

## **BILL ANALYSIS**

Senate Research Center  
86R24279 SCL-F

C.S.S.B. 1101  
By: Kolkhorst  
Health & Human Services  
4/10/2019  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

S.B. 200, 84R, directed the consolidation of ombudsman offices administered by the Health and Human Services Commission (HHSC). S.B. 200, however, did not consolidate the various statutes that governed those offices and programs. This has resulted in conflicting statutory authority and procedures for the ombudsman programs administered by HHSC and can be confusing for the clients needing the assistance of an ombudsman.

S.B. 1101 would consolidate the following ombudsman statutes into one: HHSC Office of the Ombudsman, Ombudsman Managed Care Assistance Team, Ombudsman for Behavioral Health, and the Foster Care Ombudsman. (Original Author's/Sponsor's Statement of Intent)

C.S.S.B. 1101 amends current law relating to the consolidation of ombudsman programs administered by the Health and Human Services Commission.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends the heading to Subchapter Y, Chapter 531, Government Code, to read as follows:

#### **SUBCHAPTER Y. HEALTH AND HUMAN SERVICES OMBUDSMAN PROGRAMS**

SECTION 2. Amends Section 531.991, Government Code, to define "department" as the Department of Family and Protective Services (DFPS) and to define "complaint," "consumer," "ombudsman," "ombudsman program," "retaliation," and "substantiated complaint."

SECTION 3. Amends Subchapter Y, Chapter 531, Government Code, by adding Section 531.9912, as follows:

Sec. 531.9912. ESTABLISHMENT OF OMBUDSMAN PROGRAMS. Requires the executive commissioner of the Health and Human Services Commission (executive commissioner; HHSC) to establish certain ombudsman programs.

SECTION 4. Transfers Section 531.0171, Government Code, to Subchapter Y, Chapter 531, Government Code, redesignates it as Section 531.9915, Government Code, and amends that section as follows:

Sec. 531.9915. OFFICE OF OMBUDSMAN. (a) Requires the executive commissioner to establish HHSC's office of the ombudsman with authority and responsibility over the health and human services system in performing the following functions:

- (1) providing consumer dispute resolution services, rather than providing dispute resolution services, for the health and human services system;

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

(A) raising a matter within the health and human services system that the consumer, rather than the person, feels is being ignored; and

(B) makes no changes to this paragraph; and

(3) collecting consumer inquiry and complaint data, rather than collecting inquiry and complaint data, related to the health and human services system.

(b) Provides that HHSC's office of the ombudsman does not have the authority to process case actions or overturn a decision by DFPS or a program of the health and human services system, rather than does not have the authority to provide a separate process for resolving complaints or appeals.

(c) Requires the process for tracking and reporting received inquiries to provide for the centralized tracking of inquiries and complaints submitted to field, regional, or other local health and human services system offices, including vendors contracted to provide services on behalf of a program of the health and human services system.

(d) Requires the office of the ombudsman, using the process developed under Subsection (c), to collect inquiry and complaint data from all offices, agencies, divisions, and other entities within the health and human services system, including vendors contracted to provide services on behalf of a program of the health and human services system.

(e) Requires the office of the ombudsman to be sufficiently independent from programs of the health and human services system to perform the ombudsman's duties outlined in this subchapter (Ombudsman For the Department of Family and Protective Services).

SECTION 5. Amends Sections 531.992 and 531.993, Government Code, as follows:

Sec. 531.992. New heading: APPOINTMENT OF OMBUDSMAN. (a) Requires the executive commissioner to appoint an ombudsman for each ombudsman program to serve at the will of the executive commissioner, rather than requiring the governor to appoint an ombudsman for DFPS to serve at the will of the governor.

(b) Provides that the ombudsman programs are managed as part of, rather than that the ombudsman is administratively attached to, the office of the ombudsman for HHSC.

(c) Authorizes each ombudsman, subject to the appropriation of money for those purposes, rather than authorizing the ombudsman, subject to the appropriation of money for that purpose, to employ staff to assist the ombudsman in performing the ombudsman's duties under this subchapter.

