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State of Minnesota

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HOUSE OF REPRESENTATIVES

EIGHTY-FIFTH
SESSION

HOUSE FILE No. **3576**

February 28, 2008

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The bill was read for the first time and referred to the Committee on Health and Human Services

March 17, 2008

Committee Recommendation and Adoption of Report:

To Pass

Read Second Time

1.1 A bill for an act
1.2 relating to human services; authorizing the ombudsman and Medical Review
1.3 Subcommittee to gather data about deceased clients; amending Minnesota
1.4 Statutes 2006, sections 245.91, subdivision 3, by adding a subdivision; 245.92;
1.5 245.94, subdivisions 1, 2a; 245.97, subdivision 5.

1.6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.7 Section 1. Minnesota Statutes 2006, section 245.91, subdivision 3, is amended to read:

1.8 Subd. 3. **Client.** "Client" means a person served by an agency, facility, or program,
1.9 who is receiving services or treatment for mental illness, developmental disabilities,
1.10 chemical dependency, or emotional disturbance. Client also includes a now deceased
1.11 person who had been served by an agency, facility, or program.

1.12 Sec. 2. Minnesota Statutes 2006, section 245.91, is amended by adding a subdivision
1.13 to read:

1.14 Subd. 4a. **Gather.** "Gather" means access to information or data for purposes of
1.15 inspection and to receive copies of information or data.

1.16 Sec. 3. Minnesota Statutes 2006, section 245.92, is amended to read:

1.17 **245.92 OFFICE OF OMBUDSMAN; CREATION; QUALIFICATIONS;**
1.18 **FUNCTION.**

1.19 The ombudsman for persons receiving services or treatment for mental illness,
1.20 developmental disabilities, chemical dependency, or emotional disturbance shall promote
1.21 the highest attainable standards of treatment, competence, efficiency, and justice. The
1.22 ombudsman may gather information and data about decisions, acts, and other matters of

2.1 an agency, facility, or program. The ombudsman is appointed by the governor, serves in
2.2 the unclassified service, and may be removed only for just cause. The ombudsman must
2.3 be selected without regard to political affiliation and must be a person who has knowledge
2.4 and experience concerning the treatment, needs, and rights of clients, and who is highly
2.5 competent and qualified. No person may serve as ombudsman while holding another
2.6 public office.

2.7 Sec. 4. Minnesota Statutes 2006, section 245.94, subdivision 1, is amended to read:

2.8 Subdivision 1. **Powers.** (a) The ombudsman may prescribe the methods by which
2.9 complaints to the office are to be made, reviewed, and acted upon. The ombudsman may
2.10 not levy a complaint fee.

2.11 (b) The ombudsman may mediate or advocate on behalf of a client.

2.12 (c) The ombudsman may investigate the quality of services provided to clients and
2.13 determine the extent to which quality assurance mechanisms within state and county
2.14 government work to promote the health, safety, and welfare of clients, other than clients
2.15 in acute care facilities who are receiving services not paid for by public funds. The
2.16 ombudsman is a health oversight agency as defined in Code of Federal Regulations,
2.17 title 45, section 164.501.

2.18 (d) At the request of a client, or upon receiving a complaint or other information
2.19 affording reasonable grounds to believe that the rights of a client who is not capable
2.20 of requesting assistance have been adversely affected, the ombudsman may gather
2.21 information and data about and analyze, on behalf of the client, the actions of an agency,
2.22 facility, or program.

2.23 (e) The ombudsman may ~~examine~~ gather, on behalf of a client, records of an
2.24 agency, facility, or program if the records relate to a matter that is within the scope of the
2.25 ombudsman's authority. If the records are private and the client is capable of providing
2.26 consent, the ombudsman shall first obtain the client's consent. The ombudsman is
2.27 not required to obtain consent for access to private data on clients with developmental
2.28 disabilities. The ombudsman is not required to obtain consent for access to private data
2.29 on decedents who were receiving services for mental illness, developmental disabilities,
2.30 or emotional disturbance. All data collected, created, received, or maintained by the
2.31 ombudsman are governed by chapter 13 and other applicable law.

