

SENATE BILL No. 52

January 23, 2003, Introduced by Senators BERNERO, GEORGE, GARCIA, TOY, THOMAS, LELAND, HAMMERSTROM, JOHNSON, CHERRY, BRATER, GOSCHKA, JACOBS, CLARK-COLEMAN, BASHAM, McMANUS, CASSIS, SCHAUER, STAMAS, BIRKHOLZ, OLSHOVE, SWITALSKI, PRUSI, Van WOERKOM, EMERSON, CLARKE, JELINEK, ALLEN and HARDIMAN 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:

SENATE BILL No. 52

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
7 a hospital with respect to a particular applicant for or
8 recipient 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,
19 sibling, 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
6 constitution of 1963.

7 (k) "Legislator" means a member of the senate or the house of
8 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
11 PA 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
17 developmental 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 in
26 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 in
5 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
21 compliance with relevant statutes, rules, and policies pertaining
22 to 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 appropriation,
4 the office shall employ sufficient personnel to carry out the
5 duties and powers prescribed by this act.

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

10 Sec. 5. All of the following individuals may file a
11 complaint with the office with respect to a particular applicant
12 or recipient, alleging that an administrative act or omission is
13 contrary to law, rule, or policy, imposed without an adequate
14 statement of reason, or based on irrelevant, immaterial, or
15 erroneous 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 his or her own initiative or upon receipt of a
26 complaint from a complainant, investigate an administrative act
27 or omission that is alleged to be contrary to law or rule, or

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

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

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

13 (d) Hold informal hearings and request that individuals
14 appear before the ombudsman and give testimony or produce
15 documentary or other evidence that the ombudsman considers
16 relevant 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
20 complaint from a complainant, the ombudsman shall notify the
21 complainant of the decision to investigate and shall notify the
22 department, CMHSP, mental health professional, facility, or
23 hospital of the intention to investigate. If the ombudsman
24 declines to investigate a complaint or continue an investigation,
25 the ombudsman shall notify the complainant and the department,
26 CMHSP, mental health professional, facility, or hospital of the
27 decision 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
3 complainant 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 at
6 the request of the complainant or on the ombudsman's own
7 initiative.

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

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

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

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

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

24 (2) The department, CMHSP, mental health professional,
25 facility, or hospital shall provide information to an applicant
26 or recipient, a minor applicant's or recipient's parent, an
27 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
4 investigation, including the identity of an applicant or
5 recipient or individual from whom information is acquired, as
6 confidential, except so far as disclosure is necessary to enable
7 the ombudsman to perform the duties of the office and to support
8 a recommendation resulting from an investigation. A record of
9 the office of the ombudsman is confidential, shall be used only
10 for purposes set forth in this act, and is not subject to court
11 subpoena. A record of the office of the ombudsman is exempt from
12 disclosure under the freedom of information act, 1976 PA 442,
13 MCL 15.231 to 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
17 hospital 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 or omission should be modified or
21 canceled.

22 (c) Reasons should be given for an administrative act or
23 omission.

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

26 (2) The ombudsman may request to be notified by the
27 department, CMHSP, mental health professional, facility, or

1 hospital, within a specified time, of action taken on his or her
2 recommendation.

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

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

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

13 Sec. 11. (1) The department, a CMHSP, a mental health
14 professional, a facility, or a hospital shall not penalize a
15 person for filing a complaint or cooperating with the ombudsman
16 in investigating a complaint.

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

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

27 Enacting section 1. This act takes effect January 1, 2004.