

HOUSE BILL No. 6408

September 27, 2018, Introduced by Reps. Geiss, Liberati, Clemente, Camilleri, Guerra and Phelps and referred to the Committee on Health Policy.

A bill to create the office of disabilities ombudsman; to prescribe the powers and duties of the disabilities ombudsman; and to prescribe the powers and duties of certain state departments and agencies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. (1) This act shall be known and may be cited as the
2 "office of disabilities ombudsman act".

3 (2) As used in this act unless the context clearly requires
4 otherwise:

5 (a) "Administration" means the disabilities administration of
6 the department.

7 (b) "Department" means the department of technology,
8 management, and budget.

1 (c) "Disabilities" includes developmental disabilities as that
2 term is defined in section 100a of the mental health code, 1974 PA
3 258, MCL 330.1100a, and physical disabilities.

4 (d) "Identifying information" includes the complainant's or
5 witness's name, location, telephone number, likeness, Social
6 Security number or other identification number, or identification
7 of an immediate family member.

8 (e) "Ombudsman" or "office" means the office of the
9 disabilities ombudsman created in section 3.

10 Sec. 3. (1) The office of the disabilities ombudsman is
11 created as an autonomous entity within the department. The
12 department shall contract with a private, independent nonprofit
13 organization to provide disabilities ombudsman services. The
14 department shall designate, by a competitive bidding process, the
15 nonprofit organization that shall contract to operate the office of
16 the disabilities ombudsman. The selection process must include
17 consultation of stakeholders in the development of the request for
18 proposals and evaluation of bids. The selected nonprofit
19 organization must have experience and the capacity to effectively
20 communicate regarding disability issues with policy makers,
21 stakeholders, and the general public and must be prepared and able
22 to provide all program and staff support necessary, directly or
23 through subcontracts, to carry out all duties of the office.

24 (2) The contracting nonprofit organization and its
25 subcontractors, if any, are not state agencies or departments, but
26 are private, independent entities operating under contract with
27 this state.

1 (3) The governor or the department may not revoke the
2 designation of the nonprofit organization contracted to provide the
3 services of the ombudsman except upon a showing of neglect of duty,
4 misconduct, or inability to perform duties.

5 Sec. 5. (1) The ombudsman shall ensure that the ombudsman
6 staff has access to sufficient training in or experience with
7 issues relating to individuals with disabilities and the programs
8 for individuals with disabilities, including, but not limited to,
9 the Michigan rehabilitation services. The ombudsman shall ensure
10 that there is the staff support necessary to enable the ombudsman
11 to effectively protect the interests of individuals with
12 disabilities.

13 (2) The office of the disabilities ombudsman has the powers
14 and duties to do the following:

15 (a) Provide information as appropriate on the rights and
16 responsibilities of individuals receiving state services or other
17 services, and on the procedures for providing these services.

18 (b) Investigate, on its own initiative or on receipt of a
19 complaint, an administrative act related to an individual with a
20 disability alleged to be contrary to law, rule, or policy, imposed
21 without an adequate statement of reason, or based on irrelevant,
22 immaterial, or erroneous grounds. The ombudsman may decline to
23 investigate a complaint.

24 (c) Monitor the procedures as established, implemented, and
25 practiced by other departments to carry out their responsibilities
26 in the delivery of services to an individual with a disability,
27 with a view toward appropriate preservation of families and

1 ensuring health and safety.

2 (d) Review periodically the facilities and procedures of
3 public institutions, including nursing facilities receiving public
4 funds, that serve individuals with disabilities and state-licensed
5 facilities or residences.

6 (e) Recommend changes in the procedures for addressing the
7 needs of individuals with disabilities.

8 (f) Submit annually, by November 1, to the governor and the
9 house of representatives and senate standing committees regarding
10 human services matters, a report analyzing the work of the office,
11 including recommendations.

12 (g) Establish procedures to protect the confidentiality of
13 records and sensitive information to ensure that the identity of a
14 complainant or individual with a disability is not disclosed
15 without the written consent of the complainant or individual, or
16 upon court order.

17 (h) Maintain independence and authority within the bounds of
18 the duties prescribed by this act, and exercise this independence
19 and authority in good faith and within the scope of the contract.

20 (i) Carry out other activities as determined by the ombudsman
21 within the scope of this act.

22 (3) The disabilities ombudsman must consult with stakeholders
23 to develop a plan for future expansion of the ombudsman into a
24 model of individual ombudsman services similar to the operations of
25 the long-term care ombudsman. The disabilities ombudsman shall
26 report its progress and recommendations related to this subsection
27 to the governor and the house of representatives and senate

1 standing committees regarding human services matters by November 1,
2 2020.

3 Sec. 7. The ombudsman shall collaborate and have a memoranda
4 of agreement with the office of the state long-term care ombudsman,
5 the office of the children's ombudsman, and the veteran's ombudsman
6 to clarify authority in those situations where their mandates
7 overlap.

8 Sec. 9. (1) A disabilities ombudsman shall not have
9 participated in the paid provision of services to an individual
10 with a disability within the past year.

