

2021 -- H 5846

=====
LC002081
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2021

—————
A N A C T

RELATING TO BEHAVIORAL HEALTHCARE, DEVELOPMENTAL DISABILITIES AND
HOSPITALS -- DEVELOPMENTAL DISABILITIES OMBUDSPERSON ACT OF 2021

Introduced By: Representatives Bennett, Craven, Handy, Hull, Casey, McNamara,
Williams, Cassar, and Abney

Date Introduced: February 24, 2021

Referred To: House Health & Human Services

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 40.1 of the General Laws entitled "BEHAVIORAL HEALTHCARE,
2 DEVELOPMENTAL DISABILITIES AND HOSPITALS" is hereby amended by adding thereto
3 the following chapter:

4 CHAPTER 22.2

5 DEVELOPMENTAL DISABILITIES OMBUDSPERSON ACT OF 2021

6 **40.1-22.2-1. Short title.**

7 This chapter shall be known and may be cited as the "Developmental Disabilities
8 Ombudsperson Act of 2021."

9 **40.1-22.2-2. Program established.**

10 There is established a program of the developmental disabilities ombudsperson to be
11 administratively attached to the department of administration.

12 **40.1-22.2-3. Definitions.**

13 As used in this chapter:

14 (1) An "act" of any facility or government agency includes any failure or refusal to act by
15 any facility or government agency.

16 (2) "Administrator" means any person who is charged with the general administration or
17 supervision of a facility whether or not that person has an ownership interest and whether or not
18 that person's functions and duties are shared with one or more other persons.

1 (3) "Adult with a developmental disability" means a person, eighteen (18) years old or
2 older and not under the jurisdiction of the department of children, youth, and families who is either
3 an adult with a developmental disability or is a person with a severe, chronic disability which:

4 (i) Is attributable to a mental or physical impairment or combination of mental and physical
5 impairments;

6 (ii) Is manifested before the person attains age twenty-two (22);

7 (iii) Is likely to continue indefinitely;

8 (iv) Results in substantial functional limitations in three (3) or more of the following areas
9 of major life activity:

10 (A) Self-care;

11 (B) Receptive and expressive language;

12 (C) Learning;

13 (D) Mobility;

14 (E) Self-direction;

15 (F) Capacity for independent living;

16 (G) Economic self-sufficiency; and

17 (v) Reflects the person's need for a combination and sequence of special, interdisciplinary,
18 or generic care, treatment, or other services, which are of lifelong or extended duration and are
19 individually planned and coordinated. For the purposes of funding, it is understood that students
20 enrolled in school will continue to receive education from their local education authority in
21 accordance with chapter 24 of title 16.

22 (4) "Community residence" means any home or other living arrangement which is
23 established, offered, maintained, conducted, managed, or operated by any person for a period of at
24 least twenty-four (24) hours; where, on a twenty-four (24) hour basis, direct supervision is provided
25 for the purpose of providing rehabilitative treatment, habilitation, psychological support, and/or
26 social guidance for adults with developmental disabilities. The facilities shall include, but not be
27 limited to, group homes, shared living arrangements and fully supervised apartment programs.
28 Semi-independent living programs shall not be considered community residences for the purposes
29 of this chapter and the rules and regulations herein.

30 (5) "Developmental disabilities ombudsperson nominating committee" means a committee
31 comprised of:

32 (i) Director of the department of behavioral healthcare, developmental disabilities, and
33 hospitals, or designee;

34 (ii) The chairperson of the Rhode Island developmental disabilities council, or designee;

- 1 (iii) The chairperson of the Governor's commission on disabilities, or designee;
2 (iv) The executive director of the Rhode Island Disabilities Law Center, or designee;
3 (v) The director of the Paul V. Sherlock Center on Disabilities, or designee;
4 (vi) The chairperson of Advocates in Action, or designee; and,
5 (vii) The chairperson of the Rhode Island Providers Network, or designee.

