

By: Kolkhorst

S.B. No. 1101

A BILL TO BE ENTITLED

1 AN ACT

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

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

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

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

9 SECTION 2. Section 531.991, Government Code, is amended by  
10 amending Subdivision (2) and adding Subdivision (3) to read as  
11 follows:

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

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

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

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

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

24 (2) the ombudsman for children and youth in foster

1 care in accordance with Section 531.9931;

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

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

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

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

14 (1) providing dispute resolution services for the  
15 health and human services system;

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

19 (A) raising a matter within the health and human  
20 services system that the person feels is being ignored; and

21 (B) obtaining information regarding a filed  
22 complaint; and

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

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

27 (c) The executive commissioner shall develop a standard

1 process for tracking and reporting received inquiries and  
2 complaints within the health and human services system. The  
3 process must provide for the centralized tracking of inquiries and  
4 complaints submitted to field, regional, or other local health and  
5 human services system offices.

6 (d) Using the process developed under Subsection (c), the  
7 office of the ombudsman shall collect inquiry and complaint data  
8 from all offices, agencies, divisions, and other entities within  
9 the health and human services system. To assist with the  
10 collection of data under this subsection, the office may access any  
11 system or process for recording inquiries and complaints used or  
12 maintained within the health and human services system.

13 SECTION 5. Sections [531.992](#), [531.9921](#), and [531.993](#),  
14 Government Code, are amended to read as follows:

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

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

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

26 (d) An [~~The~~] ombudsman may not use the name or any logo of  
27 the commission [~~department~~] on any forms or other materials

1 produced and distributed by the ombudsman.

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

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

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

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

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

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

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

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

27 (1) develop and implement statewide procedures to:

1 (A) receive complaints from:  
2 (i) children and youth in the  
3 conservatorship of the department; and  
4 (ii) other persons with a complaint against  
5 the commission or department;

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

8 (i) conducting an investigation into  
9 individual complaints that allege violations of commission or  
10 department [~~or agency~~] procedure or policy or other violations; and

11 (ii) referring to commission or department  
12 [~~or agency~~] management for resolution any trends or systemic issues  
13 identified in complaints;

14 (C) provide any necessary assistance to:

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

18 (ii) any other person in making complaints  
19 to the commission;

20 (D) maintain the confidentiality of:

21 (i) the ombudsman's communications and  
22 records;

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

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

27 (E) ensure that the commission, department, and

1 any person who files a complaint with the commission or department,  
2 including ~~[or]~~ a child or youth in the conservatorship of the  
3 department who files a complaint with the ombudsman, are informed  
4 of the results of the ombudsman's investigation of the complaint,  
5 including whether the ombudsman was able to substantiate the  
6 person's, child's, or youth's complaint;

7 (2) collaborate with the commission or department, as  
8 applicable, to develop and implement an annual outreach plan to  
9 promote awareness of the ombudsman among the public, children and  
10 youth in the conservatorship of the department, family members and  
11 caretakers of those children, and facilities licensed by the  
12 commission ~~[department]~~ and that includes:

- 13 (A) how the office may be contacted;  
14 (B) the purpose of the office; and  
15 (C) the services the office provides;

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

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

23 (5) collaborate with the commission or department, as  
24 applicable, to identify consequences for any retaliatory action  
25 related to a complaint filed with the ombudsman, in accordance with  
26 Section 531.997 ~~[40.0041(g), Human Resources Code]~~; and

27 (6) monitor and evaluate the commission's or

1 department's corrective actions taken in response to a  
2 recommendation by the ombudsman.

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

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

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

20 SECTION 6. The heading to Section [531.9931](#), Government  
21 Code, is amended to read as follows:

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

24 SECTION 7. Section [531.0213](#), Government Code, is  
25 transferred to Subchapter Y, Chapter [531](#), Government Code,  
26 redesignated as Section 531.9932, Government Code, and amended to  
27 read as follows:

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

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

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

15               (1) the commission's office of the ombudsman or other  
16 division of the commission designated by the executive commissioner  
17 to coordinate the network;

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

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

22               (4) area agencies on aging;

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

27               (6) any other entity the executive commissioner



1 determines appropriate, including nonprofit organizations with  
2 which the commission contracts under Subsection (c).