11 (2) A disabilities ombudsman shall not have been employed in a
12 governmental position with direct involvement in licensing,
13 certification, or regulation of a paid disabilities service
14 provider within the past year.

15 (3) No disabilities ombudsman or any member of his or her
16 immediate family may have, or have had within the past year,
17 significant ownership or investment interest in a paid provider of
18 services to individuals with disabilities.

19 (4) A disabilities ombudsman shall not be assigned to
20 investigate a facility or provider of services that provides care
21 or services to a member of that ombudsman's immediate family.

22 Sec. 11. The ombudsman shall treat all matters under
23 investigation, including the identities of service recipients,
24 complainants, and individuals from whom information is acquired, as
25 confidential, except as far as disclosures may be necessary to
26 enable the ombudsman to perform the duties of the office and to
27 support recommendations resulting from an investigation. Upon

1 receipt of information that by law is confidential or privileged,
2 the ombudsman shall maintain the confidentiality of that
3 information and shall not further disclose or disseminate the
4 information except as provided by applicable state or federal law.
5 Investigative records of the office are confidential and are exempt
6 from public disclosure under the freedom of information act, 1976
7 PA 442, MCL 15.231 to 15.246.

8 Sec. 13. (1) Identifying information about a complainant or
9 witness is not subject to any method of legal compulsion and may
10 not be revealed to the legislature or the governor except under the
11 following circumstances:

12 (a) The complainant or witness waives confidentiality.

13 (b) Under a legislative subpoena when there is a legislative
14 investigation for neglect of duty or misconduct by the ombudsman or
15 ombudsman's staff if the identifying information is necessary to
16 the investigation of the ombudsman's acts.

17 (c) Under an investigation or inquiry by the governor as to
18 neglect of duty or misconduct by the ombudsman or ombudsman's staff
19 if the identifying information is necessary to the investigation of
20 the ombudsman's acts. Consistently with this section, the ombudsman
21 must protect sensitive client information.

22 (2) Subsection (1) does not apply in any of the following
23 circumstances:

24 (a) The ombudsman or ombudsman's staff member has direct
25 knowledge of an alleged crime, and the testimony, evidence, or
26 discovery sought is relevant to that allegation.

27 (b) The ombudsman or ombudsman's staff member has received a

1 threat of, or becomes aware of a risk of, imminent serious harm to
2 an individual, and the testimony, evidence, or discovery sought is
3 relevant to that threat or risk.

4 (c) The ombudsman has been asked to provide general
5 information regarding the general operation of, or the general
6 processes employed at, the ombudsman's office.

7 Sec. 15. (1) An employee of the office of the disabilities
8 ombudsman is not liable for good-faith performance of his or her
9 responsibilities under this act.

10 (2) No discriminatory, disciplinary, or retaliatory action may
11 be taken against an ombudsman employee, an employee of a
12 contracting agency of the office, a provider of disabilities
13 services, or a recipient of ombudsman services for any
14 communication made, or information given or disclosed, to aid the
15 office of the disabilities ombudsman in carrying out its
16 responsibilities, unless the communication or information is made,
17 given, or disclosed maliciously or without good faith. This
18 subsection does not infringe on the rights of the employer to
19 supervise, discipline, or terminate an employee for other reasons.

20 (3) All communications by an ombudsman, if reasonably related
21 to the requirements of that individual's responsibilities under
22 this act and done in good faith, are privileged, and that privilege
23 serves as a defense in an action in libel or slander.

24 Sec. 17. If the ombudsman or ombudsman's staff member has
25 reasonable cause to believe that a public official, employee, or
26 other person has acted in a manner warranting criminal or
27 disciplinary proceedings, the ombudsman or ombudsman's staff member

1 must report the matter, or cause a report to be made, to the
2 appropriate authorities.

3 Sec. 19. A state department shall do all of the following:

4 (a) Allow the ombudsman or the ombudsman's designee to
5 communicate privately with an individual receiving services from
6 that department, or a person who is part of a fatality or near-
7 fatality investigation involving an individual with a disability,
8 for the purposes of carrying out its duties under this act.

9 (b) Permit the ombudsman or the ombudsman's designee physical
10 access to public institutions serving individuals with disabilities
11 and information in possession of that department concerning state-
12 licensed facilities or residences for the purpose of carrying out
13 its duties under this act.

14 (c) Upon the ombudsman's request, grant the ombudsman or the
15 ombudsman's designee the right to access, inspect, and copy all
16 relevant information, records, or documents in the possession or
17 control of that department that the ombudsman considers necessary
18 in an investigation.

19 Sec. 21. The office of the ombudsman, in collaboration with
20 the appropriate state department, shall establish a community
21 outreach program that includes educating law enforcement officers
22 on appropriate ways to approach a situation if an individual
23 involved in the situation may have a mental health issue,
24 behavioral health issue, physical disability, or developmental
25 disability.

26 Enacting section 1. This act takes effect 90 days after the
27 date it is enacted into law.