

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 18-1222.01 Christy Chase x2008

HOUSE BILL 18-1357

HOUSE SPONSORSHIP

Michaelson Jenet,

SENATE SPONSORSHIP

Gardner and Williams A., Jahn

House Committees

Public Health Care & Human Services
Appropriations

Senate Committees

State, Veterans, & Military Affairs
Appropriations

SENATE
Amended 3rd Reading
May 4, 2018

A BILL FOR AN ACT

101 **CONCERNING ACCESS TO BEHAVIORAL HEALTH CARE SERVICES, AND,**
102 **IN CONNECTION THEREWITH, ESTABLISHING AN OMBUDSMAN**
103 **FOR BEHAVIORAL HEALTH ACCESS TO CARE TO ASSIST**
104 **CONSUMERS IN ACCESSING CARE, REQUIRING THE**
105 **COMMISSIONER OF INSURANCE TO REPORT ON COMPLIANCE**
106 **WITH MENTAL HEALTH PARITY LAWS, AND MAKING AN**
107 **APPROPRIATION.**

SENATE
Amended 2nd Reading
May 3, 2018

HOUSE
Amended 3rd Reading
May 1, 2018

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

HOUSE
Amended 2nd Reading
April 30, 2018

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

Section 1 of the bill establishes an office of the ombudsperson for behavioral health access to care as an independent office within the office of the executive director of the department of human services to assist Coloradans in accessing behavioral health care.

Section 3 requires health insurers and the commissioner of insurance to report on issues related to mental health parity requirements.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add** part 3 to article
3 80 of title 27 as follows:

4 PART 3

5 BEHAVIORAL HEALTH ACCESS TO

6 CARE OMBUDSMAN

7 **27-80-301. Short title.** THE SHORT TITLE OF THIS PART 3 IS THE
8 "BEHAVIORAL HEALTH ACCESS TO CARE OMBUDSMAN ACT".

9 **27-80-302. Definitions.** AS USED IN THIS PART 3, UNLESS THE
10 CONTEXT OTHERWISE REQUIRES:

11 (1) "HEALTH CARE PROVIDER" OR "PROVIDER" MEANS:

12 (a) A PROFESSIONAL PERSON, AS DEFINED IN SECTION 27-65-102
13 (17);

14 (b) A MENTAL HEALTH PROFESSIONAL LICENSED OR CERTIFIED
15 UNDER ARTICLE 43 OF TITLE (12);

16 (c) ANY OTHER HEALTH CARE PROVIDER REGULATED BY THE
17 STATE WHEN ENGAGED IN ASSISTING CONSUMERS WITH BEHAVIORAL
18 HEALTH CARE ACCESS AND COVERAGE ISSUES; OR

19 (d) A HEALTH CARE FACILITY LICENSED PURSUANT TO SECTION
20 25-1.5-103, WHEN THE FACILITY IS ENGAGED IN ASSISTING CONSUMERS
21 WITH BEHAVIORAL HEALTH CARE ACCESS AND COVERAGE ISSUES.

22 (2) "OFFICE" MEANS THE OFFICE OF THE OMBUDSMAN FOR

1 BEHAVIORAL HEALTH ACCESS TO CARE CREATED IN SECTION 27-80-303.

2 (3) "OMBUDSMAN" MEANS THE INDIVIDUAL DESIGNATED
3 PURSUANT TO SECTION 27-80-303 AS THE OMBUDSMAN FOR BEHAVIORAL
4 HEALTH ACCESS TO CARE.

5 **27-80-303. Office of ombudsman for behavioral health access**
6 **to care - creation - appointment of ombudsman - duties.** (1) (a) THERE
7 IS HEREBY CREATED IN THE OFFICE OF THE EXECUTIVE DIRECTOR THE
8 OFFICE OF THE OMBUDSMAN FOR BEHAVIORAL HEALTH ACCESS TO CARE
9 FOR THE PURPOSE OF ASSISTING COLORADANS IN ACCESSING BEHAVIORAL
10 HEALTH CARE.

