

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

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

A BILL FOR AN ACT

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

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>.)

Section 1 of the bill establishes an office of the ombudsperson for

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.

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 OMBUDSPERSON

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

16 (c) ANY OTHER HEALTH CARE PROVIDER REGULATED BY THE
17 STATE.

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

20 (3) "OMBUDSPERSON" MEANS THE INDIVIDUAL DESIGNATED
21 PURSUANT TO SECTION 27-80-303 AS THE OMBUDSPERSON FOR
22 BEHAVIORAL HEALTH ACCESS TO CARE.

23 **27-80-303. Office of ombudsperson for behavioral health**

1 **access to care - creation - appointment of ombudsperson - duties.**

2 (1) (a) THERE IS HEREBY CREATED IN THE OFFICE OF THE EXECUTIVE
3 DIRECTOR THE OFFICE OF THE OMBUDSPERSON FOR BEHAVIORAL HEALTH
4 ACCESS TO CARE FOR THE PURPOSE OF ASSISTING COLORADANS IN
5 ACCESSING BEHAVIORAL HEALTH CARE.

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

9 (I) A REQUIREMENT THAT THE OFFICE HAS ITS OWN PERSONNEL
10 RULES;

11 (II) A REQUIREMENT THAT THE OMBUDSPERSON HAS INDEPENDENT
12 HIRING AND TERMINATION AUTHORITY OVER OFFICE EMPLOYEES;

13 (III) A REQUIREMENT THAT THE OFFICE MUST FOLLOW STATE
14 FISCAL RULES;

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

17 (A) PERSONNEL MATTERS;

18 (B) RECRUITMENT;

19 (C) PAYROLL;

20 (D) BENEFITS;

21 (E) BUDGET SUBMISSION, AS NEEDED;

22 (F) ACCOUNTING; AND

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

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

26 (c) THE OFFICE SHALL OPERATE WITH FULL INDEPENDENCE AND
27 HAS COMPLETE AUTONOMY, CONTROL, AND AUTHORITY OVER

1 OPERATIONS, BUDGET, AND PERSONNEL DECISIONS RELATED TO THE
2 OFFICE AND THE OMBUDSPERSON.

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

15 (3) THE OMBUDSPERSON SHALL:

16 (a) INTERACT WITH CONSUMERS AND HEALTH CARE PROVIDERS
17 WITH CONCERNS OR COMPLAINTS TO HELP THE CONSUMERS AND
18 PROVIDERS RESOLVE BEHAVIORAL HEALTH CARE ACCESS AND COVERAGE
19 ISSUES;

20 (b) IDENTIFY, TRACK, AND REPORT TO THE APPROPRIATE
21 REGULATORY OR OVERSIGHT AGENCY CONCERNS, COMPLAINTS, AND
22 POTENTIAL VIOLATIONS OF STATE OR FEDERAL RULES, REGULATIONS, OR
23 STATUTES CONCERNING THE AVAILABILITY OF, AND TERMS AND
24 CONDITIONS OF, BENEFITS FOR MENTAL HEALTH CONDITIONS OR
25 SUBSTANCE USE DISORDERS, INCLUDING POTENTIAL VIOLATIONS RELATED
26 TO QUANTITATIVE AND NONQUANTITATIVE TREATMENT LIMITATIONS;

27 (c) RECEIVE AND ASSIST CONSUMERS AND PROVIDERS IN

1 REPORTING CONCERNS AND FILING COMPLAINTS WITH APPROPRIATE
2 REGULATORY OR OVERSIGHT AGENCIES RELATING TO INAPPROPRIATE
3 CARE, AN EMERGENCY PROCEDURE UNDER SECTION 27-65-105, A
4 CERTIFICATION FOR SHORT-TERM TREATMENT UNDER SECTION 27-65-107,
5 OR A CERTIFICATION FOR LONG-TERM CARE AND TREATMENT UNDER
6 SECTION 27-65-109;

7 (d) PROVIDE APPROPRIATE INFORMATION TO HELP CONSUMERS
8 OBTAIN BEHAVIORAL HEALTH CARE;

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

11 (f) PROVIDE APPROPRIATE INFORMATION TO HELP CONSUMERS OR
12 HEALTH CARE PROVIDERS FILE APPEALS OR COMPLAINTS WITH THE
13 APPROPRIATE ENTITIES, INCLUDING INSURERS AND OTHER STATE AND
14 FEDERAL AGENCIES.

15 (4) THE OMBUDSPERSON, EMPLOYEES OF THE OFFICE, AND ANY
16 PERSONS ACTING ON BEHALF OF THE OFFICE SHALL COMPLY WITH ALL
17 STATE AND FEDERAL CONFIDENTIALITY LAWS THAT GOVERN THE
18 DEPARTMENT WITH RESPECT TO THE TREATMENT OF CONFIDENTIAL
19 INFORMATION OR RECORDS AND THE DISCLOSURE OF SUCH INFORMATION
20 AND RECORDS.

21 (5) IN THE PERFORMANCE OF HIS OR HER DUTIES, THE
22 OMBUDSPERSON SHALL ACT INDEPENDENTLY OF THE OFFICE OF
23 BEHAVIORAL HEALTH. ANY RECOMMENDATIONS MADE BY THE
24 OMBUDSPERSON OR POSITIONS TAKEN BY THE OMBUDSPERSON DO NOT
25 REFLECT THOSE OF THE DEPARTMENT OR OFFICE OF BEHAVIORAL HEALTH.