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

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

9 (1) operate a statewide toll-free assistance  
10 telephone number that includes relay services for persons with  
11 speech or hearing disabilities and assistance for persons who speak  
12 Spanish;

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

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

20 (4) educate persons so that they:

21 (A) understand the concept of managed care;

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

24 (C) are able to advocate for themselves;

25 (5) collect and maintain statistical information on a  
26 regional basis regarding calls received by the assistance lines and  
27 publish quarterly reports that:

- 1 (A) list the number of calls received by region;
- 2 (B) identify trends in delivery and access  
3 problems;
- 4 (C) identify recurring barriers in the Medicaid  
5 system; and
- 6 (D) indicate other problems identified with  
7 Medicaid managed care;
- 8 (6) assist the state Medicaid office and managed care  
9 organizations and providers in identifying and correcting  
10 problems, including site visits to affected regions if necessary;
- 11 (7) meet the needs of all current and future Medicaid  
12 managed care recipients, including children receiving dental  
13 benefits and other recipients receiving benefits, under the:
- 14 (A) STAR Medicaid managed care program;
- 15 (B) STAR + PLUS Medicaid managed care program,  
16 including the Texas Dual Eligibles Integrated Care Demonstration  
17 Project provided under that program;
- 18 (C) STAR Kids managed care program established  
19 under Section [533.00253](#); and
- 20 (D) STAR Health program;
- 21 (8) incorporate support services for children  
22 enrolled in the child health plan established under Chapter [62](#),  
23 Health and Safety Code; and
- 24 (9) ensure that staff providing support and  
25 information services receives sufficient training, including  
26 training in the Medicare program for the purpose of assisting  
27 recipients who are dually eligible for Medicare and Medicaid, and

1 has sufficient authority to resolve barriers experienced by  
2 recipients to health care and long-term services and supports.

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

10 SECTION 8. Section [531.02251](#), Government Code, is  
11 transferred to Subchapter Y, Chapter [531](#), Government Code, and  
12 redesignated as Section [531.9933](#), Government Code, to read as  
13 follows:

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

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

20 (c) The ombudsman is administratively attached to the  
21 office of the ombudsman for the commission.

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

26 (e) The ombudsman serves as a neutral party to help  
27 consumers, including consumers who are uninsured or have public or

1 private health benefit coverage, and behavioral health care  
2 providers navigate and resolve issues related to consumer access to  
3 behavioral health care, including care for mental health conditions  
4 and substance use disorders.

5 (f) The ombudsman shall:

6 (1) interact with consumers and behavioral health care  
7 providers with concerns or complaints to help the consumers and  
8 providers resolve behavioral health care access issues;

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

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

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

20 (5) provide appropriate information to help consumers  
21 obtain behavioral health care;

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

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

27 (g) The ombudsman shall participate in the mental health

1 condition and substance use disorder parity work group established  
2 under Section 531.02252 and provide summary reports of concerns,  
3 complaints, and potential violations described by Subsection  
4 (f)(2) to the work group. This subsection expires September 1,  
5 2021.

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

11 SECTION 9. Sections 531.994 and 531.9941, Government Code,  
12 are amended to read as follows:

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

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

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

27 (c) The ombudsman for children and youth in foster care

1 shall notify the court with jurisdiction over the child's case of  
2 any investigation of a complaint filed under this subchapter  
3 related to foster care.

4 SECTION 10. Sections [531.995](#), [531.996](#), [531.997](#), and  
5 [531.998](#), Government Code, are amended to read as follows:

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

11 Sec. 531.996. COMMUNICATION AND CONFIDENTIALITY. (a) A  
12 person may communicate with an [~~the~~] ombudsman relating to a  
13 complaint by telephone, by mail, by electronic mail, or by any other  
14 means the ombudsman determines to be feasible, secure, and  
15 accessible to children and youth and other persons.

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

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

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

27 (e) An [~~The~~] ombudsman is not prohibited from communicating

1 with the commission or department [~~or another health and human~~  
2 ~~services agency~~] regarding confidential information disclosed to  
3 the ombudsman by the commission or department [~~or agency~~].

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

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

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

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

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

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

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

26 (5) a description of the methods used to promote  
27 awareness of the ombudsman under Section [531.993\(b\)](#) and the

1 ombudsman's promotion plan for the next year; and

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

4 (b) Each [~~The~~] report must be submitted to the governor, the  
5 lieutenant governor, each standing committee of the legislature  
6 with jurisdiction over matters involving the commission or  
7 department, as applicable, each member of the legislature, the  
8 executive commissioner, and the commissioner of the department not  
9 later than December 1 of each year. On receipt of the report, the  
10 department and the commission shall make the report publicly  
11 available on the department's and the commission's Internet  
12 websites, as applicable.

13 SECTION 11. If before implementing any provision of this  
14 Act a state agency determines that a waiver or authorization from a  
15 federal agency is necessary for implementation of that provision,  
16 the agency affected by the provision shall request the waiver or  
17 authorization and may delay implementing that provision until the  
18 waiver or authorization is granted.

19 SECTION 12. This Act takes effect immediately if it  
20 receives a vote of two-thirds of all the members elected to each  
21 house, as provided by Section 39, Article III, Texas Constitution.  
22 If this Act does not receive the vote necessary for immediate  
23 effect, this Act takes effect September 1, 2019.