11 (b) THE OFFICE AND THE DEPARTMENT SHALL OPERATE PURSUANT
12 TO A MEMORANDUM OF UNDERSTANDING BETWEEN THE TWO ENTITIES.
13 THE MEMORANDUM OF UNDERSTANDING CONTAINS, AT A MINIMUM:

14 (I) A REQUIREMENT THAT THE OFFICE HAS ITS OWN PERSONNEL
15 RULES;

16 (II) A REQUIREMENT THAT THE OMBUDSMAN HAS INDEPENDENT
17 HIRING AND TERMINATION AUTHORITY OVER OFFICE EMPLOYEES;

18 (III) A REQUIREMENT THAT THE OFFICE MUST FOLLOW STATE
19 FISCAL RULES;

20 (IV) A REQUIREMENT THAT THE OFFICE OF BEHAVIORAL HEALTH
21 SHALL OFFER THE OFFICE LIMITED SUPPORT WITH RESPECT TO:

22 (A) PERSONNEL MATTERS;

23 (B) RECRUITMENT;

24 (C) PAYROLL;

25 (D) BENEFITS;

26 (E) BUDGET SUBMISSION, AS NEEDED;

27 (F) ACCOUNTING; AND

1 (G) OFFICE SPACE, FACILITIES, AND TECHNICAL SUPPORT; AND
2 (V) ANY OTHER PROVISIONS REGARDING ADMINISTRATIVE
3 SUPPORT THAT WILL HELP MAINTAIN THE INDEPENDENCE OF THE OFFICE.

4 (c) THE OFFICE SHALL OPERATE WITH FULL INDEPENDENCE AND
5 HAS COMPLETE AUTONOMY, CONTROL, AND AUTHORITY OVER
6 OPERATIONS, BUDGET, AND PERSONNEL DECISIONS RELATED TO THE
7 OFFICE AND THE OMBUDSMAN.

8 (2) BY NOVEMBER 1, 2018, THE GOVERNOR SHALL DESIGNATE AN
9 OMBUDSMAN FOR BEHAVIORAL HEALTH ACCESS TO CARE, WHO SHALL
10 SERVE AS DIRECTOR OF THE OFFICE. THE OMBUDSMAN SHALL SERVE AS A
11 NEUTRAL PARTY TO HELP CONSUMERS, INCLUDING CONSUMERS WHO ARE
12 UNINSURED OR HAVE PUBLIC OR PRIVATE HEALTH BENEFIT COVERAGE,
13 INCLUDING COVERAGE THAT IS NOT SUBJECT TO STATE REGULATION, AND
14 HEALTH CARE PROVIDERS, ACTING ON THEIR OWN BEHALF, ON BEHALF
15 OF A CONSUMER WITH THE CONSUMER'S WRITTEN PERMISSION, OR ON
16 BEHALF OF A GROUP OF HEALTH CARE PROVIDERS, NAVIGATE AND
17 RESOLVE ISSUES RELATED TO CONSUMER ACCESS TO BEHAVIORAL HEALTH
18 CARE, INCLUDING CARE FOR MENTAL HEALTH CONDITIONS AND
19 SUBSTANCE USE DISORDERS.

20 (3) THE OMBUDSMAN SHALL:

21 (a) INTERACT WITH CONSUMERS AND HEALTH CARE PROVIDERS
22 WITH CONCERNS OR COMPLAINTS TO HELP THE CONSUMERS AND
23 PROVIDERS RESOLVE BEHAVIORAL HEALTH CARE ACCESS AND COVERAGE
24 ISSUES;

25 (b) IDENTIFY, TRACK, AND REPORT TO THE APPROPRIATE
26 REGULATORY OR OVERSIGHT AGENCY CONCERNS, COMPLAINTS, AND
27 POTENTIAL VIOLATIONS OF STATE OR FEDERAL RULES, REGULATIONS, OR

