
SUBSTITUTE SENATE BILL 5946

State of Washington 58th Legislature 2003 Regular Session

By Senate Committee on Children & Family Services & Corrections
(originally sponsored by Senators Kastama and Kohl-Welles)

READ FIRST TIME 03/05/03.

1 AN ACT Relating to creating an office of mental health ombudsman;
2 adding a new chapter to Title 43 RCW; creating a new section; and
3 providing an effective date.

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

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

13 NEW SECTION. **Sec. 2.** The definitions in this section apply
14 throughout this chapter unless the context clearly requires otherwise.

15 (1) "Department" means the department of community, trade, and
16 economic development.

17 (2) "Immediate family member," as pertaining to conflicts of

1 interest, means the spouse, parents, children, and siblings of the
2 mental health ombudsman.

3 (3) "Mental health consumer" or "consumer" means any individual who
4 is a current or past client, patient, or resident of a mental health
5 provider or facility, or an applicant for such mental health services.

6 (4) "Mental health ombudsman" or "ombudsman" means the state mental
7 health ombudsman, regional mental health ombudsmen, staff of the state
8 and regional mental health ombudsmen, and certified volunteer mental
9 health ombudsmen. A mental health ombudsman shall not be considered to
10 be a mental health provider.

11 (5) "Mental health provider or facility" means any of the
12 following:

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

16 (b) An evaluation and treatment facility, as defined in RCW
17 71.05.020 or 71.34.020;

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

20 (d) A state hospital, as defined in RCW 72.23.010; and

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

24 (6) "Office" means the office of the state mental health ombudsman.

25 NEW SECTION. **Sec. 3.** (1) The office of the state mental health
26 ombudsman is hereby created. The office shall be headed by an
27 individual known as the state mental health ombudsman, who shall be
28 selected from among individuals with expertise and experience in the
29 fields of mental health services, policy, and advocacy. The office
30 shall carry out, directly and through the use of mental health
31 ombudsmen, an independent statewide program known as the state mental
32 health ombudsman program.

33 (2) The department shall contract with a private nonprofit
34 organization to operate the office of the state mental health ombudsman
35 and to provide, directly or through subcontracts, mental health
36 ombudsman services as specified under, and consistent with, the
37 medicaid managed care mental health waiver, state law, the goals of the

1 state, and the needs of its residents. The organization that operates
2 the office of the state mental health ombudsman shall select the
3 individual to serve as the state mental health ombudsman, with
4 opportunity for prior stakeholder input, and shall revoke the
5 designation only upon a showing of neglect of duty, misconduct, or
6 inability to perform duties. The department shall ensure that all
7 program and staff support necessary to enable the mental health
8 ombudsman program to protect the interests of persons with mental
9 illness is provided, directly or through subcontracts, by the
10 organization that operates the office of the state mental health
11 ombudsman. The contracting organization and the office shall not be
12 considered to be state agencies or departments, but instead shall be
13 private entities operating under contract with the state.

14 (3) The department shall designate by a competitive bidding process
15 the organization that will contract to operate the office of the state
16 mental health ombudsman. The selection process shall include direct
17 stakeholder participation in the development of the request for
18 proposal, evaluation of bids, and final selection. The department
19 shall ensure that the designated organization is free from conflicts of
20 interest and has the demonstrated capacity to ensure that the
21 responsibilities of the office of the state mental health ombudsman are
22 carried out. The department shall undertake an annual review of the
23 designated organization to ensure compliance with the provisions of the
24 contract. The department shall not revoke the designation of the
25 organization operating the office of the state mental health ombudsman
26 except upon a showing of neglect of duty, misconduct, or inability to
27 perform duties. Prior to revoking the designation, the department
28 shall provide notice and an opportunity for the organization, the state
29 ombudsman, and the public to comment upon the proposed revocation, and
30 shall provide the organization an opportunity to appeal the decision to
31 the director of the department.

32 (4) The department shall adopt rules to carry out this chapter.

