

## CHAPTER 543—H.F.No. 2138

*An act relating to human services; revising and clarifying the duties and powers of the ombudsman for mental health and mental retardation; transferring money; amending Minnesota Statutes 1987 Supplement, sections 245.91, subdivisions 2, 3, and 4; 245.92; 245.94, subdivisions 1, 2, 3, and 4; 245.95, subdivision 1; 245.97, subdivision 1; 626.556, subdivisions 9 and 10; and 626.557, subdivision 9.*

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

Section 1. Minnesota Statutes 1987 Supplement, section 245.91, subdivision 2, is amended to read:

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, and of designated county social service agencies as defined in section 256G.02, subdivision 7, 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 or treatment for mental illness, mental retardation or a related condition, chemical dependency, or emotional disturbance.~~

Sec. 2. Minnesota Statutes 1987 Supplement, section 245.91, subdivision 3, is amended to read:

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 an agency or facility, or program, who is receiving residential services or treatment for mental illness, mental retardation or a related condition, chemical dependency, or emotional disturbance.

Sec. 3. Minnesota Statutes 1987 Supplement, section 245.91, subdivision 4, is amended to read:

Subd. 4. ~~MENTAL HEALTH OR MENTAL RETARDATION FACILITY OR PROGRAM.~~ ~~“Mental health or mental retardation facility”~~ or “Facility” or “program” means a regional center operated by the commissioner of human services, a nonresidential or residential facility program as defined in section ~~245.782, subdivision 6~~ 245A.02, subdivisions 10 and 14, that is required to be licensed by the commissioner of human services, and an acute care inpatient facility, that provides services or treatment for mental illness, mental retardation or a related condition, chemical dependency, or emotional disturbance.

Sec. 4. Minnesota Statutes 1987 Supplement, section 245.92, is amended to read:

**245.92 OFFICE OF OMBUDSMAN; CREATION; QUALIFICATIONS; FUNCTION.**

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The ombudsman for ~~mental health and mental retardation~~ shall promote the highest attainable standards of treatment, competence, efficiency, and justice for ~~people~~ persons receiving care ~~services~~ or treatment for mental illness, mental retardation or a related condition, chemical dependency, or emotional disturbance shall promote the highest attainable standards of treatment, competence, efficiency, and justice. The ombudsman may gather information about decisions, acts, and other matters of an agency ~~or~~ facility, or program. The ombudsman serves at the pleasure of the ~~is appointed by the~~ governor, serves in the unclassified service, and is ~~accountable to the governor~~ may be removed only for just cause. 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. 5. Minnesota Statutes 1987 Supplement, section 245.94, subdivision 1, is amended to read:

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) The ombudsman may investigate the quality of services provided to clients and determine the extent to which quality assurance mechanisms within state and county government work to promote the health, safety, and welfare of clients, other than clients in acute care facilities who are receiving services not paid for by public funds.

(d) 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, or program.

(~~e~~) (e) The ombudsman may examine, on behalf of a client, records of an agency ~~or~~ facility, or program 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. The ombudsman is not required to obtain consent for access to private data on clients with mental retardation or a related condition.

(~~f~~) (f) 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, or program.

(~~g~~) (g) The ombudsman may attend department of human services review

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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~~ client, other proceedings affecting the rights of ~~residents or patients~~ clients. The ombudsman is not required to obtain consent to attend meetings or proceedings and have access to private data on clients with mental retardation or a related condition.

~~(e)~~ (h) The ombudsman shall have access to data of agencies, facilities, or programs classified as private or confidential as defined in section 13.02, subdivisions 12 and 13, regarding services provided to clients with mental retardation or a related condition.

(i) 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 or program.

~~(h)~~ (j) Sections 245.91 to 245.97 are in addition to other provisions of law under which any other remedy or right is provided.

Sec. 6. Minnesota Statutes 1987 Supplement, section 245.94, subdivision 2, is amended to read:

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 program, or actions of an agency ~~or~~ facility, or program that:

- (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, or program;
- (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;
- (7) may impede or promote independence, community integration, and productivity for clients; or
- (8) may impede or improve the monitoring or evaluation of services provided to clients.

