

By: Noble

H.B. No. 3462

A BILL TO BE ENTITLED

AN ACT

relating to the consolidation of ombudsman programs administered by the Health and Human Services Commission.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The heading to Subchapter Y, Chapter 531, Government Code, is amended to read as follows:

SUBCHAPTER Y. COMMISSION OMBUDSMAN PROGRAMS [~~FOR THE DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES~~]

SECTION 2. Section 531.991, Government Code, is amended by amending Subdivision (2) and adding Subdivisions (3), (4) and (5) to read as follows:

(1) "Department" means the Department of Family and Protective Services.

(2) "Ombudsman" means the individual appointed as the ombudsman for an ombudsman program [~~the Department of Family and Protective Services~~].

(3) "Ombudsman program" means an ombudsman program administered by the commission under this subchapter.

(4) "Commission" means the Health and Human Services Commission.

(5) "Commissioner" means the executive commissioner of the Health and Human Services Commission.

SECTION 3. Subchapter Y, Chapter 531, Government Code, is amended by adding Section 531.9912 to read as follows:

1 Sec. 531.9912. ESTABLISHMENT OF OMBUDSMAN PROGRAMS. The
2 executive commissioner shall establish the following ombudsman
3 programs:

4 (1) the health and human services office of the
5 ombudsman in accordance with Section 531.9915;

6 (2) the ombudsman for children and youth in foster
7 care in accordance with Section 531.9931;

8 (3) the ombudsman for managed care assistance in
9 accordance with Section 531.9932;

10 (4) the ombudsman for behavioral health access to care
11 in accordance with Section 531.9933; and

12 (5) the ombudsman for individuals with an intellectual
13 or developmental disability in accordance with Section 531.9934.

14 SECTION 4. Section 531.0171, Government Code, is
15 transferred to Subchapter Y, Chapter 531, Government Code, and
16 redesignated as Section 531.9915, Government Code, to read as
17 follows:

18 Sec. 531.9915 [~~531.0171~~]. OFFICE OF OMBUDSMAN. (a) The
19 executive commissioner shall establish the commission's office of
20 the ombudsman with authority and responsibility over the health and
21 human services system in performing the following functions:

22 (1) providing dispute resolution services for the
23 health and human services system;

24 (2) performing consumer protection and advocacy
25 functions related to health and human services, including assisting
26 a consumer or other interested person with:

27 (A) raising a matter within the health and human

1 services system that the person feels is being ignored; and

2 (B) obtaining information regarding a filed
3 complaint; and

4 (3) collecting inquiry and complaint data related to
5 the health and human services system.

6 (b) The office of the ombudsman does not have the authority
7 to provide a separate process for resolving complaints or appeals.

8 (c) The executive commissioner shall develop a standard
9 process for tracking and reporting received inquiries and
10 complaints within the health and human services system. The process
11 must provide for the centralized tracking of inquiries and
12 complaints submitted to field, regional, or other local health and
13 human services system offices.

14 (d) Using the process developed under Subsection (c), the
15 office of the ombudsman shall collect inquiry and complaint data
16 from all offices, agencies, divisions, and other entities within
17 the health and human services system. To assist with the collection
18 of data under this subsection, the office may access any system or
19 process for recording inquiries and complaints used or maintained
20 within the health and human services system.

21 SECTION 5. Section 531.992, Government Code, is amended to
22 read as follows:

23 Sec. 531.992. APPOINTMENT OF OMBUDSMAN [~~FOR THE DEPARTMENT~~
24 ~~OF FAMILY AND PROTECTIVE SERVICES~~]. [(a)] The executive
25 commissioner [~~governor~~] shall appoint an ombudsman for each
26 ombudsman program under Section 531.9912 [~~the Department of Family~~
27 ~~and Protective Services~~] to serve at the will of the executive

1 commissioner [~~governor~~].

