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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2014

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A N A C T

RELATING TO BEHAVIORAL HEALTHCARE, DEVELOPMENTAL DISABILITIES, AND
HOSPITALS - DEVELOPMENTAL DISABILITIES OMBUDSPERSON ACT OF 2014

Introduced By: Representatives Naughton, Canario, O'Brien, Martin, and Slater

Date Introduced: February 06, 2014

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 2014

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 2014".

8 **40.1-22.2-2. Program established.** – There is established the developmental disabilities
9 ombudsperson program to be administered by the department of administration.

10 **40.1-22.2-3. Definitions.** – As used in this chapter:

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

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

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

1 which:

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

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

5 (iii) Is likely to continue indefinitely;

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

8 (A) Self-care;

9 (B) Receptive and expressive language;

10 (C) Learning;

11 (D) Mobility;

12 (E) Self-direction;

13 (F) Capacity for independent living;

14 (G) Economic self-sufficiency; and

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

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

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

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

32 (ii) The chairperson of the Rhode Island developmental disabilities council;

33 (iii) The chairperson of the governor 's commission on disabilities;

34 (iv) The executive director of the Rhode Island Disabilities Law Center;

- 1 (v) The director of the Paul V. Sherlock center on disabilities;
2 (vi) The chairperson of advocates in action; and
3 (vii) The chairperson of the Rhode Island providers network or their respective designees.

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

7 (6) "Developmental disability organizations (DDOs)" means an organization licensed by
8 behavioral healthcare developmental disabilities and hospitals (BHDDH) to provide services to
9 adults with disabilities, as provided herein. As used herein, developmental disability
10 organizations (DDOs) 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 for
16 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.

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

27 **40.1-22.2-5. Powers and duties.** – The developmental disabilities ombudsperson shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 shall:

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

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

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

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

9 (1) Visit, speak to and make personal, social and other appropriate services available;

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

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

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

17 (d) Notwithstanding any other provision of law, any health oversight agency and its
18 employees and agents shall comply with all state and federal confidentiality laws, including, but
19 not limited to, chapter 5-37.3 ("Confidentiality of Health Care Communications and Information
20 Act"), and specifically § 5-37.3-4(c), which requires limitation on the distribution of information
21 which is the subject of this chapter on a "need to know" basis, and § 40.1-5-26 relating to the
22 disclosure of confidential information and records.

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

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

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

5 **40.1-22.2-10. Annual reports.** – The developmental disabilities ombudsperson shall
6 submit an annual report of the activities of the developmental disabilities ombudsperson program
7 and the developmental disabilities ombudsperson's activities concerning facilities and the
8 protection of the rights of adults with a developmental disability to the governor, speaker of the
9 house, senate president, chairs of the senate and house committee on finance, chair of the senate
10 committee on health and human services, chair of the house committee on health, education and
11 welfare, general assembly, the secretary of the office of health and human services, the director of
12 behavioral healthcare, developmental disabilities and hospitals, the chairperson of the Rhode
13 Island developmental disabilities council, the chairperson of the governor's commission on
14 disabilities, the executive director of the Rhode Island Disabilities Law Center, the director of the
15 Paul V. Sherlock center on disabilities, the chairperson of advocates in action, the chairperson of
16 the Rhode Island providers network, the state librarian and other appropriate governmental
17 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 good
19 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 of
29 complaints, through administrative action.

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 developmental disabilities ombudsperson shall establish an interagency
33 agreement between the department of behavioral healthcare, developmental disabilities and
34 hospitals, the department of health, the department of health and human services and the office of

1 attorney general to ensure a cooperative effort in meeting the needs of adults with a
2 developmental disability.

3 **40.1-22.2-14. Non-interference.** – No person shall willfully interfere with the
4 developmental disabilities ombudsperson in the performance of the ombudsperson's official
5 duties.

6 **40.1-22.2-15. Enforcement.** – The attorney general shall have the power to enforce the
7 provisions of this chapter.

8 **40.1-22.2-16. Penalty.** – Every person who willfully violates the provisions of §§ 40.1-
9 22.2-8 or 40.1-22.2-14, shall be subject to a fine of not more than one thousand dollars (\$1,000)
10 for each violation of these provisions, in addition to any other remedy provided for in Rhode
11 Island law.

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

19 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
HOSPITALS - DEVELOPMENTAL DISABILITIES OMBUDSPERSON ACT OF 2014

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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