By:  Kolkhorst S.B. No. 1101

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. HEALTH AND HUMAN SERVICES OMBUDSMAN PROGRAMS [~~FOR THE DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES~~]

SECTION 2.  Section 531.991, Government Code, is amended to read as follows:

Sec. 531.991.  DEFINITIONS. In this subchapter:

(1)  "Complaint" means any expression of dissatisfaction by a consumer about a program or service of the health and human services system or of the department.

(2)  "Consumer" means:

(A)  an applicant or client of a program of the health and human services system;

(B)  the applicant's or client's legally authorized representative;

(C)  a member of the public seeking information about a program of the health and human services system; or

(D)  a child or youth in the conservatorship of the department.

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

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

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

(6)  "Retaliation" means a harmful action taken because of, or substantially motivated by, reprisal or revenge in response to a legally protected activity, including making a good faith complaint.

(7)  "Substantiated complaint" means a complaint for which research clearly indicates:

(A)  the policy of a program of the health and human services system or the department was violated; or

(B)  the health and human services system's expectations were not met.

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

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

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

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

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

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

(5)  the ombudsman for individuals with intellectual or developmental disabilities in accordance with Section 531.9934.

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

Sec. 531.9915 [~~531.0171~~].  OFFICE OF OMBUDSMAN. (a)  The executive commissioner shall establish the commission'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 for the health and human services system;

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

(A)  raising a matter within the health and human services system that the consumer [~~person~~] feels is being ignored; and

(B)  obtaining information regarding a filed complaint; and

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

(b)  The office of the ombudsman does not have the authority to process case actions or overturn a decision by the department or a program of the health and human services system [~~provide a separate process for resolving complaints or appeals~~].

(c)  The executive commissioner shall develop a standard process for tracking and reporting received inquiries and complaints within the health and human services system.  The process must 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)  Using the process developed under Subsection (c), the office of the ombudsman shall 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. To assist with the collection of data under this subsection, the office may access any system or process for recording inquiries and complaints used or maintained within the health and human services system.

(e)  The office of the ombudsman must be sufficiently independent from programs of the health and human services system to perform the ombudsman's duties outlined in this subchapter.

SECTION 5.  Sections 531.992 and 531.993, Government Code, are amended to read as follows:

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

(b)  The ombudsman programs are managed as part of [~~is administratively attached to~~] the office of the ombudsman for the commission.

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

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

Sec. 531.993.  DUTIES OF OMBUDSMAN. (a)  An [~~The~~] ombudsman serves as a neutral party in assisting:

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

(2)  consumers [~~persons~~] with a complaint against the commission or a health and human services agency [~~department~~] regarding case-specific activities of the programs of the commission or agency [~~department, including adult protective services, child protective services, child-care licensing, and statewide intake~~].

(b)  An [~~The~~] ombudsman shall, as applicable:

(1)  develop and implement statewide procedures to:

(A)  receive complaints from:

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

(ii)  consumers [~~other persons~~] with a complaint against the commission or a health and human services agency [~~department~~];

(B)  review complaints filed with the ombudsman and take appropriate action, including:

(i)  conducting an investigation into individual complaints that allege violations of commission, department, or agency procedure or policy or other violations; and

(ii)  referring to commission, department, or agency management for resolution any trends or systemic issues identified in complaints;

(C)  provide any necessary assistance to:

(i)  children and youth in the conservatorship of the department in making complaints and reporting allegations of abuse or neglect to the department; and

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

(D)  maintain the confidentiality of:

(i)  the ombudsman's communications and records;

(ii)  records of another person that have been provided to the ombudsman; and

(iii)  communications of another person with the ombudsman; and

(E)  ensure that the commission, the department, a health and human services agency, and any consumer who files a complaint with the commission, including [~~person or~~] a child or youth in the conservatorship of the department who files a complaint with the ombudsman, are informed of the results of the ombudsman's investigation of the complaint, including whether the ombudsman was able to substantiate the [~~person's, child's, or youth's~~] complaint;

(2)  collaborate with the commission, the department, 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 the department, [~~family members and caretakers of those children,~~] and facilities licensed by the commission [~~department~~] and that includes:

(A)  how the office may be contacted;

(B)  the purpose of the office; and

(C)  the services the office provides;

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

(4)  establish a secure form of communication with any individual who files a complaint with the ombudsman;

(5)  collaborate with the commission, the department, 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 [~~40.0041(g), Human Resources Code~~]; and

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

(c)  An [~~The~~] ombudsman's notification [~~final determination in a report~~] described by Subsection (b)(3) must include a determination of whether the complaint is a substantiated complaint [~~there was wrongdoing or negligence by the department or an agent of the department or whether the complaint was frivolous and without merit~~]. If the ombudsman determines a complaint is a substantiated complaint [~~there was wrongdoing or negligence~~], the ombudsman shall recommend corrective actions to be taken by the commission, the department, or a health and human services agency.

