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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2013

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A N A C T

RELATING TO BEHAVIORAL HEALTHCARE, DEVELOPMENTAL DISABILITIES AND
HOSPITALS - DEVELOPMENTAL DISABILITIES OMBUDSPERSON ACT OF 2013

Introduced By: Senators DiPalma, Lombardi, Ciccone, and Ottiano

Date Introduced: March 06, 2013

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 OF 2013

6 40.1-22.2-1. Short title. – This chapter shall be known and may be cited as the
7 “Developmental Disabilities Ombudsperson Act of 2013”.

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 behavioral healthcare, developmental disabilities, and hospitals.

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) “Community residence” means any home or other living arrangement which is
18 established, offered, maintained, conducted, managed, or operated by any person for a period of

1 at least twenty-four (24) hours, where, on a twenty-four (24) hour basis, direct supervision is
2 provided for the purpose of providing rehabilitative treatment, habilitation, psychological support,
3 and/or social guidance for three (3) or more persons with developmental disabilities or cognitive
4 disabilities such as brain injury. The facilities shall include, but not be limited to, group homes,
5 and fully supervised apartment programs. Semi-independent living programs and shared living
6 arrangements shall not be considered community residences for the purposes of this chapter and
7 the rules and regulations herein.

8 (4) “Developmentally disabled adult” means a person, eighteen (18) years old or older
9 and not under the jurisdiction of the department of children, youth, and families who is either a
10 developmentally disabled adult or is a person with a severe, chronic disability which:

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

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

14 (iii) Is likely to continue indefinitely;

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

17 (A) Self care;

18 (B) Receptive and expressive language;

19 (C) Learning;

20 (D) Mobility;

21 (E) Self-direction;

22 (F) Capacity for independent living;

23 (G) Economic self-sufficiency; and

24 (v) Reflects the person’s need for a combination and sequence of special,
25 interdisciplinary, or generic care, treatment, or other services, which are of lifelong or extended
26 duration and are individually planned and coordinated. For the purposes of funding, it is
27 understood that students enrolled in school will continue to receive education from their local
28 education authority in accordance with section 16-24-1 et seq.

29 (5) “Developmentally disability organizations (DDOs)” means an organization licensed
30 by BHDDH to provide services to adults with disabilities, as provided herein. As used herein,
31 DDOs shall have the same meaning as “providers” or “agencies.”

32 (6) “Government agency” means any department, division, office, bureau, board,
33 commission, authority, nonprofit community organization, or any other agency or instrumentality
34 created by any municipality or by the state, or to which the state is a party, which is responsible

1 for the regulation, inspection, visitation, or supervision of facilities or which provides services to
2 residents of facilities.

3 (7) “Health oversight agency” means, for the purposes of this chapter, the department of
4 behavioral healthcare, developmental disabilities, and hospitals or the person or entity designated
5 as the state’s developmental disabilities ombudsperson by the governor, including the employees
6 or agents of such person or entity, when they are acting to fulfill the duties and responsibilities of
7 the state’s developmental disabilities ombudsperson program in which information is necessary to
8 oversee the care system and in accordance with the U.S. Health Insurance Portability and
9 Accountability Act (HIPAA) of 1996.

10 (8) “Interfere” means willing and continuous conduct which prevents the ombudsperson
11 from performing his or her official duties.

12 (9) “Director” means the director of the department of behavioral healthcare,
13 developmental disabilities, and hospitals.

14 (10) “Ombudsperson” means the person or persons designated by the governor to carry
15 out the powers and duties of the office.

16 (11) “Person” means any individual, trust, estate, partnership, limited liability
17 corporation, corporation (including associations, joint stock companies, and insurance companies)
18 state, or political subdivision or instrumentality of the state.

19 (12) “Provider” means any organization that has been established for the purpose of
20 providing either residential and/or day support services for adults with developmental disabilities
21 and which is licensed by the department of behavioral healthcare, developmental disabilities and
22 hospitals pursuant to section 40.1-24-1 et seq., of the Rhode Island general laws, as amended. For
23 the purposes of this section, “provider” shall also include any residential and/or day program
24 services operated by the department of behavioral healthcare, developmental disabilities and
25 hospitals and the state of Rhode Island.

26 (13) “Services” means those services provided, and shall include, but not be limited to,
27 developmental services, supportive services, and ancillary services.

28 (14) “Shared Living Residence” means the residence and physical premises in which the
29 support is provided by the shared living arrangement provider. The home shall be inspected and
30 approved by the shared living placement agency.

