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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2019

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A N A C T

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

Introduced By: Senators Satchell, DiPalma, Conley, Lawson, and Nesselbush

Date Introduced: January 15, 2019

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 DEVELOPMENTAL DISABILITIES AND HOSPITALS" is hereby amended by adding thereto
3 the following chapter:

4 CHAPTER 22.2

5 DEVELOPMENTAL DISABILITIES OMBUDSPERSON ACT

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".

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

10 There is hereby created the office of developmental disabilities ombudsperson.

11 **40.1-22.2-3. Definitions.**

12 As used in this chapter:

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

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

18 (3) "Adult with a developmental disability" means a person, eighteen (18) years old or

1 older and not under the jurisdiction of the department of children, youth, and families who is
2 either an adult with a developmental disability or is a person with a severe, chronic disability
3 which:

4 (i) Is attributable to a mental or physical impairment or combination of mental and
5 physical 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
9 areas 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,
18 interdisciplinary, or generic care, treatment, or other services, which are of lifelong or extended
19 duration and are individually planned and coordinated. For the purposes of funding, it is
20 understood that students enrolled in school will continue to receive education from their local
21 education authority in 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
24 at least twenty-four (24) hours; where, on a twenty-four (24) hour basis, direct supervision is
25 provided for the purpose of providing rehabilitative treatment, habilitation, psychological support,
26 and/or social guidance for adults with developmental disabilities. The facilities shall include, but
27 not be limited to, group homes, shared living arrangements and fully supervised apartment
28 programs. Semi-independent living programs shall not be considered community residences for
29 the purposes of this chapter and the rules and regulations herein.

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

32 (i) The director of the department of behavioral healthcare, developmental disabilities,
33 and 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 Rhode Island, or designee; and
5 (vii) The chairperson of the Community Providers Network of Rhode Island, 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) "Developmental 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
17 for 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 Pub L. No. 104-191.

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

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

32 (12) "Person" means any individual, trust, estate, partnership, limited liability
33 corporation, corporation (including associations, joint stock companies, and insurance companies)
34 state, or 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 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 **40.1-22.2-4. Developmental Disabilities Ombudsperson.**

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

28 **40.1-22.2-5. Powers and duties.**

29 The developmental disabilities ombudsperson shall:

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

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

32 (ii) Relate to an action, inaction, or decision, that may adversely affect the health, safety,
33 welfare, rights, or quality of life of the adults with a developmental disability (including the
34 welfare and rights of adults with a developmental disability with respect to the appointment and

1 activities of guardians and representative payees and health care and financial powers of attorney,
2 and access to hospice care);

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

4 (3) Represent the interests of adults with a developmental disability before government
5 agencies and seek administrative, legal, and other remedies to protect the health, safety, welfare,
6 rights, and quality of life of the adults with a developmental disability including, but not limited
7 to, rights with respect to the appointment or removal of guardians, representative payees and
8 powers of attorney;

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

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

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

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

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

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

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

28 **40.1-22.2-6. Confidentiality.**

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

1 **40.1-22.2-7. Access to records, community residences, adults with a developmental**
2 **disability.**

3 (a) In the course of an investigation, the developmental disabilities ombudsperson shall:
4 (1) Make the necessary inquiries and obtain information as is deemed necessary;
5 (2) Have access to community residences and residents and staff thereof;
6 (3) Enter provider locations and, after notifying the person in charge, inspect any books,
7 files, medical records, or other records that pertain to the investigation.

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

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

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

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

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

24 **40.1-22.2-8. Retaliation prohibited.**

25 No discriminatory, disciplinary, or retaliatory action shall be taken against any officer or
26 employee of a provider by the provider; nor against any guardian or family member of any adults
27 with a developmental disability; nor against any resident of a community residence; nor against
28 any volunteer for any communication by them with the developmental disabilities ombudsperson
29 or for any information given or disclosed by them in good faith to aid the developmental
30 disabilities ombudsperson in carrying out their duties and responsibilities.

31 **40.1-22.2-9. Cooperation required.**

32 (a) The developmental disabilities ombudsperson may request from any government
33 agency, and the agency is authorized and directed to provide, any cooperation and assistance,
34 services, and data that will enable the developmental disabilities ombudsperson to properly

1 perform or exercise any of their functions, duties and powers under this chapter.

2 (b) The developmental disabilities ombudsperson shall cooperate and assist other
3 government agencies in their investigations, such as the department of health, the office of
4 attorney general, the department of human services and any other pertinent departments or
5 agencies.

6 **40.1-22.2-10. Annual reports.**

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

20 **40.1-22.2-11. Immunity from liability.**

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

27 **40.1-22.2-12. Rules and regulations.**

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

32 **40.1-22.2-13. Interagency cooperation.**

33 Nothing in this chapter shall be construed to be a limitation of the powers and
34 responsibilities assigned by law to other state agencies or departments. The developmental

1 [disabilities ombudsperson shall establish an interagency agreement between the department of](#)
2 [behavioral healthcare, developmental disabilities and hospitals, the department of health, the](#)
3 [department of human services, and the office of attorney general to ensure a cooperative effort in](#)
4 [meeting the needs of adults with a developmental disability.](#)

5 **40.1-22.2-14. Non-interference.**

6 [No person shall willfully interfere with the developmental disabilities ombudsperson in](#)
7 [the performance of the ombudsperson's official duties.](#)

8 **40.1-22.2-15. Enforcement.**

9 [The attorney general shall have the power to enforce the provisions of this chapter.](#)

10 **40.1-22.2-16. Penalty for violations.**

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

14 **40.1-22.2-17. Severability.**

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

22 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

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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