

Notwithstanding section 13.42 or 13.85, the ombudsman has access to corrections and detention data and medical data maintained by an agency and classified as private data on individuals or confidential data on individuals when access to the data is necessary for the ombudsman to perform the powers under section 241.44.

Sec. 20. **EFFECTIVE DATE.**

Sections 7; 9, subdivision 4, paragraph (g); 11; 12; 13; and 15 to 18; are effective the day following final enactment.

Approved June 1, 1987

CHAPTER 352—S.F.No. 514

An act relating to human services; creating the office of ombudsman for mental health and mental retardation; providing for the powers and duties of the ombudsman; creating a medical review board; requiring reporting of abuse and neglect to the ombudsman for mental health and mental retardation; appropriating money; amending Minnesota Statutes 1986, sections 13.46, subdivision 1; 626.556, subdivisions 9 and 10; and 626.557, subdivision 9; proposing coding for new law in Minnesota Statutes, chapter 245.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1986, section 13.46, subdivision 1, is amended to read:

Subdivision 1. **DEFINITIONS.** As used in this section:

(a) "Individual" means an individual pursuant to section 13.02, subdivision 8, but does not include a vendor of services.

(b) "Program" includes all programs for which authority is vested in a component of the welfare system pursuant to statute or federal law.

(c) "Welfare system" includes the department of human services, county welfare boards, county welfare agencies, human services boards, community mental health center boards, state hospitals, state nursing homes, the ombudsman for mental health and mental retardation, and persons, agencies, institutions, organizations, and other entities under contract to any of the above agencies to the extent specified in the contract.

(d) "Mental health data" means data on individual clients and patients of community mental health centers, established under section 245.62, ~~or~~ mental health divisions of counties and other providers under contract to deliver mental health services, or the ombudsman for mental health and mental retardation.

Changes or additions are indicated by underline, deletions by ~~strikeout~~.

Sec. 2. [245.91] DEFINITIONS.

Subdivision 1. APPLICABILITY. For the purposes of sections 2 to 8, the following terms have the meanings given them.

Subd. 2. MENTAL HEALTH OR MENTAL RETARDATION AGENCY. "Mental health or mental retardation agency" or "agency" means the divisions, officials, or employees of the state departments of human services and health, that are engaged in monitoring, providing, or regulating services to mental health or mental retardation clients. It does not include a political subdivision of the state.

Subd. 3. MENTAL HEALTH OR MENTAL RETARDATION CLIENT. "Mental health or mental retardation client" or "client" means a patient, resident, or other person served by a mental health or mental retardation agency or facility, who is receiving residential treatment for mental illness, mental retardation, chemical dependency, or emotional disturbance.

Subd. 4. MENTAL HEALTH OR MENTAL RETARDATION FACILITY. "Mental health or mental retardation facility" or "facility" means a regional center operated by the commissioner of human services, a residential facility as defined in section 245.782, subdivision 6, that is required to be licensed by the commissioner of human services, and an acute care inpatient facility, that provides treatment for mental illness, mental retardation, chemical dependency, or emotional disturbance.

Subd. 5. REGIONAL CENTER. "Regional center" means a regional center as defined in section 253B.02, subdivision 18.

Sec. 3. [245.92] OFFICE OF OMBUDSMAN; CREATION; QUALIFICATIONS; FUNCTION.

The ombudsman for mental health and mental retardation shall promote the highest attainable standards of treatment, competence, efficiency, and justice for people receiving care or treatment for mental illness, mental retardation, chemical dependency, or emotional disturbance. The ombudsman may gather information about decisions, acts, and other matters of an agency or facility. The ombudsman serves at the pleasure of the governor in the unclassified service and is accountable to the governor. The ombudsman must be selected without regard to political affiliation and must be a person who has knowledge and experience concerning the treatment, needs, and rights of mental health and mental retardation clients, and who is highly competent and qualified. No person may serve as ombudsman while holding another public office.