(d)  The commission, the department, or a health and human services agency, as applicable, shall provide written notice to an ombudsman on whether the commission, department, or agency adopted or rejected the ombudsman's recommended corrective action. On rejection of the recommended corrective action, the commission, department, or health and human services agency shall include in the notice the reason for the rejection [~~The ombudsman may attend any judicial proceeding related to a complaint filed with the office~~].

SECTION 6.  Section 531.9931, Government Code, is amended to read as follows:

Sec. 531.9931.  [~~DIVISION OF~~] OMBUDSMAN FOR CHILDREN AND YOUTH IN FOSTER CARE. (a)  The [~~division of the~~] ombudsman for children and youth in foster care is created within the office of the ombudsman for the purpose of:

(1)  receiving complaints from children and youth in the conservatorship of the department as provided under Section 531.993(a)(1);

(2)  informing children and youth in the conservatorship of the department who file a complaint under this subchapter about the result of the ombudsman's investigation of the complaint, including whether the ombudsman was able to substantiate the child's or youth's complaint; and

(3)  collaborating with the department to develop an outreach plan for children and youth in the conservatorship of the department to promote awareness of the ombudsman.

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

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

(d)  Not later than the fifth day of each month, the ombudsman for children and youth in foster care shall compile and provide to the commission and the department, as applicable, a written report regarding the investigations the ombudsman compiled during the preceding month. The report must include:

(1)  a summary of each complaint investigated;

(2)  the ombudsman's final determination on the complaint; and

(3)  any corrective action recommended by the ombudsman.

SECTION 7.  Subchapter Y, Chapter 531, Government Code, is amended by adding Section 531.99315 to read as follows:

Sec. 531.99315.  COMPLAINT PROCESS FOR FOSTER CHILDREN AND YOUTH SERVED BY SINGLE SOURCE CONTINUUM CONTRACTOR. (a)  In this section, "contractor" means a single source continuum contractor in this state providing services identified under Subchapter B-1, Chapter 264, Family Code.

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

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

(d)  The ombudsman for children and youth in foster care shall provide written notice of the results of the investigation of a complaint filed under this section to:

(1)  the child or youth who filed the complaint;

(2)  the child's or youth's contractor; and

(3)  the department.

(e)  Each contractor in this state shall provide to the ombudsman for children and youth in foster care:

(1)  the contractor's contact information for the ombudsman to receive records and provide notice under this section; and

(2)  updates to the contact information as necessary.

(f)  A contractor may not directly or indirectly use or cause to be used the term "ombudsman" to describe the contractor or the contractor's internal complaint process.

SECTION 8.  Section 531.0213, Government Code, is transferred to Subchapter Y, Chapter 531, Government Code, redesignated as Section 531.9932, Government Code, and amended to read as follows:

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

(b)  The ombudsman for managed care [~~commission~~] shall give emphasis to assisting a consumer [~~person~~] with an urgent or immediate medical or support need.

(b-1)  The commission shall provide support and information services required by this section through a network of entities coordinated by the [~~commission's office of the~~] ombudsman for managed care [~~or other division of the commission designated by the executive commissioner~~] and composed of:

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

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

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

(4)  area agencies on aging;

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

(6)  any other entity the executive commissioner determines appropriate, including nonprofit organizations with which the commission contracts under Subsection (c).

(c)  The ombudsman for managed care [~~commission~~] may provide support and information services by requesting the commission to contract [~~contracting~~] with nonprofit organizations that are not involved in providing health care, health insurance, or health benefits.

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

(1)  operate a statewide toll-free assistance telephone number that includes relay services for consumers [~~persons~~] with speech or hearing disabilities and assistance for consumers [~~persons~~] who speak Spanish;

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

(3)  assist a consumer [~~person~~] who is experiencing barriers in the Medicaid application and enrollment process and refer the consumer [~~person~~] for further assistance if appropriate;

(4)  educate consumers [~~persons~~] so that they:

(A)  understand the concept of managed care;

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

(C)  are able to advocate for themselves;

(5)  collect and maintain statistical information on a regional basis regarding cases [~~calls~~] received by the ombudsman [~~assistance lines~~] and publish quarterly reports on the commission's Internet website that:

(A)  list the number of cases [~~calls~~] received by region;

(B)  identify trends in delivery and access problems;

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

(D)  indicate other problems identified with Medicaid managed care;

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

(7)  meet the needs of all current and future Medicaid managed care recipients, including children receiving dental benefits and other recipients receiving benefits, under the:

