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Introduced by Representatives Donahue of Northfield, Gage of Rutland City,
Poirier of Barre City, and Woodward of Johnson

Referred to Committee on

Date:

Subject: Health; mental health; ombudsman

Statement of purpose of bill as introduced: This bill proposes to clarify the
statutory duties of the Office of the Mental Health Care Ombudsman.

An act relating to the Office of the Mental Health Care Ombudsman

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. PURPOSE

Due to the State's unique role in coordinating and providing services for
Vermonters with one or more diagnosed mental health conditions, the General
Assembly created the Office of the Mental Health Care Ombudsman, and now
finds it necessary to clarify the Office's role, which is to safeguard access to
services and those rights and protections that may be at risk. Due to the fact
that the Office of the Mental Health Care Ombudsman addresses methods of
care that are not as prevalent as those among other health conditions, the
Office's existence remains consistent with the principles of parity and
achieving integration throughout Vermont's health care system.

1 Sec. 2. 18 V.S.A. chapter 178 is added to read:

2 CHAPTER 178. MENTAL HEALTH CARE OMBUDSMAN

3 § 7451. DEFINITIONS

4 As used in this chapter:

5 (1) “Agency” means the organization designated by the Governor as the
6 protection and advocacy system for the State pursuant to 42 U.S.C. § 10801
7 et seq.

8 (2) “Department” means the Department of Mental Health.

9 (3) “Intensive residential recovery facility” shall have the same meaning
10 as in section 7252 of this title.

11 (4) “Mental Health Care Ombudsman” or “Ombudsman” means an
12 individual providing protection and advocacy services pursuant to this chapter.

13 (5) “Office” means the Office of the Mental Health Care Ombudsman.

14 (6) “Secure residential recovery facility” shall have the same meaning as
15 in section 7620 of this title.

16 (7) “State agency” means any office, department, board, bureau,
17 division, agency, or instrumentality of the State.

18 § 7452. OFFICE OF THE MENTAL HEALTH CARE OMBUDSMAN

19 (a) The Department of Mental Health shall establish the Office of the
20 Mental Health Care Ombudsman within the Agency by executing a
21 memorandum of designation between the Department and the Agency.

1 (b) The Office shall represent the interests of Vermonters with one or more
2 diagnosed mental health conditions, including individuals receiving services at
3 designated hospitals, emergency departments, correctional facilities, intensive
4 residential recovery facilities, secure residential recovery facilities, or within a
5 community setting.

6 (c) The Office shall be directed by an individual, to be known as the
7 Mental Health Care Ombudsman, who shall be selected from among
8 individuals within the Agency executing the memorandum of designation with
9 the Department of Mental Health.

10 § 7453. RESPONSIBILITIES OF THE OFFICE

11 (a) The Office may:

12 (1) investigate individual cases of abuse, neglect, and other serious
13 violations of individuals in Vermont with diagnosed mental health conditions;

14 (2) analyze, monitor, and aim to reduce the use of seclusion, restraint,
15 coercion, and involuntary mental health procedures;

16 (3)(A) review emergency involuntary procedure reports provided by the
17 Department;

18 (B) confer with the Department at least twice annually regarding any
19 findings or recommendations for improvement made by the Office in response
20 to the emergency involuntary procedure reports;

1 (4)(A) review any reports of untimely deaths provided by the
2 Department of individuals with a diagnosed mental health condition in
3 designated hospitals, emergency departments, intensive residential recovery
4 facilities, secure residential recovery facilities, or community settings;

5 (B) confer with the Department regarding any findings or
6 recommendations for improvement made by the Office in response to the
7 untimely death reports;

8 (5) participate on State panels reviewing the treatment of individuals
9 with a diagnosed mental health condition;

10 (6) integrate efforts with the Health Care Ombudsman's Office
11 established under 8 V.S.A. chapter 107, subchapter 1A and the Long-Term
12 Care Ombudsman's Office established under 33 V.S.A. chapter 75 to minimize
13 duplication of efforts; and

14 (7) annually, on or before January 15th, submit a report to the
15 Department and General Assembly detailing all activities performed pursuant
16 to this chapter and recommending improvements to the mental health system.