Sec. 4. [245.93] ORGANIZATION OF OFFICE OF OMBUDSMAN.

Subdivision 1. STAFF. The ombudsman may appoint a deputy and a confidential secretary in the unclassified service and may appoint other employees as authorized by the legislature. The ombudsman and the full-time staff members of the Minnesota state retirement association.

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Subd. 2. ADVOCACY. The function of mental health and mental retardation client advocacy in the department of human services is transferred to the office of ombudsman according to section 15.039. The ombudsman shall maintain at least one client advocate in each regional center.

Subd. 3. DELEGATION. The ombudsman may delegate to members of the staff any authority or duties of the office except the duty of formally making recommendations to an agency or facility or reports to the governor or the legislature.

Sec. 5. [245.94] POWERS OF OMBUDSMAN; REVIEWS AND EVALUATIONS; RECOMMENDATIONS.

Subdivision 1. POWERS. (a) The ombudsman may prescribe the methods by which complaints to the office are to be made, reviewed, and acted upon. The ombudsman may not levy a complaint fee.

(b) The ombudsman may mediate or advocate on behalf of a client.

(c) At the request of a client, or upon receiving a complaint or other information affording reasonable grounds to believe that the rights of a client who is not capable of requesting assistance have been adversely affected, the ombudsman may gather information about and analyze, on behalf of the client, the actions of an agency or facility.

(d) The ombudsman may examine, on behalf of a client, records of an agency or facility to which the client is entitled to access if the records relate to a matter that is within the scope of the ombudsman's authority. If the records are private and confidential and the client is capable of providing consent, the ombudsman shall first obtain the client's consent.

(e) The ombudsman may, at reasonable times in the course of conducting a review, enter and view premises within the control of an agency or facility.

(f) The ombudsman may attend department of human services review board and special review board proceedings; proceedings regarding the transfer of patients or residents, as defined in section 246.50, subdivisions 4 and 4a, between institutions operated by the department of human services; and, subject to the consent of the affected patient or resident, other proceedings affecting the rights of residents or patients.

(g) To avoid duplication and preserve evidence, the ombudsman shall inform relevant licensing or regulatory officials before undertaking a review of an action of the facility.

(h) Sections 2 to 8 are in addition to other provisions of law under which any other remedy or right is provided.

Subd. 2. MATTERS APPROPRIATE FOR REVIEW. (a) In selecting matters for review by the office, the ombudsman shall give particular attention to unusual deaths or injuries of a client served by an agency or facility, or actions of an agency or facility that:

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(1) may be contrary to law or rule;

(2) may be unreasonable, unfair, oppressive, or inconsistent with a policy or order of an agency or facility;

(3) may be mistaken in law or arbitrary in the ascertainment of facts;

(4) may be unclear or inadequately explained, when reasons should have been revealed;

(5) may result in abuse or neglect of a person receiving treatment; or

(6) may disregard the rights of a client or other individual served by an agency or facility.

(b) The ombudsman shall, in selecting matters for review and in the course of the review, avoid duplicating other investigations or regulatory efforts.

Subd. 3. COMPLAINTS. The ombudsman may receive a complaint from any source concerning an action of an agency or facility. After completing a review, the ombudsman shall inform the complainant and the agency or facility. No client may be punished nor may the general condition of the client's treatment be unfavorably altered as a result of a complaint by the client or by another person on the client's behalf.

Subd. 4. RECOMMENDATIONS TO AGENCY. (a) If, after reviewing a complaint and considering the response of an agency or facility and any other pertinent material, the ombudsman determines that the complaint has merit, the ombudsman may recommend that the agency or facility:

(1) consider the matter further;

(2) modify or cancel its actions;

(3) alter a rule, order, or internal policy;

(4) explain more fully the action in question; or

(5) take any other action the ombudsman recommends to the agency or facility involved.

(b) At the ombudsman's request, the agency or facility shall, within a reasonable time, inform the ombudsman about the action taken on the recommendation or the reasons for not complying with it.