2 [~~(b) The ombudsman is administratively attached to the~~
3 ~~office of the ombudsman for the commission.~~

4 [~~(c) Subject to the appropriation of money for that purpose,~~
5 ~~the ombudsman may employ staff to assist the ombudsman in~~
6 ~~performing the ombudsman's duties under this subchapter.~~

7 [~~(d) The ombudsman may not use the name or any logo of the~~
8 ~~department on any forms or other materials produced and distributed~~
9 ~~by the ombudsman.]~~

10 SECTION 6. Section 531.9921, Government Code, is amended to
11 read as follows:

12 Sec. 531.9921. CONFLICT OF INTEREST. A person may not serve
13 as ombudsman in an ombudsman program under Section 531.9912 if the
14 person or the person's spouse:

15 (1) is employed by or participates in the management
16 of a business entity or other organization receiving funds from the
17 commission [~~department~~];

18 (2) owns or controls, directly or indirectly, any
19 interest in a business entity or other organization receiving funds
20 from the commission [~~department~~]; or

21 (3) is required to register as a lobbyist under
22 Chapter 305 because of the person's activities for compensation on
23 behalf of a profession related to the operation of the commission
24 [~~department~~].

25 SECTION 7. Section 531.993, Government Code, is amended to
26 read as follows:

27 Sec. 531.993. DUTIES OF OMBUDSMAN. (a) An [~~The~~] ombudsman

1 serves as an [~~a~~] impartial [~~neutral~~] party in assisting:

2 (1) children and youth in the conservatorship of the
3 department with complaints regarding issues within the authority of
4 the department or commission [~~another health and human services~~
5 ~~agency~~]; and

6 (2) persons with a complaint against the commission
7 [~~department~~] regarding case-specific activities of the programs
8 within the health and human services system of the commission
9 [~~department, including adult protective services, child protective~~
10 ~~services, child-care licensing, and statewide intake~~].

11 (b) An [~~The~~] ombudsman shall:

12 (1) develop and implement statewide procedures to:

13 (A) receive complaints from:

14 (i) children and youth in the
15 conservatorship of the department; and

16 (ii) other persons with a complaint against
17 the programs within the health and human services system of the
18 commission [~~department~~];

19 (B) review complaints filed with an [~~the~~]
20 ombudsman and take appropriate action, including:

21 (i) conducting an investigation into
22 individual complaints that allege violations of department or
23 [~~agency~~] commission procedures, policies, [~~procedure or policy~~] or
24 other violations; and

25 (ii) referring to the commission
26 [~~department or agency management~~] for resolution, any trends or
27 systemic issues identified in complaints;

1 (C) provide any necessary assistance to:

2 (i) children and youth in the

3 conservatorship of the department in making complaints and

4 reporting allegations of abuse, ~~or~~ neglect, or exploitation in

5 accordance with Chapter 48, Human Resources Code [~~to the~~

6 ~~department~~]; and

7 (ii) other persons in making complaints and

8 reporting allegations of abuse, neglect, or exploitation against

9 the programs within the health and human services system of the

10 commission in accordance with Chapter 48, Human Resources Code;

11 (D) maintain the confidentiality of:

12 (i) an [~~the~~] ombudsman's communications and

13 records;

14 (ii) records of another person that have

15 been provided to an [~~the~~] ombudsman; and

16 (iii) communications of another person with

17 an [~~the~~] ombudsman; and

18 (E) ensure that the [~~department and any~~] person

19 [~~or a child or youth in the conservatorship of the department~~] who

20 files a complaint with an [~~the~~] ombudsman is [~~are~~] informed of the

21 results of the ombudsman's investigation of the complaint,

22 including whether the ombudsman was able to substantiate the

23 [~~person's, child's, or youth's~~] complaint;

24 (2) collaborate with the commission [~~department~~] to

25 develop and implement an annual outreach plan to promote awareness

26 of [~~the~~] ombudsman programs among the public and stakeholders [~~7~~

27 ~~children and youth in the conservatorship of the department, family~~

1 ~~members and caretakers of those children, and facilities licensed~~
2 ~~by the department and~~] that includes:

3 (A) how an ombudsman [~~the office~~] may be
4 contacted;

5 (B) the purpose of an ombudsman [~~the office~~]; and

6 (C) the services an ombudsman [~~the office~~]
7 provides;

8 (3) issue and file with the commission [~~department and~~
9 ~~any applicable health and human services agency~~] a report that
10 contains an [~~the~~] ombudsman's final determination regarding a
11 complaint and any recommended corrective actions to be taken as a
12 result of the complaint;

13 (4) establish a secure form of communication with any
14 individual who files a complaint with an [~~the~~] ombudsman;

15 (5) collaborate with the commission [~~department~~] to
16 identify consequences for any retaliatory action related to a
17 complaint filed with an [~~the~~] ombudsman, in accordance with Section
18 531.997 [~~40.0041(g), Human Resources Code~~]; and

19 (6) monitor and evaluate [~~the department's~~] corrective
20 actions taken in response to a recommendation by an [~~the~~]
21 ombudsman.