Deletes Subsection (d), relating to prohibiting the ombudsman from using the name or logo of DFPS on certain materials.

Sec. 531.993. DUTIES OF OMBUDSMAN. (a) Provides that an ombudsman, rather than the ombudsman, serves as a neutral party in assisting:

(1) children and youth in the conservatorship of DFPS with complaints regarding issues within the authority of HHSC, DFPS, or a health and human services agency, rather than within the authority of DFPS or another health and human services agency; and

(2) consumers with a complaint against HHSC or a health and human services agency regarding case-specific activities of the programs of HHSC or the agency, rather than persons with a complaint against DFPS regarding case-specific activities of the programs of DFPS, including adult protective services, child protective services, child-care licensing, and statewide intake.

(b) Requires an ombudsman, as applicable, rather than the ombudsman, to:

(1) develop and implement statewide procedures to:

(A) receive complaints from:

(i) creates this subparagraph and Subparagraph (ii) from existing text and makes a nonsubstantive change; and

(ii) consumers with a complaint against HHSC or a health and human services agency, rather than other persons with a complaint against DFPS;

(B) review complaints filed with the ombudsman and take appropriate action, including conducting an investigation into individual complaints that allege violations of HHSC, DFPS, or health and human services agency procedure, policy, or other violations and including referring to HHSC, DFPS, or health and human services agency management for resolution any trends or systemic issues identified in complaints, rather than review complaints filed with the ombudsman and take appropriate action, including conducting an investigation into individual complaints that allege violations of DFPS or agency procedure, policy, or other violations and including referring to DFPS or agency management for resolution any trends or systemic issues identified in complaints;

(C) provide any necessary assistance to:

(i) creates this subparagraph from existing text and makes nonsubstantive changes; and

(ii) any consumer in making complaints to HHSC or a health and human services agency;

(D) makes no changes to this paragraph; and

(E) ensure that HHSC, DFPS, a health and human services agency, and any consumer who files a complaint with HHSC, including certain individuals, are informed of certain information relating to the complaint, including whether the ombudsman was able to substantiate the complaint, rather than ensure that DFPS and any person or a child or youth in the conservatorship of DFPS who files a complaint with the ombudsman are informed of certain information relating to the complaint, including whether the ombudsman was able to substantiate the person's, child's, or youth's complaint;

(2) collaborate with HHSC, DFPS, or a health and human services agency as applicable, to develop and implement an annual outreach plan to promote awareness of the ombudsman among the public, children and youth in the conservatorship of DFPS, and facilities licensed by HHSC and that includes certain information about the office, rather than collaborate with DFPS to develop and implement an annual outreach plan to promote awareness of the ombudsman among the public, children and youth in the conservatorship of DFPS, family members and caretakers of those children, and facilities licensed by DFPS and that includes certain information about the office.

(3) notify in writing HHSC, DFPS, and a health and human services agency, as applicable, of the ombudsman final determination regarding a complaint and any recommended corrective actions to be taken as a result of the complaint, rather than issue and file with DFPS and any applicable health and human services agency a report that contains the ombudsman final determination regarding a complaint and any recommended corrective actions to be taken as a result of the complaint;

(4) makes no changes to this subdivision;

(5) collaborate with HHSC, DFPS, and a health and human services agency, as applicable, to identify consequences for any retaliatory action related to a complaint filed with the ombudsman, in accordance with Section 531.997 (Retaliation Prohibited), rather than collaborate with DFPS to identify consequences for any retaliatory action related to a complaint filed with the ombudsman, in accordance with Section 40.0041(g) (relating to requiring DFPS and the ombudsman for children and youth in foster care to cooperate to create consequences for certain offenses of retaliation), Human Resources Code; and

(6) monitor and evaluate HHSC's, DFPS's, or a health and human services agency's corrective actions, rather than DFPS's corrective actions, taken in response to a recommendation by the ombudsman.

