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**SENATE BILL 5522**

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**State of Washington**

**57th Legislature**

**2001 Regular Session**

**By** Senators Kastama, Hargrove, Thibaudeau, Winsley, Kohl-Welles, Long, Costa, Snyder, Deccio, Fraser and Rasmussen

Read first time 01/25/2001. 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 11 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 statewide 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 statewide, 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 systemwide, and shall  
22 actively recruit and support the participation of service recipients as  
23 mental health ombudsmen and quality review team members.

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

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

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

1 community, trade, and economic development, regional support networks,  
2 and mental health advocacy groups.

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

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

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

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

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

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

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

- 1 (3) An accounting of the monitoring activities of the ombudsman;
- 2 (4) An identification of deficiencies in the service system and  
3 recommendations for remedial action;
- 4 (5) Recommendations for regulatory action by agencies that would  
5 improve the quality of service to individuals with mental illness; and
- 6 (6) Recommendations for legislative action that would result in  
7 improved services to individuals with mental illness.

8 NEW SECTION. **Sec. 7.** Every mental health provider and facility  
9 shall post in a conspicuous location a notice providing the office of  
10 mental health ombudsman's toll-free number, and the name, address, and  
11 phone number of the office of the appropriate local mental health  
12 ombudsman and a brief description of the services provided by the  
13 office. The form of the notice must be approved by the office of  
14 mental health ombudsman. This information must also be distributed to  
15 the patients, residents, and clients, and their family members and  
16 legal guardians, upon application for mental health provider services,  
17 and upon admission to a mental health facility.

18 NEW SECTION. **Sec. 8.** The office of mental health ombudsman shall:  
19 (1) Identify, investigate, and resolve complaints made by or on  
20 behalf of patients, residents, and clients of mental health providers  
21 and facilities relating to administrative action, inaction, or  
22 decisions, that may adversely affect the health, safety, welfare, and  
23 rights of these individuals;

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

27 (3) Provide information as appropriate to patients, residents,  
28 clients, family members, guardians, resident representatives, employees  
29 of mental health providers and facilities, and others regarding the  
30 rights of residents, and to public agencies regarding the quality of  
31 service, complaints, and problems of individuals receiving services  
32 from mental health providers and facilities; and

33 (4) Provide for training volunteers and promoting the development  
34 of citizen organizations to participate in the ombudsman program. A  
35 trained and certified mental health ombudsman, in accordance with the  
36 policies and procedures established by the office of mental health  
37 ombudsman, shall inform residents, their representatives, and others

1 about the rights of residents, and may identify, investigate, and  
2 resolve complaints and monitor the quality of services provided to  
3 patients, residents, and clients of mental health providers and  
4 facilities.

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

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

16 (3) The office of mental health ombudsman, and all local and  
17 volunteer mental health ombudsmen, shall work in cooperation with the  
18 state designated protection and advocacy agency, the long-term care  
19 ombudsman, and the children and family ombudsman. The office of mental  
20 health ombudsman shall develop and implement a working agreement with  
21 the protection and advocacy agency, the long-term care ombudsman, and  
22 the children and family ombudsman, to ensure efficient, coordinated  
23 service.

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

28 NEW SECTION. **Sec. 10.** (1) The office of mental health ombudsman  
29 shall develop procedures governing the right of entry of all mental  
30 health ombudsmen to mental health providers and facilities, jails, and  
31 correctional facilities. Mental health ombudsmen shall have access to  
32 patients, residents, and clients of mental health providers and  
33 facilities, and inmates at jails and correctional facilities, with  
34 provisions made for privacy, for the purpose of hearing, investigating,  
35 and resolving complaints and monitoring the quality of services, at any  
36 time deemed necessary and reasonable by the office of mental health  
37 ombudsman to effectively carry out the provisions of this chapter.

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

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

9 NEW SECTION. **Sec. 11.** (1) No mental health ombudsman is liable  
10 for good faith performance of responsibilities under this chapter.

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

20 (3) All communications by a mental health ombudsman, if reasonably  
21 related to the requirements of that individual's responsibilities under  
22 this chapter and done in good faith, are privileged, and that privilege  
23 shall serve as a defense to 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.**    It is the intent of the legislature that  
2 federal medicaid requirements be complied with and the department of  
3 community, trade, and economic development annually expend at least the  
4 amount currently expended on mental health ombudsman services and  
5 quality review team services by regional support networks and state  
6 hospitals and their subcontractors, pursuant to contracts with the  
7 department of social and health services, to establish the mental  
8 health ombudsman program established by this chapter, and the amount  
9 annually expended by the mental health division in staff support,  
10 monitoring, oversight, and subcontracted training and consultation for  
11 community mental health ombudsman and quality review team services and  
12 state hospital mental health patient advocate or ombudsman services.

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

17        NEW SECTION.    **Sec. 15.**    Sections 1 through 14 of this act  
18 constitute a new chapter in Title 71 RCW.

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