



Reprinted
January 29, 1999

HOUSE BILL No. 1117

DIGEST OF HB 1117 (Updated January 28, 1999 10:44 am - DI 77)

Citations Affected: IC 12-11; IC 16-39.

Synopsis: Developmental disabilities ombudsman. Establishes a statewide waiver ombudsman for individuals with waivers under the federal home and community based services program. Requires the division of disability, aging, and rehabilitative services to administer the ombudsman program. Authorizes the ombudsman to intervene on behalf of customers of waiver services. Makes certain actions that impede the ombudsman's investigation a Class B misdemeanor. Establishes the quality assurance program. Allows the ombudsman a patient's mental health record without the patient's consent. (The introduced version of this bill was prepared by the Indiana commission on mental retardation and developmental disabilities.)

Effective: July 1, 1998; July 1, 1999.

**Klinker, Goeglein, Brown C,
Brown T**

January 6, 1999, read first time and referred to Committee on Public Health.
January 25, 1999, amended, reported — Do Pass.
January 28, 1999, read second time, amended, ordered engrossed.

HB 1117—LS 6700/DI 77+



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January 29, 1999

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

HOUSE BILL No. 1117

A BILL FOR AN ACT to amend the Indiana Code concerning human services.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 12-11-13 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 1999] :

4 **Chapter 13. Statewide Waiver Ombudsman**
5 **Sec. 1. This chapter applies only to an individual who has a**
6 **developmental disability and who receives services under an**
7 **intermediate care facility for the mentally retarded (ICF/MR)**
8 **waiver, an autism waiver, or a medically fragile children waiver**
9 **under the federal home and community based services program.**

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

14 **Sec. 3. The statewide waiver ombudsman position is established**
15 **as an independent and autonomous unit within the quality**
16 **assurance program established by the division under section 13 of**
17 **this chapter.**

HB 1117—LS 6700/DI 77+



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

4 **Sec. 5. The ombudsman may employ technical experts and other**
 5 **employees to carry out the purposes of the quality assurance**
 6 **program established under section 13 of this chapter.**

7 **Sec. 6. (a) The ombudsman shall work with the bureau incident**
 8 **coordinator and the bureau of aging and in-home services**
 9 **advocacy unit. The ombudsman shall receive, investigate, and**
 10 **attempt to resolve complaints and concerns that are made by or on**
 11 **behalf of an individual who receives waiver services.**

12 **(b) At the conclusion of an investigation of a complaint, the**
 13 **ombudsman shall report the ombudsman's findings to the**
 14 **complainant.**

15 **(c) If the ombudsman does not investigate a complaint, the**
 16 **ombudsman shall notify the complainant of the decision not to**
 17 **investigate and the reasons for the decision.**

18 **Sec. 7. (a) An ombudsman shall be given appropriate access to**
 19 **the records of an individual who receives waiver services and the**
 20 **provider of waiver services.**

21 **(b) A state or local government agency or entity that has records**
 22 **that are relevant to a complaint or an investigation conducted by**
 23 **the ombudsman shall provide the ombudsman with access to the**
 24 **records.**

25 **(c) A provider of waiver services or an employee of a provider**
 26 **of waiver services is immune from:**

- 27 **(1) civil or criminal liability; and**
 28 **(2) actions taken under a professional disciplinary procedure;**
 29 **for the release or disclosure of records to the ombudsman under**
 30 **this chapter.**

31 **Sec. 8. The ombudsman shall do the following:**

32 **(1) Promote effective coordination among the following:**

33 **(A) Programs that provide legal services for the**
 34 **developmentally disabled.**

35 **(B) The division.**

36 **(C) Providers of waiver services.**

37 **(D) Providers of other necessary or appropriate services.**

38 **(2) Ensure that the identity of a complainant, resident, or**
 39 **client will not be disclosed without:**

40 **(A) the complainant's, resident's, or client's written**
 41 **consent; or**