17 (b)(1) A person shall not impose any additional duties on the Office in
18 excess of the requirements set forth in subsection (a) of this section or
19 otherwise imposed on agencies under federal law.

1 (2) Nothing in this chapter shall supersede the authorities or
2 responsibilities granted to the Agency under Protection and Advocacy for
3 Individuals with Mental Illness, 42 U.S.C. §§ 10801–10851.

4 (3) The General Assembly may at any time allocate funds it deems
5 necessary to supplement federal funding used to maintain the Office.

6 § 7454. AUTHORITY OF THE MENTAL HEALTH CARE OMBUDSMAN

7 In fulfilling the responsibilities of the Office, the Mental Health Care
8 Ombudsman may:

9 (1) Hire or contract with persons or organizations to fulfill the purposes
10 of this chapter.

11 (2) Communicate and visit with any individual with a diagnosed mental
12 health condition, provided that the Ombudsman shall discontinue interactions
13 with any individual when requested to do so by that individual. Toward that
14 end, designated hospitals, emergency departments, correctional facilities,
15 intensive residential recovery facilities, secure residential recovery facilities,
16 and other community treatment facilities shall provide the Ombudsman access
17 to their facilities and to individuals for whom they provide mental health
18 services. If the individual with a diagnosed mental health condition has a
19 guardian, the Office shall take no action without consent of the guardian or a
20 court order.

1 (3) Delegate to employees any part of the Mental Health Care
2 Ombudsman's authority.

3 (4) Take such further actions as are necessary in order to fulfill the
4 purpose of this chapter.

5 § 7455. COOPERATION OF STATE AGENCIES

6 (a) All State agencies shall comply with requests of the Mental Health Care
7 Ombudsman for information and assistance necessary to carry out the
8 responsibilities of the Office.

9 (b) The Secretary of Human Services may adopt rules necessary to ensure
10 that departments within the Agency of Human Services cooperate with the
11 Office.

12 § 7456. CONFIDENTIALITY

13 In the absence of written consent by an individual with a diagnosed mental
14 health condition about whom a report has been made, or by his or her guardian
15 or legal representative, or a court order, the Mental Health Care Ombudsman
16 shall not disclose the identity of such person, unless otherwise provided for
17 under Protection and Advocacy for Individuals with Mental Illness, 42 U.S.C.
18 §§ 10801–10851.

1 § 7457. IMMUNITY

2 Civil liability shall not attach to the Mental Health Care Ombudsman or his
3 or her employees for good faith performance of the duties imposed by
4 this chapter.

5 § 7458. INTERFERENCE AND RETALIATION

6 (a) A person who intentionally hinders a representative of the Office acting
7 pursuant to this chapter shall be imprisoned not more than one year or fined
8 not more than \$5,000.00, or both.

9 (b) A person who takes discriminatory, disciplinary, or retaliatory action
10 against an employee, a resident, or a volunteer of a designated hospital,
11 emergency departments, correctional facility, intensive residential recovery
12 facility, secure residential recovery facility, community treatment facility, or
13 State agency for any communication made, or information disclosed, to aid the
14 Office in carrying out its duties and responsibilities shall be imprisoned not
15 more than one year or fined not more than \$5,000.00, or both. An employee, a
16 resident, or a volunteer of such facilities or State agencies may seek damages
17 in Superior Court against a person who takes an action prohibited by this
18 subsection.

19 § 7459. CONFLICT OF INTEREST

20 The Mental Health Care Ombudsman, an employee of the Ombudsman, or
21 an immediate family member of the Ombudsman or of an employee shall not

1 have any financial interest in or authority over a designated hospital,
2 emergency departments, correctional facility, intensive residential recovery
3 facility, secure residential recovery facility, or community treatment facility
4 and from providing mental health services, which creates a conflict of interest
5 in carrying out the Ombudsman's responsibilities under this chapter.

6 Sec. 3. REPEAL

7 18 V.S.A. § 7259 (mental health care ombudsman) is repealed.

8 Sec. 4. EFFECTIVE DATE

9 This act shall take effect on July 1, 2015.