26 **27-80-304. Liaisons - department - commissioner of insurance.**

27 THE COMMISSIONER OF INSURANCE AND THE EXECUTIVE DIRECTOR SHALL

1 EACH APPOINT A LIAISON TO THE OMBUDSPERSON TO RECEIVE REPORTS OF
2 CONCERNS, COMPLAINTS, AND POTENTIAL VIOLATIONS DESCRIBED IN
3 SECTION 27-80-303 (3)(b) FROM THE OMBUDSPERSON, CONSUMERS, OR
4 HEALTH CARE PROVIDERS.

5 **27-80-305. Qualified immunity.** THE OMBUDSPERSON AND
6 EMPLOYEES OR PERSONS ACTING ON BEHALF OF THE OFFICE ARE IMMUNE
7 FROM SUIT AND LIABILITY, EITHER PERSONALLY OR IN THEIR OFFICIAL
8 CAPACITIES, FOR ANY CLAIM FOR DAMAGE TO OR LOSS OF PROPERTY, OR
9 FOR PERSONAL INJURY OR OTHER CIVIL LIABILITY CAUSED BY OR ARISING
10 OUT OF ANY ACTUAL OR ALLEGED ACT, ERROR, OR OMISSION THAT
11 OCCURRED WITHIN THE SCOPE OF EMPLOYMENT, DUTIES, OR
12 RESPONSIBILITIES PERTAINING TO THE OFFICE, INCLUDING ISSUING
13 REPORTS OR RECOMMENDATIONS; EXCEPT THAT NOTHING IN THIS SECTION
14 PROTECTS THOSE PERSONS FROM SUIT OR LIABILITY FOR DAMAGE, LOSS,
15 INJURY, OR LIABILITY CAUSED BY THE INTENTIONAL OR WILLFUL AND
16 WANTON MISCONDUCT OF THE PERSON.

17 **27-80-306. Annual report.** (1) ON OR BEFORE SEPTEMBER 1,
18 2020, AND ON OR BEFORE SEPTEMBER 1 OF EACH YEAR THEREAFTER, THE
19 OMBUDSPERSON SHALL PREPARE AND SUBMIT, IN ACCORDANCE WITH
20 SUBSECTION (2) OF THIS SECTION, A WRITTEN REPORT THAT INCLUDES
21 INFORMATION FROM THE PRECEDING FISCAL YEAR CONCERNING ACTIONS
22 TAKEN BY THE OMBUDSPERSON RELATING TO THE DUTIES OF THE OFFICE
23 SET FORTH IN SECTION 27-80-303.

24 (2) THE OMBUDSPERSON SHALL SUBMIT THE REPORT REQUIRED BY
25 THIS SECTION TO THE GOVERNOR, THE EXECUTIVE DIRECTOR, THE
26 COMMISSIONER OF INSURANCE, THE SENATE COMMITTEE ON HEALTH AND
27 HUMAN SERVICES OR ANY SUCCESSOR COMMITTEE, AND THE HOUSE OF

1 REPRESENTATIVES COMMITTEES ON HEALTH, INSURANCE, AND
2 ENVIRONMENT AND PUBLIC HEALTH CARE AND HUMAN SERVICES OR ANY
3 SUCCESSOR COMMITTEES. NOTWITHSTANDING SECTION 24-1-136
4 (11)(a)(I), THE REPORTING REQUIREMENT SET FORTH IN THIS SECTION
5 CONTINUES INDEFINITELY.

6 (3) THE OMBUDSPERSON SHALL POST THE ANNUAL REPORT ON THE
7 DEPARTMENT'S WEBSITE.

8 (4) THE OMBUDSPERSON SHALL NOT INCLUDE IN THE REPORT
9 REQUIRED BY THIS SECTION ANY PERSONALLY IDENTIFYING INFORMATION
10 ABOUT AN INDIVIDUAL CONSUMER OR [REDACTED] HEALTH CARE PROVIDER OR
11 IDENTIFYING INFORMATION ABOUT A HEALTH CARE FACILITY LICENSED
12 PURSUANT TO SECTION 25-1.5-103 OR AN EMERGENCY MEDICAL SERVICES
13 FACILITY, AS DEFINED IN SECTION 27-65-102 (5.5).

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

16 **24-1-120. Department of human services - creation.** (12) THE
17 OFFICE OF THE OMBUDSPERSON FOR BEHAVIORAL HEALTH ACCESS TO CARE
18 CREATED IN SECTION 27-80-303 SHALL EXERCISE ITS POWERS AND
19 PERFORM ITS DUTIES AND FUNCTIONS AS IF THE OFFICE WERE
20 TRANSFERRED BY A **TYPE 1** TRANSFER, AS DEFINED IN SECTION 24-1-105,
21 TO THE DEPARTMENT OF HUMAN SERVICES.

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

24 **10-16-147. Parity reporting - [REDACTED] commissioner - [REDACTED]**
25 **definition.** (1) (a) BY MARCH 1, 2019, AND EVERY OTHER MARCH 1
26 THEREAFTER, THE COMMISSIONER SHALL SUBMIT A WRITTEN REPORT AND
27 PROVIDE A PRESENTATION OF THE REPORT TO THE GENERAL ASSEMBLY

1 THAT:

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

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

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

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

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

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

26 **SECTION 4. Act subject to petition - effective date.** This act
27 takes effect at 12:01 a.m. on the day following the expiration of the

1 ninety-day period after final adjournment of the general assembly (August
2 8, 2018, if adjournment sine die is on May 9, 2018); except that, if a
3 referendum petition is filed pursuant to section 1 (3) of article V of the
4 state constitution against this act or an item, section, or part of this act
5 within such period, then the act, item, section, or part will not take effect
6 unless approved by the people at the general election to be held in
7 November 2018 and, in such case, will take effect on the date of the
8 official declaration of the vote thereon by the governor.