

2 **ESSB 5522** - S AMD 496
3 By Senators Kastama and Hewitt

4 ADOPTED 01/30/02

5 Strike everything after the enacting clause and insert the
6 following:

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

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

17 (1) An agency, individual, or facility that is part of the
18 community mental health service delivery system, as defined in RCW
19 71.24.025;

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

22 (3) A state hospital, as defined in RCW 72.23.010; and

23 (4) A facility or agency that receives funds from the state of
24 Washington to provide residential or treatment services to adults or
25 children with mental illness.

26 NEW SECTION. **Sec. 3.** (1) The department of community, trade, and
27 economic development shall contract with a private nonprofit
28 organization to be the office of mental health ombudsman and to provide
29 mental health ombudsman services as specified under, and consistent
30 with, the medicaid managed care mental health waiver, state law, the
31 goals of the state, and the needs of its citizens. The department of
32 community, trade, and economic development shall ensure that all
33 program and staff support necessary to enable the ombudsman to
34 effectively protect the interests of persons with mental illness is

1 provided by the nonprofit organization that contracts to be the office
2 of mental health ombudsman and to provide independent mental health
3 ombudsman services. The department shall designate the organization to
4 be the office of mental health ombudsman and to provide mental health
5 ombudsman services by a competitive bidding process which shall include
6 direct stakeholder participation in the development of the request for
7 proposal, evaluation of bids, and final selection. The department
8 shall ensure that the designated agency has demonstrated financial
9 stability and meets the qualifications for ombudsman identified in
10 section 4 of this act. The department shall undertake an annual review
11 of the designated agency to ensure compliance with the provisions of
12 the contract. The department shall not redesignate the agency serving
13 as the office of mental health ombudsman except upon a showing of good
14 cause for redesignation, and after notice and opportunity for agency
15 and public comment have been made and there has been an opportunity to
16 appeal the redesignation to the director.

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

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

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

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

25 (c) Establish procedures consistent with section 10 of this act for
26 appropriate access by mental health ombudsmen to mental health
27 providers and facilities and the records of patients, residents, and
28 clients, including procedures to protect the confidentiality of the
29 records and ensure that the identity of any complainant or resident
30 will not be disclosed without the written consent of the complainant or
31 resident, or upon court order;

32 (d) Establish a statewide uniform reporting system to collect and
33 analyze data relating to complaints, conditions, and service quality
34 provided by mental health providers and facilities for the purpose of
35 identifying and resolving significant individual problems and
36 analyzing, developing, and advocating remedies in policy, practice, or
37 legislation for systemic problems, with provision for submission of
38 such data to the department of social and health services, the state
39 block grant mental health advisory committee, and to the federal

1 department of health and human services, or its successor agency, on a
2 regular basis. This reporting system must be compatible with uniform
3 child and adult consumer service outcomes, where such outcome measures
4 are established;

5 (e) Establish procedures to assure that any files maintained by
6 ombudsman programs shall be disclosed only at the discretion of the
7 ombudsman having authority over the disposition of such files, except
8 that the identity of a complainant or patient, resident, or client of
9 a mental health provider or facility may not be disclosed by the
10 ombudsman unless:

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

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

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

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

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

22 (b) The legal system;

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

24 (d) Dispute or problem resolution techniques, including
25 investigation, mediation, and negotiation.

26 (2) A mental health ombudsman or quality review team member must
27 not have been employed by a regional support network or any mental
28 health provider or facility within the past three years, except where
29 prior to the adoption of this chapter he or she has been employed by or
30 volunteered for a regional support network or subcontractor thereof or
31 a state hospital to provide mental health ombudsman services pursuant
32 to the requirements of the federal medicaid managed care mental health
33 waiver. The office of mental health ombudsman shall actively recruit
34 persons who provided ombudsman services through a regional support
35 network or subcontractor thereof or a state hospital.

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

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

3 (5) Mental health ombudsmen shall assist and advocate on behalf of
4 patients, residents, and clients of mental health providers and
5 facilities and shall attempt to resolve complaints informally, using
6 complaint and grievance processes and, if applicable, the fair hearing
7 process. Mental health ombudsmen shall attempt to resolve all disputes
8 at the lowest possible level.

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

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

18 (8) The office of mental health ombudsman shall support mental
19 health service recipient participation in treatment planning and
20 delivery, both on an individual basis and systemwide, and shall
21 actively recruit and support the participation of consumers, parents,
22 and guardians of minor children recipients, and family members of adult
23 service recipients as mental health ombudsmen and quality review team
24 members.

