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ENGROSSED SUBSTITUTE SENATE BILL 5522

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State of Washington

57th Legislature

2001 Regular Session

By Senate Committee on Human Services & Corrections (originally sponsored by Senators Kastama, Hargrove, Thibaudeau, Winsley, Kohl-Welles, Long, Costa, Snyder, Deccio, Fraser and Rasmussen)

READ FIRST TIME 02/26/01.

1 AN ACT Relating to creating an office of mental health ombudsman;  
2 adding a new chapter to Title 71 RCW; and providing an effective date.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** The legislature finds that in order to  
5 comply with the community mental health services act, chapter 71.24  
6 RCW, and the medicaid managed care mental health waiver, and to  
7 effectively assist persons with mental illness and consumers of mental  
8 health services in the assertion of their civil and human rights, and  
9 to improve the quality of services available and promote the  
10 rehabilitation, recovery, and reintegration of these persons, an  
11 independent mental health ombudsman program should be instituted.

12 NEW SECTION. **Sec. 2.** As used in this chapter, "mental health  
13 provider or facility" means any of the following:

14 (1) An agency, individual, or facility that is part of the  
15 community mental health service delivery system, as defined in RCW  
16 71.24.025;

17 (2) A long-term care facility, as defined in RCW 43.190.020, in  
18 which adults or children with mental illness reside;

- 1 (3) A state hospital, as defined in RCW 72.23.010; and  
2 (4) A facility or agency that receives funds from the state of  
3 Washington to provide residential or treatment services to adults or  
4 children with mental illness.

5 NEW SECTION. **Sec. 3.** (1) The department of community, trade, and  
6 economic development shall contract with a private nonprofit  
7 organization to be the office of mental health ombudsman and to provide  
8 mental health ombudsman services as specified under, and consistent  
9 with, the medicaid managed care mental health waiver, state law, the  
10 goals of the state, and the needs of its citizens. The department of  
11 community, trade, and economic development shall ensure that all  
12 program and staff support necessary to enable the ombudsman to  
13 effectively protect the interests of persons with mental illness is  
14 provided by the nonprofit organization that contracts to be the office  
15 of mental health ombudsman and to provide independent mental health  
16 ombudsman services. The department shall designate the organization to  
17 be the office of mental health ombudsman and to provide mental health  
18 ombudsman services by a competitive bidding process which shall include  
19 direct stakeholder participation in the development of the request for  
20 proposal, evaluation of bids, and final selection. The department  
21 shall ensure that the designated agency has demonstrated financial  
22 stability and meets the qualifications for ombudsman identified in  
23 section 4 of this act. The department shall undertake an annual review  
24 of the designated agency to ensure compliance with the provisions of  
25 the contract. The department shall not redesignate the agency serving  
26 as the office of mental health ombudsman except upon a showing of good  
27 cause for redesignation, and after notice and opportunity for agency  
28 and public comment have been made and there has been an opportunity to  
29 appeal the redesignation to the director.

30 (2) The department of community, trade, and economic development  
31 shall adopt rules to carry out this chapter.

32 (3) The office of mental health ombudsman shall have the following  
33 powers and duties:

34 (a) Provide services for coordinating the activities of mental  
35 health ombudsmen throughout the state;

36 (b) Carry out such other activities as the department of community,  
37 trade, and economic development deems appropriate;

1 (c) Establish procedures consistent with section 10 of this act for  
2 appropriate access by mental health ombudsmen to mental health  
3 providers and facilities and the records of patients, residents, and  
4 clients, including procedures to protect the confidentiality of the  
5 records and ensure that the identity of any complainant or resident  
6 will not be disclosed without the written consent of the complainant or  
7 resident, or upon court order;

8 (d) Establish a statewide uniform reporting system to collect and  
9 analyze data relating to complaints, conditions, and service quality  
10 provided by mental health providers and facilities for the purpose of  
11 identifying and resolving significant individual problems and  
12 analyzing, developing, and advocating remedies in policy, practice, or  
13 legislation for systemic problems, with provision for submission of  
14 such data to the department of social and health services, the state  
15 block grant mental health advisory committee, and to the federal  
16 department of health and human services, or its successor agency, on a  
17 regular basis. This reporting system must be compatible with uniform  
18 child and adult consumer service outcomes, where such outcome measures  
19 are established;

20 (e) Establish procedures to assure that any files maintained by  
21 ombudsman programs shall be disclosed only at the discretion of the  
22 ombudsman having authority over the disposition of such files, except  
23 that the identity of a complainant or patient, resident, or client of  
24 a mental health provider or facility may not be disclosed by the  
25 ombudsman unless:

26 (i) The complainant or resident, or the complainant or resident's  
27 legal representative, consents in writing to such disclosure; or

28 (ii) Such disclosure is required by court order; and

29 (f) Establish ombudsman services that are available statewide, and  
30 at eastern state and western state hospitals.