1 STATUTES CONCERNING THE AVAILABILITY OF, AND TERMS AND
2 CONDITIONS OF, BENEFITS FOR MENTAL HEALTH CONDITIONS OR
3 SUBSTANCE USE DISORDERS, INCLUDING POTENTIAL VIOLATIONS RELATED
4 TO QUANTITATIVE AND NONQUANTITATIVE TREATMENT LIMITATIONS;

5 (c) RECEIVE AND ASSIST CONSUMERS AND PROVIDERS IN
6 REPORTING CONCERNS AND FILING COMPLAINTS WITH APPROPRIATE
7 REGULATORY OR OVERSIGHT AGENCIES RELATING TO INAPPROPRIATE
8 CARE, AN EMERGENCY PROCEDURE UNDER SECTION 27-65-105, A
9 CERTIFICATION FOR SHORT-TERM TREATMENT UNDER SECTION 27-65-107,
10 OR A CERTIFICATION FOR LONG-TERM CARE AND TREATMENT UNDER
11 SECTION 27-65-109;

12 (d) PROVIDE APPROPRIATE INFORMATION TO HELP CONSUMERS
13 OBTAIN BEHAVIORAL HEALTH CARE;

14 (e) DEVELOP APPROPRIATE POINTS OF CONTACT FOR REFERRALS TO
15 OTHER STATE AND FEDERAL AGENCIES; AND

16 (f) PROVIDE APPROPRIATE INFORMATION TO HELP CONSUMERS OR
17 HEALTH CARE PROVIDERS FILE APPEALS OR COMPLAINTS WITH THE
18 APPROPRIATE ENTITIES, INCLUDING INSURERS AND OTHER STATE AND
19 FEDERAL AGENCIES.

20 (4) THE OMBUDSMAN, EMPLOYEES OF THE OFFICE, AND ANY
21 PERSONS ACTING ON BEHALF OF THE OFFICE SHALL COMPLY WITH ALL
22 STATE AND FEDERAL CONFIDENTIALITY LAWS THAT GOVERN THE
23 DEPARTMENT WITH RESPECT TO THE TREATMENT OF CONFIDENTIAL
24 INFORMATION OR RECORDS AND THE DISCLOSURE OF SUCH INFORMATION
25 AND RECORDS.

26 (5) IN THE PERFORMANCE OF HIS OR HER DUTIES, THE OMBUDSMAN
27 SHALL ACT INDEPENDENTLY OF THE OFFICE OF BEHAVIORAL HEALTH. ANY

1 RECOMMENDATIONS MADE OR POSITIONS TAKEN BY THE OMBUDSMAN DO
2 NOT REFLECT THOSE OF THE DEPARTMENT OR OFFICE OF BEHAVIORAL
3 HEALTH.

4 **27-80-304. Liaisons - department - commissioner of insurance.**

5 THE COMMISSIONER OF INSURANCE AND THE EXECUTIVE DIRECTOR SHALL
6 EACH APPOINT A LIAISON TO THE OMBUDSMAN TO RECEIVE REPORTS OF
7 CONCERNS, COMPLAINTS, AND POTENTIAL VIOLATIONS DESCRIBED IN
8 SECTION 27-80-303 (3)(b) FROM THE OMBUDSMAN, CONSUMERS, OR
9 HEALTH CARE PROVIDERS.

