

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

REVISED

*This Version Includes All Amendments Adopted
on Second Reading 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

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.

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>.)

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.

SENATE
Amended 2nd Reading
May 3, 2018

HOUSE
Amended 3rd Reading
May 1, 2018

HOUSE
Amended 2nd Reading
April 30, 2018

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.

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

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

PART 3

BEHAVIORAL HEALTH ACCESS TO
CARE OMBUDSMAN

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

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

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

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

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

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

(d) A HEALTH CARE FACILITY LICENSED PURSUANT TO SECTION 25-1.5-103.

(2) "OFFICE" MEANS THE OFFICE OF THE OMBUDSMAN FOR BEHAVIORAL HEALTH ACCESS TO CARE CREATED IN SECTION 27-80-303.

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

4 **27-80-303. Office of ombudsman for behavioral health access**
5 **to care - creation - appointment of ombudsman - duties.** (1) (a) THERE
6 IS HEREBY CREATED IN THE OFFICE OF THE EXECUTIVE DIRECTOR THE
7 OFFICE OF THE OMBUDSMAN FOR BEHAVIORAL HEALTH ACCESS TO CARE
8 FOR THE PURPOSE OF ASSISTING COLORADANS IN ACCESSING BEHAVIORAL
9 HEALTH CARE.

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

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

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

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

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

21 (A) PERSONNEL MATTERS;

22 (B) RECRUITMENT;

23 (C) PAYROLL;

24 (D) BENEFITS;

25 (E) BUDGET SUBMISSION, AS NEEDED;

26 (F) ACCOUNTING; AND

27 (G) OFFICE SPACE, FACILITIES, AND TECHNICAL SUPPORT; AND

1 (V) ANY OTHER PROVISIONS REGARDING ADMINISTRATIVE
2 SUPPORT THAT WILL HELP MAINTAIN THE INDEPENDENCE OF THE OFFICE.

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

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

19 (3) THE OMBUDSMAN SHALL:

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

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

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

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

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

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

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

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

25 (5) IN THE PERFORMANCE OF HIS OR HER DUTIES, THE OMBUDSMAN
26 SHALL ACT INDEPENDENTLY OF THE OFFICE OF BEHAVIORAL HEALTH. ANY
27 RECOMMENDATIONS MADE OR POSITIONS TAKEN BY THE OMBUDSMAN DO

1 NOT REFLECT THOSE OF THE DEPARTMENT OR OFFICE OF BEHAVIORAL
2 HEALTH.

3 **27-80-304. Liaisons - department - commissioner of insurance.**

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

9 **27-80-305. Qualified immunity.** THE OMBUDSMAN AND
10 EMPLOYEES OR PERSONS ACTING ON BEHALF OF THE OFFICE ARE IMMUNE
11 FROM SUIT AND LIABILITY, EITHER PERSONALLY OR IN THEIR OFFICIAL
12 CAPACITIES, FOR ANY CLAIM FOR DAMAGE TO OR LOSS OF PROPERTY, OR
13 FOR PERSONAL INJURY OR OTHER CIVIL LIABILITY CAUSED BY OR ARISING
14 OUT OF ANY ACTUAL OR ALLEGED ACT, ERROR, OR OMISSION THAT
15 OCCURRED WITHIN THE SCOPE OF EMPLOYMENT, DUTIES, OR
16 RESPONSIBILITIES PERTAINING TO THE OFFICE, INCLUDING ISSUING
17 REPORTS OR RECOMMENDATIONS; EXCEPT THAT NOTHING IN THIS SECTION
18 PROTECTS THOSE PERSONS FROM SUIT OR LIABILITY FOR DAMAGE, LOSS,
19 INJURY, OR LIABILITY CAUSED BY THE INTENTIONAL OR WILLFUL AND
20 WANTON MISCONDUCT OF THE PERSON.

21 **27-80-306. Annual report.** (1) ON OR BEFORE SEPTEMBER 1,
22 2020, AND ON OR BEFORE SEPTEMBER 1 OF EACH YEAR THEREAFTER, THE
23 OMBUDSMAN SHALL PREPARE AND SUBMIT, IN ACCORDANCE WITH
24 SUBSECTION (2) OF THIS SECTION, A WRITTEN REPORT THAT INCLUDES
25 INFORMATION FROM THE PRECEDING FISCAL YEAR CONCERNING ACTIONS
26 TAKEN BY THE OMBUDSMAN RELATING TO THE DUTIES OF THE OFFICE SET
27 FORTH IN SECTION 27-80-303.

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

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

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

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

20 **24-1-120. Department of human services - creation.** (12) THE
21 OFFICE OF THE OMBUDSMAN FOR BEHAVIORAL HEALTH ACCESS TO CARE
22 CREATED IN SECTION 27-80-303 SHALL EXERCISE ITS POWERS AND
23 PERFORM ITS DUTIES AND FUNCTIONS AS IF THE OFFICE WERE
24 TRANSFERRED BY A **TYPE 1** TRANSFER, AS DEFINED IN SECTION 24-1-105,
25 TO THE DEPARTMENT OF HUMAN SERVICES.

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

1 **10-16-147. Parity reporting - commissioner -**

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

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

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

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

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

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

27 (2) AS USED IN THIS SECTION, "MHPAEA" MEANS THE FEDERAL

1 "PAUL WELLSTONE AND PETE DOMENICI MENTAL HEALTH PARITY AND
2 ADDICTION EQUITY ACT OF 2008", PUB.L. 110-343, AS AMENDED.

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

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

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