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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2016

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A N A C T

RELATING TO BEHAVIORAL HEALTHCARE, DEVELOPMENTAL DISABILITIES AND
HOSPITALS - DEVELOPMENTAL DISABILITIES OMBUDSPERSON ACT OF 2016

Introduced By: Representatives Naughton, Keable, Melo, O'Brien, and Hearn

Date Introduced: April 06, 2016

Referred To: House Finance

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 2016

6 **40.1-22.2-1. Short title.** -- This chapter shall be known and may be cited as the
7 "Developmental Disabilities Act of 2016".

8 **40.1-22.2-2. Program established.** -- There is established a program of the
9 developmental disabilities ombudsperson to be administratively attached to the department of
10 administration.

11 **40.1-22.2-3. Definitions.** -- As used in this chapter:

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

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

17 (3) "Adult with a developmental disability" means a person, eighteen (18) years old or
18 older and not under the jurisdiction of the department of children, youth, and families who is

1 either an adult with a developmental disability or is a person with a severe, chronic disability
2 which:

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

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

6 (iii) Is likely to continue indefinitely;

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

9 (A) Self-care;

10 (B) Receptive and expressive language;

11 (C) Learning;

12 (D) Mobility;

13 (E) Self-direction;

14 (F) Capacity for independent living;

15 (G) Economic self-sufficiency; and

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

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

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

31 (i) The director of the department of behavioral healthcare, developmental disabilities,
32 and hospitals, or designee;

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

34 (iii) The chairperson of the governor's commission on disabilities, or designee;

1 (iv) The executive director of the Rhode Island Disabilities Law Center, or designee;

2 (v) The director of the Paul V. Sherlock Center on Disabilities, or designee;

3 (vi) The chairperson of Advocates in Action Rhode Island, or designee; and

4 (vii) The chairperson of the Community Providers Network of Rhode Island, or designee.

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

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

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

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

18 (9) "Health oversight agency" means for the purposes of this chapter, the department of
19 behavioral healthcare, developmental disabilities, and hospitals or the person or entity designated
20 as the state's developmental disabilities ombudsperson by the governor, including the employees
21 or agents of such person or entity, when they are acting to fulfill the duties and responsibilities of
22 the state's developmental disabilities ombudsperson program in which information is necessary to
23 oversee the care system and in accordance with the U.S. Health Insurance Portability and
24 Accountability Act (HIPAA) of 1996 Pub L. No. 104-191.

25 (10) "Interfere" means willing and continuous conduct which prevents the ombudsperson
26 from performing their official duties.

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

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

34 (13) "Provider" means any organization that has been established for the purpose of

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

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

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

11 **40.1-22.2-4. Developmental Disabilities Ombudsperson. --** The governor shall
12 establish the position(s) of developmental disabilities ombudsperson for the purpose of
13 advocating on behalf of adults with a developmental disability, individuals acting on their behalf,
14 or any individual organization or government agency that has reason to believe that a facility,
15 organization or government agency has engaged in activities, practices or omissions that
16 constitute a violation of applicable statutes or regulations or that may have an adverse effect upon
17 the health, safety, welfare, rights or quality of life of adults with a developmental disability. The
18 developmental disabilities ombudsperson may dismiss a complaint at any stage of an
19 investigation with an explanation to the originator(s) of the complaint. The governor shall appoint
20 the developmental disabilities ombudsperson from a list of three (3) to five (5) candidates
21 provided by the developmental disabilities ombudsperson nominating committee to a term of five
22 (5) years. The department of administration may operate the office of developmental disabilities
23 ombudsperson and carry out the program, directly or by contract or other arrangement with any
24 public agency or nonprofit organization. The developmental disabilities ombudsperson shall hire
25 additional staff as necessary to carry out the powers and duties of the office.

26 **40.1-22.2-5. Powers and duties. --** The developmental disabilities ombudsperson shall:

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

28 (i) Are made by, or on behalf of, adults with a developmental disability; and

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

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

1 (3) Represent the interests of adults with a developmental disability before government
2 agencies and seek administrative, legal, and other remedies to protect the health, safety, welfare,
3 rights, and quality of life of the adults with a developmental disability including, but not limited
4 to, rights with respect to the appointment or removal of guardians, representative payees and
5 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-
8 four (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,
12 and 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
14 healthcare, developmental disabilities and hospitals, the executive office of health and human
15 services and the 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 a developmental disability discharged
18 from community residences or shared living residences;

19 (8) Provide referral services to assist adults with developmental disabilities in protecting
20 their health, safety, welfare, rights, and quality of life;

21 (9) Inform adults with developmental disabilities of their rights and advocate on their
22 behalf to improve their quality of life and live with dignity and respect; and

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

25 **40.1-22.2-6. Confidentiality.** -- The files maintained by the developmental disabilities
26 ombudsperson are confidential and shall be disclosed only with the written consent of the adult
27 with developmental disability affected or their legal representative/guardian, or if any disclosure
28 is required by court order. Nothing in this section shall be construed to prohibit the disclosure of
29 information gathered in an investigation to any interested party as may be necessary to resolve the
30 complaint or to refer to other appropriate state agencies investigating civil, criminal or licensing
31 violations.

32 **40.1-22.2-7. Access to records, community residences, adults with a developmental**
33 **disability.** -- (a) In the course of an investigation, the developmental disabilities ombudsperson
34 shall:

- 1 (1) Make the necessary inquiries and obtain information as is deemed necessary;
2 (2) Have access to community residences and residents and staff thereof;
3 (3) Enter provider locations and, after notifying the person in charge, inspect any books,
4 files, medical records, or other records that pertain to the investigation.