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

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Sec. 7. Minnesota Statutes 1987 Supplement, section 245.94, subdivision 3, is amended to read:

Subd. 3. **COMPLAINTS.** The ombudsman may receive a complaint from any source concerning an action of an agency ~~or~~, facility, or program. After completing a review, the ombudsman shall inform the complainant and the agency ~~or~~, facility, or program. No client may be punished nor may the general condition of the client's treatment be unfavorably altered as a result of an investigation, a complaint by the client, or by another person on the client's behalf. An agency, facility, or program shall not retaliate or take adverse action, as defined in section 626.557, subdivision 17, paragraph (c), against a client or other person, who in good faith makes a complaint or assists in an investigation.

Sec. 8. Minnesota Statutes 1987 Supplement, section 245.94, subdivision 4, is amended to read:

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

- (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, or program shall, within a reasonable time, inform the ombudsman about the action taken on the recommendation or the reasons for not complying with it.

Sec. 9. Minnesota Statutes 1987 Supplement, section 245.95, subdivision 1, is amended to read:

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

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Sec. 10. Minnesota Statutes 1987 Supplement, section 245.97, subdivision 1, is amended to read:

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, or program; human services and health care professionals, including specialists in psychiatry, psychology, internal medicine, and forensic pathology; and other providers of services or treatment to ~~mental health or mental retardation~~ clients ~~or other individuals served by an agency or facility~~.

Sec. 11. Minnesota Statutes 1987 Supplement, 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 services or~~ services or treatment for mental illness, mental retardation or a related condition, chemical dependency, or emotional disturbance from ~~a mental health or mental retardation~~ an agency or, facility, or program as defined in section 245.91, the medical examiner or coroner shall also notify and report findings to the ombudsman ~~for mental health and mental retardation~~ established under sections 245.91 to 245.97.

Sec. 12. Minnesota Statutes 1987 Supplement, section 626.556, subdivision 10, is amended to read:

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

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family life whenever possible. If the report alleges a violation of a criminal statute involving sexual abuse or physical abuse, the local law enforcement agency and local welfare agency shall coordinate the planning and execution of their respective investigation and assessment efforts to avoid a duplication of fact-finding efforts and multiple interviews. Each agency shall prepare a separate report of the results of its investigation. 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 245.91, has been the subject of physical abuse or neglect at a ~~mental health or mental retardation~~ an agency or facility, or program as defined in section 245.91, it shall, in addition to its other duties under this section, immediately inform the ombudsman ~~for mental health and mental retardation established under sections 245.91 to 245.97.~~

(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.

(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 chair of the

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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.

(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.

(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.

(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. 13. Minnesota Statutes 1987 Supplement, 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 or 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 services or treatment for mental illness, mental retardation or a related condition, chemical dependency, or emotional disturbance from ~~a mental health or mental retardation an~~ an agency or facility, or program as defined in section 245.91, shall also report the information and findings to the ombudsman ~~for mental health and mental retardation established under sections 245.91 to 245.97.~~

Sec. 14. **TRANSFER OF MONEY.**

The money appropriated in Laws 1987, chapter 403, article 1, section 2, subdivision 2, to the commissioner of human services for the Welsch consent decree monitor's office for the fiscal year ending June 30, 1989, is transferred to the appropriation in Laws 1987, chapter 352, section 13, to the ombudsman for mental health and mental retardation.

Approved April 18, 1988

**CHAPTER 544—H.F.No. 2192**

*An act relating to transportation; providing for application of rules; providing for agreements with other states to administer special permits for vehicles exceeding weight and length restrictions; exempting limousines from motor carrier regulation; clarifying the filing of petitions for operating certificates and permits, carrying of cab cards, and requirements for private carriers; establishing insurance requirements; providing that investigative data on violations under chapter 221 may be given to transportation regulation board; amending Minnesota Statutes 1986, sections 169.81, subdivision 2; 169.86, by adding a subdivision; 221.025; 221.031, subdivisions 1, 2, 2a, and 3; 221.081; 221.121, subdivisions 1 and 5; 221.141, subdivision 1; 221.151, subdivision 1; 221.172, subdivision 2; 221.185, subdivision 9; 221.291, subdivisions 1 and 2; 221.296, subdivisions 4 and 8; and 221.81, subdivision 3a; Minnesota Statutes 1987 Supplement, sections 221.031, subdivision 7; 221.061; 221.291, subdivision 3; and 221.296, subdivision 5; proposing coding for new law in Minnesota Statutes, chapters 169 and 221; repealing Minnesota Statutes 1986, section 13.72, subdivision 3.*

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