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

30 (2) The mental health division and the regional support networks
31 shall work in cooperation with the office of mental health ombudsman to
32 develop agreements regarding how this quality information will be
33 incorporated into their quality management system. These agreements
34 must ensure that information related to complaints and grievances
35 conforms to a standardized form.

36 (3) The office of mental health ombudsman shall ensure that its
37 reports and recommendations are broadly distributed and shall report
38 annually regarding its activities, findings, and recommendations to at

1 least the following: The mental health division, the mental health
2 advisory board, the state long-term care ombudsman, the state family
3 and children's ombudsman, the state designated protection and advocacy
4 system, the department of community, trade, and economic development,
5 regional support networks, and mental health advocacy groups.

6 (4) Regional support networks and the mental health division shall
7 promptly provide the office of mental health ombudsman with demographic
8 information they possess regarding the diversity of individuals
9 applying for, receiving, and denied services in each region, service
10 utilization information, contract and subcontract requirements, the
11 results of all audits and reviews conducted by the regional support
12 networks or the mental health division, and such other information
13 collected or produced by the regional support networks or the mental
14 health division as may be necessary for mental health ombudsman and
15 quality review team members in the performance of their duties.

16 (5) Regional support networks and the mental health division shall
17 assist mental health ombudsman and quality review team members in
18 obtaining entry and meaningful access to mental health providers and
19 facilities, cooperation from their staff, and access to patients and
20 clients.

21 (6) Each regional support network and state hospital shall
22 designate at least one liaison to the office of mental health ombudsman
23 who shall be responsible for ensuring that mental health ombudsman and
24 quality review team members are actively included in quality management
25 planning and assessment, for providing assistance in resolving issues
26 regarding access to information and patients or clients, and for
27 resolving individual and systemic issues where requested by the mental
28 health ombudsman or quality review team.

29 (7) Regional support networks, state hospitals, and their
30 subcontractors shall respond in writing to all recommendations
31 regarding quality improvement made by mental health ombudsmen and
32 quality review teams within thirty days of issuance, and shall identify
33 what action will be taken in response, and if no action or action other
34 than that which is recommended by the mental health ombudsman or
35 quality review team is taken, the reasons for the variance must be
36 explained in writing.

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

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

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

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

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

8 (5) An identification of the numbers of volunteers used and in what
9 capacity;

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

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

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

16 NEW SECTION. **Sec. 7.** Every mental health provider and facility
17 shall post in a conspicuous location a notice providing the office of
18 mental health ombudsman's toll-free number, and the name, address, and
19 phone number of the office of the appropriate local mental health
20 ombudsman and quality review team and a brief description of the
21 services provided. The form of the notice must be approved by the
22 office of mental health ombudsman. This information must also be
23 distributed to the patients, residents, and clients, and their family
24 members and legal guardians, upon application for mental health
25 provider services, and upon admission to a mental health facility.

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

27 (1) Identify, investigate, and resolve complaints made by or on
28 behalf of patients, residents, clients of mental health providers and
29 facilities, and individuals denied services relating to administrative
30 action, inaction, or decisions, that may adversely affect the
31 rehabilitation, recovery, reintegration, health, safety, welfare, and
32 rights of these individuals;

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

36 (3) Provide information as appropriate to patients, residents,
37 clients, individuals denied services, family members, guardians,

1 resident representatives, employees of mental health providers and
2 facilities, and others regarding the rights of residents, and to public
3 agencies regarding the quality of service, complaints, and problems of
4 individuals receiving or denied services from mental health providers
5 and facilities; and

6 (4) Provide for the training and certification of paid and
7 volunteer mental health ombudsmen. Paid mental health ombudsmen shall
8 recruit, supervise, and provide ongoing training of certified volunteer
9 mental health ombudsmen. Volunteers may be recruited to otherwise
10 assist with mental health ombudsman and quality review team services.

11 (5) A trained and certified mental health ombudsman, in accordance
12 with the policies and procedures established by the office of mental
13 health ombudsman, shall inform residents, their representatives, and
14 others about the rights of residents, and may identify, investigate,
15 and resolve complaints and monitor the quality of services provided to
16 patients, residents, and clients of mental health providers and
17 facilities.

18 NEW SECTION. **Sec. 9.** (1) The office of mental health ombudsman
19 shall develop referral procedures for all mental health ombudsmen to
20 refer any complaint to an appropriate state or local government agency.
21 The department of social and health services shall act as quickly as
22 possible on any complaint referred to them by a mental health
23 ombudsman.