22 (c) An [~~The~~] ombudsman's final determination in a report
23 described by Subsection (b)(3) must include a determination of
24 whether there was wrongdoing or negligence by the commission or
25 department or an agent of the commission or department and [~~or~~]
26 whether the complaint was frivolous or [~~and~~] without merit. If the
27 ombudsman determines there was wrongdoing or negligence, the

1 ombudsman shall recommend corrective actions to be taken by the
2 commission or department.

3 (c-1) The department and the commission shall provide
4 written notice to an ombudsman on adoption or rejection of the
5 ombudsman's recommended corrective action. A rejection of a
6 recommended corrective action shall include the reason for the
7 rejection.

8 (d) An [~~The~~] ombudsman may attend any judicial proceeding
9 related to a complaint filed with the ombudsman program [~~office~~].

10 SECTION 8. The heading to Section 531.9931, Government
11 Code, is amended to read as follows:

12 Sec. 531.9931. [~~DIVISION OF~~] OMBUDSMAN FOR CHILDREN AND
13 YOUTH IN FOSTER CARE.

14 SECTION 9. Section 531.9931, Government Code, is amended to
15 read as follows:

16 Sec. 531.9931. [~~DIVISION OF~~] OMBUDSMAN FOR CHILDREN AND
17 YOUTH IN FOSTER CARE. (a) The commission shall establish an
18 ombudsman program to provide support and information services to
19 children and youth in foster care.

20 (b) [(a)] An [~~The division of the~~] ombudsman appointed under
21 this section shall [~~for children and youth in foster care is created~~
22 ~~within the office of the ombudsman for the purpose of~~]:

23 (1) receive [~~receiving~~] complaints from children and
24 youth in the conservatorship of the department as provided under
25 Section 531.993(b)(1)(A)(i) [~~531.993(a)(1)~~];

26 (2) inform [~~informing~~] children and youth in the
27 conservatorship of the department who file a complaint under this

1 subchapter about the result of an [~~the~~] ombudsman's investigation
2 of the complaint, including whether the ombudsman was able to
3 substantiate the child's or youth's complaint; and

4 (3) collaborate [~~collaborating~~] with the department
5 to develop an outreach plan for children and youth in the
6 conservatorship of the department to promote awareness of the
7 ombudsman program.

8 [~~(b) If a child or youth in the conservatorship of the
9 department contacts the ombudsman by telephone call to report a
10 complaint under this subchapter, the call shall be transferred
11 directly to a person employed by the division of the ombudsman
12 created under this section.~~]

13 SECTION 10. Section 531.0213, Government Code, is
14 transferred to Subchapter Y, Chapter 531, Government Code,
15 redesignated as Section 531.9932, Government Code, and amended to
16 read as follows:

17 Sec. 531.9932 [~~531.0213~~]. OMBUDSMAN FOR MANAGED CARE
18 ASSISTANCE [~~SUPPORT SERVICES FOR MEDICAID RECIPIENTS~~]. (a) The
19 commission shall establish an ombudsman program to provide support
20 and information services to a person enrolled in or applying for
21 Medicaid coverage who experiences barriers to receiving health care
22 services.

23 (b) An [~~The~~] ombudsman appointed under this section
24 [~~commission~~] shall give emphasis to assisting a person with an
25 urgent or immediate medical or support need.