42 **(B) a court order.**



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- 1 **(3) Ensure that the quality assurance program effectively**
 2 **addresses incidents and complaints on behalf of individuals**
 3 **receiving waiver services.**
- 4 **Sec. 9. The director of the division may adopt rules under**
 5 **IC 4-22-2 necessary to carry out this chapter.**
- 6 **Sec. 10. The ombudsman is not civilly liable for the good faith**
 7 **performance of official duties.**
- 8 **Sec. 11. (a) The ombudsman shall prepare a report each year on**
 9 **the operations of the program.**
- 10 **(b) A copy of the report shall be provided to the following:**
- 11 **(1) The governor.**
- 12 **(2) The general assembly.**
- 13 **(3) The division.**
- 14 **Sec. 12. A person who:**
- 15 **(1) intentionally prevents the work of the ombudsman;**
 16 **(2) knowingly offers compensation to the ombudsman in an**
 17 **effort to affect the outcome of an investigation or a potential**
 18 **investigation; or**
 19 **(3) knowingly or intentionally retaliates against a resident, a**
 20 **client, an employee, or another person who files a complaint**
 21 **or provides information to the ombudsman;**
 22 **commits a Class B misdemeanor.**
- 23 **Sec. 13. The division shall establish a quality assurance program**
 24 **to implement this chapter.**
- 25 SECTION 2. IC 16-39-2-6 IS AMENDED TO READ AS
 26 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 6. (a) Without the
 27 consent of the patient, the patient's mental health record may only be
 28 disclosed as follows:
- 29 (1) To individuals who meet the following conditions:
- 30 (A) Are employed by:
- 31 (i) the provider at the same facility or agency;
- 32 (ii) a managed care provider (as defined in
 33 IC 12-7-2-127(b)); or
- 34 (iii) a health care provider or mental health care provider, if
 35 the mental health records are needed to provide health care
 36 or mental health services to the patient.
- 37 (B) Are involved in the planning, provision, and monitoring of
 38 services.
- 39 (2) To the extent necessary to obtain payment for services
 40 rendered or other benefits to which the patient may be entitled, as
 41 provided in IC 16-39-5-3.
- 42 (3) To the patient's court appointed counsel and to the Indiana

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

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

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1 patient is evaluated to be dangerous, the records shall be interpreted in
2 consultation with a licensed mental health professional on the staff of
3 the United States Secret Service.

4 (c) A person who discloses information under subsection (a)(7) or
5 (a)(15) in good faith is immune from civil and criminal liability.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Public Health, to which was referred House Bill 1117, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, line 4, delete "Program".

Page 1, line 11, delete "program".

Page 1, line 13, delete "by the statewide waiver ombudsman office".

Page 1, line 14, delete "program" and insert "**position**".

Page 1, delete line 15 and insert "**established within the quality assurance program established by the division under section 13 of this chapter.**".

Page 2, line 3, delete "office." and insert "**quality assurance program established under section 13 of this chapter.**".

Page 2, line 4, after "(a)" insert "**The ombudsman shall work with the bureau incident coordinator and the bureau of aging and in-home services advocacy unit.**".

Page 2, between lines 37 and 38, begin a new line block indented and insert:

"(3) Ensure that the quality assurance program effectively addresses incidents and complaints on behalf of individuals receiving waiver services."

Page 3, after line 14, begin a new paragraph and insert:

"Sec. 13. The division shall establish a quality assurance program to implement this chapter."

and when so amended that said bill do pass.

(Reference is to HB 1117 as introduced.)

BROWN C, Chair

Committee Vote: yeas 10, nays 0.



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HOUSE MOTION

Mr. Speaker: I move that House Bill 1117 be amended to read as follows:

Page 1, line 14, after "established" insert "**as an independent and autonomous unit**".

(Reference is to HB 1117 as printed January 26, 1999.)