2.32 (f) Notwithstanding any law to the contrary, the ombudsman may subpoena a person
2.33 to appear, give testimony, or produce documents or other evidence that the ombudsman
2.34 considers relevant to a matter under inquiry. The ombudsman may petition the appropriate
2.35 court in Ramsey County to enforce the subpoena. A witness who is at a hearing or is part

3.1 of an investigation possesses the same privileges that a witness possesses in the courts or
3.2 under the law of this state. Data obtained from a person under this paragraph are private
3.3 data as defined in section 13.02, subdivision 12.

3.4 (g) The ombudsman may, at reasonable times in the course of conducting a review,
3.5 enter and view premises within the control of an agency, facility, or program.

3.6 (h) The ombudsman may attend Department of Human Services Review Board
3.7 and Special Review Board proceedings; proceedings regarding the transfer of patients
3.8 or residents, as defined in section 246.50, subdivisions 4 and 4a, between institutions
3.9 operated by the Department of Human Services; and, subject to the consent of the affected
3.10 client, other proceedings affecting the rights of clients. The ombudsman is not required to
3.11 obtain consent to attend meetings or proceedings and have access to private data on clients
3.12 with developmental disabilities.

3.13 (i) The ombudsman shall ~~have access to~~ gather data of agencies, facilities, or
3.14 programs classified as private or confidential as defined in section 13.02, subdivisions 3
3.15 and 12, regarding services provided to clients with developmental disabilities.

3.16 (j) To avoid duplication and preserve evidence, the ombudsman shall inform
3.17 relevant licensing or regulatory officials before undertaking a review of an action of
3.18 the facility or program.

3.19 (k) Sections 245.91 to 245.97 are in addition to other provisions of law under which
3.20 any other remedy or right is provided.

3.21 Sec. 5. Minnesota Statutes 2006, section 245.94, subdivision 2a, is amended to read:

3.22 Subd. 2a. **Mandatory reporting.** Within 24 hours after a client suffers death or
3.23 serious injury, the agency, facility, or program director shall notify the ombudsman of the
3.24 death or serious injury. The ombudsman is authorized to receive identifying information
3.25 about a deceased client according to Code of Federal Regulations, title 42, section 2.15,
3.26 paragraph (b).

3.27 Sec. 6. Minnesota Statutes 2006, section 245.97, subdivision 5, is amended to read:

3.28 Subd. 5. **Medical Review Subcommittee.** At least five members of the committee,
3.29 including at least three physicians, one of whom is a psychiatrist, must be designated by
3.30 the governor to serve as a Medical Review Subcommittee. Terms of service, vacancies,
3.31 and compensation are governed by subdivision 2. The governor shall designate one of
3.32 the members to serve as chair of the subcommittee. The Medical Review Subcommittee
3.33 may have access to private and confidential data collected or created by the ombudsman

4.1 that are necessary to fulfill the duties of the Medical Review Subcommittee under this
4.2 section and may:

4.3 (1) make a preliminary determination of whether the death of a client that has been
4.4 brought to its attention is unusual or reasonably appears to have resulted from causes other
4.5 than natural causes and warrants investigation;

4.6 (2) review the causes of and circumstances surrounding the death;

4.7 (3) request the county coroner or medical examiner to conduct an autopsy;

4.8 (4) assist an agency in its investigations of unusual deaths and deaths from causes
4.9 other than natural causes; and

4.10 (5) submit a report regarding the death of a client to the committee, the ombudsman,
4.11 the client's next-of-kin, and the facility where the death occurred and, where appropriate,
4.12 make recommendations to prevent recurrence of similar deaths to the head of each
4.13 affected agency or facility.