31 NEW SECTION. **Sec. 4.** (1) The agency designated by the department  
32 of community, trade, and economic development as the office of mental  
33 health ombudsman and any mental health ombudsman authorized by this  
34 chapter or a local governmental authority must have training or  
35 experience in all of the following areas:

36 (a) Mental health and other related social services programs;

37 (b) The legal system;

38 (c) Advocacy and supporting self-advocacy; and

1 (d) Dispute or problem resolution techniques, including  
2 investigation, mediation, and negotiation.

3 (2) A mental health ombudsman or quality review team member must  
4 not have been employed by a regional support network or any mental  
5 health provider or facility within the past three years, except where  
6 prior to the adoption of this chapter he or she has been employed by or  
7 volunteered for a regional support network or subcontractor thereof or  
8 a state hospital to provide mental health ombudsman services pursuant  
9 to the requirements of the federal medicaid managed care mental health  
10 waiver. The office of mental health ombudsman shall actively recruit  
11 persons who provided ombudsman services through a regional support  
12 network or subcontractor thereof or a state hospital.

13 (3) No mental health ombudsman or any member of his or her  
14 immediate family may have, or have had within the past three years, any  
15 pecuniary interest in the provision of mental health services.

16 (4) The office of mental health ombudsman shall maintain a toll-  
17 free telephone number.

18 (5) Mental health ombudsmen shall assist and advocate on behalf of  
19 patients, residents, and clients of mental health providers and  
20 facilities and shall attempt to resolve complaints informally, using  
21 complaint and grievance processes and, if applicable, the fair hearing  
22 process. Mental health ombudsmen shall attempt to resolve all disputes  
23 at the lowest possible level.

24 (6) The office of mental health ombudsman shall ensure that there  
25 are quality review teams established to evaluate quality and consumer  
26 satisfaction and provide recommendations for service improvements, as  
27 required by the medicaid managed care waiver. Quality review teams  
28 shall define, establish, and measure systemic consumer outcomes and  
29 report on systemic causes of consumer access barrier service problems.

30 (7) Where consented to by the patient, resident, or client,  
31 ombudsmen shall involve family members and friends in the process of  
32 resolving complaints.

33 (8) The office of mental health ombudsman shall support mental  
34 health service recipient participation in treatment planning and  
35 delivery, both on an individual basis and systemwide, and shall  
36 actively recruit and support the participation of consumers, parents,  
37 and guardians of minor children recipients, and family members of adult  
38 service recipients as mental health ombudsmen and quality review team  
39 members.

1        NEW SECTION.    **Sec. 5.**    (1) The office of mental health ombudsman  
2 shall provide information relevant to the quality of mental health  
3 services, and recommendations for improvements in the quality of mental  
4 health services, to regional support networks and the mental health  
5 division.

6        (2) The mental health division and the regional support networks  
7 shall work in cooperation with the office of mental health ombudsman to  
8 develop agreements regarding how this quality information will be  
9 incorporated into their quality management system. These agreements  
10 must ensure that information related to complaints and grievances  
11 conforms to a standardized form.

12        (3) The office of mental health ombudsman shall ensure that its  
13 reports and recommendations are broadly distributed and shall report  
14 annually regarding its activities, findings, and recommendations to at  
15 least the following: The mental health division, the mental health  
16 advisory board, the state long-term care ombudsman, the state family  
17 and children's ombudsman, the state designated protection and advocacy  
18 system, the department of community, trade, and economic development,  
19 regional support networks, and mental health advocacy groups.

20        (4) Regional support networks and the mental health division shall  
21 promptly provide the office of mental health ombudsman with demographic  
22 information they possess regarding the diversity of individuals  
23 applying for, receiving, and denied services in each region, service  
24 utilization information, contract and subcontract requirements, the  
25 results of all audits and reviews conducted by the regional support  
26 networks or the mental health division, and such other information  
27 collected or produced by the regional support networks or the mental  
28 health division as may be necessary for mental health ombudsman and  
29 quality review team members in the performance of their duties.

30        (5) Regional support networks and the mental health division shall  
31 assist mental health ombudsman and quality review team members in  
32 obtaining entry and meaningful access to mental health providers and  
33 facilities, cooperation from their staff, and access to patients and  
34 clients.

35        (6) Each regional support network and state hospital shall  
36 designate at least one liaison to the office of mental health ombudsman  
37 who shall be responsible for ensuring that mental health ombudsman and  
38 quality review team members are actively included in quality management  
39 planning and assessment, for providing assistance in resolving issues

1 regarding access to information and patients or clients, and for  
2 resolving individual and systemic issues where requested by the mental  
3 health ombudsman or quality review team.