(A)  STAR Medicaid managed care program;

(B)  STAR + PLUS Medicaid managed care program, including the Texas Dual Eligibles Integrated Care Demonstration Project provided under that program;

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

(D)  STAR Health program; and

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

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

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

SECTION 9.  Section 531.02251, Government Code, is transferred to Subchapter Y, Chapter 531, Government Code, redesignated as Section 531.9933, Government Code, and amended to read as follows:

Sec. 531.9933 [~~531.02251~~].  OMBUDSMAN FOR BEHAVIORAL HEALTH ACCESS TO CARE. (a)  [~~In this section, "ombudsman" means the individual designated as the ombudsman for behavioral health access to care.~~

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

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

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

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

(b) [~~(f)~~]  The ombudsman for behavioral health shall:

(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, Health and Safety Code; and

(B)  consumers seeking and receiving services through:

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

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

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

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

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

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

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

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

(c) [~~(g)~~]  The ombudsman for behavioral health shall participate in the mental health condition and substance use disorder parity work group established under Section 531.02252 and provide summary reports of concerns, complaints, and potential violations described by Subsection (b)(2) [~~(f)(2)~~] to the work group. This subsection expires September 1, 2021.

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

SECTION 10.  Subchapter Y, Chapter 531, Government Code, is amended by adding Section 531.9934 to read as follows:

Sec. 531.9934.  OMBUDSMAN FOR INDIVIDUALS WITH INTELLECTUAL OR DEVELOPMENTAL DISABILITIES. (a)  In this section, "local intellectual and developmental disability authority" has the meaning assigned by Section 531.002, Health and Safety Code.

(b)  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:

(1)  the home and community-based services and Texas home living Medicaid waiver programs; and

(2)  local intellectual and developmental disability authorities.

(c)  The ombudsman for individuals with intellectual or developmental disabilities shall:

(1)  interact with individuals with intellectual or developmental disabilities and the individuals' representatives and providers with concerns or complaints to assist the individuals, representatives, providers, and local intellectual and developmental disability authorities in resolving those issues;

(2)  identify, track, and assist with reporting potential violations of state or federal rules, regulations, or statutes concerning the rights of individuals with intellectual or developmental disabilities and services provided through:

(A)  the home and community-based services and Texas home living Medicaid waiver programs; and

(B)  local intellectual and developmental disability authorities;

(3)  provide appropriate information to assist individuals with intellectual or developmental disabilities in obtaining services and understanding their rights;

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

(5)  provide appropriate information to assist individuals with intellectual or developmental disabilities and the individuals' representatives and providers in filing appeals or complaints with the appropriate entities.

SECTION 11.  Sections 531.994, 531.995, 531.996, 531.997, and 531.998, Government Code, are amended to read as follows:

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

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

Sec. 531.996.  COMMUNICATION AND CONFIDENTIALITY. (a)  A person may communicate with an [~~the~~] 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 [~~to children and youth~~].

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

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

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

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

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

Sec. 531.997.  RETALIATION PROHIBITED. The commission, the department, or a [~~another~~] health and human services agency may not retaliate against a commission, department, or agency employee, a child or youth in the conservatorship of the department, or any other consumer [~~person~~] who in good faith makes a complaint to an [~~the~~] ombudsman or against any person who cooperates with the ombudsman in an investigation.

Sec. 531.998.  REPORT. (a)  The health and human services office of the ombudsman shall prepare an annual report that contains:

(1)  a description of the [~~ombudsman's~~] work of the commission's ombudsman programs;

(2)  any change made by the commission, the department, or a [~~another~~] health and human services agency in response to a substantiated complaint;

(3)  a description of any trends in the nature of complaints received by an [~~the~~] ombudsman, any recommendations related to addressing those trends, and an evaluation of the feasibility of the ombudsman's recommendations;

(4)  a glossary of terms used in the report;

(5)  a description of the methods used to promote awareness of the ombudsman under Section 531.993(b) and the ombudsman's promotion plan for the next year; and

(6)  any public feedback received by the ombudsman relating to the ombudsman's previous annual reports.

(b)  The report must be submitted to the governor, the lieutenant governor, each standing committee of the legislature with jurisdiction over matters involving the commission, the department, and each health and human services agency, each member of the legislature, the executive commissioner, and the commissioner of the department not later than December 1 of each year. On receipt of the report, [~~the department and~~] the commission shall make the report publicly available on [~~the department's and~~] the commission's Internet website [~~websites~~].

SECTION 12.  Sections 531.9921 and 531.9941, Government Code, are repealed.

SECTION 13.  If before implementing any provision of this Act a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

SECTION 14.  This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2019.