Sec. 6. [245.95] RECOMMENDATIONS AND REPORTS TO GOVERNOR.

Subdivision 1. SPECIFIC REPORTS. The ombudsman may send conclusions and suggestions concerning any matter reviewed to the governor. Before making public a conclusion or recommendation that expressly or implicitly criticizes an agency or facility or any person, the ombudsman shall consult with the governor and the agency, facility, or person concerning the conclusion or

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recommendation. When sending a conclusion or recommendation to the governor that is adverse to an agency or facility or any person, the ombudsman shall include any statement of reasonable length made by that agency, facility, or person in defense or mitigation of the office's conclusion or recommendation.

Subd. 2. GENERAL REPORTS. In addition to whatever conclusions or recommendations the ombudsman may make to the governor on an ad hoc basis, the ombudsman shall at the end of each year report to the governor concerning the exercise of the ombudsman's functions during the preceding year.

Sec. 7. [245.96] CIVIL ACTIONS.

The ombudsman and his designees are not civilly liable for any action taken under sections 2 to 8 if the action was taken in good faith, was within the scope of the ombudsman's authority, and did not constitute willful or reckless misconduct.

Sec. 8. [245.97] OMBUDSMAN COMMITTEE.

Subdivision 1. MEMBERSHIP. The ombudsman committee consists of 15 members appointed by the governor to three-year terms. Members shall be appointed on the basis of their knowledge of and interest in the health and human services system subject to the ombudsman's authority. In making the appointments, the governor shall try to ensure that the overall membership of the committee adequately reflects the agencies, facilities, and programs within the ombudsman's authority and that members include consumer representatives, including clients, former clients, and relatives of present or former clients; representatives of advocacy organizations for clients and other individuals served by an agency or facility; human services and health care professionals, including specialists in psychiatry, psychology, internal medicine, and forensic pathology; and other providers of services to mental health or mental retardation clients or other individuals served by an agency or facility.

Subd. 2. COMPENSATION; CHAIR. Members do not receive compensation, but are entitled to receive reimbursement for reasonable and necessary expenses incurred. The governor shall designate one member of the committee to serve as its chair at the pleasure of the governor.

Subd. 3. MEETINGS. The committee shall meet at least four times a year at the request of its chair or the ombudsman.

Subd. 4. DUTIES. The committee shall advise and assist the ombudsman in selecting matters for attention; developing policies, plans, and programs to carry out the ombudsman's functions and powers; and making reports and recommendations for changes designed to improve standards of competence, efficiency, justice, and protection of rights. The committee shall function as an advisory body.

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Subd. 5. MEDICAL REVIEW SUBCOMMITTEE. At least five members of the committee, including at least three physicians, one of whom is a psychiatrist, must be designated by the governor to serve as a medical review subcommittee. Terms of service, vacancies, and compensation are governed by subdivision 2. The governor shall designate one of the members to serve as chair of the subcommittee. The medical review subcommittee may:

(1) make a preliminary determination of whether the death of a client that has been brought to its attention is unusual or reasonably appears to have resulted from causes other than natural causes and warrants investigation;

(2) review the causes of and circumstances surrounding the death;

(3) request the county coroner or medical examiner to conduct an autopsy;

(4) assist an agency in its investigations of unusual deaths and deaths from causes other than natural causes; and

(5) submit a report regarding the death of a client to the committee, the ombudsman, the client's next-of-kin, and the facility where the death occurred and, where appropriate, make recommendations to prevent recurrence of similar deaths to the head of each affected agency or facility.

Subd. 6. TERMS, COMPENSATION, AND REMOVAL. The membership terms, compensation, and removal of members of the committee and the filling of membership vacancies are governed by section 15.0575.