26 (b-1) The commission shall provide support and information
27 services required by this section through a network of entities

1 coordinated by the commission's [~~office of the~~] ombudsman program
2 [~~or other division of the commission designated by the executive~~
3 ~~commissioner~~] and composed of:

4 (1) the commission's [~~office of the~~] ombudsman program
5 or other division of the commission designated by the executive
6 commissioner to coordinate the network;

7 (2) the office of the state long-term care ombudsman
8 required under Subchapter F, Chapter 101A, Human Resources Code;

9 (3) the division within the commission responsible for
10 oversight of Medicaid managed care contracts;

11 (4) area agencies on aging;

12 (5) aging and disability resource centers established
13 under the Aging and Disability Resource Center initiative funded in
14 part by the federal Administration on Aging and the Centers for
15 Medicare and Medicaid Services; and

16 (6) any other entity the executive commissioner
17 determines appropriate [~~, including nonprofit organizations with~~
18 ~~which the commission contracts under Subsection (c)].~~

19 (c) [~~The commission may provide support and information~~
20 ~~services by contracting with nonprofit organizations that are not~~
21 ~~involved in providing health care, health insurance, or health~~
22 ~~benefits.~~

23 ~~(d)]~~ As a part of the support and information services
24 required by this section, the ombudsman [~~commission~~] shall:

25 (1) operate a statewide toll-free assistance
26 telephone number that includes relay services for persons with
27 speech or hearing disabilities and assistance for persons who speak

1 Spanish;

2 (2) intervene promptly with the state Medicaid office,
3 managed care organizations and providers, and any other appropriate
4 entity on behalf of a person who has an urgent need for medical
5 services;

6 (3) assist a person who is experiencing barriers in
7 the Medicaid application and enrollment process and refer the
8 person for further assistance if appropriate;

9 (4) educate persons so that they:

10 (A) understand the concept of managed care;

11 (B) understand their rights under Medicaid,
12 including grievance and appeal procedures; and

13 (C) are able to advocate for themselves;

14 (5) ~~[collect and maintain statistical information on a~~
15 ~~regional basis regarding calls received by the assistance lines and~~
16 ~~publish quarterly reports that:~~

17 ~~(A) list the number of calls received by region;~~

18 ~~(B) identify trends in delivery and access~~
19 ~~problems;~~

20 ~~(C) identify recurring barriers in the Medicaid~~
21 ~~system; and~~

22 ~~(D) indicate other problems identified with~~
23 ~~Medicaid managed care;]~~

24 ~~[(6)]~~ assist the state Medicaid office and managed care
25 organizations and providers in identifying and correcting
26 problems, including site visits to affected regions if necessary;

27 (6) ~~[(7)]~~ meet the needs of all current and future

1 Medicaid managed care recipients, including children receiving
2 dental benefits [~~and other recipients receiving benefits, under~~
3 ~~the:~~

4 ~~(A) STAR Medicaid managed care program;~~

5 ~~(B) STAR + PLUS Medicaid managed care program,~~
6 ~~including the Texas Dual Eligible Integrated Care Demonstration~~
7 ~~Project provided under that program;~~

8 ~~(C) STAR Kids managed care program established~~
9 ~~under Section 533.00253; and~~

10 ~~(D) STAR Health program];~~

11 (7) [~~(8)~~] incorporate support services for children
12 enrolled in the child health plan established under Chapter 62,
13 Health and Safety Code; and

14 (8) [~~(9)~~] ensure that staff providing support and
15 information services receives sufficient training, including
16 training in the Medicare program for the purpose of assisting
17 recipients who are dually eligible for Medicare and Medicaid, and
18 has sufficient authority to resolve barriers experienced by
19 recipients to health care and long-term services and supports.

20 (d) [~~(e)~~] The [~~commission's office of the~~] ombudsman's
21 [~~ombudsman~~] program [~~, or other division of the commission~~
22 ~~designated by the executive commissioner to coordinate the network~~
23 ~~of entities responsible for providing support and information~~
24 ~~services under this section,~~] must be sufficiently independent from
25 other aspects of Medicaid managed care to represent the best
26 interests of recipients in problem resolution.

27 SECTION 11. Section 531.02251, Government Code, is

1 transferred to Subchapter Y, Chapter 531, Government Code,
2 redesignated as Section 531.9933, Government Code, and amended to
3 read as follows:

4 Sec. 531.9933 [~~531.02251~~]. OMBUDSMAN FOR BEHAVIORAL HEALTH
5 ACCESS TO CARE. (a) The commission shall establish an ombudsman
6 program to provide support and information services to a person
7 enrolled in or applying for behavioral health programs. [~~In this~~
8 ~~section, "ombudsman" means the individual designated as the~~
9 ~~ombudsman for behavioral health access to care.]~~

10 (b) [~~The executive commissioner shall designate an~~
11 ~~ombudsman for behavioral health access to care.]~~

12 [~~(c) The ombudsman is administratively attached to the~~
13 ~~office of the ombudsman for the commission.]~~

14 [~~(d)~~] The commission may use an alternate title for the
15 ombudsman in consumer-facing materials if the commission
16 determines that an alternate title would be beneficial to consumer
17 understanding or access.