6 The developmental disabilities ombudsperson nominating committee shall meet when
7 needed to solicit, accept and review applications for the position of developmental disabilities
8 ombudsperson and provide the governor with a list of three (3) to five (5) qualified candidates.

9 (6) "Developmentally disability organizations (DDOs)" means an organization licensed by
10 BHDDH to provide services to adults with disabilities, as provided herein. As used herein, DDOs
11 shall have the same meaning as "providers" or "agencies."

12 (7) "Director" means the director of the department of behavioral healthcare,
13 developmental disabilities, and hospitals.

14 (8) "Government agency" means any department, division, office, bureau, board,
15 commission, authority, nonprofit community organization, or any other agency or instrumentality
16 created by any municipality or by the state, or to which the state is a party, which is responsible for
17 the regulation, inspection, visitation, or supervision of facilities or which provides services to
18 residents of facilities.

19 (9) "Health oversight agency" means, for the purposes of this chapter, the department of
20 behavioral healthcare, developmental disabilities, and hospitals or the person or entity designated
21 as the state's developmental disabilities ombudsperson by the governor, including the employees
22 or agents of such person or entity, when they are acting to fulfill the duties and responsibilities of
23 the state's developmental disabilities ombudsperson program in which information is necessary to
24 oversee the care system and in accordance with the U.S. Health Insurance Portability and
25 Accountability Act (HIPAA) of 1996.

26 (10) "Interfere" means willing and continuous conduct which prevents the ombudsperson
27 from performing his or her official duties.

28 (11) "Ombudsperson" means the person or persons designated by the governor to carry out
29 the powers and duties of the office. That person or persons shall have expertise and experience in
30 the fields of social work, long-term care, and advocacy, and shall be qualified and experienced in
31 the provision of support services to adults with developmental disabilities.

32 (12) "Person" means any individual, trust, estate, partnership, limited liability corporation,
33 corporation (including associations, joint stock companies, and insurance companies), state, or
34 political subdivision or instrumentality of the state.

1 (13) "Provider" means any organization that has been established for the purpose of
2 providing either residential and/or day support services for adults with developmental disabilities
3 and which is licensed by the department of behavioral healthcare, developmental disabilities and
4 hospitals pursuant to chapter 24 of title 40.1. For the purposes of this section, "provider" shall also
5 include any residential and/or day program services operated by the department of behavioral
6 healthcare, developmental disabilities and hospitals and the state of Rhode Island.

7 (14) "Services" means those services provided and shall include, but not be limited to,
8 developmental services, supportive services, and ancillary services.

9 (15) "Shared living residence" means the residence and physical premises in which the
10 support is provided by the shared living arrangement provider. The home shall be inspected and
11 approved by the shared living placement agency.

12 (16) "Student with a developmental disability in transition to adult services" means a
13 person, sixteen (16) to twenty-one (21) years old who is transitioning from special education
14 services to adult services and is either a person with a developmental disability or is a person with
15 a severe, chronic disability which:

16 (i) Is attributable to a mental or physical impairment or combination of mental and physical
17 impairments;

18 (ii) Is manifested before the person attains age twenty-two (22);

19 (iii) Is likely to continue indefinitely;

20 (iv) Results in substantial functional limitations in three (3) or more of the following areas
21 of major life activity:

22 (A) Self-care;

23 (B) Receptive and expressive language;

24 (C) Learning;

25 (D) Mobility;

26 (E) Self-direction;

27 (F) Capacity for independent living;

28 (G) Economic self-sufficiency; and

29 (v) Reflects the person's need for a combination and sequence of special, interdisciplinary,
30 or generic care, treatment, or other services, which are of lifelong or extended duration and are
31 individually planned and coordinated. For the purposes of funding, it is understood that students
32 enrolled in school will continue to receive education from their local education authority in
33 accordance with chapter 24 of title 16.

34 **40.1-22.2-4. Developmental Disabilities Ombudsperson.**

1 The governor shall establish the position(s) of developmental disabilities ombudsperson
2 for the purpose of advocating on behalf of adults with a developmental disability and students with
3 a developmental disability in transition to adult services, individuals acting on their behalf, or any
4 individual organization or government agency that has reason to believe that a facility, organization
5 or government agency has engaged in activities, practices or omissions that constitute a violation
6 of applicable statutes or regulations or that may have an adverse effect upon the health, safety,
7 welfare, rights or quality of life of adults with a developmental disability and students with a
8 developmental disability in transition to adult services. The developmental disabilities
9 ombudsperson may dismiss a complaint at any stage of an investigation with an explanation to the
10 originator(s) of the complaint. The governor shall appoint the developmental disabilities
11 ombudsperson from a list of three (3) to five (5) candidates provided by the developmental
12 disabilities ombudsperson nominating committee to a term of five (5) years with the advice and
13 consent of the senate. The department of administration may operate the office of developmental
14 disabilities ombudsperson and carry out the program, directly or by contract or other arrangement
15 with any public agency or nonprofit organization. The developmental disabilities ombudsperson
16 shall hire additional staff and recruit/train volunteers as necessary to carry out the powers and duties
17 of the office.

18 **40.1-22.2-5. Powers and duties.**

19 The developmental disabilities ombudsperson shall:

20 (1) Identify, investigate, and resolve complaints that:

21 (i) Are made by, or on behalf of, adults with a developmental disability and students with
22 a developmental disability in transition to adult services; and

23 (ii) Relate to an action, inaction, or decision, that may adversely affect the health, safety,
24 welfare, rights, or quality of life of the adults with a developmental disability (including the welfare
25 and rights of adults with a developmental disability with respect to the appointment and activities
26 of guardians and representative payees and health care and financial powers of attorney, and access
27 to hospice care);

28 (2) Formulate policies and procedures to identify, investigate and resolve complaints;

29 (3) Represent the interests of adults with a developmental disability and students with a
30 developmental disability in transition to adult services before government agencies and seek
31 administrative, legal, and other remedies to protect the health, safety, welfare, rights, and quality
32 of life of the adults with a developmental disability including, but not limited to, rights with respect
33 to the appointment or removal of guardians, representative payees and powers of attorney;

34 (4) Receive all reports from the department of behavioral healthcare, developmental

1 disabilities and hospitals of incidents reported to the office of quality assurance within twenty-four
2 (24) hours or by the next business day of the occurrence in cases of resident abuse, neglect,
3 exploitation, hospitalization, death, missing persons, theft, sexual abuse, accidents involving fires,
4 elopement and resident-to-resident abuses;

5 (5) Review and, if necessary, comment on any existing and proposed laws, regulations, and
6 other government policies and actions that affect the parties subject to this statute;

7 (6) Make appropriate referrals of investigations to the department of behavioral healthcare,
8 developmental disabilities and hospitals, the executive office of health and human services and the
9 attorney general and other state agencies;

10 (7) Receive from the department of behavioral healthcare, developmental disabilities and
11 hospitals all reports of thirty (30) day notices of adults with a developmental disability discharged
12 from community residences or shared living residences;

13 (8) Provide referral services to assist adults with developmental disabilities and students
14 with a developmental disability in transition to adult services in protecting their health, safety,
15 welfare, rights, and quality of life;

16 (9) Inform adults with developmental disabilities and students with a developmental
17 disability in transition to adult services of their rights and advocate on their behalf to improve their
18 quality of life and live with dignity and respect;

19 (10) Offer assistance and training to public and private organizations on long-term care of
20 adults with developmental disabilities.

21 **40.1-22.2-6. Confidentiality.**

22 The files maintained by the developmental disabilities ombudsperson are confidential and
23 shall be disclosed only with the written consent of the adult or student with a developmental
24 disability affected or his or her legal representative/guardian, or if any disclosure is required by
25 court order. Nothing in this subsection shall be construed to prohibit the disclosure of information
26 gathered in an investigation to any interested party as may be necessary to resolve the complaint or
27 to refer to other appropriate state agencies investigating civil, criminal or licensing violations.

28 **40.1-22.2-7. Access to records, community residences, adults with a developmental**
29 **disability and students with a developmental disability in transition to adult services.**

30 (a) In the course of an investigation, the developmental disabilities ombudsperson shall:

31 (1) Make the necessary inquiries and obtain information as is deemed necessary;

32 (2) Have access to community residences and residents and staff thereof;

33 (3) Enter provider locations and, after notifying the person in charge, inspect any books,
34 files, medical records, or other records that pertain to the investigation;

1 (b) In the ordinary course of the developmental disabilities ombudsperson's duties, the
2 developmental disabilities ombudsperson shall have access to and may engage in the following:

3 (1) A community residence to visit, talk with, make personal, social, and other appropriate
4 services available;

5 (2) A community residence to inform them of their rights and entitlements and
6 corresponding obligations under federal and state law by distribution of educational materials,
7 discussion in groups, or discussion with individuals and their families; and

8 (3) Engage in other methods of assisting, advising, and representing adults with a
9 developmental disability to extend to them the full enjoyment of their rights.

10 (4) Have access to public and private schools and students and staff thereof;

11 (5) Enter public and private schools and, after notifying the person in charge, inspect any
12 books, files, medical records, or other records that pertain to the investigation;

13 (c) The office of the developmental disabilities ombudsperson is considered a health
14 oversight agency.

15 (d) Notwithstanding any other provision of law, any health oversight agency and its
16 employees and agents shall comply with all state and federal confidentiality laws, including, but
17 not limited to, chapter 37.3 of title 5 ("confidentiality of health care communications and
18 information act") and specifically § 5-37.3-4(c), which requires limitation on the distribution of
19 information which is the subject of this chapter on a "need to know" basis, and § 40.1-5-26.

20 (e) In the ordinary course of the developmental disabilities ombudsperson's duties, the
21 developmental disabilities ombudsperson shall have access to students with a developmental
22 disability in transition to adult services to provide the following:

23 (1) Visit, talk with, make personal, social, and other appropriate services available;

24 (2) Inform them of their rights and entitlements and corresponding obligations under
25 federal and state law by distribution of educational materials, discussion in groups, or discussion
26 with individuals and their families; and

27 (3) Engage in other methods of assisting, advising, and representing students with a
28 developmental disability in transition to adult services to extend to them the full enjoyment of their
29 rights.

30 **40.1-22.2-8. Retaliation prohibited.**

31 No discriminatory, disciplinary, or retaliatory action shall be taken against any officer or
32 employee of a provider by the provider; nor against any guardian or family member of any adults
33 with a developmental disability or students with a developmental disability in transition to adult
34 services; nor against any resident of a community residence; nor against any student; nor against

1 any school employee; nor against any volunteer for any communication by him or her with the
2 developmental disabilities ombudsperson or for any information given or disclosed by him or her
3 in good faith to aid the developmental disabilities ombudsperson in carrying out his or her duties
4 and responsibilities.

5 **40.1-22.2-9. Cooperation required.**

6 (a) The developmental disabilities ombudsperson may request from any government
7 agency, and the agency is authorized and directed to provide, any cooperation and assistance,
8 services, and data that will enable the developmental disabilities ombudsperson to properly perform
9 or exercise any of his or her functions, duties and powers under this chapter.

10 (b) The developmental disabilities ombudsperson shall cooperate and assist other
11 government agencies in their investigations, such as the department of health, the office of attorney
12 general, the department of human services, the department of education and any other pertinent
13 departments or agencies.

14 **40.1-22.2-10. Annual reports.**

15 The developmental disabilities ombudsperson shall submit an annual report of the activities
16 of the developmental disabilities ombudsperson program and the developmental disabilities
17 ombudsperson's activities concerning facilities and the protection of the rights of adults with a
18 developmental disability and students with a developmental disability in transition to adult services
19 to the governor, speaker of the house, senate president, chairs of the senate and house committee
20 on finance, chairs of the senate and house committee on health and human services, chairs of the
21 senate and house committee on education, general assembly, the secretary of the office of health
22 and human services, the director of behavioral healthcare, developmental disabilities and hospitals,
23 the commissioner of elementary and secondary education, the chairperson of the Rhode Island
24 special education advisory committee, the chairperson of the Rhode Island developmental
25 disabilities council, the chairperson of the governor's commission on disabilities, the executive
26 director of the Rhode Island Disabilities Law Center, the director of the Paul V. Sherlock Center
27 on Disabilities, the chairperson of Advocates in Action, the chairperson of the Rhode Island
28 Providers Network, the state librarian, and other appropriate governmental entities. The report shall
29 be available to the public.

30 **40.1-22.2-11. Immunity from liability.**

31 Any person, institution, or official who in good faith participates in the registering of a
32 complaint, or who in good faith investigates that complaint or provides access to those persons
33 carrying out the investigation, or who participates in a judicial proceeding resulting from that
34 complaint, is immune from any civil or criminal liability that might otherwise be a result of these

1 actions. For the purpose of any civil or criminal proceedings, there is a rebuttable presumption that
2 any person acting pursuant to this chapter did so in good faith.

3 **40.1-22.2-12. Rules and regulations.**

4 The office of the developmental disabilities ombudsperson shall promulgate and, from time
5 to time, revise rules and regulations for the implementation and enforcement of the developmental
6 disabilities ombudsperson program including, but not limited to, the procedures for the receipt,
7 investigation and resolution, through administrative action, of complaints.

8 **40.1-22.2-13. Interagency cooperation.**

9 Nothing in this chapter shall be construed to be a limitation of the powers and
10 responsibilities assigned by law to other state agencies or departments. The developmental
11 disabilities ombudsperson shall establish an interagency agreement between the department of
12 behavioral healthcare, developmental disabilities and hospitals, the department of education, the
13 department of health, the department of human services, and the office of attorney general to ensure
14 a cooperative effort in meeting the needs of adults with a developmental disability and students
15 with a developmental disability in transition to adult services.

16 **40.1-22.2-14. Non-interference.**

17 No person shall willfully interfere with the developmental disabilities ombudsperson in the
18 performance of the ombudsperson's official duties.

19 **40.1-22.2-15. Enforcement.**

20 The attorney general shall have the power to enforce the provisions of this chapter.

21 **40.1-22.2-16. Penalty for violations of §§ 40.1-22.2-8 and 40.1-22.2-14.**

22 Every person who willfully violates the provisions of §§ 40.1-22.2-8 or 40.1-22.2-14 shall
23 be subject to a fine up to one thousand dollars (\$1,000) for each violation of these sections and any
24 other remedy provided for in Rhode Island law.

25 **40.1-22.2-17. Severability.**

26 If any provision of this chapter or any rule or regulation made under this chapter, or the
27 application of any provision of this chapter to any person or circumstance shall be held invalid by
28 any court of competent jurisdiction, the remainder of the chapter, rule or regulation and the
29 application of such provision to other persons or circumstances shall not be affected thereby. The
30 invalidity of any section or sections or parts of any section of this chapter shall not affect the validity
31 of the remainder of this chapter and to this end the provisions of the chapter are declared to be
32 severable.

1 SECTION 2. This act shall take effect upon passage.

=====
LC002081
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO BEHAVIORAL HEALTHCARE, DEVELOPMENTAL DISABILITIES AND
HOSPITALS -- DEVELOPMENTAL DISABILITIES OMBUDSPERSON ACT OF 2021

1 This act would create a developmental disabilities ombudsperson program to be
2 administratively attached to the department of administration. The developmental disabilities
3 ombudsperson would be selected by a committee, named by the governor, and would advocate on
4 behalf of adults with developmental disabilities and students with a developmental disability in
5 transition to adult services.

6 This act would take effect upon passage.

=====
LC002081
=====