

PREVAILED	Roll Call No. _____
FAILED	Ayes _____
WITHDRAWN	Noes _____
RULED OUT OF ORDER	

# HOUSE MOTION \_\_\_\_\_

MR. SPEAKER:

I move that Engrossed Senate Bill 606 be amended to read as follows:

- 1           Page 27, between lines 1 and 2, begin a new paragraph and insert:
- 2           "SECTION 32. IC 12-10-13-14 IS AMENDED TO READ AS
- 3           FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 14. (a) The office shall
- 4           receive, investigate, and attempt to resolve complaints and concerns
- 5           that:
- 6           (1) are made by or on behalf of a patient, resident, or client of a
- 7           long term care facility or a home care service, **except for an**
- 8           **individual with a developmental disability who is receiving**
- 9           **waiver services; and**
- 10          (2) involve the health, safety, welfare, or rights of a resident or
- 11          client.
- 12          (b) At the conclusion of an investigation of a complaint, the office
- 13          shall report the office's findings to the complainant."
- 14          Page 31, between lines 32 and 33, begin a new paragraph and insert:
- 15          "SECTION 33. IC 12-11-13 IS ADDED TO THE INDIANA CODE
- 16          AS A **NEW CHAPTER** TO READ AS FOLLOWS [EFFECTIVE
- 17          JULY 1, 1999]:
- 18          **Chapter 13. Statewide Waiver Ombudsman**
- 19          **Sec. 1. This chapter applies only to an individual who:**
- 20          **(1) has a developmental disability; and**
- 21          **(2) receives services under a waiver under the federal home**
- 22          **and community based services program.**

1           **Sec. 2.** As used in this chapter, "ombudsman" refers to the  
 2 statewide waiver ombudsman established by section 3 of this  
 3 chapter. The term includes individuals approved to act in the  
 4 capacity of ombudsmen by the statewide waiver ombudsman.

5           **Sec. 3.** The statewide waiver ombudsman position is established  
 6 within the division.

7           **Sec. 4.** The director shall appoint an acting ombudsman within  
 8 thirty (30) days of a vacancy in the position of the ombudsman. The  
 9 acting ombudsman has the powers and duties of the ombudsman.

10          **Sec. 5.** The ombudsman may consult with experts in fulfilling  
 11 the duties of the ombudsman.

12          **Sec. 6. (a)** The ombudsman shall receive, investigate, and  
 13 attempt to resolve complaints and concerns that are made by or on  
 14 behalf of an individual described in section 1 of this chapter.

15          **(b)** At the conclusion of an investigation of a complaint, the  
 16 ombudsman shall report the ombudsman's findings to the  
 17 complainant.

18          **(c)** If the ombudsman does not investigate a complaint, the  
 19 ombudsman shall notify the complainant of the decision not to  
 20 investigate and the reasons for the decision.

21          **Sec. 7. (a)** An ombudsman must be provided access to the  
 22 following:

23           **(1)** An individual described in section 1 of this chapter.

24           **(2)** An entity that provides waiver services to an individual  
 25 described in section 1 of this chapter.

26           **(3)** Records of an individual described in section 1 of this  
 27 chapter, including records held by an entity that provides  
 28 services to the individual.

29           **(4)** If an individual described in section 1 of this chapter is  
 30 incapable of giving consent, as determined by the attending  
 31 physician or as otherwise determined under state law, the  
 32 name, address, and telephone number of the individual's legal  
 33 representative.

34          **Except as provided in subsections (c) and (d), the ombudsman must**  
 35 **obtain consent under subsection (b) before having access to the**  
 36 **records described in subdivision (3).**

37          **(b)** Consent to have access to an individual's records shall be  
 38 given in one (1) of the following forms:

39           **(1)** In writing by the individual.

40           **(2)** Orally by the individual in the presence of a witness.

41           **(3)** In writing by the legal representative of the individual if:

42           **(A)** the individual is incapable of giving consent, as  
 43 determined by the attending physician or as otherwise  
 44 determined under state law; and

45           **(B)** the legal representative has the authority to give  
 46 consent.

1 (c) If consent to have access to an individual's records cannot be  
 2 obtained under subsection (b), an ombudsman may inspect the  
 3 records of the individual if the individual is incapable of giving  
 4 consent, as determined by the attending physician or as otherwise  
 5 determined under state law, and:

- 6 (1) has no legal representative;  
 7 (2) has a legal representative but the legal representative  
 8 cannot be contacted within three (3) days; or  
 9 (3) has a legal representative but the legal representative does  
 10 not have the authority to give consent to have access to the  
 11 records.