Sec. 9. Minnesota Statutes 1986, section 626.556, subdivision 9, is amended to read:

Subd. 9. MANDATORY REPORTING TO A MEDICAL EXAMINER OR CORONER. When a person required to report under the provisions of subdivision 3 knows or has reason to believe a child has died as a result of neglect or physical or sexual abuse, the person shall report that information to the appropriate medical examiner or coroner instead of the local welfare agency, police department or county sheriff. Medical examiners or coroners shall notify the local welfare agency or police department or county sheriff in instances in which they believe that the child has died as a result of neglect or physical or sexual abuse. The medical examiner or coroner shall complete an investigation as soon as feasible and report the findings to the police department or county sheriff and the local welfare agency. If the child was receiving residential treatment for mental illness, mental retardation, chemical dependency, or emotional disturbance from a mental health or mental retardation agency or facility as defined in section 2, the medical examiner or coroner shall also notify and report findings to the ombudsman for mental health and mental retardation.

Sec. 10. Minnesota Statutes 1986, section 626.556, subdivision 10, is amended to read:

Subd. 10. DUTIES OF LOCAL WELFARE AGENCY AND LOCAL LAW

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ENFORCEMENT AGENCY UPON RECEIPT OF A REPORT. (a) If the report alleges neglect, physical abuse, or sexual abuse by a parent, guardian, or individual functioning within the family unit as a person responsible for the child's care, the local welfare agency shall immediately conduct an assessment and offer protective social services for purposes of preventing further abuses, safeguarding and enhancing the welfare of the abused or neglected minor, and preserving family life whenever possible. When necessary the local welfare agency shall seek authority to remove the child from the custody of a parent, guardian or adult with whom the child is living. In performing any of these duties, the local welfare agency shall maintain appropriate records.

(b) When a local agency receives a report or otherwise has information indicating that a child who is a mental health or mental retardation client, as defined in section 2, has been the subject of physical abuse or neglect at a mental health or mental retardation agency or facility, as defined in section 2, it shall, in addition to its other duties under this section, immediately inform the ombudsman for mental health and mental retardation.

(c) Authority of the local welfare agency responsible for assessing the child abuse report and of the local law enforcement agency for investigating the alleged abuse includes, but is not limited to, authority to interview, without parental consent, the alleged victim and any other minors who currently reside with or who have resided with the alleged perpetrator. The interview may take place at school or at any facility or other place where the alleged victim or other minors might be found and may take place outside the presence of the perpetrator or parent, legal custodian, guardian, or school official. Except as provided in this clause, the parent, legal custodian, or guardian shall be notified by the responsible local welfare or law enforcement agency no later than the conclusion of the investigation or assessment that this interview has occurred. Notwithstanding rule 49.02 of the Minnesota rules of procedure for juvenile courts, the juvenile court may, after hearing on an ex parte motion by the local welfare agency, order that, where reasonable cause exists, the agency withhold notification of this interview from the parent, legal custodian, or guardian. If the interview took place or is to take place on school property, the order shall specify that school officials may not disclose to the parent, legal custodian, or guardian the contents of the notification of intent to interview the child on school property, as provided under paragraph (c), and any other related information regarding the interview that may be a part of the child's school record. A copy of the order shall be sent by the local welfare or law enforcement agency to the appropriate school official.

(e) (d) When the local welfare or local law enforcement agency determines that an interview should take place on school property, written notification of intent to interview the child on school property must be received by school officials prior to the interview. The notification shall include the name of the child to be interviewed, the purpose of the interview, and a reference to the statutory authority to conduct an interview on school property. For interviews conducted by the local welfare agency, the notification shall be signed by the

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chair of the county welfare board or the chair's designee. The notification shall be private data on individuals subject to the provisions of this paragraph. School officials may not disclose to the parent, legal custodian, or guardian the contents of the notification or any other related information regarding the interview until notified in writing by the local welfare or law enforcement agency that the investigation or assessment has been concluded. Until that time, the local welfare or law enforcement agency shall be solely responsible for any disclosures regarding the nature of the assessment or investigation.