5 (b) In the ordinary course of the developmental disabilities ombudsperson's duties, the
6 developmental disabilities ombudsperson shall have access to residents of a community residence
7 to:

- 8 (1) Visit, talk with, make personal, social, and other appropriate services available;
9 (2) Inform them of their rights and entitlements and corresponding obligations under
10 federal and state law by distribution of educational materials, discussion in groups, or discussion
11 with individuals and their families; and

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

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

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

21 **40.1-22.2-8. Retaliation prohibited.** -- No discriminatory, disciplinary, or retaliatory
22 action shall be taken against any officer or employee of a provider by the provider; nor against
23 any guardian or family member of any adults with a developmental disability; nor against any
24 resident of a community residence; nor against any volunteer for any communication by them
25 with the developmental disabilities ombudsperson or for any information given or disclosed by
26 them in good faith to aid the developmental disabilities ombudsperson in carrying out their duties
27 and responsibilities.

28 **40.1-22.2-9. Cooperation required.** -- (a) The developmental disabilities ombudsperson
29 may request from any government agency, and the agency is authorized and directed to provide,
30 any cooperation and assistance, services, and data that will enable the developmental disabilities
31 ombudsperson to properly perform or exercise any of their functions, duties and powers under
32 this chapter.

33 (b) The developmental disabilities ombudsperson shall cooperate and assist other
34 government agencies in their investigations, such as the department of health, the office of

1 attorney general, the department of human services and any other pertinent departments or
2 agencies.

3 **40.1-22.2-10. Annual reports.** -- The developmental disabilities ombudsperson shall
4 submit an annual report of the activities of the developmental disabilities ombudsperson program
5 and the developmental disabilities ombudsperson's activities concerning facilities and the
6 protection of the rights of adults with a developmental disability to the governor, speaker of the
7 house of representatives, president of the senate, chairs of the senate and house committees on
8 finance, chair of the senate committee on health and human services, chair of the house
9 committee on health, education and welfare, general assembly, the secretary of the office of
10 health and human services, the director of behavioral healthcare, developmental disabilities and
11 hospitals, the chairperson of the Rhode Island developmental disabilities council, the chairperson
12 of the governor's commission on disabilities, the executive director of the Rhode Island
13 Disabilities Law Center, the director of the Paul V. Sherlock Center on Disabilities, the
14 chairperson of Advocates in Action Rhode Island, the chairperson of the Community Providers
15 Network of Rhode Island, the state librarian, and other appropriate governmental entities. The
16 report shall be available to the public.

17 **40.1-22.2-11. Immunity from liability.** -- Any person, institution, or official who in
18 good faith participates in the registering of a complaint, or who in good faith investigates that
19 complaint or provides access to those persons carrying out the investigation, or who participates
20 in a judicial proceeding resulting from that complaint, is immune from any civil or criminal
21 liability that might otherwise be a result of these actions. For the purpose of any civil or criminal
22 proceedings, there is a rebuttable presumption that any person acting pursuant to this chapter did
23 so in good faith.

24 **40.1-22.2-12. Rules and regulations.** -- The office of the developmental disabilities
25 ombudsperson shall promulgate and, from time to time, revise rules and regulations for the
26 implementation and enforcement of the developmental disabilities ombudsperson program
27 including, but not limited to, the procedures for the receipt, investigation and resolution, through
28 administrative action, of complaints.

29 **40.1-22.2-13. Interagency cooperation.** -- Nothing in this chapter shall be construed to
30 be a limitation of the powers and responsibilities assigned by law to other state agencies or
31 departments. The developmental disabilities ombudsperson shall establish an interagency
32 agreement between the department of behavioral healthcare, developmental disabilities and
33 hospitals, the department of health, the department of human services, and the office of attorney
34 general to ensure a cooperative effort in meeting the needs of adults with a developmental

1 [disability.](#)

2 **40.1-22.2-14. Non-interference.** -- [No person shall willfully interfere with the](#)
3 [developmental disabilities ombudsperson in the performance of the ombudsperson's official](#)
4 [duties.](#)

5 **40.1-22.2-15. Enforcement.** -- [The attorney general shall have the power to enforce the](#)
6 [provisions of this chapter.](#)

7 **40.1-22.2-16. Penalty for violations.** -- [Every person who willfully violates the](#)
8 [provisions of §§40.1-22.2-8 or 40.1-22.2-14 shall be subject to a fine up to one thousand dollars](#)
9 [\(\\$1,000\) for each violation of these sections and any other remedy provided for in Rhode Island](#)
10 [law.](#)

11 **40.1-22.2-17. Severability.** -- [If any provision of this chapter or any rule or regulation](#)
12 [made under this chapter, or the application of any provision of this chapter to any person or](#)
13 [circumstance shall be held invalid by any court of competent jurisdiction, the remainder of the](#)
14 [chapter, rule or regulation and the application of such provision to other persons or circumstances](#)
15 [shall not be affected thereby. The invalidity of any section or sections or parts of any section of](#)
16 [this chapter shall not affect the validity of the remainder of this chapter, and to this end, the](#)
17 [provisions of the chapter are declared to be severable.](#)

18 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 - DEVELOPMENTAL DISABILITIES OMBUDSPERSON ACT OF 2016

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.

5 This act would take effect upon passage.

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