(c) Requires an ombudsman's notification described by Subsection (b)(3) to include a determination of whether the complaint is a substantiated complaint, rather than requiring the ombudsman's final determination in a report described by Subsection (b)(3) to include a determination of whether there was wrongdoing or negligence by DFPS or an agent of DFPS or whether the complaint was frivolous and without merit. Requires the ombudsman, if the ombudsman determines a complaint is a substantiated complaint, to recommend corrective actions to be taken by HHSC, DFPS, or a health and human services agency, rather than requiring the ombudsman, if the ombudsman determines there was wrongdoing or negligence, to recommend corrective actions to be taken by DFPS.

(d) Requires HHSC, DFPS, or a health and human services agency, as applicable, to provide written notice to an ombudsman on whether HHSC, DFPS, or the agency adopted or rejected the ombudsman's recommended corrective action. Requires HHSC, DFPS, or the agency, on rejection of the recommended corrective action, to include in the notice of the reason for the rejection. Deletes existing text authorizing the ombudsman to attend any judicial proceeding related to a complaint filed with the office of the ombudsman.

SECTION 6. Amends Section 531.9931, Government Code, as follows:

Sec. 531.9931. New heading: OMBUDSMAN FOR CHILDREN AND YOUTH IN FOSTER CARE. (a) Provides that the ombudsman for children and youth in foster care, rather than the division of the ombudsman for children and youth in foster care, is created within the office of the ombudsman for certain specified purposes.

(b) Requires a call made by a child or youth in the conservatorship of DFPS to an ombudsman by telephone call to report a complaint under this subchapter to be transferred directly to a person employed by the ombudsman created under this section, rather than requiring a call made by a child or youth in the conservatorship of DFPS to the ombudsman by telephone call to report a complaint under this subchapter to be transferred directly to a person employed by the division of the ombudsman created under this section.

(c) Requires the ombudsman for children and youth in foster care to promptly refer to DFPS for DFPS to address in accordance with Section 40.0041 (Complaint Process), Human Resources Code, each complaint received by the ombudsman regarding DFPS, other than those made by a child or youth in the conservatorship of DFPS.

(d) Requires the ombudsman for children and youth in foster care, not later than the fifth day of each month, to compile and provide to HHSC and DFPS, as applicable, a written report regarding the investigations the ombudsman compiled during the preceding months. Requires the report to include a summary of each complaint investigated, the ombudsman's final determination on the complaint, and any corrective action recommended by the ombudsman.

SECTION 7. Amends Subchapter Y, Chapter 531, Government Code, by adding Section 531.99315, as follows:

Sec. 531.99315. COMPLAINT PROCESS FOR FOSTER CHILDREN AND YOUTH SERVED BY SINGLE SOURCE CONTINUUM CONTRACTOR. (a) Defines "contractor" for purposes of this section.

(b) Authorizes a child or youth in the conservatorship of DFPS and served by the contractor to file a complaint directly with the ombudsman for children and youth in foster care and provides that the child is not required to file an initial complaint with the contractor.

(c) Authorizes the ombudsman for children and youth in foster care to access the internal records of a contractor that are relevant to a complaint filed under this section and not included in DFPS's automated case tracking and information management system.

(d) Requires the ombudsman for children and youth in foster care to provide written notice of the results of the investigation of a complaint filed under this section to the child or youth who filed the complaint, the child's or youth's contractor, and DFPS.

(e) Requires each contractor in this state to provide to the ombudsman for children and youth in foster care the contractor's contract information of the ombudsman to receive records and provide notice under this section and updates to the contract information as necessary.

(f) Prohibits a contractor from directly or indirectly using or causing to be used the term "ombudsman" to describe the contractor or the contractor's internal complaint process.

SECTION 8. Transfers Section 531.0213, Government Code, to Subchapter Y, Chapter 531, Government Code, redesignates it as Section 531.9932, and amends it as follows:

Sec. 531.9932. New heading: OMBUDSMAN FOR MANAGED CARE. (a) Requires HHSC to establish an ombudsman for managed care to provide support and information services to a consumer, rather than requiring HHSC to provide support and information

services to a person, enrolled in or applying for Medicaid coverage who experiences barriers to receiving health care services.

