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An Act

HOUSE BILL 18-1357

BY REPRESENTATIVE(S) Michaelson Jenet, Becker K., Exum, Ginal, Gray, Herod, Hooton, Jackson, Kennedy, Kraft-Tharp, Lee, McLachlan, Rosenthal, Valdez, Winkler, Winter, Young, Duran, Coleman, Esgar, Lontine, Singer;
also SENATOR(S) Gardner and Williams A., Jahn, Aguilar, Court, Fields, Hill, Jones, Kagan, Kefalas, Martinez Humenik, Merrifield, Moreno, Todd, Grantham.

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

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

Capital letters or bold & italic numbers indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

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, WHEN THE FACILITY IS ENGAGED IN ASSISTING CONSUMERS WITH BEHAVIORAL HEALTH CARE ACCESS AND COVERAGE ISSUES.

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

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

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

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

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

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

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

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

(A) PERSONNEL MATTERS;

(B) RECRUITMENT;

(C) PAYROLL;

(D) BENEFITS;

(E) BUDGET SUBMISSION, AS NEEDED;

(F) ACCOUNTING; AND

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

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

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

(2) BY NOVEMBER 1, 2018, THE GOVERNOR SHALL DESIGNATE AN OMBUDSMAN FOR BEHAVIORAL HEALTH ACCESS TO CARE, WHO SHALL SERVE AS DIRECTOR OF THE OFFICE. THE OMBUDSMAN SHALL SERVE AS A NEUTRAL PARTY TO HELP CONSUMERS, INCLUDING CONSUMERS WHO ARE UNINSURED OR HAVE PUBLIC OR PRIVATE HEALTH BENEFIT COVERAGE, INCLUDING COVERAGE THAT IS NOT SUBJECT TO STATE REGULATION, AND HEALTH CARE

PROVIDERS, ACTING ON THEIR OWN BEHALF, ON BEHALF OF A CONSUMER WITH THE CONSUMER'S WRITTEN PERMISSION, OR ON BEHALF OF A GROUP OF HEALTH CARE PROVIDERS, NAVIGATE AND RESOLVE ISSUES RELATED TO CONSUMER ACCESS TO BEHAVIORAL HEALTH CARE, INCLUDING CARE FOR MENTAL HEALTH CONDITIONS AND SUBSTANCE USE DISORDERS.

(3) THE OMBUDSMAN SHALL:

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

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

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

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

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

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

(4) THE OMBUDSMAN, EMPLOYEES OF THE OFFICE, AND ANY PERSONS ACTING ON BEHALF OF THE OFFICE SHALL COMPLY WITH ALL STATE AND

FEDERAL CONFIDENTIALITY LAWS THAT GOVERN THE DEPARTMENT WITH RESPECT TO THE TREATMENT OF CONFIDENTIAL INFORMATION OR RECORDS AND THE DISCLOSURE OF SUCH INFORMATION AND RECORDS.

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

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

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

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

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

(2) THE OMBUDSMAN SHALL SUBMIT THE REPORT REQUIRED BY THIS SECTION TO THE GOVERNOR, THE EXECUTIVE DIRECTOR, THE COMMISSIONER OF INSURANCE, THE SENATE COMMITTEE ON HEALTH AND HUMAN SERVICES

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

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

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

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

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

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

10-16-147. Parity reporting - commissioner - definition. (1) (a) BY MARCH 1, 2019, AND EVERY OTHER MARCH 1 THEREAFTER, THE COMMISSIONER SHALL SUBMIT A WRITTEN REPORT AND PROVIDE A PRESENTATION OF THE REPORT TO THE GENERAL ASSEMBLY THAT:

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

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

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

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

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

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

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

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

SECTION 5. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August

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

Crisanta Duran
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Kevin J. Grantham
PRESIDENT OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Effie Ameen
SECRETARY OF
THE SENATE

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO