

2022 -- S 2615

LC004997

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2022

A N A C T

RELATING TO BEHAVIORAL HEALTHCARE, DEVELOPMENTAL DISABILITIES AND HOSPITALS -- INTELLECTUAL/DEVELOPMENTAL DISABILITIES OMBUDSPERSON ACT OF 2022

Introduced By: Senators DiMario, DiPalma, Miller, Valverde, Burke, Lawson, Kallman, Seveney, and Euer

Date Introduced: March 10, 2022

Referred To: Senate 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 INTELLECTUAL/DEVELOPMENTAL DISABILITIES AND HOSPITALS" is hereby amended
3 by adding thereto the following chapter:

4 CHAPTER 22.2

5 INTELLECTUAL/DEVELOPMENTAL DISABILITIES OMBUDSPERSON ACT OF 2022

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

7 This chapter shall be known and may be cited as the "Intellectual/Developmental
8 Disabilities Ombudsperson Act of 2022."

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

10 There is established a program of the intellectual/developmental disabilities
11 ombudsperson.

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

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

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

8 (iii) Is likely to continue indefinitely;

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

11 (A) Self-care;

12 (B) Receptive and expressive language;

13 (C) Learning;

14 (D) Mobility;

15 (E) Self-direction;

16 (F) Capacity for independent living;

17 (G) Economic self-sufficiency; and

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

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

31 (5) "Intellectual/developmental disabilities ombudsperson nominating committee" means
32 a committee comprised of:

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

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

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

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

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

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

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

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

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

34 (12) "Person" means any individual, trust, estate, partnership, limited liability corporation,

1 corporation (including associations, joint stock companies, and insurance companies), state, or
2 political subdivision or instrumentality of the state.

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

10 (14) "Services" means those services provided and shall include, but not be limited to,
11 intellectual/developmental services, supportive services, and ancillary services.

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

15 (16) "Student with an intellectual/developmental disability in transition to adult services"
16 means a person, sixteen (16) to twenty-two (22) years old who is transitioning from special
17 education services to adult services and is either a person with an intellectual/developmental
18 disability or is a person with a severe, chronic disability which:

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

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

22 (iii) Is likely to continue indefinitely;

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

25 (A) Self-care;

26 (B) Receptive and expressive language;

27 (C) Learning;

28 (D) Mobility;

29 (E) Self-direction;

30 (F) Capacity for independent living;

31 (G) Economic self-sufficiency; and

32 (v) Reflects the person's need for a combination and sequence of special, interdisciplinary,
33 or generic care, treatment, or other services, which are of lifelong or extended duration and are
34 individually planned and coordinated. For the purposes of funding, it is understood that students

1 enrolled in school will continue to receive education from their local education authority in
2 accordance with chapter 24 of title 16.

3 **40.1-22.2-4. Intellectual/developmental disabilities ombudsperson.**

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

22 **40.1-22.2-5. Powers and duties.**

23 The intellectual/developmental disabilities ombudsperson shall:

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

25 (i) Are made by, or on behalf of, adults with an intellectual/developmental disability;

26 (ii) Are made by, or on behalf of students with an intellectual/developmental disability in
27 regard to transition to adult services; and

28 (iii) Relate to an action, inaction, or decision, that may adversely affect the health, safety,
29 welfare, rights, or quality of life of the adults with an intellectual/developmental disability
30 (including the welfare and rights of adults with an intellectual/developmental disability with respect
31 to the appointment and activities of guardians and representative payees and health care and
32 financial powers of attorney, and access to hospice care);

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

34 (3) Represent the interests of adults with an intellectual/developmental disability and

1 students with an intellectual/developmental disability in transition to adult services before
2 government agencies and seek administrative, legal, and other remedies to protect the health, safety,
3 welfare, rights, and quality of life of the adults with an intellectual/developmental disability
4 including, but not limited to, rights with respect to the appointment or removal of guardians,
5 representative payees and powers of attorney;

6 (4) Receive all reports from the department of behavioral healthcare, developmental
7 disabilities and hospitals of incidents reported to the office of quality assurance within twenty-four
8 (24) hours or by the next business day of the occurrence in cases of resident abuse, neglect,
9 exploitation, hospitalization, death, missing persons, theft, sexual abuse, accidents involving fires,
10 elopement and resident-to-resident abuses;

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

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

16 (7) Receive from the department of behavioral healthcare, developmental disabilities and
17 hospitals all reports of thirty (30) day notices of adults with an intellectual/developmental disability
18 discharged from community residences or shared living residences;

19 (8) Provide referral services to assist adults with intellectual/developmental disabilities and
20 students with an intellectual/developmental disability in transition to adult services in protecting
21 their health, safety, welfare, rights, and quality of life;

22 (9) Inform adults with intellectual/developmental disabilities and students with an
23 intellectual/developmental disability in transition to adult services of their rights and advocate on
24 their behalf to improve their quality of life and live with dignity and respect;

25 (10) Offer assistance and training to public and private organizations on long-term care of
26 adults with intellectual/developmental disabilities.

27 **40.1-22.2-6. Confidentiality.**

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

1 **40.1-22.2-7. Access to records, community residences, adults with an**
2 **intellectual/developmental disability and students with an intellectual/developmental**
3 **disability in transition to adult services.**

4 (a) In the course of an investigation, the intellectual/developmental disabilities
5 ombudsperson shall:

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

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

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

10 (b) In the ordinary course of the intellectual/developmental disabilities ombudsperson's
11 duties, the intellectual/developmental disabilities ombudsperson shall have access to and may
12 engage in the following:

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

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

18 (3) Engage in other methods of assisting, advising, and representing adults with an
19 intellectual/developmental disability to extend to them the full enjoyment of their rights.

20 (c) The office of the intellectual/developmental disabilities ombudsperson is considered a
21 health oversight agency.

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

27 (e) In the ordinary course of the intellectual/developmental disabilities ombudsperson's
28 duties, the intellectual/developmental disabilities ombudsperson shall have access to students with
29 an intellectual/developmental disability in transition to adult services to provide the following:

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

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

34 (3) Engage in other methods of assisting, advising, and representing students with an

1 intellectual/developmental disability in transition to adult services to extend to them the full
2 enjoyment of their rights.

3 **40.1-22.2-8. Retaliation prohibited.**

4 No discriminatory, disciplinary, or retaliatory action shall be taken against any officer or
5 employee of a provider by the provider; nor against any guardian or family member of any adults
6 with an intellectual/developmental disability or students with an intellectual/developmental
7 disability in transition to adult services; nor against any resident of a community residence; nor
8 against any student; nor against any school employee; nor against any volunteer for any
9 communication by him or her with the intellectual/developmental disabilities ombudsperson or for
10 any information given or disclosed by him or her in good faith to aid the intellectual/developmental
11 disabilities ombudsperson in carrying out his or her duties and responsibilities.

12 **40.1-22.2-9. Cooperation required.**

13 (a) The intellectual/developmental disabilities ombudsperson may request from any
14 government agency, and the agency is authorized and directed to provide, any cooperation and
15 assistance, services, and data that will enable the intellectual/developmental disabilities
16 ombudsperson to properly perform or exercise any of his or her functions, duties and powers under
17 this chapter.

18 (b) The intellectual/developmental disabilities ombudsperson shall cooperate and assist
19 other government agencies in their investigations, such as the department of health, the office of
20 attorney general, the department of human services, the department of education and any other
21 pertinent departments or agencies.

22 **40.1-22.2-10. Annual reports.**

23 The intellectual/developmental disabilities ombudsperson shall submit an annual report of
24 the activities of the intellectual/developmental disabilities ombudsperson program and the
25 intellectual/developmental disabilities ombudsperson's activities concerning facilities and the
26 protection of the rights of adults with an intellectual/developmental disability and students with an
27 intellectual/developmental disability in transition to adult services to the governor, speaker of the
28 house, senate president, chairs of the senate and house committee on finance, chairs of the senate
29 and house committee on health and human services, chairs of the senate and house committee on
30 education, general assembly, the secretary of the office of health and human services, the director
31 of behavioral healthcare, developmental disabilities and hospitals, the commissioner of elementary
32 and secondary education, the chairperson of the Rhode Island special education advisory
33 committee, the chairperson of the Rhode Island developmental disabilities council, the chairperson
34 of the governor's commission on disabilities, the executive director of Disability Rights Rhode

1 Island, the director of the Paul V. Sherlock Center on Disabilities, the chairperson of Advocates in
2 Action, the chairperson of the Community Providers Network of Rhode Island, the state librarian,
3 and other appropriate governmental entities. The report shall be available to the public.

4 **40.1-22.2-11. Immunity from liability.**

5 Any person, institution, or official who in good faith participates in the registering of a
6 complaint, or who in good faith investigates that complaint or provides access to those persons
7 carrying out the investigation, or who participates in a judicial proceeding resulting from that
8 complaint, is immune from any civil or criminal liability that might otherwise be a result of these
9 actions. For the purpose of any civil or criminal proceedings, there is a rebuttable presumption that
10 any person acting pursuant to this chapter did so in good faith.

11 **40.1-22.2-12. Rules and regulations.**

12 The office of the intellectual/developmental disabilities ombudsperson shall promulgate
13 and, from time to time, revise rules and regulations for the implementation and enforcement of the
14 intellectual/developmental disabilities ombudsperson program including, but not limited to, the
15 procedures for the receipt, investigation and resolution, through administrative action, of
16 complaints.

17 **40.1-22.2-13. Interagency cooperation.**

18 Nothing in this chapter shall be construed to be a limitation of the powers and
19 responsibilities assigned by law to other state agencies or departments. The
20 intellectual/developmental disabilities ombudsperson shall establish an interagency agreement
21 between the department of behavioral healthcare, intellectual/developmental disabilities and
22 hospitals, the department of education, the department of health, the department of human services,
23 and the office of attorney general to ensure a cooperative effort in meeting the needs of adults with
24 an intellectual/developmental disability and students with an intellectual/developmental disability
25 in transition to adult services.

26 **40.1-22.2-14. Non-interference.**

27 No person shall willfully interfere with the intellectual/developmental disabilities
28 ombudsperson in the performance of the ombudsperson's official duties.

29 **40.1-22.2-15. Enforcement.**

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

31 **40.1-22.2-16. Penalty for violations of §§ 40.1-22.2-8 and 40.1-22.2-14.**

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

1 **40.1-22.2-17. Severability.**

2 If any provision of this chapter or any rule or regulation made under this chapter, or the
3 application of any provision of this chapter to any person or circumstance shall be held invalid by
4 any court of competent jurisdiction, the remainder of the chapter, rule or regulation and the
5 application of such provision to other persons or circumstances shall not be affected thereby. The
6 invalidity of any section or sections or parts of any section of this chapter shall not affect the validity
7 of the remainder of this chapter and to this end the provisions of the chapter are declared to be
8 severable.

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

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO BEHAVIORAL HEALTHCARE, DEVELOPMENTAL DISABILITIES AND
HOSPITALS -- INTELLECTUAL/DEVELOPMENTAL DISABILITIES OMBUDSPERSON
ACT OF 2022

- 1 This act would create an intellectual/developmental disabilities ombudsperson program.
2 The intellectual/developmental disabilities ombudsperson would be selected by a committee,
3 named by the governor, and would advocate on behalf of adults with intellectual/developmental
4 disabilities and students with intellectual/developmental disabilities in transition to adult services.
5 This act would take effect upon passage.

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