
SENATE BILL 6587

State of Washington

59th Legislature

2006 Regular Session

By Senators Kastama, Regala, Keiser, Deccio, Thibaudeau, Rasmussen, McAuliffe, Kohl-Welles and Kline

Read first time 01/16/2006. Referred to Committee on Human Services & Corrections.

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; repealing
3 RCW 71.24.350; and 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, including participation from mental health
18 consumers and family members, in the development of the request for
19 proposal, evaluation of bids, and final selection. The department
20 shall ensure that the designated organization is free from conflicts of
21 interest and has the demonstrated capacity to ensure that the
22 responsibilities of the office of the state mental health ombudsman are
23 carried out. The department shall undertake an annual review of the
24 designated organization to ensure compliance with the provisions of the
25 contract. The department shall not revoke the designation of the
26 organization operating the office of the state mental health ombudsman
27 except upon a showing of neglect of duty, misconduct, or inability to
28 perform duties. Prior to revoking the designation, the department
29 shall provide notice and an opportunity for the organization, the state
30 ombudsman, and the public to comment upon the proposed revocation, and
31 shall provide the organization an opportunity to appeal the decision to
32 the director of the department.

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

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

36 (1) Establish appropriate procedures: For access by mental health
37 ombudsmen to all mental health consumers, consistent with section 12 of

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

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

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

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

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

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

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

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

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

35 (8) Monitor the development and implementation of federal, state,
36 and local laws, regulations, and policies with respect to mental health
37 services in this state, and provide information that the office

1 determines to be appropriate to the public, legislators, public and
2 private agencies, and other persons;

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

8 (10) Where necessary to fulfill the purposes of this chapter,
9 subcontract with nonprofit organizations or individuals to perform the
10 functions of mental health ombudsman, provided however, that the state
11 office shall provide services for coordinating the activities of mental
12 health ombudsmen throughout the state. The office of mental health
13 ombudsman shall actively recruit mental health consumers to perform the
14 functions of the office, and shall require subcontractors to do the
15 same. In selecting subcontractors, the office of mental health
16 ombudsman shall give preference to individuals and agencies with
17 experience and commitment to the support of consumer-directed advocacy;

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

29 (12) Carry out such other activities as the department deems
30 appropriate. Actively solicit the participation of mental health
31 consumers in carrying out the functions identified in this section.

32 NEW SECTION. **Sec. 5.** All mental health ombudsmen must receive
33 certification by the state mental health ombudsman and have training or
34 experience in the following areas prior to serving as mental health
35 ombudsmen:

36 (1) Mental health programs, other related social services programs,
37 and community resources;

- 1 (2) Mental health diagnoses, care, and treatment approaches;
- 2 (3) Evidence-based practices, and consumer-directed services
- 3 including peer support and clubhouses;
- 4 (4) Advocacy and supporting consumer self-advocacy;
- 5 (5) The legal system; and
- 6 (6) Dispute resolution techniques, including investigation,
- 7 mediation, and negotiation.

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

10 (a) No mental health ombudsman shall have been employed by, or
11 participated in the management of, a regional support network or any
12 mental health provider or facility within the past year, except where
13 prior to the effective date of this act he or she has been employed by
14 or volunteered for a regional support network, subcontractor thereof,
15 or a state hospital to provide mental health ombudsman services
16 pursuant to the requirements of the federal medicaid managed care
17 mental health waiver, and except where he or she is a mental health
18 consumer. The office shall actively recruit persons who provided
19 ombudsman services through a regional support network, subcontractor
20 thereof, or state hospital;

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

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

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

32 (2) No individual, or immediate family member of such an
33 individual, who is involved in the designation or removal of the state
34 mental health ombudsman, or the designation or revocation of the
35 contractor or subcontractors, or who administers the contractor's or
36 subcontractor's contract, may be an official or employee with

1 responsibility for the licensing, certification, or regulation of
2 mental health providers or facilities or may be employed by, own,
3 operate, or manage mental health providers or facilities.