33 NEW SECTION. **Sec. 4.** The office has the following powers and
34 duties:

35 (1) Establish appropriate procedures: For access by mental health
36 ombudsmen to all mental health consumers, consistent with section 12 of
37 this act; for ombudsman access to the records of mental health

1 consumers, with provisions to ensure confidentiality, consistent with
2 sections 12 and 13 of this act; and for the protection of the ombudsman
3 program's records and files, consistent with section 13 of this act;

4 (2) Maintain a statewide toll-free telephone number for the receipt
5 of complaints and inquiries;

6 (3) Offer and provide services to assist mental health consumers
7 and their representatives in order to assist in protecting the health,
8 safety, welfare, and rights of mental health consumers;

9 (4) Offer and provide information as appropriate to mental health
10 consumers, family members, guardians and other representatives,
11 employees of mental health providers and facilities, and others
12 regarding the rights of mental health consumers;

13 (5) Identify, investigate, and resolve complaints made by or on
14 behalf of mental health consumers that relate to action, inaction, or
15 decisions which:

16 (a) May adversely affect the rehabilitation, recovery,
17 reintegration, health, safety, welfare, or rights of mental health
18 consumers; and

19 (b) Involve a mental health provider or facility; a regulatory,
20 governmental, health, or social service agency; a guardian or other
21 representative; a family member; or another mental health consumer,
22 friend, or associate;

23 (6) Support and encourage mental health consumer participation in
24 treatment planning, delivery, and complaint resolution, both on an
25 individual basis and systemwide, and recruit and support the
26 participation of family members of the mental health consumer, close
27 friends, and guardians and other representatives in the consumer's
28 treatment and complaint resolution, unless the mental health consumer
29 expressly objects to such participation;

30 (7) Represent the interests of mental health consumers before
31 governmental agencies, and seek administrative, legal, and other
32 remedies to protect the health, safety, welfare, and rights of mental
33 health consumers;

34 (8) Monitor the development and implementation of federal, state,
35 and local laws, regulations, and policies with respect to mental health
36 services in this state, and provide information that the office
37 determines to be appropriate to the public, legislators, public and
38 private agencies, and other persons;

1 (9) Provide for the training, certification, and decertification
2 for good cause, of paid and volunteer mental health ombudsmen. Paid
3 mental health ombudsmen shall recruit, supervise, and provide ongoing
4 training of certified volunteer mental health ombudsmen, in accordance
5 with the policies and procedures established by the office;

6 (10) Where necessary to fulfill the purposes of this chapter,
7 subcontract with nonprofit organizations or individuals to perform the
8 functions of mental health ombudsman, provided however, that the state
9 office shall provide services for coordinating the activities of mental
10 health ombudsmen throughout the state;

11 (11) Establish a statewide uniform reporting system to collect and
12 analyze data relating to complaints, conditions, and service quality
13 provided by mental health providers and facilities, jails, and
14 correctional facilities, for the purpose of identifying and resolving
15 significant individual problems and analyzing, developing, and
16 advocating remedies in policy, practice, rule, or legislation for
17 systemic problems, with provision for submission of such data to
18 relevant agencies and entities on at least an annual basis, as
19 specified in sections 8 and 9 of this act. This reporting system must
20 be compatible with uniform child and adult consumer service outcomes,
21 where such outcome measures are established; and

22 (12) Carry out such other activities as the department deems
23 appropriate.

24 NEW SECTION. **Sec. 5.** All mental health ombudsmen must receive
25 certification by the state mental health ombudsman and have training or
26 experience in the following areas prior to serving as mental health
27 ombudsmen:

28 (1) Mental health programs, other related social services programs,
29 and community resources;

30 (2) Mental health diagnoses, care, and treatment approaches;

31 (3) Advocacy and supporting consumer self-advocacy;

32 (4) The legal system; and

33 (5) Dispute resolution techniques, including investigation,
34 mediation, and negotiation.

35 NEW SECTION. **Sec. 6.** (1) All mental health ombudsmen must be free
36 from conflicts of interest, including:

1 (a) No mental health ombudsman shall have been employed by, or
2 participated in the management of, a regional support network or any
3 mental health provider or facility within the past year, except where
4 prior to the effective date of this act he or she has been employed by
5 or volunteered for a regional support network, subcontractor thereof,
6 or a state hospital to provide mental health ombudsman services
7 pursuant to the requirements of the federal medicaid managed care
8 mental health waiver. The office shall actively recruit persons who
9 provided ombudsman services through a regional support network,
10 subcontractor thereof, or state hospital;

11 (b) No mental health ombudsman or any member of his or her
12 immediate family may have, or have had within the past year, any
13 significant ownership or investment interest in the provision of mental
14 health services or in a mental health provider or facility;

15 (c) No mental health ombudsman shall have been employed in a
16 governmental position with direct involvement in the licensing,
17 certification, or regulation of a mental health provider or facility
18 within the past year; and

19 (d) No mental health ombudsman shall be assigned to a mental health
20 facility in which a member of that ombudsman's immediate family
21 resides.