18 (c) [~~(e)~~] An [~~The~~] ombudsman serves as an [~~a~~] impartial
19 [~~neutral~~] party to help consumers, including consumers who are
20 uninsured or have public or private health benefit coverage, and
21 behavioral health care providers navigate and resolve issues
22 related to consumer access to behavioral health care, including
23 care for mental health conditions and substance use disorders.

24 (d) [~~(f)~~] An [~~The~~] ombudsman shall:

25 (1) interact with consumers and behavioral health care
26 providers with concerns or complaints to help the consumers and
27 providers resolve behavioral health care access issues;

1 (2) identify, track, and help report potential
2 violations of state or federal rules, regulations, or statutes
3 concerning the availability of, and terms and conditions of,
4 benefits for mental health conditions or substance use disorders,
5 including potential violations related to quantitative and
6 nonquantitative treatment limitations;

7 (3) report concerns, complaints, and potential
8 violations described by Subdivision (2) to the appropriate
9 regulatory or oversight agency;

10 (4) receive and report concerns and complaints
11 relating to inappropriate care or mental health commitment;

12 (5) provide appropriate information to help consumers
13 obtain behavioral health care;

14 (6) develop appropriate points of contact for
15 referrals to other state and federal agencies; and

16 (7) provide appropriate information to help consumers
17 or providers file appeals or complaints with the appropriate
18 entities, including insurers and other state and federal agencies.

19 [~~(g) Expired.~~]

20 (e) [~~(h)~~] The Texas Department of Insurance shall appoint a
21 liaison to an [~~the~~] ombudsman to receive reports of concerns,
22 complaints, and potential violations described by Subsection
23 (d) [~~(f)~~](2) from an [~~the~~] ombudsman, consumers, or behavioral
24 health care providers.

25 SECTION 12. Chapter 531, Subchapter Y, Government Code, is
26 amended by adding Section 531.9934 to read as follows:

27 Sec. 531.9934. OMBUDSMAN FOR INDIVIDUALS WITH AN

1 INTELLECTUAL OR DEVELOPMENTAL DISABILITY. The executive
2 commissioner shall appoint an ombudsman to assist a client, or a
3 person acting on behalf of a person with an intellectual disability
4 or a group of persons with an intellectual disability, with a
5 complaint or grievance regarding the infringement of the rights of
6 a person with an intellectual disability or the delivery of
7 intellectual disability services submitted under Section 592.039,
8 Health and Safety Code.

9 SECTION 13. Sections 531.994, Government Code, is amended
10 to read as follows:

11 Sec. 531.994. INVESTIGATION OF UNREPORTED COMPLAINTS. If,
12 during the investigation of a complaint, an [~~the~~] ombudsman
13 discovers unreported violations of the commission's [~~department's~~
14 ~~or a health and human services agency's~~] rules and policies, the
15 ombudsman shall open a new investigation for each unreported
16 violation.

17 SECTION 14. Section 531.995, Government Code, is amended to
18 read as follows:

19 Sec. 531.995. ACCESS TO INFORMATION. The commission
20 [~~department and each health and human services agency~~] shall
21 provide an [~~the~~] ombudsman access to [~~the department's or agency's~~]
22 records that relate to a complaint the ombudsman is reviewing or
23 investigating.

24 SECTION 15. Section 531.996, Government Code, is amended to
25 read as follows:

26 Sec. 531.996. COMMUNICATION AND CONFIDENTIALITY. (a) A
27 person may communicate with an [~~the~~] ombudsman relating to a

1 complaint by telephone, by mail, by electronic mail, or by any other
2 means the ombudsman determines to be feasible, secure, and
3 accessible [~~to children and youth~~].

4 (b) A communication with an [~~the~~] ombudsman is confidential
5 during an investigation or review of a complaint and remains
6 confidential after the complaint is resolved.