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

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

10 (b) Offer and provide information as appropriate to mental health
11 consumers, family members of mental health consumers, guardians and
12 other representatives, employees of mental health providers and
13 facilities, and others regarding the rights of mental health consumers.
14 Mental health ombudsmen shall have an outreach plan for reaching mental
15 health consumers, which shall include regular visits to local mental
16 health agencies, facilities, clubhouses, and other appropriate
17 locations;

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

21 (i) May adversely affect the rehabilitation, recovery,
22 reintegration, health, safety, welfare, or rights of mental health
23 consumers; and

24 (ii) Involve a mental health provider or facility; a regulatory,
25 governmental, health, or social service agency; a guardian or other
26 representative; a family member; or another mental health consumer,
27 friend, or associate;

28 (d) Support and encourage mental health consumer participation in
29 treatment planning, delivery, and complaint resolution, both on an
30 individual basis and systemwide, and recruit and support the
31 participation of family members, close friends, guardians, and other
32 representatives in the consumer's treatment and complaint resolution,
33 unless the mental health consumer expressly objects to such
34 participation;

35 (e) Represent the interests of mental health consumers before
36 governmental agencies, and seek administrative, legal, and other

1 remedies to protect the health, safety, welfare, and rights of mental
2 health consumers; and

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

5 (2) Mental health ombudsmen shall attempt to resolve complaints
6 informally and at the lowest level possible, using direct discussion
7 with care providers and personnel, complaint and grievance processes,
8 and the fair hearing process if applicable, unless such avenues appear
9 to be futile, not feasible, or not in the interest of the mental health
10 consumer.

11 NEW SECTION. **Sec. 8.** (1) The office shall provide information
12 relevant to the quality of mental health services, and recommendations
13 for improvements in the quality of mental health services, to regional
14 support networks and the mental health division of the department of
15 social and health services.

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

22 (3) The office shall ensure that its reports and recommendations
23 are broadly distributed and shall report annually regarding its
24 activities, findings, and recommendations to at least the following
25 entities: The mental health division, the mental health advisory
26 board, the state long-term care ombudsman, the state family and
27 children's ombudsman, the state designated protection and advocacy
28 system, the department of community, trade, and economic development,
29 regional support networks, and mental health advocacy groups.

30 (4) Regional support networks and the mental health division shall
31 promptly provide the office with demographic information they possess
32 regarding the diversity of individuals applying for, receiving, and
33 being denied services in each region, service utilization information,
34 contract and subcontract requirements, the results of all audits and
35 reviews conducted by the regional support networks or the mental health
36 division, and such other information collected or produced by the

1 regional support networks or the mental health division as may be
2 necessary for mental health ombudsmen in the performance of their
3 duties.

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

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

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

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

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

21 (3) An accounting of the monitoring activities by the mental health
22 ombudsman program;

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

25 (5) An identification of the numbers of certified volunteer mental
26 health ombudsmen;

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

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

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

33 NEW SECTION. **Sec. 10.** Every mental health provider and facility
34 shall post in a conspicuous location a notice providing the office's
35 toll-free number, and the name, address, and phone number of the office
36 of the appropriate local mental health ombudsman if any and a brief

1 description of the services provided. The form of the notice must be
2 approved by the office. This information must also be distributed to
3 mental health consumers, their legal guardians or representatives, and
4 family members of mental health consumers if appropriate, upon
5 application for mental health provider services and upon admission to
6 a mental health facility.

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

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

18 (3) The office, and its subcontractors if any, shall work in
19 cooperation with the state designated protection and advocacy agency,
20 the long-term care ombudsman program, and the office of children and
21 family ombudsman. The office shall develop and implement working
22 agreements with these advocacy organizations to ensure efficient,
23 coordinated services.

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

28 NEW SECTION. **Sec. 12.** (1) The office shall develop appropriate
29 procedures governing the right of entry of all mental health ombudsmen
30 to mental health providers and facilities, jails, and correctional
31 facilities, for the purpose of carrying out the provisions of this
32 chapter.

33 (2) Mental health ombudsmen shall have private access to all mental
34 health consumers at any time deemed necessary and reasonable by the
35 office to effectively carry out the provisions of this chapter. Mental
36 health ombudsmen shall be provided access to all mental health

1 consumers receiving or seeking services from mental health providers or
2 facilities, and to detainees and inmates of jails and correctional
3 facilities who have a mental illness, with provisions made for privacy,
4 for the purposes of providing information, hearing, investigating, and
5 resolving complaints, and monitoring the quality of mental health
6 services. Access shall be deemed necessary and reasonable during a
7 facility's regular visiting hours, other periods the facility or
8 provider is open to the public, and any other time access may be
9 required by the particular complaint or condition to be monitored or
10 investigated. Mental health ombudsmen seeking access to jails,
11 juvenile detention facilities, and correctional facilities must
12 successfully pass a criminal history background check as provided by
13 chapter 43.43 RCW.