10 **27-80-305. Qualified immunity.** THE OMBUDSMAN AND

11 EMPLOYEES OR PERSONS ACTING ON BEHALF OF THE OFFICE ARE IMMUNE
12 FROM SUIT AND LIABILITY, EITHER PERSONALLY OR IN THEIR OFFICIAL
13 CAPACITIES, FOR ANY CLAIM FOR DAMAGE TO OR LOSS OF PROPERTY, OR
14 FOR PERSONAL INJURY OR OTHER CIVIL LIABILITY CAUSED BY OR ARISING
15 OUT OF ANY ACTUAL OR ALLEGED ACT, ERROR, OR OMISSION THAT
16 OCCURRED WITHIN THE SCOPE OF EMPLOYMENT, DUTIES, OR
17 RESPONSIBILITIES PERTAINING TO THE OFFICE, INCLUDING ISSUING
18 REPORTS OR RECOMMENDATIONS; EXCEPT THAT NOTHING IN THIS SECTION
19 PROTECTS THOSE PERSONS FROM SUIT OR LIABILITY FOR DAMAGE, LOSS,
20 INJURY, OR LIABILITY CAUSED BY THE INTENTIONAL OR WILLFUL AND
21 WANTON MISCONDUCT OF THE PERSON.

22 **27-80-306. Annual report.** (1) ON OR BEFORE SEPTEMBER 1,

23 2020, AND ON OR BEFORE SEPTEMBER 1 OF EACH YEAR THEREAFTER, THE
24 OMBUDSMAN SHALL PREPARE AND SUBMIT, IN ACCORDANCE WITH
25 SUBSECTION (2) OF THIS SECTION, A WRITTEN REPORT THAT INCLUDES
26 INFORMATION FROM THE PRECEDING FISCAL YEAR CONCERNING ACTIONS
27 TAKEN BY THE OMBUDSMAN RELATING TO THE DUTIES OF THE OFFICE SET

1 FORTH IN SECTION 27-80-303.

2 (2) THE OMBUDSMAN SHALL SUBMIT THE REPORT REQUIRED BY
3 THIS SECTION TO THE GOVERNOR, THE EXECUTIVE DIRECTOR, THE
4 COMMISSIONER OF INSURANCE, THE SENATE COMMITTEE ON HEALTH AND
5 HUMAN SERVICES OR ANY SUCCESSOR COMMITTEE, AND THE HOUSE OF
6 REPRESENTATIVES COMMITTEES ON HEALTH, INSURANCE, AND
7 ENVIRONMENT AND PUBLIC HEALTH CARE AND HUMAN SERVICES OR ANY
8 SUCCESSOR COMMITTEES. NOTWITHSTANDING SECTION 24-1-136
9 (11)(a)(I), THE REPORTING REQUIREMENT SET FORTH IN THIS SECTION
10 CONTINUES INDEFINITELY.

11 (3) THE OMBUDSMAN SHALL POST THE ANNUAL REPORT ON THE
12 DEPARTMENT'S WEBSITE.

13 (4) THE OMBUDSMAN SHALL NOT INCLUDE IN THE REPORT
14 REQUIRED BY THIS SECTION ANY PERSONALLY IDENTIFYING INFORMATION
15 ABOUT AN INDIVIDUAL CONSUMER OR HEALTH CARE PROVIDER OR
16 IDENTIFYING INFORMATION ABOUT A HEALTH CARE FACILITY LICENSED
17 PURSUANT TO SECTION 25-1.5-103 OR AN EMERGENCY MEDICAL SERVICES
18 FACILITY, AS DEFINED IN SECTION 27-65-102 (5.5).

19 **SECTION 2.** In Colorado Revised Statutes, 24-1-120, **add** (12)
20 as follows:

21 **24-1-120. Department of human services - creation.** (12) THE
22 OFFICE OF THE OMBUDSMAN FOR BEHAVIORAL HEALTH ACCESS TO CARE
23 CREATED IN SECTION 27-80-303 SHALL EXERCISE ITS POWERS AND
24 PERFORM ITS DUTIES AND FUNCTIONS AS IF THE OFFICE WERE
25 TRANSFERRED BY A **TYPE 1** TRANSFER, AS DEFINED IN SECTION 24-1-105,
26 TO THE DEPARTMENT OF HUMAN SERVICES.

