
SENATE BILL 6830

State of Washington

56th Legislature

2000 Regular Session

By Senators Franklin, Long, Thibaudeau, Winsley and Costa

Read first time 02/04/2000. Referred to Committee on Human Services & Corrections.

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

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, an
9 independent mental health ombudsman program should be instituted.

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

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

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

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

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

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

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

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

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

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

33 (c) Establish procedures consistent with section 9 of this act for
34 appropriate access by mental health ombudsmen to mental health
35 providers and facilities and the records of their patients, residents,
36 and clients, including procedures to protect the confidentiality of the
37 records and ensure that the identity of any complainant or resident

1 will not be disclosed without the written consent of the complainant or
2 resident, or upon court order;

3 (d) Establish a state-wide uniform reporting system to collect and
4 analyze data relating to complaints, conditions, and service quality
5 provided by mental health providers and facilities for the purpose of
6 identifying and resolving significant problems, with provision for
7 submission of such data to the department of social and health services
8 and to the federal department of health and human services, or its
9 successor agency, on a regular basis;

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

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

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

19 (f) Establish ombudsman services that are available state-wide, and
20 at eastern state and western state hospitals.

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

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

27 (b) The legal system;

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

29 (d) Dispute or problem resolution techniques, including
30 investigation, mediation, and negotiation.

31 (2) A mental health ombudsman must not have been employed by any
32 mental health provider or facility within the past three years, except
33 where prior to the adoption of this chapter he or she has been employed
34 by a regional support network or subcontractor thereof to provide
35 mental health ombudsman services pursuant to the requirements of the
36 federal medicaid managed care mental health waiver.

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

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

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

12 (6) The office of mental health ombudsman shall ensure that there
13 are quality review teams established to evaluate quality and service
14 recipient satisfaction and provide recommendations for service
15 improvements, as required by the medicaid managed care waiver.

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

19 (8) The office of mental health ombudsman shall support mental
20 health service recipient participation in treatment planning and
21 delivery, both on an individual basis and system-wide, and shall
22 actively recruit and support the participation of service recipients as
23 mental health ombudsmen.

24 NEW SECTION. **Sec. 5.** Every mental health provider and facility
25 shall post in a conspicuous location a notice providing the office of
26 mental health ombudsman's toll-free number, and the name, address, and
27 phone number of the office of the appropriate local mental health
28 ombudsman and a brief description of the services provided by the
29 office. The form of the notice must be approved by the office of
30 mental health ombudsman. This information must also be distributed to
31 the patients, residents, and clients, and their family members and
32 legal guardians, upon application for mental health provider services,
33 and upon admission to a mental health facility.

34 NEW SECTION. **Sec. 6.** The office of mental health ombudsman shall:

35 (1) Identify, investigate, and resolve complaints made by or on
36 behalf of patients, residents, and clients of mental health providers
37 and facilities relating to administrative action, inaction, or

1 decisions that may adversely affect the health, safety, welfare, and
2 rights of these individuals;

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

6 (3) Provide information as appropriate to patients, residents,
7 clients, family members, guardians, resident representatives, employees
8 of mental health providers and facilities, and others regarding the
9 rights of residents, and to public agencies regarding the quality of
10 service, complaints, and problems of individuals receiving services
11 from mental health providers and facilities; and

12 (4) Provide for training volunteers and promoting the development
13 of citizen organizations to participate in the ombudsman program. A
14 trained and certified mental health ombudsman, in accordance with the
15 policies and procedures established by the office of mental health
16 ombudsman, shall inform residents, their representatives, and others
17 about the rights of residents, and may identify, investigate, and
18 resolve complaints and monitor the quality of services provided to
19 patients, residents, and clients of mental health providers and
20 facilities.

21 NEW SECTION. **Sec. 7.** (1) The office of mental health ombudsman
22 shall develop referral procedures for all mental health ombudsmen to
23 refer any complaint to an appropriate state or local government agency.
24 The department of social and health services shall act as quickly as
25 possible on any complaint referred to them by a mental health
26 ombudsman.

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

32 (3) The office of mental health ombudsman, and all local and
33 volunteer mental health ombudsmen, shall work in cooperation with the
34 state designated protection and advocacy agency, the long-term care
35 ombudsman, and the children and family ombudsman. The office of mental
36 health ombudsman shall develop and implement a working agreement with
37 the protection and advocacy agency, the long-term care ombudsman, and

1 the children and family ombudsman, to ensure efficient, coordinated
2 service.

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

7 NEW SECTION. **Sec. 8.** (1) The office of mental health ombudsman
8 shall develop procedures governing the right of entry of all mental
9 health ombudsmen to mental health providers and facilities, jails, and
10 correctional facilities. Mental health ombudsmen shall have access to
11 patients, residents, and clients of mental health providers and
12 facilities, and inmates at jails and correctional facilities, with
13 provisions made for privacy, for the purpose of hearing, investigating,
14 and resolving complaints and monitoring the quality of services, at any
15 time deemed necessary and reasonable by the office of mental health
16 ombudsman to effectively carry out the provisions of this chapter.

17 (2) Nothing in this chapter restricts, limits, or increases any
18 existing right of an organization or individual not described in
19 subsection (1) of this section to enter or provide assistance to
20 patients, residents, or clients of mental health providers or
21 facilities.

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

25 NEW SECTION. **Sec. 9.** (1) No mental health ombudsman is liable for
26 good faith performance of responsibilities under this chapter.

27 (2) No discriminatory, disciplinary, or retaliatory action may be
28 taken against an employee of a mental health provider or facility, or
29 a patient, resident, or client of a mental health provider or facility,
30 or a volunteer, for any communication made, or information given or
31 disclosed, to aid the mental health ombudsman in carrying out duties
32 and responsibilities under this chapter, unless the same was done
33 maliciously or without good faith. This subsection is not intended to
34 infringe on the rights of the employer to supervise, discipline, or
35 terminate an employee for other reasons.

36 (3) All communications by a mental health ombudsman, if reasonably
37 related to the requirements of that individual's responsibilities under

1 this chapter and done in good faith, are privileged and that privilege
2 shall serve as a defense to any action in libel or slander.

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

6 NEW SECTION. **Sec. 10.** All records and files of mental health
7 ombudsmen relating to any complaint or investigation made pursuant to
8 carrying out their duties and the identities of complainants,
9 witnesses, patients, or residents shall remain confidential unless
10 disclosure is authorized by the client or his or her guardian or legal
11 representative. No disclosures may be made outside the office without
12 the consent of any named witnesses, resident, patient, client, or
13 complainant unless the disclosure is made without the identity of any
14 of these individuals being disclosed.

15 NEW SECTION. **Sec. 11.** It is the intent of the legislature that
16 federal medicaid requirements be complied with and the department of
17 community, trade, and economic development annually expend at least the
18 amount currently expended on mental health ombudsman services and
19 quality review team services by regional support networks and their
20 subcontractors, pursuant to contracts with the department of social and
21 health services, to establish the mental health ombudsman program
22 established by this chapter.

23 NEW SECTION. **Sec. 12.** If any provision of this act or its
24 application to any person or circumstance is held invalid, the
25 remainder of the act or the application of the provision to other
26 persons or circumstances is not affected.

27 NEW SECTION. **Sec. 13.** Sections 1 through 12 of this act
28 constitute a new chapter in Title 71 RCW.

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