
SUBSTITUTE SENATE BILL 5522

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 11 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 of volunteers invited to assist the
21 ombudsman program and the promotion of the development of citizen
22 organizations to participate in the ombudsman program. Volunteers and
23 citizen organizations may not be used instead of employed ombudsmen to
24 perform the fundamental functions of the program.

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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