27 **SECTION 3.** In Colorado Revised Statutes, **add** 10-16-147 as

1 follows:

2 **10-16-147. Parity reporting - [REDACTED] commissioner - [REDACTED]**

3 **definition.** (1) (a) BY MARCH 1, 2019, AND EVERY OTHER MARCH 1
4 THEREAFTER, THE COMMISSIONER SHALL SUBMIT A WRITTEN REPORT AND
5 PROVIDE A PRESENTATION OF THE REPORT TO THE GENERAL ASSEMBLY
6 THAT:

7 (I) SPECIFIES THE METHODOLOGY THE COMMISSIONER USES TO
8 VERIFY THAT CARRIERS ARE COMPLYING WITH SECTION 10-16-104 (5.5)
9 AND RULES ADOPTED UNDER THAT SECTION AND WITH THE MHPAEA,
10 ANY REGULATIONS ADOPTED PURSUANT TO THAT ACT, OR GUIDANCE
11 RELATED TO COMPLIANCE WITH AND OVERSIGHT OF THAT ACT;

12 (II) IDENTIFIES MARKET CONDUCT EXAMINATIONS INITIATED,
13 CONDUCTED, OR COMPLETED DURING THE PRECEDING TWELVE MONTHS
14 REGARDING COMPLIANCE WITH SECTION 10-16-104 (5.5) AND RULES
15 ADOPTED UNDER THAT SECTION AND WITH THE MHPAEA AND
16 REGULATIONS ADOPTED UNDER THAT ACT AND SUMMARIZES THE
17 OUTCOMES OF THOSE MARKET CONDUCT EXAMINATIONS;

18 (III) DETAILS ANY EDUCATIONAL OR CORRECTIVE ACTIONS THE
19 COMMISSIONER HAS TAKEN TO ENSURE CARRIER COMPLIANCE WITH
20 SECTION 10-16-104 (5.5) AND RULES ADOPTED UNDER THAT SECTION AND
21 WITH THE MHPAEA AND REGULATIONS ADOPTED UNDER THAT ACT.

22 (b) THE COMMISSIONER SHALL ENSURE THAT THE REPORT IS
23 WRITTEN IN PLAIN LANGUAGE AND IS MADE AVAILABLE TO THE PUBLIC BY,
24 AT A MINIMUM, POSTING THE REPORT ON THE DIVISION'S WEBSITE.

25 (c) NOTWITHSTANDING SECTION 24-1-136 (11)(a)(I), THE
26 REPORTING REQUIREMENT SPECIFIED IN THIS SECTION CONTINUES
27 INDEFINITELY.

1 (2) AS USED IN THIS SECTION, "MHPAEA" MEANS THE FEDERAL
2 "PAUL WELLSTONE AND PETE DOMENICI MENTAL HEALTH PARITY AND
3 ADDICTION EQUITY ACT OF 2008", PUB.L. 110-343, AS AMENDED.

4 **SECTION 4. Appropriation.** (1) For the 2018-19 state fiscal
5 year, \$85,695 is appropriated to the department of human services. This
6 appropriation is from the general fund and is based on an assumption that
7 the department will require an additional 0.9 FTE. To implement this act,
8 the department may use this appropriation for the office of the
9 ombudsman for behavioral health access to care.

10 (2) For the 2018-19 state fiscal year, \$8,355 is appropriated to the
11 department of regulatory agencies for use by the division of insurance.
12 This appropriation is from the division of insurance cash fund created in
13 section 10-1-103 (3), C.R.S., and is based on an assumption that the
14 division will require an additional 0.1 FTE. To implement this act, the
15 division may use this appropriation for personal services.

16 **SECTION 5. Act subject to petition - effective date.** This act
17 takes effect at 12:01 a.m. on the day following the expiration of the
18 ninety-day period after final adjournment of the general assembly (August
19 8, 2018, if adjournment sine die is on May 9, 2018); except that, if a
20 referendum petition is filed pursuant to section 1 (3) of article V of the
21 state constitution against this act or an item, section, or part of this act
22 within such period, then the act, item, section, or part will not take effect
23 unless approved by the people at the general election to be held in
24 November 2018 and, in such case, will take effect on the date of the
25 official declaration of the vote thereon by the governor.