22 (2) No individual, or immediate family member of such an
23 individual, who is involved in the designation or removal of the state
24 mental health ombudsman, or the designation or revocation of the
25 contractor or subcontractors, or who administers the contractor's or
26 subcontractor's contract, may be an official or employee with
27 responsibility for the licensing, certification, or regulation of
28 mental health providers or facilities or may be employed by, own,
29 operate, or manage mental health providers or facilities.

30 NEW SECTION. **Sec. 7.** (1) Mental health ombudsmen shall act in
31 accordance with the policies and procedures established by the office,
32 and shall have the following authority and duties:

33 (a) Offer and provide services to assist mental health consumers
34 and their representatives in order to assist in protecting the health,
35 safety, welfare, and rights of mental health consumers;

36 (b) Offer and provide information as appropriate to mental health

1 consumers, family members of mental health consumers, guardians and
2 other representatives, employees of mental health providers and
3 facilities, and others regarding the rights of mental health consumers;

4 (c) Identify, investigate, and resolve complaints made by or on
5 behalf of mental health consumers that relate to action, inaction, or
6 decisions which:

7 (i) May adversely affect the rehabilitation, recovery,
8 reintegration, health, safety, welfare, or rights of mental health
9 consumers; and

10 (ii) Involve a mental health provider or facility; a regulatory,
11 governmental, health, or social service agency; a guardian or other
12 representative; a family member; or another mental health consumer,
13 friend, or associate;

14 (d) Support and encourage mental health consumer participation in
15 treatment planning, delivery, and complaint resolution, both on an
16 individual basis and systemwide, and recruit and support the
17 participation of family members, close friends, guardians, and other
18 representatives in the consumer's treatment and complaint resolution,
19 unless the mental health consumer expressly objects to such
20 participation;

21 (e) Represent the interests of mental health consumers before
22 governmental agencies, and seek administrative, legal, and other
23 remedies to protect the health, safety, welfare, and rights of mental
24 health consumers; and

25 (f) Perform other duties assigned by the office or its
26 subcontractors, consistent with the purposes of this chapter.

27 (2) Mental health ombudsmen shall attempt to resolve complaints
28 informally and at the lowest level possible, using direct discussion
29 with care providers and personnel, complaint and grievance processes,
30 and the fair hearing process if applicable, unless such avenues appear
31 to be futile, not feasible, or not in the best interest of the mental
32 health consumer.

33 NEW SECTION. **Sec. 8.** (1) The office shall provide information
34 relevant to the quality of mental health services, and recommendations
35 for improvements in the quality of mental health services, to regional
36 support networks and the mental health division of the department of
37 social and health services.

1 (2) The mental health division and the regional support networks
2 shall work in cooperation with the office to develop agreements
3 regarding how this quality information will be incorporated into their
4 quality management systems. These agreements must ensure that
5 information related to complaints and grievances conforms to a
6 standardized form.

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

15 (4) Regional support networks and the mental health division shall
16 promptly provide the office with demographic information they possess
17 regarding the diversity of individuals applying for, receiving, and
18 being denied services in each region, service utilization information,
19 contract and subcontract requirements, the results of all audits and
20 reviews conducted by the regional support networks or the mental health
21 division, and such other information collected or produced by the
22 regional support networks or the mental health division as may be
23 necessary for mental health ombudsmen in the performance of their
24 duties.

25 (5) Regional support networks and the mental health division shall
26 assist mental health ombudsmen in obtaining entry and meaningful access
27 to mental health providers and facilities, cooperation from their
28 staff, and access to mental health consumers.

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

35 NEW SECTION. **Sec. 9.** The office shall provide the legislature
36 with an annual report that includes:

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

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

6 (3) An accounting of the monitoring activities by the mental health
7 ombudsman program;

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

10 (5) An identification of the numbers of certified volunteer mental
11 health ombudsmen;

12 (6) An identification of deficiencies in the mental health service
13 system and recommendations for remedial action in policy or practice;

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

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

18 NEW SECTION. **Sec. 10.** Every mental health provider and facility
19 shall post in a conspicuous location a notice providing the office's
20 toll-free number, and the name, address, and phone number of the office
21 of the appropriate local mental health ombudsman if any and a brief
22 description of the services provided. The form of the notice must be
23 approved by the office. This information must also be distributed to
24 mental health consumers, their legal guardians or representatives, and
25 family members of mental health consumers if appropriate, upon
26 application for mental health provider services and upon admission to
27 a mental health facility.

