

1 S.114

2 Introduced by Senators Fox, Ayer, and Pollina

3 Referred to Committee on

4 Date:

5 Subject: Health; mental health; ombudsman

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

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

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

10 Sec. 1. PURPOSE

11 Due to the State's unique role in coordinating and providing services for  
12 Vermonters with one or more diagnosed mental health conditions, the General  
13 Assembly created the Office of the Mental Health Care Ombudsman, and now  
14 finds it necessary to clarify the Office's role, which is to safeguard access to  
15 services and those rights and protections that may be at risk. Due to the fact  
16 that the Office of the Mental Health Care Ombudsman addresses methods of  
17 care that are not as prevalent as among other health conditions, the Office's  
18 existence remains consistent with the principles of parity and achieving  
19 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 et  
7 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 rooms, 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 provided by the Department of untimely  
2           deaths of individuals with a diagnosed mental health condition in designated  
3           hospitals, intensive residential recovery facilities, secure residential recovery  
4           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 rooms, correctional facilities, intensive  
15          residential recovery facilities, secure residential recovery facilities, and other  
16          community treatment facilities shall provide the Ombudsman access to their  
17          facilities and to individuals for whom they provide mental health services. If  
18          the individual with a diagnosed mental health condition has a guardian, the  
19          Office shall take no action without consent of the guardian or a court order.

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

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

3           § 7455. COOPERATION OF STATE AGENCIES

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

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

10          § 7456. CONFIDENTIALITY

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

17          § 7457. IMMUNITY

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

1     § 7458. INTERFERENCE AND RETALIATION

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

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

14    § 7459. CONFLICT OF INTEREST

15         The Mental Health Care Ombudsman, an employee of the Ombudsman, or  
16    an immediate family member of the Ombudsman or of an employee shall not  
17    have any financial interest in or authority over a designated hospital,  
18    correctional facility, intensive residential recovery facility, secure residential  
19    recovery facility, or community treatment facility and from providing mental  
20    health services, which creates a conflict of interest in carrying out the  
21    Ombudsman's responsibilities under this chapter.

1       Sec. 3. REPEAL

2             18 V.S.A. § 7259 (mental health care ombudsman) is repealed.

3       Sec. 4. EFFECTIVE DATE

4             This act shall take effect on July 1, 2013.