14 (3) Nothing in this chapter restricts any right or privilege of a
15 mental health consumer to receive visitors of his or her choice.
16 Nothing in this chapter restricts, limits, or increases any existing
17 right of an organization or individual not described in subsections (1)
18 and (2) of this section to enter or provide assistance to mental health
19 consumers.

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

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

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

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

32 (5) Mental health ombudsmen shall be given prompt and timely access
33 to the mental health consumer's records, which in no case shall be
34 longer than the time period governing the consumer's access to his or
35 her records from the mental health provider or facility. The mental
36 health provider or facility may not refuse access to records to the
37 ombudsman on the basis that it is medically contraindicated or for
38 similar grounds. The identities of other patients, clients, residents,

1 or mental health consumers, if contained in the records of the mental
2 health consumer to which the ombudsman has access, must be redacted
3 prior to review by the ombudsman, if permission is not obtained by the
4 ombudsman from these individuals.

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

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

12 (8) For any copies obtained under this section, the ombudsman may
13 be charged a reasonable rate, which for public agencies or facilities
14 may not exceed the copying rate adopted under the public disclosure
15 laws, and for private facilities and providers may not exceed the rate
16 charged by commercial copy centers in the community.

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

21 (a) No disclosure may be made without the prior approval of the
22 state mental health ombudsman or his or her designee, provided however,
23 that requests to the ombudsman program by mental health consumers or
24 their representatives for assistance in obtaining service or better
25 service, or to file a complaint, may be communicated directly by the
26 mental health ombudsman to the mental health provider or facility or
27 oversight entity, without requiring prior approval of the state
28 ombudsman; and

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

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

36 (3) All communications by a mental health ombudsman, if done in
37 good faith and reasonably related to the requirements of the

1 ombudsman's responsibilities under this chapter, are privileged, and
2 that privilege shall serve as a defense to any action in libel or
3 slander.

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

8 (5) In monitoring the office and its subcontractors, access to the
9 ombudsman program's files and records, minus identifying information
10 regarding any mental health consumer, complainant, or witness, shall be
11 available to the director or one senior manager of the department or
12 the contracting or subcontracting organization in which the state or
13 local ombudsman office is administratively located. The individuals
14 who perform the monitoring function must have no conflict of interest,
15 as provided in section 6 of this act.

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

19 (2) No discriminatory, disciplinary, or retaliatory action may be
20 taken against an employee of a mental health provider or facility, an
21 employee of a jail or correctional facility, an employee of a public,
22 health, or social service agency, or a mental health consumer or family
23 member, for any communication made, or information given or disclosed,
24 to aid a mental health ombudsman in carrying out his or her duties
25 under this chapter. This prohibition does not apply to communications
26 or false information provided maliciously or without good faith. This
27 subsection is not intended to infringe on the rights of the employer to
28 supervise, discipline, or terminate an employee for permissible
29 reasons.

30 NEW SECTION. **Sec. 15.** (1) It is the intent of the legislature
31 that the state mental health ombudsman program make reasonable efforts
32 to maintain and improve the current level and quality of mental health
33 ombudsman services, taking into account the transition period from the
34 current system of ombudsman programs within the regional support
35 networks and state hospitals.

1 (2) It is the intent of the legislature that federal medicaid
2 requirements be complied with, and that the department of social and
3 health services no longer provide mental health ombudsman services
4 through the regional support networks effective July 1, 2007.

5 (3) It is the intent of the legislature that commencing July 1,
6 2007, the funds currently expended by the regional support networks
7 through their contracts with the department of social and health
8 services to provide mental health ombudsman services shall be
9 transferred to the department of community, trade, and economic
10 development for use by the office of mental health ombudsman.

11 NEW SECTION. **Sec. 16.** Effective July 1, 2007, the department of
12 social and health services shall transfer from training funds provided
13 for the ombudsman quality review teams within the mental health
14 division of the department of social and health services for mental
15 health ombudsman services through the regional support networks and
16 state hospitals to the department of community, trade, and economic
17 development to provide funding for the office of mental health
18 ombudsman created in this act.

19 NEW SECTION. **Sec. 17.** RCW 71.24.350 (Mental health ombudsman
20 office) and 2005 c 504 s 803 are each repealed.

21 NEW SECTION. **Sec. 18.** If any provision of this act or its
22 application to any person or circumstance is held invalid, the
23 remainder of the act or the application of the provision to other
24 persons or circumstances is not affected.

25 NEW SECTION. **Sec. 19.** This act takes effect July 1, 2007.

26 NEW SECTION. **Sec. 20.** Sections 1 through 15 of this act
27 constitute a new chapter in Title 43 RCW.

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