28 NEW SECTION. **Sec. 11.** (1) The office shall develop referral
29 procedures for mental health ombudsmen to refer appropriate complaints
30 to state or local government agencies, consistent with the
31 confidentiality provisions of this chapter. The state and local
32 agencies shall act promptly on any complaint referred to them by a
33 mental health ombudsman.

34 (2) The department of social and health services shall respond to
35 any complaint against a mental health provider or facility referred to

1 it by a mental health ombudsman and shall forward to that ombudsman a
2 summary of the results of the investigation and action proposed or
3 taken.

4 (3) The office, and its subcontractors if any, shall work in
5 cooperation with the state designated protection and advocacy agency,
6 the long-term care ombudsman program, and the office of children and
7 family ombudsman. The office shall develop and implement working
8 agreements with these advocacy organizations to ensure efficient,
9 coordinated services.

10 (4) The office shall develop and implement working agreements with
11 each regional support network, the state psychiatric hospitals, the
12 mental health division, and such other entities as necessary to
13 accomplish the purposes of this chapter.

14 NEW SECTION. **Sec. 12.** (1) The office shall develop appropriate
15 procedures governing the right of entry of all mental health ombudsmen
16 to mental health providers and facilities, jails, and correctional
17 facilities, for the purpose of carrying out the provisions of this
18 chapter.

19 (2) Mental health ombudsmen shall have private access to all mental
20 health consumers at any time deemed necessary and reasonable by the
21 office to effectively carry out the provisions of this chapter. Mental
22 health ombudsmen shall be provided access to all mental health
23 consumers receiving or seeking services from mental health providers or
24 facilities, and to detainees and inmates of jails and correctional
25 facilities who have a mental illness, with provisions made for privacy,
26 for the purposes of providing information, hearing, investigating, and
27 resolving complaints, and monitoring the quality of mental health
28 services. Access shall be deemed necessary and reasonable during a
29 facility's regular visiting hours, other periods the facility or
30 provider is open to the public, and any other time access may be
31 required by the particular complaint or condition to be monitored or
32 investigated. Mental health ombudsmen seeking access to jails,
33 juvenile detention facilities, and correctional facilities must
34 successfully pass a criminal history background check as provided by
35 chapter 43.43 RCW.

36 (3) Nothing in this chapter restricts any right or privilege of a
37 mental health consumer to receive visitors of his or her choice.

1 Nothing in this chapter restricts, limits, or increases any existing
2 right of an organization or individual not described in subsections (1)
3 and (2) of this section to enter or provide assistance to mental health
4 consumers.

5 (4) Ombudsmen shall be permitted to review and copy the medical,
6 social, legal, and mental health records of a mental health consumer
7 if:

8 (a) The ombudsman has the written permission of the mental health
9 consumer or the representative of the consumer;

10 (b) The mental health consumer is unable to give informed consent
11 to the review and has no representative; or

12 (c) The representative of an incapacitated mental health consumer
13 refuses to give permission, the ombudsman reasonably believes the
14 representative is not acting in the consumer's best interest, and the
15 ombudsman receives prior written approval from the state mental health
16 ombudsman or his or her designee.

17 (5) Mental health ombudsmen shall be given prompt and timely access
18 to the mental health consumer's records, which in no case shall be
19 longer than the time period governing the consumer's access to his or
20 her records from the mental health provider or facility. The mental
21 health provider or facility may not refuse access to records to the
22 ombudsman on the basis that it is medically contraindicated or for
23 similar grounds. The identities of other patients, clients, residents,
24 or mental health consumers, if contained in the records of the mental
25 health consumer to which the ombudsman has access, must be redacted
26 prior to review by the ombudsman, if permission is not obtained by the
27 ombudsman from these individuals.

28 (6) The provisions of this section apply to accessing the records
29 of detainees and inmates of jails and correctional facilities who have
30 a mental illness.

31 (7) The office shall have timely access to, and copies when
32 requested of, the licensing, complaint investigation, and certification
33 records maintained by the state with respect to mental health providers
34 and facilities.

