

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**

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**HOUSE SPONSORSHIP**

**Michaelson Jenet,**

**SENATE SPONSORSHIP**

**Gardner and Williams A., Jahn**

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**House Committees**

Public Health Care & Human Services  
Appropriations

**Senate Committees**

State, Veterans, & Military Affairs  
Appropriations

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**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.**

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**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.

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.

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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.

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