

HOUSE BILL NO. 349

INTRODUCED BY L. BISHOP

A BILL FOR AN ACT ENTITLED: "AN ACT COMBINING THE OFFICE OF MENTAL HEALTH OMBUDSMAN AND THE MENTAL DISABILITIES BOARD OF VISITORS; AND AMENDING SECTIONS 2-15-210, 2-15-211, 53-20-104, AND 53-21-166, MCA."

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

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

"2-15-210. ~~Mental health ombudsman~~ Office of mental health and developmental disabilities. (1)

There is ~~a mental health ombudsman~~ an office of mental health and developmental disabilities. The ~~ombudsman~~ executive director of the office must be appointed by the governor for a term of ~~4~~ 6 years. The ~~ombudsman office~~ is attached to the office of the governor for administrative purposes.

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

(3) The ~~ombudsman office~~ shall:

(a) represent the interests of individuals with regard to the need for public mental health services and developmental disability services, including individuals in transition from public to private services; and

(b) assist the mental disabilities board of visitors provided for in 2-15-211 in carrying out its duties under Title 53, chapter 20, part 1, and Title 53, chapter 21, part 1.

(4) The ~~ombudsman office~~ may not provide a legal advocacy service, except as provided in 53-21-104(6).

~~(4)(5)~~ The ~~ombudsman office~~ may retain counsel for legal support.

~~(5)(6)~~ Names of individuals receiving assistance ~~from the ombudsman~~ and information associated with an individual compiled by the ~~ombudsman office~~ in the course of conducting an investigation are confidential and privileged information and may not be disclosed unless a court has determined that certain information is subject to compulsory legal process or discovery because:

(a) the party seeking the information has demonstrated that there is a compelling state interest that



1 outweighs the individual's privacy interest; or

2 (b) the information is requested pursuant to an investigative subpoena issued under 46-4-301.

3 (7) The executive director may employ staff for the purpose of carrying out the provisions of this section."

4

5 **Section 2.** Section 2-15-211, MCA, is amended to read:

6 **"2-15-211. Mental disabilities board of visitors -- composition -- allocation.** (1) The governor shall
7 appoint a mental disabilities board of visitors.

8 (2) (a) The board shall consist of ~~six~~ seven persons who possess qualifications necessary to carry out
9 the responsibilities of the board defined in 53-20-104 and 53-21-104.

10 (b) The members of the board must meet the following requirements:

11 ~~(i) one person must possess skills, knowledge, and experience relative to the treatment and welfare of~~
12 ~~adults with serious disabling mental illnesses~~ licensed professional in the field of mental health treatment;

13 ~~(ii) one person must possess skills, knowledge, and~~ licensed professional with experience relative to the
14 treatment and welfare of children with serious emotional disturbances; ~~(iii) one person must possess skills,~~
15 ~~knowledge, and experience relative to the treatment and welfare of adults with developmental disabilities~~ licensed
16 professional in the field of developmental disabilities treatment;

17 ~~(iv) one person must be a consumer of mental health services or a family member of a consumer of~~
18 ~~mental health services; and~~

19 ~~(v) one person must be a consumer or family member of a consumer of developmental disabilities~~
20 ~~services or a family member of a person with developmental disabilities;~~

21 (vi) one person with a background in law enforcement, corrections, or the criminal justice system; and

22 (vii) one at-large member.

23 ~~(c) The members of the board must also meet the following requirements:~~

24 ~~—— (i) at least one board member must be a professional person in the field of mental health treatment;~~

25 ~~—— (ii) at least one board member must be a professional person in the field of developmental disabilities~~
26 ~~treatment; and~~

27 ~~(iii)(c) no~~ No more than three board members may be professional persons in the fields of mental health
28 treatment and developmental disabilities treatment.

29 ~~(d)~~ (3) (a) A member of the board may not be a full-time agent or employee of:

30 (i) the department of public health and human services; or

1 (ii) a mental health facility affected by Title 53, chapter 20, part 1, and Title 53, chapter 21, part 1, ~~except~~
2 this.

