

# SENATE BILL No. 1

January 12, 2005, Introduced by Senators BERNERO and GEORGE 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,  
5 decision, recommendation, practice, or other procedure of the  
6 department, a CMHSP, a mental health professional, a facility, or a

1 hospital with respect to a particular applicant for or recipient of  
2 mental health services.

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

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

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

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

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

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

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

27 (i) "Hospital" or "psychiatric hospital" means an inpatient

1 program operated by the department for the treatment of individuals  
2 with serious mental illness or serious emotional disturbance or a  
3 psychiatric hospital or psychiatric unit licensed under section 137  
4 of the mental health code, 1974 PA 258, MCL 330.1137.

5 (j) "Legislative council" means the legislative council  
6 established under section 15 of article IV of the state  
7 constitution of 1963.

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

10 (l) "Licensed facility" means a facility licensed by the  
11 department under section 137 of the mental health code, 1974 PA  
12 258, MCL 330.1137, or an adult foster care facility licensed under  
13 the adult foster care facility licensing act, 1979 PA 218, MCL  
14 400.701 to 400.737.

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

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

19 (i) A physician who is licensed to practice medicine or  
20 osteopathic medicine and surgery in this state under article 15 of  
21 the public health code, 1978 PA 368, MCL 333.16101 to 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 to  
24 333.18838.

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

1 (iv) A licensed master's social worker licensed under article  
2 15 of the public health code, 1978 PA 368, MCL 333.16101 to  
3 333.18838.

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

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

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

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

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

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

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

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

26 Sec. 4. (1) The legislative council shall establish procedures  
27 for approving the budget for the office, expending funds, and

1 employing personnel. Subject to annual appropriation, the office  
2 shall employ sufficient personnel to carry out the duties and  
3 powers prescribed by this act.

4 (2) The ombudsman shall establish procedures for receiving and  
5 processing complaints from complainants, conducting investigations,  
6 holding hearings, and reporting findings resulting from  
7 investigations.

8 Sec. 5. All of the following individuals may file a complaint  
9 with the office with respect to a particular applicant or  
10 recipient, alleging that an administrative act or omission is  
11 contrary to law, rule, or policy, imposed without an adequate  
12 statement of reason, or based on irrelevant, immaterial, or  
13 erroneous grounds:

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

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

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

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

19 (e) A Michigan legislator.

20 (f) An attorney for an individual described in subdivisions  
21 (a) to (e).

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

23 (a) Upon his or her own initiative or upon receipt of a  
24 complaint from a complainant, investigate an administrative act or  
25 omission that is alleged to be contrary to law or rule, or contrary  
26 to the policy of the department, a CMHSP, a facility, or a hospital  
27 imposed without an adequate statement of reason, or based on

1 irrelevant, immaterial, or erroneous grounds.

2 (b) Decide, in his or her discretion, whether to investigate a  
3 complaint.

4 (c) Upon his or her own initiative or upon receipt of a  
5 complaint from a complainant, conduct a preliminary investigation  
6 to determine whether a mental health professional may have  
7 committed an administrative act or omission that is alleged to be  
8 contrary to law, rule, the Michigan rules of professional conduct  
9 adopted by the Michigan supreme court, or the commonly accepted  
10 practice standards of the mental health profession.

11 (d) Hold informal hearings and request that individuals appear  
12 before the ombudsman and give testimony or produce documentary or  
13 other evidence that the ombudsman considers relevant to a matter  
14 under investigation.

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

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

26 (2) The ombudsman may advise a complainant to pursue all  
27 administrative remedies or channels of complaint open to the

1 complainant before pursuing a complaint with the ombudsman.  
2 Subsequent to the administrative processing of a complaint, the  
3 ombudsman may conduct a further investigation of a complaint at the  
4 request of the complainant or on the ombudsman's own initiative.

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

9 Sec. 8. (1) The department, CMHSP, mental health professional,  
10 facility, and hospital shall do all of the following:

11 (a) Upon the ombudsman's request, grant the ombudsman or his  
12 or her designee access to all relevant information, records, and  
13 documents in the department's, CMHSP's, mental health  
14 professional's, facility's, or hospital's possession that the  
15 ombudsman considers necessary in an investigation.

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

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

20 (2) The department, CMHSP, mental health professional,  
21 facility, or hospital shall provide information to an applicant or  
22 recipient, a minor applicant's or recipient's parent, an  
23 applicant's or recipient's guardian, or an applicant's or  
24 recipient's family member or an applicant's or recipient's attorney  
25 regarding the provisions of this act.

26 Sec. 9. The ombudsman shall treat a matter under  
27 investigation, including the identity of an applicant or recipient

1 or individual from whom information is acquired, as confidential,  
2 except so far as disclosure is necessary to enable the ombudsman to  
3 perform the duties of the office and to support a recommendation  
4 resulting from an investigation. A record of the office of the  
5 ombudsman is confidential, shall be used only for purposes set  
6 forth in this act, and is not subject to court subpoena. A record  
7 of the office of the ombudsman is exempt from disclosure under the  
8 freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

9       Sec. 10. (1) The ombudsman shall prepare a report of the  
10 findings of an investigation and make a recommendation to the  
11 department, CMHSP, mental health professional, facility, or  
12 hospital if the ombudsman finds 1 or more of the following:

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

15       (b) An administrative act or omission should be modified or  
16 canceled.

17       (c) Reasons should be given for an administrative act or  
18 omission.

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

21       (2) The ombudsman may request to be notified by the  
22 department, CMHSP, mental health professional, facility, or  
23 hospital, within a specified time, of action taken on his or her  
24 recommendation.

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



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

3           (5) The ombudsman shall submit to the legislative council, the  
4 director of the department, and the legislature an annual report on  
5 the conduct of the ombudsman, including recommendations regarding  
6 the need for legislation or for change in rules or policies.

7           Sec. 11. (1) The department, a CMHSP, a mental health  
8 professional, a facility, or a hospital shall not penalize a person  
9 for filing a complaint or cooperating with the ombudsman in  
10 investigating a complaint.

11           (2) An individual, the department, or a CMHSP, mental health  
12 professional, facility, or hospital shall not hinder the lawful  
13 actions of the ombudsman or the ombudsman's employees.

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

21           Enacting section 1. This act takes effect January 1, 2006.