7 (c) The records of an [~~the~~] ombudsman are confidential and
8 must be maintained in a manner that preserves the confidentiality
9 of the records.

10 (d) The disclosure of confidential information to an [~~the~~]
11 ombudsman under this subchapter [~~section or Section 531.995~~] does
12 not constitute a waiver of confidentiality. Any information
13 disclosed to an [~~the~~] ombudsman [~~under this section or Section~~
14 531.995] remains confidential and privileged following disclosure.

15 (e) An [~~The~~] ombudsman is not prohibited from communicating
16 with the commission [~~department or another health and human~~
17 ~~services agency~~] regarding confidential information disclosed to
18 the ombudsman [~~by the department or agency~~].

19 (f) An [~~The~~] ombudsman may make reports relating to an
20 investigation of a complaint public after the complaint is
21 resolved. A report may not include information that identifies an
22 individual complainant, client, parent, or employee or any other
23 person involved in the complaint.

24 SECTION 16. Section 531.997, Government Code, is amended to
25 read as follows:

26 Sec. 531.997. RETALIATION PROHIBITED. The commission
27 [~~department or another health and human services agency~~] may not

1 retaliate against a commission [~~department~~] employee [~~, a child or~~
2 ~~youth in the conservatorship of the department,~~] or any [~~other~~]
3 person who in good faith makes a complaint to an [~~the~~] ombudsman or
4 against any person who cooperates with the ombudsman in an
5 investigation.

6 SECTION 17. Section 531.998, Government Code, is amended to
7 read as follows:

8 Sec. 531.998. REPORT. (a) Each [~~The~~] ombudsman shall
9 prepare an annual report that contains:

- 10 (1) a description of an [~~the~~] ombudsman's work;
- 11 (2) any change made by the commission or department
12 [~~or another health and human services agency~~] in response to a
13 substantiated complaint;
- 14 (3) a description of any trends in the nature of
15 complaints received by an [~~the~~] ombudsman or any systemic issues
16 identified in the investigation of individual complaints, any
17 recommendations related to addressing those trends and systemic
18 issues, and an evaluation of the feasibility of an [~~the~~]
19 ombudsman's recommendations;
- 20 (4) a glossary of terms used in the report;
- 21 (5) a description of the methods used to promote
22 awareness of an [~~the~~] ombudsman under this subchapter [~~Section~~
23 ~~531.993(b)~~] and an [the] ombudsman's promotion plan for the next
24 year; and
- 25 (6) any public feedback received by an [~~the~~] ombudsman
26 relating to the ombudsman's previous annual reports.

27 (b) Each [~~The~~] report must be submitted to the governor, the

1 lieutenant governor, each standing committee of the legislature
2 with jurisdiction over matters involving the commission
3 [~~department~~], each member of the legislature, and the executive
4 commissioner, [and the commissioner of the department] not later
5 than December 1 of each year. On receipt of the report, [~~the~~
6 ~~department and~~] the commission shall make the report publicly
7 available on [~~the department's and~~] the commission's Internet
8 websites.

9 SECTION 18. Section 592.039, Health and Safety Code, is
10 amended to read as follows:

11 Sec. 592.039. GRIEVANCES. A client, or a person acting on
12 behalf of a person with an intellectual disability or a group of
13 persons with an intellectual disability, has the right to submit
14 complaints or grievances regarding the infringement of the rights
15 of a person with an intellectual disability or the delivery of
16 intellectual disability services against a person, group of
17 persons, organization, or business to the HHSC Ombudsman for
18 Individuals with an Intellectual or Developmental Disability
19 [~~department's Office of Consumer Rights and Services for~~
20 ~~investigation and appropriate action~~].

21 SECTION 19. REPEALER. Section 531.9941, Government Code,
22 is repealed.

23 SECTION 20. If before implementing any provision of this
24 Act a state agency determines that a waiver or authorization from a
25 federal agency is necessary for implementation of that provision,
26 the agency affected by the provision shall request the waiver or
27 authorization and may delay implementing that provision until the

1 waiver or authorization is granted.

2 SECTION 21. This Act takes effect immediately if it
3 receives a vote of two-thirds of all the members elected to each
4 house, as provided by Section 39, Article III, Texas Constitution.
5 If this Act does not receive the vote necessary for immediate
6 effect, this Act takes effect September 1, 2023.