KLINKER

 HOUSE MOTION

Mr. Speaker: I move that House Bill 1117 be amended to read as follows:

Page 3, after line 23, begin a new paragraph and insert:

"SECTION 2. IC 16-39-2-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 6. (a) Without the consent of the patient, the patient's mental health record may only be disclosed as follows:

- (1) To individuals who meet the following conditions:
 - (A) Are employed by:
 - (i) the provider at the same facility or agency;
 - (ii) a managed care provider (as defined in IC 12-7-2-127(b)); or
 - (iii) a health care provider or mental health care provider, if the mental health records are needed to provide health care or mental health services to the patient.
 - (B) Are involved in the planning, provision, and monitoring of services.
- (2) To the extent necessary to obtain payment for services rendered or other benefits to which the patient may be entitled, as provided in IC 16-39-5-3.
- (3) To the patient's court appointed counsel and to the Indiana protection and advocacy services commission.
- (4) For research conducted in accordance with IC 16-39-5-3 and the rules of the division of mental health, the rules of the division of disability, aging, and rehabilitative services, or the rules of the provider.
- (5) To the division of mental health for the purpose of data collection, research, and monitoring managed care providers (as defined in IC 12-7-2-127(b)) who are operating under a contract



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with the division of mental health.

(6) To the extent necessary to make reports or give testimony required by the statutes pertaining to admissions, transfers, discharges, and guardianship proceedings.

(7) To a law enforcement agency if any of the following conditions are met:

(A) A patient escapes from a facility to which the patient is committed under IC 12-26.

(B) The superintendent of the facility determines that failure to provide the information may result in bodily harm to the patient or another individual.

(C) A patient commits or threatens to commit a crime on facility premises or against facility personnel.

(D) A patient is in the custody of a law enforcement officer or agency for any reason and:

(i) the information to be released is limited to medications currently prescribed for the patient or to the patient's history of adverse medication reactions; and

(ii) the provider determines that the release of the medication information will assist in protecting the health, safety, or welfare of the patient.

Mental health records released under this clause must be maintained in confidence by the law enforcement agency receiving them.

(8) To a coroner or medical examiner, in the performance of the individual's duties.

(9) To a school in which the patient is enrolled if the superintendent of the facility determines that the information will assist the school in meeting educational needs of a person with a disability under 20 U.S.C. 1400 et seq.

(10) To the extent necessary to satisfy reporting requirements under the following statutes:

(A) IC 12-10-3-10.

(B) IC 12-17-2-16.

(C) IC 12-24-17-5.

(D) IC 16-41-2-3.

(E) IC 31-33-5-4.

(F) IC 34-30-16-2.

(G) IC 35-46-1-13.

(11) To the extent necessary to satisfy release of information requirements under the following statutes:

(A) IC 12-24-11-2.

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- (B) IC 12-24-12-3, IC 12-24-12-4, and IC 12-24-12-6.
- (C) IC 12-26-11.

(12) To another health care provider in a health care emergency.
(13) For legitimate business purposes as described in IC 16-39-5-3.

(14) Under a court order under IC 16-39-3.

(15) With respect to records from a mental health or developmental disability facility, to the United States Secret Service if the following conditions are met:

(A) The request does not apply to alcohol or drug abuse records described in 42 U.S.C. 290dd-2 unless authorized by a court order under 42 U.S.C. 290dd-2(b)(2)(c).

(B) The request relates to the United States Secret Service's protective responsibility and investigative authority under 18 U.S.C. 3056, 18 U.S.C. 871, or 18 U.S.C. 879.

(C) The request specifies an individual patient.

(D) The director or superintendent of the facility determines that disclosure of the mental health record may be necessary to protect a person under the protection of the United States Secret Service from serious bodily injury or death.

(E) The United States Secret Service agrees to only use the mental health record information for investigative purposes and not disclose the information publicly.

(F) The mental health record information disclosed to the United States Secret Service includes only:

- (i) the patient's name, age, and address;
- (ii) the date of the patient's admission to or discharge from the facility; and
- (iii) any information that indicates whether or not the patient has a history of violence or presents a danger to the person under protection.

(16) To the statewide waiver ombudsman established under IC 12-11-13, in the performance of the ombudsman's duties.

(b) After information is disclosed under subsection (a)(15) and if the patient is evaluated to be dangerous, the records shall be interpreted in consultation with a licensed mental health professional on the staff of the United States Secret Service.

(c) A person who discloses information under subsection (a)(7) or (a)(15) in good faith is immune from civil and criminal liability."

(Reference is to HB 1117 as printed January 26, 1999.)

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