

2 **SHB 1650** - S AMD TO HSC COMM AMD (S-2448.1/01) AMD 269
3 By Senator Kastama

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5 On page 9, beginning on line 1 of the amendment, strike all of
6 section 8 and insert the following:

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

15 NEW SECTION. **Sec. 9.** As used in this chapter, "mental health
16 provider or facility" means any of the following:

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

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

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

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

26 (5) A facility or service licensed under chapter 71.12 RCW to
27 provide care or treatment to adults or children with mental illness.

28 NEW SECTION. **Sec. 10.** (1) The department of community, trade, and
29 economic development shall contract with a private nonprofit
30 organization to be the office of mental health ombudsman and to provide
31 mental health ombudsman services as specified under, and consistent
32 with, the medicaid managed care mental health waiver, state law, the
33 goals of the state, and the needs of its citizens. The department of
34 community, trade, and economic development shall ensure that all

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

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

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

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

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

27 (c) Establish procedures consistent with section 17 of this act for
28 appropriate access by mental health ombudsmen to mental health
29 providers and facilities and the records of patients, residents, and
30 clients, including procedures to protect the confidentiality of the
31 records and ensure that the identity of any complainant or resident
32 will not be disclosed without the written consent of the complainant or
33 resident, or upon court order;

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

1 such data to the department of social and health services, the state
2 block grant mental health advisory committee, and to the federal
3 department of health and human services, or its successor agency, on a
4 regular basis. This reporting system must be compatible with uniform
5 child and adult consumer service outcomes, where such outcome measures
6 are established;

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

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

15 (ii) Such disclosure is required by court order;

16 (f) Establish ombudsman services that are available statewide, and
17 at eastern state and western state hospitals; and

18 (g) Establish the jurisdiction of the mental health ombudsman so
19 that it does not overlap with other state ombudsman offices and allows
20 contact and coordination among the various state ombudsman offices.

21 NEW SECTION. **Sec. 11.** (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 or quality review team member must
32 not have been employed by a regional support network or any mental
33 health provider or facility within the past three years, except where
34 prior to the adoption of this chapter he or she has been employed by or
35 volunteered for a regional support network or subcontractor thereof or
36 a state hospital to provide mental health ombudsman services pursuant
37 to the requirements of the federal medicaid managed care mental health
38 waiver. The office of mental health ombudsman shall actively recruit

1 persons who provided ombudsman services through a regional support
2 network or subcontractor thereof or a state hospital.

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

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

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

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

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

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

30 NEW SECTION. **Sec. 12.** (1) The office of mental health ombudsman
31 shall provide information relevant to the quality of mental health
32 services, and recommendations for improvements in the quality of mental
33 health services, to regional support networks and the mental health
34 division.

35 (2) The mental health division and the regional support networks
36 shall work in cooperation with the office of mental health ombudsman to
37 develop agreements regarding how this quality information will be
38 incorporated into their quality management system. These agreements

1 must ensure that information related to complaints and grievances
2 conforms to a standardized form.

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

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

21 (5) Regional support networks and the mental health division shall
22 assist mental health ombudsman and quality review team members in
23 obtaining entry and meaningful access to mental health providers and
24 facilities, cooperation from their staff, and access to patients and
25 clients.

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

34 (7) Regional support networks, state hospitals, and their
35 subcontractors shall respond in writing to all recommendations
36 regarding quality improvement made by mental health ombudsmen and
37 quality review teams within thirty days of issuance, and shall identify
38 what action will be taken in response, and if no action or action other
39 than that which is recommended by the mental health ombudsman or

1 quality review team is taken, the reasons for the variance must be
2 explained in writing.

3 NEW SECTION. **Sec. 13.** The office of mental health ombudsman shall
4 provide the legislature with an annual report that includes:

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

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

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

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

12 (5) An identification of the numbers of volunteers used and in what
13 capacity;

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

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

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

20 NEW SECTION. **Sec. 14.** Every mental health provider and facility
21 shall post in a conspicuous location a notice providing the office of
22 mental health ombudsman's toll-free number, and the name, address, and
23 phone number of the office of the appropriate local mental health
24 ombudsman and quality review team and a brief description of the
25 services provided. The form of the notice must be approved by the
26 office of mental health ombudsman. This information must also be
27 distributed to the patients, residents, and clients, and their family
28 members and legal guardians, upon application for mental health
29 provider services, and upon admission to a mental health facility.

30 NEW SECTION. **Sec. 15.** The office of mental health ombudsman
31 shall:

32 (1) Identify, investigate, and resolve complaints made by or on
33 behalf of patients, residents, clients of mental health providers and
34 facilities, and individuals denied services relating to administrative
35 action, inaction, or decisions, that may adversely affect the

1 rehabilitation, recovery, reintegration, 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, individuals denied services, family members, guardians,
8 resident representatives, employees of mental health providers and
9 facilities, and others regarding the rights of residents, and to public
10 agencies regarding the quality of service, complaints, and problems of
11 individuals receiving or denied services from mental health providers
12 and facilities; and

13 (4) Provide for the training and certification of paid and
14 volunteer mental health ombudsmen. Paid mental health ombudsmen shall
15 recruit, supervise, and provide ongoing training of certified volunteer
16 mental health ombudsmen. Volunteers may be recruited to otherwise
17 assist with mental health ombudsman and quality review team services.

