

FIRST REGULAR SESSION

HOUSE BILL NO. 315

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES FOLEY, GRAHAM, CHAMPION, MILLER,
BARRY (Co-sponsors), HOLT AND BURTON.

Read 1st time January 10, 2001, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

0967L.011

AN ACT

To amend chapter 630, RSMo, by adding thereto four new sections relating to the office of state ombudsman for mental health facility residents, with penalty provisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 630, RSMo, is amended by adding thereto four new sections, to be
2 known as sections 630.201, 630.202, 630.203 and 630.204, to read as follows:

**630.201. As used in sections 630.201 to 630.204 and with reference to the definitions
2 in this chapter and chapters 631, 632 and 633, RSMo, the following terms mean:**

3 **(1) "Mental health provider" includes, but is not limited to, any long-term care
4 facility, any regional center, any public or private program which receives public moneys
5 and provides services which include, but are not limited to, prevention, clinical, psycho-
6 social, vocational or residential treatment, habilitation, or rehabilitation services or
7 programs, either separately or in combination with one another or another service or
8 intervention, for persons with mental disorders, mental illnesses, developmental
9 disabilities, mental retardation, or persons with substance abuse problems. No jail or
10 correctional institution or facility shall be a mental health facility within the meaning of
11 sections 630.201 to 630.204;**

12 **(2) "Office", the office of the state ombudsman for recipients of mental health
13 services;**

14 **(3) "Ombudsman", the state ombudsman for recipients of mental health services;**

15 **(4) "Recipient", a person who receives services from a mental health provider;**

16 **(5) "Regional or deputy ombudsman", designated individuals working for, or
17 under contract with, the office of ombudsman who are qualified, trained and certified to
18 assist the office in carrying out its statutory duties.**

630.202. 1. There is hereby established within the office of the lieutenant governor the "Office of State Ombudsman for Recipients of Mental Health Services", for the purpose of helping to protect the rights of recipients of mental health services, to assure that recipients receive high quality mental health services and to improve the quality of life experienced by recipients of mental health services. Any recipient or any other person acting on behalf of the interests of such recipient shall have access to the services of the ombudsman.

2. The ombudsman shall be appointed by a five-member ombudsman commission. The lieutenant governor shall serve as a permanent member of the commission with the remaining four members to be appointed by the governor with the advice and consent of the senate. The ombudsman shall be appointed to a four-year term by the commission and may be removed for cause.

3. The office shall be administered by the state ombudsman, who shall devote his or her entire time to the duties of the ombudsman position.

4. The state ombudsman shall have the authority to employ and certify trained regional or deputy ombudsmen and staff commensurate with appropriations, and to qualify, train and monitor activities of volunteers to assist the office in carrying out its statutory duties. Compensation and expenses for regional ombudsmen and staff, and expenses for volunteers shall be determined by the state ombudsman.

5. The state ombudsman shall prepare an annual budget and appropriations request and, within one year of the establishment of the office, submit a long-range plan for the office's operation, which shall be updated and revised as needed, but in no event less than once every two years.

6. The state ombudsman shall establish and implement procedures for receiving, processing, responding to and resolving complaints made by or on behalf of recipients of mental health services relating to action, inaction or decisions of providers, or their representatives, of mental health services, of private mental health providers, of public agencies or of social service agencies, which may adversely affect the health, safety, welfare or rights of such residents.

7. The office of state ombudsman for recipients of mental health services shall establish and implement procedures for resolution of complaints. The ombudsman or representatives of the office shall have the authority to:

(1) Access any recipient of mental health services, including entering the premises of any mental health provider, and such access shall not be denied by a mental health provider. No prior notice to a mental health provider shall be required when access is sought. The ombudsman shall have access to review and photocopy the records of a

37 recipient of mental health services if given permission by such recipient or such recipient's
38 legal guardian. A recipient of mental health services shall have the right to request, deny
39 or terminate visits with an ombudsman. The ombudsman shall have the authority to
40 review and photocopy all mental health provider policies and procedures relevant to the
41 recipient's mental health care. Reasonable costs for photocopying service may be charged
42 by the mental health provider;

43 (2) Make the necessary inquiries, conduct interviews with staff and others, and
44 review such information and records as the ombudsman or representative of the office
45 deems necessary to accomplish the objective of verifying these complaints.

46 8. The office shall acknowledge complaints, report its findings and make
47 recommendations in writing in a timely manner.

48 9. The office shall gather and disseminate information and other material and
49 publicize its existence, including issuing an annual report to the governor, general assembly
50 and the department of mental health on the office's activities and recommendations for
51 systemic improvements.