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

29 (3) The office of mental health ombudsman, and all local mental
30 health ombudsmen and related volunteers, shall work in cooperation with
31 the state designated protection and advocacy agency, the long-term care
32 ombudsman, and the children and family ombudsman. The office of mental
33 health ombudsman shall develop and implement a working agreement with
34 the protection and advocacy agency, the long-term care ombudsman, and
35 the children and family ombudsman, to ensure efficient, coordinated
36 service.

37 (4) The office of mental health ombudsman shall develop working
38 agreements with each regional support network, the state psychiatric

1 hospitals, the mental health division, and such other entities as
2 necessary to accomplish the goals of the program.

3 NEW SECTION. **Sec. 10.** (1) The office of mental health ombudsman
4 shall develop procedures governing the right of entry of all mental
5 health ombudsmen to mental health providers and facilities, jails, and
6 correctional facilities.

7 (2) Mental health ombudsmen and quality review team members shall
8 have access to patients, residents, and clients of mental health
9 providers and facilities, other entities providing inpatient or
10 outpatient social services, and jails, with provisions made for
11 privacy, for the purpose of hearing, investigating, and resolving
12 complaints and monitoring the quality of services, at any time deemed
13 necessary and reasonable by the office of mental health ombudsman to
14 effectively carry out the provisions of this chapter. Ombudsmen and
15 quality review team members who have passed criminal background checks
16 must have access to inmates at correctional facilities with reasonable
17 notice to the department of corrections, with provisions made for
18 privacy, for the purpose of hearing, investigating, and resolving
19 complaints and monitoring the quality of services, at any time deemed
20 necessary and reasonable by the office of mental health ombudsman to
21 effectively carry out the provisions of this chapter.

22 (3) Nothing in this chapter restricts, limits, or increases any
23 existing right of an organization or individual not described in
24 subsections (1) and (2) of this section to enter or provide assistance
25 to patients, residents, or clients of mental health providers or
26 facilities.

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

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

33 (2) No discriminatory, disciplinary, or retaliatory action may be
34 taken against an employee of a mental health provider or facility, or
35 a patient, resident, or client of a mental health provider or facility,
36 or a volunteer, for any communication made, or information given or
37 disclosed, to aid the mental health ombudsman or quality review team in

1 carrying out duties and responsibilities under this chapter, unless the
2 same was done maliciously or without good faith. This subsection is
3 not intended to infringe on the rights of the employer to supervise,
4 discipline, or terminate an employee for other reasons.

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

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

13 NEW SECTION. **Sec. 12.** All records and files of mental health
14 ombudsmen relating to any complaint or investigation made pursuant to
15 carrying out their duties and the identities of complainants,
16 witnesses, patients, or residents shall remain confidential unless
17 disclosure is authorized by the client or his or her guardian or legal
18 representative. No disclosures may be made outside the office without
19 the consent of any named witnesses, resident, patient, client, or
20 complainant unless the disclosure is made without the identity of any
21 of these individuals being disclosed.

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

28 (2) It is the intent of the legislature that federal medicaid
29 requirements be complied with and the department of community, trade,
30 and economic development expend no more than the amount currently
31 expended on mental health ombudsman services and quality review team
32 services by regional support networks and state hospitals and their
33 subcontractors, including related administrative costs, pursuant to
34 contracts with the department of social and health services, to
35 establish the mental health ombudsman program established by this
36 chapter, and the amount annually expended by the mental health division
37 in staff support, monitoring, oversight, and subcontracted training and

1 consultation for community mental health ombudsman and quality review
2 team services and state hospital mental health patient advocate or
3 ombudsman services, except to the extent that additional funds are
4 appropriated by the legislature, for the first two years after the
5 enactment of this act.

6 NEW SECTION. **Sec. 14.** If any provision of this act or its
7 application to any person or circumstance is held invalid, the
8 remainder of the act or the application of the provision to other
9 persons or circumstances is not affected.

10 NEW SECTION. **Sec. 15.** This act takes effect July 1, 2003.

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

13 **ESSB 5522** - S AMD 496
14 By Senators Kastama and Hewitt

15 ADOPTED 01/30/02

16 On page 1, line 1 of the title, after "ombudsman;" strike the
17 remainder of the title and insert "adding a new chapter to Title 71
18 RCW; and providing an effective date."

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