative act is contrary to
13 law, rule, or policy, imposed without an adequate statement of
14 reason, or based on irrelevant, immaterial, or erroneous
15 grounds:

16 (a) The applicant or recipient, if he or she is able to
17 articulate a complaint.

18 (b) A minor applicant's or recipient's parent.

19 (c) An applicant's or recipient's guardian.

20 (d) An applicant's or recipient's family member.

21 (e) A Michigan legislator.

22 (f) An attorney for an individual described in subdivisions
23 (a) to (e).

24 Sec. 6. The ombudsman may do all of the following:

25 (a) Upon its own initiative or upon receipt of a complaint
26 from a complainant, investigate an administrative act that is
27 alleged to be contrary to law or rule, or contrary to policy of

1 the department, a CMHSP, a facility, or a hospital imposed
2 without an adequate statement of reason, or based on irrelevant,
3 immaterial, or erroneous grounds.

4 (b) Decide, in its discretion, whether to investigate a
5 complaint.

6 (c) Upon its own initiative or upon receipt of a complaint
7 from a complainant, conduct a preliminary investigation to deter-
8 mine whether a mental health professional may have committed an
9 administrative act that is alleged to be contrary to law, rule,
10 the Michigan rules of professional conduct adopted by the
11 Michigan supreme court, or the commonly accepted practice stan-
12 dards of the mental health profession.

13 (d) Hold informal hearings and request that individuals
14 appear before the ombudsman and give testimony or produce docu-
15 mentary or other evidence that the ombudsman considers relevant
16 to a matter under investigation.

17 (e) Make recommendations to the governor and the legislature
18 concerning the need for mental health services legislation.

19 Sec. 7. (1) Upon rendering a decision to investigate a com-
20 plaint from a complainant, the ombudsman shall notify the com-
21 plainant of the decision to investigate and shall notify the
22 department, CMHSP, mental health professional, facility, or hos-
23 pital of the intention to investigate. If the ombudsman declines
24 to investigate a complaint or continue an investigation, the
25 ombudsman shall notify the complainant and the department, CMHSP,
26 mental health professional, facility, or hospital of the decision
27 and reason for the ombudsman's action.

1 (2) The ombudsman may advise a complainant to pursue all
2 administrative remedies or channels of complaint open to the com-
3 plainant before pursuing a complaint with the ombudsman.

4 Subsequent to the administrative processing of a complaint, the
5 ombudsman may conduct a further investigation of a complaint upon
6 the request of the complainant or upon the ombudsman's own
7 initiative.

8 (3) If the ombudsman finds in the course of an investigation
9 that an individual's action is in violation of state or federal
10 criminal law, the ombudsman shall immediately report that fact to
11 the county prosecutor or the attorney general.

12 Sec. 8. (1) The department, CMHSP, mental health profes-
13 sional, facility, and hospital shall do all of the following:

14 (a) Upon the ombudsman's request, grant the ombudsman or its
15 designee access to all relevant information, records, and docu-
16 ments in the department's, CMHSP's, mental health professional's,
17 facility's, or hospital's possession that the ombudsman considers
18 necessary in an investigation.

19 (b) Assist the ombudsman to obtain the necessary releases of
20 documents that are specifically restricted.

21 (c) Provide the ombudsman upon request with progress reports
22 concerning the administrative processing of a complaint.

23 (2) The department, CMHSP, mental health professional,
24 facility, or hospital shall provide information to an applicant
25 or recipient, a minor applicant's or recipient's parent, an
26 applicant's or recipient's guardian, or an applicant's or

1 recipient's family member or an applicant's or recipient's
2 attorney regarding the provisions of this act.

3 Sec. 9. The ombudsman shall treat a matter under investiga-
4 tion, including the identity of an applicant or recipient or
5 individual from whom information is acquired, as confidential,
6 except so far as disclosure is necessary to enable the ombudsman
7 to perform the duties of the office and to support a recommenda-
8 tion resulting from an investigation. A record of the office of
9 the ombudsman is confidential, shall be used only for purposes
10 set forth in this act, and is not subject to court subpoena. A
11 record of the office of the ombudsman is exempt from disclosure
12 under the freedom of information act, 1976 PA 442, MCL 15.231 to
13 15.246.

14 Sec. 10. (1) The ombudsman shall prepare a report of the
15 findings of an investigation and make a recommendation to the
16 department, CMHSP, mental health professional, facility, or hos-
17 pital if the ombudsman finds 1 or more of the following:

18 (a) A matter should be further considered by the department,
19 CMHSP, mental health professional, facility, or hospital.

20 (b) An administrative act should be modified or canceled.

21 (c) Reasons should be given for an administrative act.

22 (d) Other action should be taken by the department, CMHSP,
23 mental health professional, facility, or hospital.

24 (2) The ombudsman may request to be notified by the depart-
25 ment, CMHSP, mental health professional, facility, or hospital,
26 within a specified time, of any action taken on any
27 recommendation presented.

1 (3) The ombudsman shall notify the complainant of the action
2 taken by the ombudsman and by the department, CMHSP, mental
3 health professional, facility, or hospital.

4 (4) The ombudsman shall provide the complainant with a copy
5 of its recommendation on a complaint.

6 (5) The ombudsman shall submit to the legislative council,
7 the director of the department, and the legislature an annual
8 report on the conduct of the ombudsman, including any recommenda-
9 tions regarding the need for legislation or for change in rules
10 or policies.

11 Sec. 11. (1) The department, a CMHSP, a mental health pro-
12 fessional, a facility, or a hospital shall not penalize any
13 person for filing a complaint or cooperating with the ombudsman
14 in investigating a complaint.

15 (2) An individual, the department, or a CMHSP, mental health
16 professional, facility, or hospital shall not hinder the lawful
17 actions of the ombudsman or employees of the ombudsman.

18 Sec. 12. The authority granted the ombudsman under this act
19 is in addition to the authority granted under the provisions of
20 any other act or rule under which the remedy or right of appeal
21 or objection is provided for a person, or procedure provided for
22 inquiry into or investigation of any matter. The authority
23 granted the ombudsman does not limit or affect the remedy or
24 right of appeal or objection and is not an exclusive remedy or
25 procedure.

26 Enacting section 1. This act takes effect January 1, 2002.