

## **IC 12-11-13**

### **Chapter 13. Statewide Waiver Ombudsman**

#### **IC 12-11-13-1**

##### **Applicability**

Sec. 1. This chapter applies only to an individual who:

- (1) has a developmental disability; and
- (2) receives services under a waiver under the federal home and community based services program.

*As added by P.L.272-1999, SEC.35.*

#### **IC 12-11-13-2**

##### **"Ombudsman" defined**

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

*As added by P.L.272-1999, SEC.35.*

#### **IC 12-11-13-3**

##### **Position established**

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

*As added by P.L.272-1999, SEC.35.*

#### **IC 12-11-13-4**

##### **Appointment of acting ombudsman**

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

*As added by P.L.272-1999, SEC.35.*

#### **IC 12-11-13-5**

##### **Consultation with experts regarding duties**

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

*As added by P.L.272-1999, SEC.35.*

#### **IC 12-11-13-6**

##### **Investigation and resolution of complaints**

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

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

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

*As added by P.L.272-1999, SEC.35.*

### **IC 12-11-13-7**

#### **Access to records required**

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

- (1) An individual described in section 1 of this chapter.
- (2) An entity that provides waiver services to an individual described in section 1 of this chapter.
- (3) Records of an individual described in section 1 of this chapter, including records held by an entity that provides services to the individual.
- (4) If an individual described in section 1 of this chapter is incapable of giving consent, as determined by the attending physician or as otherwise determined under state law, the name, address, and telephone number of the individual's legal representative.

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

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

- (1) In writing by the individual.
- (2) Orally by the individual in the presence of a witness.
- (3) In writing by the legal representative of the individual if:
  - (A) the individual is incapable of giving consent, as determined by the attending physician or as otherwise determined under state law; and
  - (B) the legal representative has the authority to give consent.

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

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

(d) If an ombudsman has:

- (1) been denied access to an individual's records by the individual's legal representative;
- (2) reasonable cause to believe that the individual's legal representative is not acting in the best interests of the individual; and
- (3) received written approval from the state ombudsman;

the ombudsman may inspect the records of the individual.

*As added by P.L.272-1999, SEC.35.*

### **IC 12-11-13-8**

#### **Immunity of provider of waiver services**

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

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

*As added by P.L.272-1999, SEC.35.*

#### **IC 12-11-13-9**

##### **Agency providing access to relevant records**

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

*As added by P.L.272-1999, SEC.35.*

#### **IC 12-11-13-10**

##### **Ombudsman providing coordination and confidentiality**

Sec. 10. The ombudsman shall do the following:

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

*As added by P.L.272-1999, SEC.35. Amended by P.L.99-2007, SEC.86.*

#### **IC 12-11-13-11**

##### **Rules**

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

*As added by P.L.272-1999, SEC.35.*

#### **IC 12-11-13-12**

##### **Immunity from civil liability**

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

*As added by P.L.272-1999, SEC.35.*

#### **IC 12-11-13-13**

##### **Annual report on operations of program**

Sec. 13. (a) The ombudsman shall prepare a report each year on the operations of the program.

- (b) A copy of the report required under subsection (a) shall be

provided to the following:

- (1) The governor.
- (2) The legislative council. The report must be in an electronic format under IC 5-14-6.
- (3) The division.
- (4) The members of the commission on developmental disabilities established by IC 2-5-27.2-2.

*As added by P.L.272-1999, SEC.35. Amended by P.L.28-2004, SEC.95; P.L.3-2009, SEC.5.*

#### **IC 12-11-13-14**

##### **Report to commission on developmental disabilities**

Sec. 14. The ombudsman shall report:

- (1) annually; or
- (2) upon request;

to the commission on developmental disabilities established by IC 2-5-27.2-2.

*As added by P.L.272-1999, SEC.35. Amended by P.L.3-2009, SEC.6.*

#### **IC 12-11-13-15**

##### **Receipt of complaints**

Sec. 15. The division shall:

- (1) establish a statewide toll free telephone line continuously open to receive complaints regarding individuals described in section 1 of this chapter; and
- (2) forward all complaints received from the toll free telephone line to the statewide waiver ombudsman.

*As added by P.L.272-1999, SEC.35.*

#### **IC 12-11-13-16**

##### **Offenses regarding ombudsman**

Sec. 16. A person who:

- (1) intentionally prevents the work of the ombudsman;
- (2) knowingly offers compensation to the ombudsman in an effort to affect the outcome of an investigation or a potential investigation; or
- (3) knowingly or intentionally retaliates against a resident, a client, an employee, or another person who files a complaint or provides information to the ombudsman;

commits a Class B misdemeanor.

*As added by P.L.272-1999, SEC.35.*