35 (8) For any copies obtained under this section, the ombudsman may
36 be charged a reasonable rate, which for public agencies or facilities
37 may not exceed the copying rate adopted under the public disclosure

1 laws, and for private facilities and providers may not exceed the rate
2 charged by commercial copy centers in the community.

3 NEW SECTION. **Sec. 13.** (1) All records and files, and the
4 information therein, maintained by the mental health ombudsman program
5 shall remain confidential. Any disclosure of ombudsman program records
6 or files is subject to both of the following provisions:

7 (a) No disclosure may be made without the prior approval of the
8 state mental health ombudsman or his or her designee, provided however,
9 that requests to the ombudsman program by mental health consumers or
10 their representatives for assistance in obtaining service or better
11 service, or to file a complaint, may be communicated directly by the
12 mental health ombudsman to the mental health provider or facility or
13 oversight entity, without requiring prior approval of the state
14 ombudsman; and

15 (b) No disclosure of the identity or identifying information
16 regarding a mental health consumer, complainant, or witness shall be
17 made unless that individual or his or her representative consents in
18 writing to the disclosure, or disclosure is authorized by court order.

19 (2) Statistics, aggregate data, nonidentifying information and case
20 studies, and analysis may be disclosed at the discretion of the state
21 mental health ombudsman or his or her designee.

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

27 (4) All mental health ombudsmen are exempt from being required to
28 testify in any judicial or administrative proceeding as to any
29 confidential matters or records, except as a court may deem necessary
30 to enforce this chapter.

31 (5) In monitoring the office and its subcontractors, access to the
32 ombudsman program's files and records, minus identifying information
33 regarding any mental health consumer, complainant, or witness, shall be
34 available to the director or one senior manager of the department or
35 the contracting or subcontracting organization in which the state or
36 local ombudsman office is administratively located. The individuals

1 who perform the monitoring function must have no conflict of interest,
2 as provided in section 6 of this act.

3 NEW SECTION. **Sec. 14.** (1) It is unlawful to willfully interfere
4 with a mental health ombudsman in the performance of his or her duties
5 under this chapter.

6 (2) No discriminatory, disciplinary, or retaliatory action may be
7 taken against an employee of a mental health provider or facility, an
8 employee of a jail or correctional facility, an employee of a public,
9 health, or social service agency, or a mental health consumer or family
10 member, for any communication made, or information given or disclosed,
11 to aid a mental health ombudsman in carrying out his or her duties
12 under this chapter. This prohibition does not apply to communications
13 or false information provided maliciously or without good faith. This
14 subsection is not intended to infringe on the rights of the employer to
15 supervise, discipline, or terminate an employee for permissible
16 reasons.

17 NEW SECTION. **Sec. 15.** (1) It is the intent of the legislature
18 that the state mental health ombudsman program make reasonable efforts
19 to maintain and improve the current level and quality of mental health
20 ombudsman services, taking into account the transition period from the
21 current system of ombudsman programs within the regional support
22 networks and state hospitals.

23 (2) It is the intent of the legislature that federal medicaid
24 requirements be complied with, and that the department of social and
25 health services no longer provide mental health ombudsman services
26 through the regional support networks and state hospitals effective
27 July 1, 2005.

28 (3) It is the intent of the legislature that commencing July 1,
29 2005, the funds currently expended by the regional support networks
30 through their contracts with the department of social and health
31 services to provide mental health ombudsman services, and expended by
32 the department of social and health services to provide ombudsman or
33 patient advocate services at Western state hospital and Eastern state
34 hospital, shall be transferred to the department of community, trade,
35 and economic development for use by the office of mental health
36 ombudsman.

1 NEW SECTION. **Sec. 16.** Effective July 1, 2004, the department of
2 social and health services shall transfer three hundred twenty-two
3 thousand eight hundred dollars from funding the office of consumer
4 affairs and training funds provided for the ombudsman quality review
5 teams within the mental health division of the department of social and
6 health services for mental health ombudsman services through the
7 regional support networks and state hospitals to the department of
8 community, trade, and economic development to provide funding for the
9 office of mental health ombudsman created in this act.

10 NEW SECTION. **Sec. 17.** If any provision of this act or its
11 application to any person or circumstance is held invalid, the
12 remainder of the act or the application of the provision to other
13 persons or circumstances is not affected.

14 NEW SECTION. **Sec. 18.** This act takes effect July 1, 2004.

15 NEW SECTION. **Sec. 19.** Sections 1 through 15 of this act
16 constitute a new chapter in Title 43 RCW.

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