Except where the alleged perpetrator is believed to be a school official or employee, the time and place, and manner of the interview on school premises shall be within the discretion of school officials, but the local welfare or law enforcement agency shall have the exclusive authority to determine who may attend the interview. The conditions as to time, place, and manner of the interview set by the school officials shall be reasonable and the interview shall be conducted not more than 24 hours after the receipt of the notification unless another time is considered necessary by agreement between the school officials and the local welfare or law enforcement agency. Where the school fails to comply with the provisions of this paragraph, the juvenile court may order the school to comply. Every effort must be made to reduce the disruption of the educational program of the child, other students, or school staff when an interview is conducted on school premises.

(d) (e) Where the perpetrator or a person responsible for the care of the alleged victim or other minor prevents access to the victim or other minor by the local welfare agency, the juvenile court may order the parents, legal custodian, or guardian to produce the alleged victim or other minor for questioning by the local welfare agency or the local law enforcement agency outside the presence of the perpetrator or any person responsible for the child's care at reasonable places and times as specified by court order.

(e) (f) Before making an order under paragraph (d), the court shall issue an order to show cause, either upon its own motion or upon a verified petition, specifying the basis for the requested interviews and fixing the time and place of the hearing. The order to show cause shall be served personally and shall be heard in the same manner as provided in other cases in the juvenile court. The court shall consider the need for appointment of a guardian ad litem to protect the best interests of the child. If appointed, the guardian ad litem shall be present at the hearing on the order to show cause.

(f) (g) The commissioner, the ombudsman for mental health and mental retardation, the local welfare agencies responsible for investigating reports, and the local law enforcement agencies have the right to enter facilities as defined in subdivision 2 and to inspect and copy the facility's records, including medical records, as part of the investigation. Notwithstanding the provisions of chapter 13, they also have the right to inform the facility under investigation that they are conducting an investigation, to disclose to the facility the names of the individuals under investigation for abusing or neglecting a child, and to provide the facility with a copy of the report and the investigative findings.

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Sec. 11. Minnesota Statutes 1986, section 626.557, subdivision 9, is amended to read:

Subd. 9. **MANDATORY REPORTING TO A MEDICAL EXAMINER OR CORONER.** A person required to report under the provisions of subdivision 3 who has reasonable cause to believe that a vulnerable adult has died as a direct or indirect result of abuse or neglect shall report that information to the appropriate medical examiner or coroner in addition to the local welfare agency, police department, or county sheriff for appropriate licensing agency or agencies. The medical examiner or coroner shall complete an investigation as soon as feasible and report the findings to the police department or county sheriff, the local welfare agency, and, if applicable, each licensing agency. A person or agency that receives a report under this subdivision concerning a vulnerable adult who was receiving residential treatment for mental illness, mental retardation, chemical dependency, or emotional disturbance from a mental health or mental retardation agency or facility as defined in section 2, shall also report the information and findings to the ombudsman for mental health and mental retardation.

Sec. 12. **INITIAL APPOINTMENTS.**

Notwithstanding section 8, the governor shall appoint the initial members of the ombudsman committee as follows:

- (1) five members to one-year terms;
- (2) five members to two-year terms; and
- (3) five members to three-year terms.

Sec. 13. **APPROPRIATIONS.**

\$39,000 is appropriated from the general fund to the ombudsman for mental health and mental retardation.

Approved June 2, 1987

CHAPTER 353—S.F.No. 90

An act relating to public safety; pipelines and underground facilities; requiring a routing permit to construct a new pipeline; creating the office of pipeline safety and providing for its powers and duties; authorizing rulemaking for purposes of delegation of federal authority; creating the pipeline safety advisory commission; regulating the operation of certain pipelines; requiring the adoption of pipeline setback ordinances; providing for notification of excavation in the area of underground facilities; providing for a pipeline inspection fee; providing penalties; appropriating money; amending Minnesota Statutes 1986, sections 116I.02, subdivisions 2 and 3; 117.48; 117.49; 216B.16, by adding a subdivision; 299F.56, by adding

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