

BILL ANALYSIS

Senate Research Center
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S.B. 1101
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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.

As proposed, 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. COMMISSION OMBUDSMAN PROGRAMS

SECTION 2. Amends Section 531.991, Government Code, by amending Subdivision (2) and adding Subdivision (3), as follows:

(2) Redefines "ombudsman" as the individual appointed as the ombudsman for an ombudsman program, rather than appointed as the ombudsman for the Department of Family and Protective Services (DFPS).

(3) Defines "ombudsman program" as an ombudsman program administered by the Health and Human Services Commission (HHSC) under this subchapter.

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 HHSC (executive commissioner) 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 makes no further changes to the section.

SECTION 5. Amends Sections 531.992, 531.9921, and 531.993, Government Code, as follows:

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

(b) Provides that the ombudsman programs are, rather than 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 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.

(d) Prohibits an ombudsman, rather than the ombudsman, from using the name or logo of HHSC, rather than DFPS, on any forms or other materials produced and distributed by the ombudsman.

Sec. 531.9921. CONFLICT OF INTEREST. Replaces references to DFPS with references to HHSC. Specifies that a person is prohibited from serving as ombudsman in an ombudsman program if the person or the person's spouse meets certain criteria.

Sec. 531.993. DUTIES OF OMBUDSMAN. (a) Provides that an ombudsman serves as a neutral party in assisting children and youth in the conservatorship of DFPS with complaints regarding issues within the authority of HHSC or DFPS, as applicable, and persons with a complaint against HHSC or DFPS regarding case-specific activities of the programs of HHSC or DFPS, including certain services, rather than provides that the ombudsman serves as a neutral party assisting children and youth in the conservatorship of DFPS with complaints regarding issues with the authority of DFPS or another health and human services agency, and person with a complaint against DFPS regarding case-specific activities of the programs of DFPS, including certain services.

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

(1) develop and implement statewide procedures to:

(A) creates subparagraphs from existing text and changes a reference from DFPS to HHSC or DFPS;

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

(C) provide any necessary assistance to:

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

(ii) any other person in making complaints to HHSC;

(D) makes no changes to this paragraph;

(E) ensures that HHSC, DFPS, and any person who files a complaint with HHSC or DFPS, rather than DFPS, are informed of certain information relating to the complaint;

(2) collaborate with HHSC or DFPS, 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, family members and caretakers of those children, and facilities licensed by HHSC and that includes, 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) issue and file with HHSC or DFPS, as applicable, rather than with DFPS 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) makes no changes to this subdivision;

(5) collaborate with HHSC or DFPS, 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 or DFPS's corrective actions, rather than DFPS's corrective actions, taken in response to a recommendation by the ombudsman.

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

(c-1) Requires DFPS and HHSC's child care licensing division to provide notice to the ombudsman on whether DFPS or the child care licensing division adopted or rejected the ombudsman's recommended corrective action. Requires DFPS or the child care licensing division, if DFPS or the division rejects a recommended corrective action, to include in the notice the reason for the rejection.

(d) Authorizes an ombudsman, rather than the ombudsman, to attend any judicial proceeding related to a complaint filed with the ombudsman's office.

SECTION 6. Amends the heading to Section 531.9931, Government Code, to read as follows:

Sec. 531.9931. OMBUDSMAN FOR CHILDREN AND YOUTH IN FOSTER CARE.

SECTION 7. 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 ASSISTANCE. (a) Requires HHSC to 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) Requires the ombudsman appointed under this section, rather than 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 HHSC's office of the ombudsman, 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.

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

(d) Requires the ombudsman, rather than HHSC, as a part of the support and information services required by this section, to perform certain duties.

(e) Requires HHSC's office of the ombudsman, rather than 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 to represent the best interests of recipients in problem resolution.

SECTION 8. Transfers Section 531.02251, Government Code, to Subchapter Y, Chapter 531, Government Code, and redesignates it as Section 531.9933, Government Code.

SECTION 9. Amends Sections 531.994 and 531.9941, Government Code, as follows:

Sec. 531.994. INVESTIGATION OF UNREPORTED COMPLAINTS. Requires an, rather than the, ombudsman, if, during the investigation of a complaint the ombudsman discovers unreported violations of HHSC's or DFPS's rules and policies, rather than unreported violations of DFPS's, DADS's, DSHS's, or DARS's rules and policies, to open a new investigation for each unreported violation.

Sec. 531.9941. DISPUTES REGARDING FOSTER CHILDREN. (a) Authorizes a child-placing agency responsible for a foster child to 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) Requires the complaint filed with the ombudsman for children and youth in foster care to include a clear explanation of the dispute and the requested remedy.

(c) Requires the ombudsman for children and youth in foster care to 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. Amends Sections 531.995, 531.996, 531.997, and 531.998, Government Code, as follows:

Sec. 531.995. ACCESS TO INFORMATION. Requires HHSC or DFPS, as applicable, rather than DFPS, DADS, DSHS, or DARS, to provide an ombudsman, rather than the ombudsman, access to HHSC's or DFPS's records, rather than DFPS's, DADS's, DSHS's,

or DARS'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, rather than 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), (c), and (d) Makes conforming changes to these subsections.

(e) Establishes that an ombudsman is not prohibited from communicating with HHSC or DFPS regarding confidential information disclosed to the ombudsman by HHSC or DFPS rather than communicating with DFPS, DADS, DSHS, or DARS regarding confidential information disclosed to the ombudsman by DFPS, DADS, DSHS, or DARS.

(f) Makes a conforming change to this subsection.

Sec. 531.997. RETALIATION PROHIBITED. Prohibits HHSC or DFPS from retaliating against an HHSC or DFPS employee, a child or youth in the conservatorship of DFPS, or any other person who in good faith makes a complaint to an ombudsman or against any person who cooperates with the ombudsman in an investigation, rather than prohibits DFPS, DADS, DSHS, or DARS from retaliating against an HHSC or 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 each ombudsman, rather than the ombudsman, to prepare an annual report that contains:

(1) makes no changes to this subdivision;

(2) any change made by HHSC or DFPS, rather than DFPS, DADS, DSHS, or DARS, in response to a substantiated complaint;

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

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

SECTION 11. 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 12. Effective date: upon passage or September 1, 2019.