3 (b) The prohibition in subsection (3)(a) does not affect any employee of a state college or university.

4 ~~(e)~~(4) Board members serve for ~~2-year~~ 4-year terms. The terms are staggered so that one-half of the
5 terms expire June 30 of each odd-numbered year.

6 ~~(3)~~(5) The mental disabilities board of visitors is attached to the governor for administrative purposes.
7 It may employ staff for the purpose of carrying out its duties as set out in Title 53, chapter 20, part 1, and Title 53,
8 chapter 21, part 1."

9

10 **Section 3.** Section 53-20-104, MCA, is amended to read:

11 **"53-20-104. Powers and duties of mental disabilities board of visitors.** (1) The board is an
12 independent board of inquiry and review established to ensure that the treatment of all persons committed to the
13 ~~Montana developmental~~ intensive behavior center provided for in 53-20-602 is humane and decent and meets
14 the requirements set forth in this part.

15 (2) The board shall review all plans for experimental research or hazardous treatment procedures
16 involving persons committed to the ~~Montana developmental~~ intensive behavior center to ensure that the research
17 project is humane and not unduly hazardous and that it complies with the principles of the statement on the use
18 of human subjects for research of the American association on ~~mental deficiency~~ intellectual and developmental
19 disabilities and with the principles for research involving human subjects required by the United States
20 department of health and human services. An experimental research project involving ~~Montana developmental~~
21 intensive behavior center residents affected by this part may not begin unless it is approved by the mental
22 disabilities board of visitors.

23 (3) The board shall investigate all cases of alleged mistreatment of a ~~Montana developmental~~ an
24 intensive behavior center resident.

25 (4) The board shall inspect the ~~Montana developmental~~ intensive behavior center at least annually. The
26 board shall inspect the physical plant, including residential, recreational, dining, and sanitary facilities. It shall visit
27 all wards and treatment or habilitation areas. The board shall inquire concerning all habilitation programs being
28 implemented by the facility.

29 (5) The board shall inspect the file of each person committed to the ~~Montana developmental~~ intensive
30 behavior center pursuant to this part to ensure that a habilitation plan exists and is being implemented. The board

1 shall inquire concerning all use of restraints, isolation, or other extraordinary measures.

2 (6) The board may assist a ~~Montana developmental~~ an intensive behavior center resident in resolving
3 a grievance the resident may have concerning the resident's commitment or course of treatment and habilitation
4 in the facility.

5 (7) If the board believes that the ~~Montana developmental~~ intensive behavior center is failing to comply
6 with the provisions of this part in regard to its physical facilities or its treatment of a resident, it shall report its
7 findings at once to the superintendent of the facility and the director of the department of public health and human
8 services. If appropriate, after waiting a reasonable time for a response from the superintendent or the director,
9 the board may notify the parents or guardian of the resident involved, the next of kin, if known, the responsible
10 person appointed by the court for the resident involved, and the district court that has jurisdiction over the facility.

11 (8) The board shall report annually to the governor concerning the status of the ~~Montana developmental~~
12 intensive behavior center and its habilitation programs."
13

14 **Section 4.** Section 53-21-166, MCA, is amended to read:

15 **"53-21-166. Records to be confidential -- exceptions.** All information obtained and records prepared
16 in the course of providing any services under this part to individuals under any provision of this part are
17 confidential and privileged matter and must remain confidential and privileged after the individual is discharged
18 from the facility. Except as provided in Title 50, chapter 16, part 5, information and records may be disclosed only:

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

21 (2) when the recipient of services designates persons to whom information or records may be released
22 or if a recipient of services is a ward and the recipient's guardian or conservator designates in writing persons
23 to whom records or information may be disclosed. However, this section may not be construed to compel a
24 physician, psychologist, social worker, nurse, attorney, or other professional person to reveal information that has
25 been given to the physician, psychologist, social worker, nurse, attorney, or other professional person in
26 confidence by members of a patient's family.

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

29 (4) for research if the department has promulgated rules for the conduct of research. Rules must include
30 but are not limited to the requirement that all researchers shall sign an oath of confidentiality.

