

1 SENATE BILL NO. 135

2 INTRODUCED BY M. WATERMAN

3 BY REQUEST OF THE LEGISLATIVE FINANCE COMMITTEE

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5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE STATUTES REGARDING THE
 6 MENTAL HEALTH MANAGED CARE OMBUDSMAN; EXPANDING WHOSE INTERESTS THE OMBUDSMAN
 7 MAY REPRESENT; ~~PROVIDING LEGAL COUNSEL FROM THE ATTORNEY GENERAL; GRANTING~~
 8 ~~SUBPOENA POWER;~~ PROVIDING CONFIDENTIALITY FOR NAMES AND MATERIAL FROM AN
 9 INVESTIGATION; ALLOWING THE OMBUDSMAN TO RECEIVE CONFIDENTIAL MENTAL HEALTH
 10 RECORDS; AND AMENDING SECTIONS 2-15-210 AND 53-21-166, MCA."

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12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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14 **Section 1.** Section 2-15-210, MCA, is amended to read:

15 **"2-15-210. Mental health ~~managed care~~ ombudsman.** (1) There is a mental health ~~managed care~~
 16 ombudsman. The ombudsman must be appointed by the governor for a term of 4 years. The ombudsman
 17 is attached to the ~~mental disabilities board of visitors~~ office of the governor for administrative purposes.

18 (2) The ombudsman shall provide an annual report to the governor and to the legislature, as
 19 required by 5-11-210, and may include recommendations regarding the mental health system.

20 (3) The ombudsman shall represent the interests of ~~consumers of~~ individuals with regard to the
 21 need for public mental health services ~~with the contractor or the department of public health and human~~
 22 services under the mental health provisions of Title 53, chapters ~~6 and 21,~~ including individuals in
 23 transition from public to private services. The ombudsman may not provide a legal advocacy service.

24 ~~———— (4) The ombudsman may subpoena witnesses, take testimony under oath, administer oaths, and~~
 25 ~~require the production of books, papers, documents, and evidence pertinent to an investigation.~~

26 ~~(5)(4) The attorney general is the legal counsel for the ombudsman and shall provide legal support~~
 27 ~~to the ombudsman~~ MAY RETAIN COUNSEL FOR LEGAL SUPPORT.

28 ~~(6)(5) Names of individuals receiving assistance from the ombudsman and information associated~~
 29 ~~with an individual compiled by the ombudsman in the course of conducting an investigation are confidential~~
 30 ~~and privileged information and may not be disclosed unless a court has determined that certain information~~

1 is subject to compulsory legal process or discovery because the party seeking the information has
 2 demonstrated that there is a compelling state interest that outweighs the individual's privacy interest or
 3 the information is requested pursuant to an investigative subpoena issued under 46-4-301."

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5 **Section 2.** Section 53-21-166, MCA, is amended to read:

6 **"53-21-166. Records to be confidential -- exceptions.** All information obtained and records
 7 prepared in the course of providing any services under this part to individuals under any provision of this
 8 part ~~shall be~~ are confidential and privileged matter and ~~shall~~ must remain confidential and privileged after
 9 the individual is discharged from the facility. Except as provided in Title 50, chapter 16, part 5, information
 10 and records may be disclosed only:

11 (1) in communications between qualified professionals in the provision of services or appropriate
 12 referrals;

13 (2) when the recipient of services designates persons to whom information or records may be
 14 released, ~~provided that~~ or if a recipient of services is a ward and ~~his~~ the recipient's guardian or conservator
 15 designates in writing persons to whom records or information may be disclosed, ~~such designation shall be~~
 16 ~~valid in lieu of the designation by the recipient, except that nothing in.~~ However, this section ~~shall~~ may not
 17 be construed to compel a physician, psychologist, social worker, nurse, attorney, or other professional
 18 person to reveal information ~~which~~ that has been given to ~~him~~ the physician, psychologist, social worker,
 19 nurse, attorney, or other professional person in confidence by members of a patient's family;

20 (3) to the extent necessary to make claims on behalf of a recipient of aid, insurance, or medical
 21 assistance to which ~~he~~ a recipient may be entitled;

22 (4) for research if the department has promulgated rules for the conduct of research; ~~such rules~~
 23 ~~shall.~~ Rules must include but are not ~~be~~ limited to the requirement that all researchers ~~must~~ shall sign an
 24 oath of confidentiality;

25 (5) to the courts as necessary ~~to~~ for the administration of justice;

26 (6) to persons authorized by an order of court, after notice and opportunity for hearing to the
 27 person to whom the record or information pertains and the custodian of the record or information pursuant
 28 to the rules of civil procedure;

29 (7) to members of the mental disabilities board of visitors or their agents when necessary to
 30 perform their functions as set out in 53-21-104; and