31 **40.1-22.2-4. Developmental Disabilities Ombudsperson.** – The governor shall establish
32 the position of developmental disabilities ombudsperson that shall be administratively attached to
33 the department of behavioral healthcare, developmental disabilities, and hospitals for the purpose
34 of advocating on behalf of developmentally disabled adults, providers, any person associated with

1 a provider, advocates, individuals acting on their behalf, or any individual organization or
2 government agency that has reason to believe that a facility, organization or government agency
3 has engaged in activities, practices or omissions that constitute a violation of applicable statutes
4 or regulations that may have an adverse effect upon the health, safety, welfare, rights or quality of
5 life of developmentally disabled adults. The developmental disabilities ombudsperson shall
6 receive, investigate, and resolve through mediation, negotiation, and administrative action
7 complaints filed by any of the aforementioned parties. The developmental disabilities
8 ombudsperson may dismiss a complaint at any stage of an investigation. The governor shall
9 appoint the developmental disabilities ombudsperson to a term of five (5) years with the advice
10 and consent of the senate. The developmental disabilities ombudsperson shall hire additional staff
11 as necessary to carry out the powers and duties of the office.

12 **40.1-22.2-5. Powers and duties.** – The developmental disabilities ombudsperson shall:

13 (1) Investigate, and resolve complaints that: (i) Are made by, or on behalf of,
14 developmentally disabled adults, any person associated with a provider, providers, advocates; and
15 (ii) Relate to action, inaction, or decisions, that may adversely affect the health, safety, welfare or
16 rights of the developmentally disabled adults (including the welfare and rights of developmentally
17 disabled adults with respect to the appointment and activities of guardians and representative
18 payees) and health care and financial powers of attorney;

19 (2) Formulate policies and procedures to investigate and resolve complaints;

20 (3) Seek administrative, legal, and other remedies to protect the health, safety, welfare,
21 and rights of the developmentally disabled adults;

22 (4) Receive all reports from the department of behavioral healthcare, developmental
23 disabilities and hospitals of incidents reported to the office of quality assurance within twenty-
24 four (24) hours, or by the next business day of the occurrence, in cases of resident abuse, neglect,
25 exploitation, theft, sexual abuse, accidents involving fires, elopement and person to person
26 abuses;

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

29 (6) Make appropriate referrals of investigations to the department of behavioral
30 healthcare, developmental disabilities and hospitals and other state agencies;

31 (7) Receive from the department of behavioral healthcare, developmental disabilities and
32 hospitals all reports of thirty (30) day notices of developmentally disabled adults discharged from
33 community residences or shared living residences;

34 **40.1-22.2-6. Confidentiality.** – The files maintained by the developmental disabilities

1 ombudsperson program are confidential and shall be disclosed only with the written consent of
2 the developmentally disabled adults affected or his or her legal representative/guardian, or if any
3 disclosure is required by court order. Nothing in this paragraph shall be construed to prohibit the
4 disclosure of information gathered in an investigation to any interested party as may be necessary
5 to resolve the complaint or to refer to other appropriate state agencies investigating civil, criminal
6 or licensing violations.

7 **40.1-22.2-7. Access to records, provider, developmentally disabled adults.** – (a) In the
8 course of an investigation, the developmental disabilities ombudsperson shall:

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

10 (2) Have access to providers and any persons related to an investigation;

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

13 (4) Make personal, social, and other appropriate services available;

14 (5) Inform them of their rights and entitlements and corresponding obligations under
15 federal and state law by distribution of educational materials, discussion in groups, or discussion
16 with individuals and their families; and

17 (6) Engage in other methods of assisting, advising, and representing developmentally
18 disabled adults to extend to them the full enjoyment of their rights.

19 (b) The office of the developmental disabilities ombudsperson is considered a health
20 oversight agency.

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

27 **40.1-22.2-8. Retaliation prohibited.** – No discriminatory, disciplinary, or retaliatory
28 action shall be taken against any officer or employee of a provider by the provider; nor against
29 any guardian or family member of any developmentally disabled adults; nor against any
30 developmentally disabled adults of the provider; nor against any volunteer for any
31 communication by him or her with the developmental disabilities ombudsperson or for any
32 information given or disclosed by him or her in good faith to aid the developmental disabilities
33 ombudsperson in carrying out his or her duties and responsibilities.

34 **40.1-22.2-9. Cooperation required.** – (a) The developmental disabilities ombudsperson

1 may request from any government agency, and the agency is authorized and directed to provide,
2 any cooperation and assistance, services, and data that will enable the developmental disabilities
3 ombudsperson to properly perform or exercise any of his or her functions, duties and powers
4 under this chapter.

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

9 **40.1-22.2-10. Annual reports.** – The developmental disabilities ombudsperson shall
10 submit an annual report of the activities of the developmental disabilities ombudsperson program
11 and the developmental disabilities ombudsperson's activities concerning facilities and the
12 protection of the rights of developmentally disabled adults to the governor, speaker of the house,
13 senate president, director of behavioral healthcare, developmental disabilities and hospitals,
14 chairs of the senate and house committee on finance, chair of the senate committee on health and
15 human services, chair of the house committee on health, education and welfare, general assembly,
16 secretary of the Rhode Island department of health and human services, state librarian, and other
17 appropriate governmental entities. The report shall be available to the public.

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

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

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

1 meeting the needs of developmentally disabled adults.

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

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RELATING TO BEHAVIORAL HEALTHCARE, DEVELOPMENTAL DISABILITIES AND
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2 administratively attached to the department of behavioral health, developmental disabilities, and
3 hospitals.

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