4 (7) Regional support networks, state hospitals, and their  
5 subcontractors shall respond in writing to all recommendations  
6 regarding quality improvement made by mental health ombudsmen and  
7 quality review teams within thirty days of issuance, and shall identify  
8 what action will be taken in response, and if no action or action other  
9 than that which is recommended by the mental health ombudsman or  
10 quality review team is taken, the reasons for the variance must be  
11 explained in writing.

12 NEW SECTION. **Sec. 6.** The office of mental health ombudsman shall  
13 provide the legislature with an annual report that includes:

14 (1) An identification of the demographic status of those served by  
15 the mental health ombudsman;

16 (2) A description of the issues addressed, and a brief description  
17 of case scenarios in a form that does not compromise confidentiality;

18 (3) An accounting of the monitoring activities of the ombudsman;

19 (4) An identification of the results of measurements of consumer  
20 satisfaction and other outcome measures;

21 (5) An identification of the numbers of volunteers used and in what  
22 capacity;

23 (6) An identification of deficiencies in the service system and  
24 recommendations for remedial action;

25 (7) Recommendations for regulatory action by agencies that would  
26 improve the quality of service to individuals with mental illness; and

27 (8) Recommendations for legislative action that would result in  
28 improved services to individuals with mental illness.

29 NEW SECTION. **Sec. 7.** Every mental health provider and facility  
30 shall post in a conspicuous location a notice providing the office of  
31 mental health ombudsman's toll-free number, and the name, address, and  
32 phone number of the office of the appropriate local mental health  
33 ombudsman and quality review team and a brief description of the  
34 services provided. The form of the notice must be approved by the  
35 office of mental health ombudsman. This information must also be  
36 distributed to the patients, residents, and clients, and their family

1 members and legal guardians, upon application for mental health  
2 provider services, and upon admission to a mental health facility.

3 NEW SECTION. **Sec. 8.** The office of mental health ombudsman shall:

4 (1) Identify, investigate, and resolve complaints made by or on  
5 behalf of patients, residents, clients of mental health providers and  
6 facilities, and individuals denied services relating to administrative  
7 action, inaction, or decisions, that may adversely affect the  
8 rehabilitation, recovery, reintegration, health, safety, welfare, and  
9 rights of these individuals;

10 (2) Monitor the development and implementation of federal, state,  
11 and local laws, rules, regulations, and policies with respect to mental  
12 health service provision in this state;

13 (3) Provide information as appropriate to patients, residents,  
14 clients, individuals denied services, family members, guardians,  
15 resident representatives, employees of mental health providers and  
16 facilities, and others regarding the rights of residents, and to public  
17 agencies regarding the quality of service, complaints, and problems of  
18 individuals receiving or denied services from mental health providers  
19 and facilities; and

20 (4) Provide for the training and certification of paid and  
21 volunteer mental health ombudsmen. Paid mental health ombudsmen shall  
22 recruit, supervise, and provide ongoing training of certified volunteer  
23 mental health ombudsmen. Volunteers may be recruited to otherwise  
24 assist with mental health ombudsman and quality review team services.

25 (5) A trained and certified mental health ombudsman, in accordance  
26 with the policies and procedures established by the office of mental  
27 health ombudsman, shall inform residents, their representatives, and  
28 others about the rights of residents, and may identify, investigate,  
29 and resolve complaints and monitor the quality of services provided to  
30 patients, residents, and clients of mental health providers and  
31 facilities.

32 NEW SECTION. **Sec. 9.** (1) The office of mental health ombudsman  
33 shall develop referral procedures for all mental health ombudsmen to  
34 refer any complaint to an appropriate state or local government agency.  
35 The department of social and health services shall act as quickly as  
36 possible on any complaint referred to them by a mental health  
37 ombudsman.

1 (2) The department of social and health services shall respond to  
2 any complaint against a mental health provider or facility that was  
3 referred to it by a mental health ombudsman and shall forward to that  
4 ombudsman a summary of the results of the investigation and action  
5 proposed or taken.

6 (3) The office of mental health ombudsman, and all local mental  
7 health ombudsmen and related volunteers, shall work in cooperation with  
8 the state designated protection and advocacy agency, the long-term care  
9 ombudsman, and the children and family ombudsman. The office of mental  
10 health ombudsman shall develop and implement a working agreement with  
11 the protection and advocacy agency, the long-term care ombudsman, and  
12 the children and family ombudsman, to ensure efficient, coordinated  
13 service.

14 (4) The office of mental health ombudsman shall develop working  
15 agreements with each regional support network, the state psychiatric  
16 hospitals, the mental health division, and such other entities as  
17 necessary to accomplish the goals of the program.