12 (d) If an ombudsman has:

- 13 (1) been denied access to an individual's records by the  
 14 individual's legal representative;  
 15 (2) reasonable cause to believe that the individual's legal  
 16 representative is not acting in the best interests of the  
 17 individual; and  
 18 (3) received written approval from the state ombudsman;  
 19 the ombudsman may inspect the records of the individual.

20 Sec. 8. A provider of waiver services or an employee of a  
 21 provider of waiver services is immune from:

- 22 (1) civil or criminal liability; and  
 23 (2) actions taken under a professional disciplinary procedure;  
 24 for the release or disclosure of records to the ombudsman under  
 25 this chapter.

26 Sec. 9. A state or local government agency or entity that has  
 27 records that are relevant to a complaint or an investigation  
 28 conducted by the ombudsman shall provide the ombudsman with  
 29 access to the records.

30 Sec. 10. The ombudsman shall do the following:

- 31 (1) Promote effective coordination among the following:  
 32 (A) Programs that provide legal services for the  
 33 developmentally disabled.  
 34 (B) The division.  
 35 (C) Providers of waiver services to individuals with  
 36 developmental disabilities.  
 37 (D) Providers of other necessary or appropriate services.  
 38 (2) Ensure that the identity of an individual described in  
 39 section 1 of this chapter will not be disclosed without:  
 40 (A) the individual's written consent; or  
 41 (B) a court order.

42 Sec. 11. The director of the division may adopt rules under  
 43 IC 4-22-2 necessary to carry out this chapter.

44 Sec. 12. The ombudsman is not civilly liable for the good faith  
 45 performance of official duties.

46 Sec. 13. (a) The ombudsman shall prepare a report each year on

1 the operations of the program.

2 (b) A copy of the report required under subsection (a) shall be  
3 provided to the following:

4 (1) The governor.

5 (2) The legislative council.

6 (3) The division.

7 (4) The members of the Indiana commission on mental  
8 retardation and developmental disabilities established by  
9 P.L.78-1994.

10 Sec. 14. The ombudsman shall report:

11 (1) annually; or

12 (2) upon request;

13 to the Indiana commission on mental retardation and  
14 developmental disabilities established by P.L.78-1994.

15 Sec. 15. The division shall:

16 (1) establish a statewide toll free telephone line continuously  
17 open to receive complaints regarding individuals described in  
18 section 1 of this chapter; and

19 (2) forward all complaints received from the toll free  
20 telephone line to the statewide waiver ombudsman.

21 Sec. 16. A person who:

22 (1) intentionally prevents the work of the ombudsman;

23 (2) knowingly offers compensation to the ombudsman in an  
24 effort to affect the outcome of an investigation or a potential  
25 investigation; or

26 (3) knowingly or intentionally retaliates against a resident, a  
27 client, an employee, or another person who files a complaint  
28 or provides information to the ombudsman;

29 commits a Class B misdemeanor."

30 Page 39, between lines 1 and 2, begin a new paragraph and insert:  
31 "SECTION 51. IC 16-39-2-6 IS AMENDED TO READ AS  
32 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 6. (a) Without the  
33 consent of the patient, the patient's mental health record may only be  
34 disclosed as follows:

35 (1) To individuals who meet the following conditions:

36 (A) Are employed by:

37 (i) the provider at the same facility or agency;

38 (ii) a managed care provider (as defined in  
39 IC 12-7-2-127(b)); or

40 (iii) a health care provider or mental health care provider, if  
41 the mental health records are needed to provide health care  
42 or mental health services to the patient.

43 (B) Are involved in the planning, provision, and monitoring of  
44 services.

45 (2) To the extent necessary to obtain payment for services  
46 rendered or other benefits to which the patient may be entitled, as