18 (5) A trained and certified mental health ombudsman, in accordance
19 with the policies and procedures established by the office of mental
20 health ombudsman, shall inform residents, their representatives, and
21 others about the rights of residents, and may identify, investigate,
22 and resolve complaints and monitor the quality of services provided to
23 patients, residents, and clients of mental health providers and
24 facilities.

25 NEW SECTION. **Sec. 16.** (1) The office of mental health ombudsman
26 shall develop referral procedures for all mental health ombudsmen to
27 refer any complaint to an appropriate state or local government agency.
28 The department of social and health services shall act as quickly as
29 possible on any complaint referred to them by a mental health
30 ombudsman.

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

36 (3) The office of mental health ombudsman, and all local mental
37 health ombudsmen and related volunteers, shall work in cooperation with
38 the state designated protection and advocacy agency, the long-term care

1 ombudsman, and the children and family ombudsman. The office of mental
2 health ombudsman shall develop and implement a working agreement with
3 the protection and advocacy agency, the long-term care ombudsman, and
4 the children and family ombudsman, to ensure efficient, coordinated
5 service.

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

10 NEW SECTION. **Sec. 17.** (1) The office of mental health ombudsman
11 shall develop procedures governing the right of entry of all mental
12 health ombudsmen to mental health providers and facilities, jails, and
13 correctional facilities.

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

29 (3) Nothing in this chapter restricts, limits, or increases any
30 existing right of an organization or individual not described in
31 subsections (1) and (2) of this section to enter or provide assistance
32 to patients, residents, or clients of mental health providers or
33 facilities.

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

1 NEW SECTION. **Sec. 18.** (1) No mental health ombudsman, volunteer,
2 or quality review team member is liable for good faith performance of
3 responsibilities under this chapter.

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

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

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

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

30 NEW SECTION. **Sec. 20.** (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 care, taking
33 into account the transition period from the current system of ombudsman
34 programs and quality review teams within the regional support networks
35 and state hospitals.

36 (2) The legislature intends that federal medicaid requirements be
37 met.

1 (3) The legislature intends that the implementation and operation
2 of the state mental health ombudsman program shall have no additional
3 fiscal impact for the first two years of the program, and that:

4 (a) The department of community, trade, and economic development
5 shall expend no more general fund-state dollars than the general fund-
6 state amount annually expended by the department of social and health
7 services, and its contractors and subcontractors, for mental health
8 ombudsman and quality review team services, and related administrative
9 costs, such as training, staff support, monitoring, and oversight.

10 (b) Costs and expenses, as referenced in this section, must include
11 any and all general fund-state amounts associated with the
12 implementation and operation of the state mental health ombudsman
13 program by the department of community, trade, and economic
14 development, the office of mental health ombudsman, and its contractors
15 or subcontractors. Any general fund-state costs incurred in the
16 planning and implementation of the state mental health ombudsman
17 program while services are still being provided within the regional
18 support networks and state hospitals must be made up out of the next
19 fiscal year's total amount of the interagency agreement between the
20 department of community, trade, and economic development and the
21 department of social and health services, for contracted services and
22 related administrative costs.

23 (c) Nothing in this section may be construed to prevent the
24 solicitation and use of private funds by the department of community,
25 trade, and economic development or the office of mental health
26 ombudsman. Any funds received from private sources may be expended in
27 excess of the limitations imposed in this section.

28 NEW SECTION. **Sec. 21.** If any provision of this act or its
29 application to any person or circumstance is held invalid, the
30 remainder of the act or the application of the provision to other
31 persons or circumstances is not affected.

32 NEW SECTION. **Sec. 22.** Sections 8 through 21 and 23 of this act
33 constitute a new chapter in Title 71 RCW.

34 NEW SECTION. **Sec. 23.** Sections 8 through 21 of this act take
35 effect July 1, 2002.

1 NEW SECTION. **Sec. 24.** Sections 1 through 7 of this act are
2 necessary for the immediate preservation of the public peace, health,
3 or safety, or support of the state government and its existing public
4 institutions, and take effect immediately."

5 **SHB 1650** - S AMD TO HSC COMM AMD (S-2448.1/01) AMD 269
6 By Senator Kastama

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8 On page 9, line 9 of the title amendment, after "insert" strike the
9 remainder of the title amendment and insert "amending RCW 71.24.015 and
10 71.24.035; adding a new chapter to Title 71 RCW; creating new sections;
11 providing an effective date; and declaring an emergency."

EFFECT: Adds the text of ESSB 5522 "creating a mental health
ombudsman," with one change from the version that passed the Senate, to
emphasize that the planning and operations of the new mental health
ombudsman program are to be done within existing state funding and have
no state fiscal impact. Private funds may be solicited and used.

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