86R11449 SCL-F

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. 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 Subdivision (3) to read as follows:

(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.

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 assistance in accordance with Section 531.9932; and

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

SECTION 4.  Section 531.0171, Government Code, is transferred to Subchapter Y, Chapter 531, Government Code, and redesignated as Section 531.9915, Government Code, 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 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 person feels is being ignored; and

(B)  obtaining information regarding a filed complaint; and

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

(b)  The office of the ombudsman does not have the authority to 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.

(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.  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.

SECTION 5.  Sections 531.992, 531.9921, 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 [~~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)  An [~~The~~] ombudsman may not use the name or any logo of the commission [~~department~~] on any forms or other materials produced and distributed by the ombudsman.

Sec. 531.9921.  CONFLICT OF INTEREST. A person may not serve as ombudsman in an ombudsman program if the person or the person's spouse:

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

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

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

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 or department, as applicable [~~or another health and human services agency~~]; and

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

(b)  An [~~The~~] ombudsman shall:

(1)  develop and implement statewide procedures to:

(A)  receive complaints from:

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

(ii)  other persons with a complaint against the commission or 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 or department [~~or agency~~] procedure or policy or other violations; and

(ii)  referring to commission or 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 other person in making complaints to the commission;

(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, department, and any person who files a complaint with the commission or department, including [~~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 or department, 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)  issue and file with the commission or department, as applicable, [~~and any applicable health and human services agency~~] 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 or department, 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 or department's corrective actions taken in response to a recommendation by the ombudsman.

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

(c-1)  The department and the commission's child care licensing division shall provide written notice to the ombudsman on whether the department or child care licensing division adopted or rejected the ombudsman's recommended corrective action. If the department or child care licensing division rejects a recommended corrective action, the department or division shall include in the notice the reason for the rejection.

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

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

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

SECTION 7.  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 ASSISTANCE [~~SUPPORT SERVICES FOR MEDICAID RECIPIENTS~~]. (a) The commission shall establish an ombudsman program 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)  The ombudsman appointed under this section [~~commission~~] shall give emphasis to assisting a 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 [~~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 [~~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 [~~commission~~] shall:

(1)  operate a statewide toll-free assistance telephone number that includes relay services for persons with speech or hearing disabilities and assistance for 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 person who has an urgent need for medical services;

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

(4)  educate 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 calls received by the assistance lines and publish quarterly reports that:

(A)  list the number of 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;

(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 8.  Section 531.02251, Government Code, is transferred to Subchapter Y, Chapter 531, Government Code, and redesignated as Section 531.9933, Government Code, 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 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.

(f)  The ombudsman 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;

(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;

(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.

(g)  The ombudsman 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 (f)(2) to the work group.  This subsection expires September 1, 2021.

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

SECTION 9.  Sections 531.994 and 531.9941, 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 or department's [~~or a health and human services agency's~~] rules and policies, the ombudsman shall open a new investigation for each unreported violation.

Sec. 531.9941.  DISPUTES REGARDING FOSTER CHILDREN. (a) A child-placing agency responsible for a foster child may refer a dispute regarding the child's placement or the permanency plan for the child to the ombudsman for children and youth in foster care by filing a complaint with the ombudsman.

(b)  The complaint filed with the ombudsman for children and youth in foster care must include a clear explanation of the dispute and the requested remedy.

(c)  The ombudsman for children and youth in foster care shall notify the court with jurisdiction over the child's case of any investigation of a complaint filed under this subchapter related to foster care.

SECTION 10.  Sections 531.995, 531.996, 531.997, and 531.998, Government Code, are amended to read as follows:

Sec. 531.995.  ACCESS TO INFORMATION. The commission or department, as applicable, [~~and each health and human services agency~~] shall provide an [~~the~~] ombudsman access to the commission's or department's [~~or agency's~~] records 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 and other persons.

(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 or department [~~or another health and human services agency~~] regarding confidential information disclosed to the ombudsman by the commission or 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 complainant, client, parent, or employee or any other person involved in the complaint.

Sec. 531.997.  RETALIATION PROHIBITED. The commission or department [~~or another health and human services agency~~] may not retaliate against a commission or department employee, a child or youth in the conservatorship of the department, or any other 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) Each [~~The~~] ombudsman shall prepare an annual report that contains:

(1)  a description of the ombudsman's work;

(2)  any change made by the commission or department [~~or 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 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)  Each [~~The~~] report must be submitted to the governor, the lieutenant governor, each standing committee of the legislature with jurisdiction over matters involving the commission or department, as applicable, 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 websites, as applicable.

SECTION 11.  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 12.  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.