- 1 provided in IC 16-39-5-3.
- 2 (3) To the patient's court appointed counsel and to the Indiana  
3 protection and advocacy services commission.
- 4 (4) For research conducted in accordance with IC 16-39-5-3 and  
5 the rules of the division of mental health, the rules of the division  
6 of disability, aging, and rehabilitative services, or the rules of the  
7 provider.
- 8 (5) To the division of mental health for the purpose of data  
9 collection, research, and monitoring managed care providers (as  
10 defined in IC 12-7-2-127(b)) who are operating under a contract  
11 with the division of mental health.
- 12 (6) To the extent necessary to make reports or give testimony  
13 required by the statutes pertaining to admissions, transfers,  
14 discharges, and guardianship proceedings.
- 15 (7) To a law enforcement agency if any of the following  
16 conditions are met:
- 17 (A) A patient escapes from a facility to which the patient is  
18 committed under IC 12-26.
- 19 (B) The superintendent of the facility determines that failure  
20 to provide the information may result in bodily harm to the  
21 patient or another individual.
- 22 (C) A patient commits or threatens to commit a crime on  
23 facility premises or against facility personnel.
- 24 (D) A patient is in the custody of a law enforcement officer or  
25 agency for any reason and:
- 26 (i) the information to be released is limited to medications  
27 currently prescribed for the patient or to the patient's history  
28 of adverse medication reactions; and
- 29 (ii) the provider determines that the release of the  
30 medication information will assist in protecting the health,  
31 safety, or welfare of the patient.
- 32 Mental health records released under this clause must be  
33 maintained in confidence by the law enforcement agency  
34 receiving them.
- 35 (8) To a coroner or medical examiner, in the performance of the  
36 individual's duties.
- 37 (9) To a school in which the patient is enrolled if the  
38 superintendent of the facility determines that the information will  
39 assist the school in meeting educational needs of a person with a  
40 disability under 20 U.S.C. 1400 et seq.
- 41 (10) To the extent necessary to satisfy reporting requirements  
42 under the following statutes:
- 43 (A) IC 12-10-3-10.
- 44 (B) IC 12-17-2-16.
- 45 (C) IC 12-24-17-5.
- 46 (D) IC 16-41-2-3.

- 1 (E) IC 31-33-5-4.  
 2 (F) IC 34-30-16-2.  
 3 (G) IC 35-46-1-13.  
 4 (11) To the extent necessary to satisfy release of information  
 5 requirements under the following statutes:  
 6 (A) IC 12-24-11-2.  
 7 (B) IC 12-24-12-3, IC 12-24-12-4, and IC 12-24-12-6.  
 8 (C) IC 12-26-11.  
 9 (12) To another health care provider in a health care emergency.  
 10 (13) For legitimate business purposes as described in  
 11 IC 16-39-5-3.  
 12 (14) Under a court order under IC 16-39-3.  
 13 (15) With respect to records from a mental health or  
 14 developmental disability facility, to the United States Secret  
 15 Service if the following conditions are met:  
 16 (A) The request does not apply to alcohol or drug abuse  
 17 records described in 42 U.S.C. 290dd-2 unless authorized by  
 18 a court order under 42 U.S.C. 290dd-2(b)(2)(c).  
 19 (B) The request relates to the United States Secret Service's  
 20 protective responsibility and investigative authority under 18  
 21 U.S.C. 3056, 18 U.S.C. 871, or 18 U.S.C. 879.  
 22 (C) The request specifies an individual patient.  
 23 (D) The director or superintendent of the facility determines  
 24 that disclosure of the mental health record may be necessary  
 25 to protect a person under the protection of the United States  
 26 Secret Service from serious bodily injury or death.  
 27 (E) The United States Secret Service agrees to only use the  
 28 mental health record information for investigative purposes  
 29 and not disclose the information publicly.  
 30 (F) The mental health record information disclosed to the  
 31 United States Secret Service includes only:  
 32 (i) the patient's name, age, and address;  
 33 (ii) the date of the patient's admission to or discharge from  
 34 the facility; and  
 35 (iii) any information that indicates whether or not the patient  
 36 has a history of violence or presents a danger to the person  
 37 under protection.  
 38 **(16) To the statewide waiver ombudsman established under**  
 39 **IC 12-11-13, in the performance of the ombudsman's duties.**  
 40 (b) After information is disclosed under subsection (a)(15) and if the  
 41 patient is evaluated to be dangerous, the records shall be interpreted in  
 42 consultation with a licensed mental health professional on the staff of  
 43 the United States Secret Service.  
 44 (c) A person who discloses information under subsection (a)(7) or  
 45 (a)(15) in good faith is immune from civil and criminal liability."  
 46 Page 42, between lines 38 and 39, begin a new paragraph and insert:

1           "SECTION 62. IC 34-30-2-43.5 IS ADDED TO THE INDIANA  
2 CODE AS A NEW SECTION TO READ AS FOLLOWS  
3 [EFFECTIVE JULY 1, 1999]: **Sec. 43.5. IC 12-11-13-8 (Concerning**  
4 **disclosure of records to the statewide waiver ombudsman by**  
5 **providers of waiver services and employees of providers.)**  
6           SECTION 63. IC 34-30-2-43.7 IS ADDED TO THE INDIANA  
7 CODE AS A NEW SECTION TO READ AS FOLLOWS  
8 [EFFECTIVE JULY 1, 1999]: **Sec. 43.7. IC 12-11-13-12 (Concerning**  
9 **the statewide waiver ombudsman.)**".  
10           Renumber all SECTIONS consecutively.  
              (Reference is to ESB 606 as printed March 26, 1999.)

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Representative Klinker