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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETIETH SESSION

H. F. No. 1229

02/14/2017 Authored by Pierson; McDonald; Liebling; Murphy, E., and Hamilton
The bill was read for the first time and referred to the Committee on Health and Human Services Reform
03/01/2017 Adoption of Report: Amended and re-referred to the Committee on Civil Law and Data Practices Policy

1.1 A bill for an act
1.2 relating to human services; modifying definitions and duties of the Office of
1.3 Ombudsman for Mental Health and Developmental Disabilities; modifying the
1.4 Ombudsman Committee; amending Minnesota Statutes 2016, sections 245.91,
1.5 subdivisions 4, 6; 245.94, subdivision 1; 245.97, subdivision 6.

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

1.7 Section 1. Minnesota Statutes 2016, section 245.91, subdivision 4, is amended to read:

1.8 Subd. 4. **Facility or program.** "Facility" or "program" means a nonresidential or
1.9 residential program as defined in section 245A.02, subdivisions 10 and 14, ~~that is required~~
1.10 ~~to be licensed by the commissioner of human services, and any agency, facility, or program~~
1.11 that provides services or treatment for mental illness, developmental disabilities, chemical
1.12 dependency, or emotional disturbance that is required to be licensed, certified, or registered
1.13 by the commissioner of human services, health, or education; and an acute care inpatient
1.14 facility that provides services or treatment for mental illness, developmental disabilities,
1.15 chemical dependency, or emotional disturbance.

1.16 Sec. 2. Minnesota Statutes 2016, section 245.91, subdivision 6, is amended to read:

1.17 Subd. 6. **Serious injury.** "Serious injury" means:

- 1.18 (1) fractures;
- 1.19 (2) dislocations;
- 1.20 (3) evidence of internal injuries;

2.1 (4) head injuries with loss of consciousness or potential for a closed head injury or
 2.2 concussion without loss of consciousness requiring a medical assessment by a health care
 2.3 professional, whether or not further medical attention was sought;

2.4 (5) lacerations involving injuries to tendons or organs, and those for which complications
 2.5 are present;

2.6 (6) extensive second-degree or third-degree burns, and other burns for which
 2.7 complications are present;

2.8 (7) extensive second-degree or third-degree frostbite, and others for which complications
 2.9 are present;

2.10 (8) irreversible mobility or avulsion of teeth;

2.11 (9) injuries to the eyeball;

2.12 (10) ingestion of foreign substances and objects that are harmful;

2.13 (11) near drowning;

2.14 (12) heat exhaustion or sunstroke; ~~and~~

2.15 (13) attempted suicide; and

2.16 ~~(13)~~ (14) all other injuries and incidents considered serious after an assessment by a
 2.17 physician, health care professional, including but not limited to self-injurious behavior, a
 2.18 medication error requiring medical treatment, a suspected delay of medical treatment, a
 2.19 complication of a previous injury, or a complication of medical treatment for an injury.

2.20 Sec. 3. Minnesota Statutes 2016, section 245.94, subdivision 1, is amended to read:

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

2.24 (b) The ombudsman is a health oversight agency as defined in Code of Federal
 2.25 Regulations, title 45, section 164.501. The ombudsman may access patient records according
 2.26 to Code of Federal Regulations, title 42, section 2.53. For purposes of this paragraph,
 2.27 "records" has the meaning given in Code of Federal Regulations, title 42, section
 2.28 2.53(a)(1)(i).

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

2.30 ~~(c)~~ (d) The ombudsman may investigate the quality of services provided to clients and
 2.31 determine the extent to which quality assurance mechanisms within state and county

3.1 government work to promote the health, safety, and welfare of clients, ~~other than clients in~~
3.2 ~~acute care facilities who are receiving services not paid for by public funds. The ombudsman~~
3.3 ~~is a health oversight agency as defined in Code of Federal Regulations, title 45, section~~
3.4 ~~164.501.~~

3.5 ~~(d)~~ (e) At the request of a client, or upon receiving a complaint or other information
3.6 affording reasonable grounds to believe that the rights of ~~a client~~ one or more clients who
3.7 ~~is~~ may not be capable of requesting assistance have been adversely affected, the ombudsman
3.8 may gather information and data about and analyze, on behalf of the client, the actions of
3.9 an agency, facility, or program.

3.10 ~~(e)~~ (f) the ombudsman may gather, on behalf of ~~a client~~ one or more clients, records of
3.11 an agency, facility, or program, or records related to clinical drug trials from the University
3.12 of Minnesota Department of Psychiatry, if the records relate to a matter that is within the
3.13 scope of the ombudsman's authority. If the records are private and the client is capable of
3.14 providing consent, the ombudsman shall first obtain the client's consent. The ombudsman
3.15 is not required to obtain consent for access to private data on clients with developmental
3.16 disabilities and individuals served by the Minnesota sex offender program. The ombudsman
3.17 may also take photographic or videographic evidence while reviewing the actions of an
3.18 agency, facility, or program, with the consent of the client. The ombudsman is not required
3.19 to obtain consent for access to private data on decedents who were receiving services for
3.20 mental illness, developmental disabilities, chemical dependency, or emotional disturbance.
3.21 All data collected, created, received, or maintained by the ombudsman are governed by
3.22 chapter 13 and other applicable law.

3.23 ~~(f)~~ (g) Notwithstanding any law to the contrary, the ombudsman may subpoena a person
3.24 to appear, give testimony, or produce documents or other evidence that the ombudsman
3.25 considers relevant to a matter under inquiry. The ombudsman may petition the appropriate
3.26 court in Ramsey County to enforce the subpoena. A witness who is at a hearing or is part
3.27 of an investigation possesses the same privileges that a witness possesses in the courts or
3.28 under the law of this state. Data obtained from a person under this paragraph are private
3.29 data as defined in section 13.02, subdivision 12.

3.30 ~~(g)~~ (h) The ombudsman may, at reasonable times in the course of conducting a review,
3.31 enter and view premises within the control of an agency, facility, or program.

3.32 ~~(h)~~ (i) The ombudsman may attend Department of Human Services Review Board and
3.33 Special Review Board proceedings; proceedings regarding the transfer of clients, as defined
3.34 in section 246.50, subdivision 4, between institutions operated by the Department of Human

4.1 Services; and, subject to the consent of the affected client, other proceedings affecting the
4.2 rights of clients. The ombudsman is not required to obtain consent to attend meetings or
4.3 proceedings and have access to private data on clients ~~with developmental disabilities~~.

4.4 ~~(j)~~ (j) The ombudsman shall gather data of agencies, facilities, or programs classified
4.5 as private or confidential as defined in section 13.02, subdivisions 3 and 12, regarding
4.6 services provided to clients ~~with developmental disabilities~~.

4.7 ~~(k)~~ (k) To avoid duplication and preserve evidence, the ombudsman shall inform relevant
4.8 licensing or regulatory officials before undertaking a review of an action of the facility or
4.9 program.

4.10 (l) The Office of Ombudsman shall provide the services of the Civil Commitment
4.11 Training and Resource Center.

4.12 ~~(m)~~ (m) The ombudsman shall monitor the treatment of individuals participating in a
4.13 University of Minnesota Department of Psychiatry clinical drug trial and ensure that all
4.14 protections for human subjects required by federal law and the Institutional Review Board
4.15 are provided.

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

4.18 Sec. 4. Minnesota Statutes 2016, section 245.97, subdivision 6, is amended to read:

4.19 Subd. 6. **Terms, compensation, and removal.** The membership terms, compensation,
4.20 and removal of members of the committee and the filling of membership vacancies are
4.21 governed by section ~~15.0575~~ 15.0597.