(b) Requires the ombudsman for managed care appointed under this section to give emphasis to assisting a consumer with an urgent or immediate medical or support need, rather than requiring HHSC to give emphasis to assisting a person with an urgent or immediate medical or support need.

(b-1) Requires HHSC to provide support and information services required by this section through a network of entities coordinated by the ombudsman for managed care, rather than coordinated by HHSC's office of the ombudsman or other division of HHSC designated by the executive commissioner, and composed of certain entities, including the ombudsman, rather than HHSC's office of the ombudsman or other division of HHSC designated by the executive commissioner to coordinate the network.

(c) Authorizes the ombudsman for managed care to provide support and information services by requesting HHSC to contract with nonprofit organizations that are not involved in providing health care, health insurance, or health benefits, rather than authorizing HHSC to provide support and information services by contracting with nonprofit organizations that are not involved in providing health care, health insurance, or health benefits.

(d) Requires the ombudsman for managed care, rather than HHSC, as a part of the support and information services required by this section, to perform certain duties. Makes conforming and nonsubstantive changes and deletes existing text including incorporating support services for children enrolled in the child health plan established under Chapter 62 (Child Health Plan For Certain Low-Income Children), Health and Safety Code, among such duties.

Deletes existing Subsection (e) relating to requiring HHSC's office of the ombudsman, or other division of HHSC designated by the executive commissioner to coordinate the network of entities responsible for providing support and information services under this section, to be sufficiently independent from other aspects of Medicaid managed care.

SECTION 9. Transfers Section 531.02251, Government Code, to Subchapter Y, Chapter 531, Government Code, redesignates it as Section 531.9933, Government Code, and amends it as follows:

Sec. 531.9933. OMBUDSMAN FOR BEHAVIORAL HEALTH ACCESS TO CARE.

(a) Deletes existing text for Subsections (a)-(d) relating to defining "ombudsman" for purposes of this section and certain provisions relating to the ombudsman for behavioral health access to care, redesignates existing Subsection (e) as this subsection, and specifies that the ombudsman referenced in this section is the ombudsman for behavioral health.

(b) Redesignates existing Subsection (f) as Subsection (b) and requires the ombudsman for behavioral health, rather than the ombudsman, to:

(1) interact with consumers and behavioral health care providers with concerns or complaints to help the consumers and providers resolve behavioral health care access issues, including:

(A) patients of state hospitals as defined by Section 552.0011 (Definitions), Health and Safety Code; and

(B) consumers seeking and receiving services through:

(i) a local behavioral health authority, as described by Section 533.0356 (Local Behavioral Health Authorities), Health and Safety Code; and

(ii) a local mental health authority, as described by Section 533.035 (Local Mental Health Authorities), Health and Safety Code;

(2)–(4) makes no changes to these subdivisions;

(5) provide appropriate information to help consumers obtain behavioral health care and understand their rights; and

(6)–(7) makes no changes to these subdivisions.

(c) and (d) Redesignates existing Subsections (g) and (h) as Subsections (c) and (d) and makes conforming changes throughout.

**SECTION 10.** Amends Subchapter Y, Chapter 531, Government Code, by adding Section 531.9934, Government Code, as follows:

**Sec. 531.9934. OMBUDSMAN FOR INDIVIDUALS WITH INTELLECTUAL OR DEVELOPMENTAL DISABILITIES.** (a) Defines "local intellectual and developmental disability authority" for purposes of this section.

(b) Provides that the ombudsman for individuals with intellectual or developmental disabilities serves as a neutral party to assist individuals with intellectual or developmental disabilities and the individuals' representatives and providers in navigating and resolving issues related to services for those individuals provided through certain programs and authorities.

(c) Requires the ombudsman for individuals with intellectual or developmental disabilities to perform certain enumerated duties.