52 10. The ombudsman may recommend to all appropriate mental health providers
53 changes in the rules, activities, findings and policies adopted or proposed by such providers
54 which do or may adversely affect the health, safety, welfare, or civil or human rights of any
55 person receiving mental health services. The office shall analyze and monitor the
56 development and implementation of federal, state and local laws, regulations and policies
57 with respect to mental health services in the state and shall recommend to each appropriate
58 state agency and local governmental body changes in such laws, rules, regulations and
59 policies deemed by the office to be appropriate.

60 11. The office shall promote community contact and involvement with recipients
61 of mental health services through the use of volunteers and volunteer programs.

62 12. The office shall develop and establish statewide policies and standards for
63 implementing and monitoring the activities of the ombudsman program, including the
64 qualifications, training and activities of regional, deputy and volunteer ombudsmen.

65 13. The office shall develop and propose programs for use, training, coordination
66 and monitoring of staff and volunteers, and may:

67 (1) Establish and conduct recruitment programs for staff and volunteers;

68 (2) Establish and conduct training seminars, meetings and other programs for staff
69 and volunteers; and

70 (3) Supply personnel, written materials and such other reasonable assistance,
71 including publicizing their activities, as may be deemed necessary.

72 14. The office shall prepare and distribute to each mental health provider written

73 notices which set forth the address and toll-free telephone number of the office, a brief
74 explanation of the function of the office, the procedure for recipients to follow in filing a
75 complaint and other pertinent information.

76 **15.** The administrator of the mental health provider shall ensure that such written
77 notice is given to every recipient of mental health services or the recipient's guardian upon
78 admission to the program and to every recipient currently receiving provider services, or
79 to his or her guardian. The administrator shall also post such written notice in a
80 conspicuous, public place at the location of the provider in the number and manner set
81 forth in the regulations adopted by the office.

82 **16.** The office shall inform recipients of mental health services, their guardians,
83 their families or others designated by the recipient of their rights and entitlements
84 pursuant to state and federal laws and rules and regulations by means of the distribution
85 of educational materials and group meetings.

86 **17.** Ombudsman staff and volunteers shall be deemed mandated reporters if they
87 have reason to believe that a situation of abuse or neglect has occurred. Such staff and
88 volunteers shall report suspected cases of abuse or neglect to the appropriate state hot line
89 for such cases. If deemed appropriate, a referral to the appropriate law enforcement
90 agency and the Missouri protection and advocacy services, incorporated, shall also take
91 place.

92 **18.** With the consent of the recipient of mental health services, or his or her legal
93 guardian, the ombudsman may refer complaint issues to the appropriate federal, state or
94 local regulatory authorities.

630.203. 1. Any files maintained by the ombudsman program shall be confidential
2 and may be disclosed only with the consent of the recipient of mental health services, or his
3 or her guardian, and only at the discretion of the ombudsman having authority over the
4 disposition of such files; except that the identity of any complainant or recipient of mental
5 health services shall not be disclosed by such ombudsman unless such disclosure is either
6 required by a court order or consent for disclosure is given by the complainant and the
7 recipient of mental health services, or the complainant's or recipient's legal guardian.

8 **2.** Any representative of the office conducting or participating in any examination
9 of a complaint who shall knowingly and willfully disclose to any person other than the
10 office, or those authorized by the office to receive it, the name of any witness examined or
11 any information obtained or given upon such examination, shall be guilty of a class A
12 misdemeanor. However, the ombudsman conducting or participating in any examination
13 of a complaint may disclose the final result of the examination to the provider with the
14 consent of the recipient of mental health services.

15 **3. Any statement or communication made by the office relevant to a complaint**
16 **received by, proceedings before or activities of the office and any complaint or information**
17 **made or provided in good faith by any person, shall be absolutely privileged and such**
18 **person shall be immune from suit.**

19 **4. The office shall not be required to testify in any court with respect to matters**
20 **held to be confidential in this section except as the court may deem necessary to enforce the**
21 **provisions of sections 630.201 to 630.204, or where otherwise required by court order.**

630.204. 1. Any regional or local program staff, whether an employee or an unpaid
2 **volunteer, shall be treated as a representative of the office. No representative of the office**
3 **shall be held liable for good faith performance of his or her official duties pursuant to the**
4 **provisions of sections 630.201 to 630.204 and shall be immune from suit for the good faith**
5 **performance of such duties. Every representative of the office shall be considered a state**
6 **employee pursuant to section 105.711, RSMo.**

7 **2. No reprisal or retaliatory action shall be taken against any recipient of mental**
8 **health services, or employee or volunteer of a mental health provider for any**
9 **communication made or information given to the office. Any person who knowingly or**
10 **willfully violates the provisions of this subsection shall be guilty of a class A misdemeanor.**