18 NEW SECTION. **Sec. 10.** (1) The office of mental health ombudsman  
19 shall develop procedures governing the right of entry of all mental  
20 health ombudsmen to mental health providers and facilities, jails, and  
21 correctional facilities.

22 (2) Mental health ombudsmen and quality review team members shall  
23 have access to patients, residents, and clients of mental health  
24 providers and facilities, other entities providing inpatient or  
25 outpatient social services, and jails, with provisions made for  
26 privacy, for the purpose of hearing, investigating, and resolving  
27 complaints and monitoring the quality of services, at any time deemed  
28 necessary and reasonable by the office of mental health ombudsman to  
29 effectively carry out the provisions of this chapter. Ombudsmen and  
30 quality review team members who have passed criminal background checks  
31 must have access to inmates at correctional facilities with reasonable  
32 notice to the department of corrections, with provisions made for  
33 privacy, for the purpose of hearing, investigating, and resolving  
34 complaints and monitoring the quality of services, at any time deemed  
35 necessary and reasonable by the office of mental health ombudsman to  
36 effectively carry out the provisions of this chapter.

37 (3) Nothing in this chapter restricts, limits, or increases any  
38 existing right of an organization or individual not described in



1 subsections (1) and (2) of this section to enter or provide assistance  
2 to patients, residents, or clients of mental health providers or  
3 facilities.

4 (4) Nothing in this chapter restricts any right or privilege of a  
5 patient, resident, or client of a mental health provider or facility to  
6 receive visitors of his or her choice.

7 NEW SECTION. **Sec. 11.** (1) No mental health ombudsman, volunteer,  
8 or quality review team member is liable for good faith performance of  
9 responsibilities under this chapter.

10 (2) No discriminatory, disciplinary, or retaliatory action may be  
11 taken against an employee of a mental health provider or facility, or  
12 a patient, resident, or client of a mental health provider or facility,  
13 or a volunteer, for any communication made, or information given or  
14 disclosed, to aid the mental health ombudsman or quality review team in  
15 carrying out duties and responsibilities under this chapter, unless the  
16 same was done maliciously or without good faith. This subsection is  
17 not intended to infringe on the rights of the employer to supervise,  
18 discipline, or terminate an employee for other reasons.

19 (3) All communications by a mental health ombudsman or quality  
20 review team member, if reasonably related to the requirements of that  
21 individual's responsibilities under this chapter and done in good  
22 faith, are privileged, and that privilege shall serve as a defense to  
23 any action in libel or slander.

24 (4) A representative of the office of mental health ombudsman is  
25 exempt from being required to testify in court as to any confidential  
26 matters except as the court may deem necessary to enforce this chapter.

27 NEW SECTION. **Sec. 12.** All records and files of mental health  
28 ombudsmen relating to any complaint or investigation made pursuant to  
29 carrying out their duties and the identities of complainants,  
30 witnesses, patients, or residents shall remain confidential unless  
31 disclosure is authorized by the client or his or her guardian or legal  
32 representative. No disclosures may be made outside the office without  
33 the consent of any named witnesses, resident, patient, client, or  
34 complainant unless the disclosure is made without the identity of any  
35 of these individuals being disclosed.

1        NEW SECTION.    **Sec. 13.**    (1) It is the intent of the legislature  
2 that the state mental health ombudsman program make reasonable efforts  
3 to maintain and improve the current level and quality of care, taking  
4 into account the transition period from the current system of ombudsman  
5 programs and quality review teams within the regional support networks  
6 and state hospitals.

7        (2) It is the intent of the legislature that federal medicaid  
8 requirements be complied with and the department of community, trade,  
9 and economic development expend no more than the amount currently  
10 expended on mental health ombudsman services and quality review team  
11 services by regional support networks and state hospitals and their  
12 subcontractors, including related administrative costs, pursuant to  
13 contracts with the department of social and health services, to  
14 establish the mental health ombudsman program established by this  
15 chapter, and the amount annually expended by the mental health division  
16 in staff support, monitoring, oversight, and subcontracted training and  
17 consultation for community mental health ombudsman and quality review  
18 team services and state hospital mental health patient advocate or  
19 ombudsman services, except to the extent that additional funds are  
20 appropriated by the legislature, for the first two years after the  
21 enactment of this act.

22        NEW SECTION.    **Sec. 14.**    If any provision of this act or its  
23 application to any person or circumstance is held invalid, the  
24 remainder of the act or the application of the provision to other  
25 persons or circumstances is not affected.

26        NEW SECTION.    **Sec. 15.**    This act takes effect July 1, 2002.

27        NEW SECTION.    **Sec. 16.**    Sections 1 through 15 of this act  
28 constitute a new chapter in Title 71 RCW.

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