**SECTION 11.** Amends Sections 531.994, 531.995, 531.996, 531.997, and 531.998, Government Code, as follows:

**Sec. 531.994. INVESTIGATION OF UNREPORTED COMPLAINTS.** Authorizes an ombudsman, if, during the investigation of a complaint an ombudsman discovers unreported violations of HHSC's, DFPS's, or a health and human services agency's rules and policies, to open a new investigation for each unreported violation, rather than requiring the ombudsman, if during the investigation of a complaint, the ombudsman discovers unreported violations of DFPS's or a health and human services agency's rules and policies, to open a new investigation for each unreported violation.

**Sec. 531.995. ACCESS TO INFORMATION.** Requires HHSC, DFPS, and each health and human services agency to provide an ombudsman access to HHSC's, DFPS's, or the agency's records and personnel that relate to a complaint the ombudsman is reviewing or investigating, rather than requiring DFPS and each health and human services agency to provide the ombudsman access to DFPS's or the agency's records that relate to a complaint the ombudsman is reviewing or investigating.

**Sec. 531.996. COMMUNICATION AND CONFIDENTIALITY.** (a) Authorizes a person to communicate with an ombudsman relating to a complaint by telephone, by mail, by electronic mail, or by any other means the ombudsman determines to be feasible, secure, and accessible, rather than authorizing a person to communicate with the ombudsman relating to a complaint by telephone, by mail, by electronic mail, or by any other means the ombudsman determines to be reasonable, secure, and accessible to children and youth.

(b), (c), and (d) Makes conforming changes to these subsections.

(e) Establishes that an ombudsman is not prohibited from communicating with HHSC, DFPS, or a health and human services agency regarding confidential information disclosed to the ombudsman by HHSC, DFPS, or the agency, rather than from communicating with DFPS or another health and human services agency regarding confidential information disclosed to the ombudsman by DFPS or the agency.

(f) Authorizes an ombudsman, rather than the ombudsman, to make reports relating to an investigation of a complaint public after the complaint is resolved. Prohibits a report from including information that identifies an individual consumer, rather than complainant, client, parent, or employee or other person involved in the complaint.

Sec. 531.997. RETALIATION PROHIBITED. Prohibits HHSC, DFPS, or a health and human services agency from retaliating against an HHSC, DFPS, or the agency employee, a child or youth in the conservatorship of DFPS, or any other consumer who in good faith makes a complaint to an ombudsman or against any person who cooperates with the ombudsman in an investigation, rather than prohibiting DFPS or another health and human services agency from retaliating against a DFPS employee, a child or youth in the conservatorship of DFPS, or any other person who in good faith makes a complaint to the ombudsman or against any person who cooperates with the ombudsman in an investigation

Sec. 531.998. REPORT. (a) Requires the health and human services office of the ombudsman, rather than the ombudsman, to prepare an annual report that contains:

(1) a description of the work of HHSC's ombudsman programs, rather than a description of the ombudsman's work;

(2) any change made by HHSC, DFPS, or a health and human services agency, rather than any change made by DFPS or another health and human services agency, in response to a substantiated complaint;

(3) makes a conforming change to this subdivision; and

(4)–(6) makes no changes to these subdivisions.

(b) Requires the report to be submitted to the governor, the lieutenant governor, each standing committee of the legislature with jurisdiction over matters involving HHSC, DFPS, and each health and human services agency, rather than involving DFPS, each member of the legislature, the executive commissioner, and the commissioner of DFPS not later than December 1 of each year. Requires HHSC, on receipt of the report, to make the report publicly available on HHSC's Internet website, as applicable, rather than requiring DFPS and HHSC, on receipt of the report, to make the report publicly available on DFPS's and HHSC's Internet websites.

SECTION 12. Repealer: Section 531.9921 (Conflict of Interest), Government Code.

Repealer: Section 531.9941 (Disputes Regarding Foster Children), Government Code.

SECTION 13. Requires a state agency, if necessary for implementation of a provision of this Act, to request a waiver or authorization from a federal agency, and authorizes a delay of implementation until such a waiver or authorization is granted.

SECTION 14. Effective date: upon passage or September 1, 2019.