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**SECOND SUBSTITUTE HOUSE BILL 2386**

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**State of Washington 66th Legislature 2020 Regular Session**

**By** House Appropriations (originally sponsored by Representatives Cody, Robinson, Leavitt, Tarleton, Thai, Frame, Fitzgibbon, Slatter, Davis, Tharinger, Sells, Macri, and Wylie)

AN ACT Relating to the creation of the state office of the behavioral health ombuds; amending RCW 71.24.045 and 71.24.380; adding a new chapter to Title 71 RCW; repealing RCW 71.24.350; and providing an effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  (1) The legislature finds that:

(a) According to the federal substance abuse and mental health services administration's 2019 report, one in five adults in the United States will experience some form of mental illness this year and one in thirteen will need substance use disorder treatment;

(b) Fewer than half of all individuals needing behavioral health treatment receive those services;

(c) An untreated behavioral health need can have long-term negative impacts on an individual's health, well-being, and productivity;

(d) The state has significant investments in the efficacy of the publicly funded behavioral health system and its providers;

(e) Behavioral health parity is required by both state and federal law;

(f) All patients deserve to be treated and cared for with dignity and respect;

(g) Patients often cross local and administrative boundaries when seeking effective behavioral health care;

(h) Individuals with behavioral health needs are disproportionately involved with the criminal justice system; and

(i) Providing robust community-based services can prevent expensive hospitalizations.

(2) The legislature intends to create the state office of the behavioral health ombuds that shall:

(a) Advocate for all patients seeking privately and publicly funded behavioral health services;

(b) Advocate for all patients receiving inpatient behavioral health services from a behavioral health provider or facility;

(c) Assure that patients are afforded all of the rights given to them by state and federal laws;

(d) Maintain independence and be free from all conflicts of interest;

(e) Provide consistent quality services across the state; and

(f) Retain an office within the boundaries of the region served by each behavioral health administrative services organization.

NEW SECTION. **Sec.**  The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Behavioral health provider or facility" means:

(a) A behavioral health provider, as defined in RCW 71.24.025;

(b) A licensed or certified behavioral health agency, as defined in RCW 71.24.025;

(c) A long-term care facility, as defined in RCW 43.190.020, in which adults or children with behavioral health conditions reside;

(d) A state hospital, as defined in RCW 72.23.010; or

(e) A facility or agency that receives funds from the state to provide behavioral health treatment services to adults or children with a behavioral health condition.

(2) "Department" means the department of commerce.

NEW SECTION. **Sec.**  (1) By January 1, 2021, the department shall contract with a private nonprofit organization to provide behavioral health ombuds services. The department shall assure all program and staff support necessary to enable the ombuds to effectively protect the interests of persons with behavioral health needs in accordance with this chapter. The department shall designate the organization to be the state office of the behavioral health ombuds by a competitive bidding process and shall assure that the designated agency (a) has demonstrated financial stability and meets the qualifications for ombuds identified in this chapter, and (b) does not have any conflicts of interest that would interfere with the duties identified in this chapter.

(2) Following the designation of the organization to be the state office of the behavioral health ombuds, the department shall not redesignate the organization except upon a showing of misconduct or neglect of duty and proof that the organization is failing to provide services as specified in section 4 of this act, or has a demonstrated conflict of interest. Prior to redesignating the organization, the department shall provide an opportunity for comment by the organization and the public and provide the organization the opportunity to appeal the redesignation to the department.

(3) The department shall adopt rules to carry out the purposes of this chapter.

NEW SECTION. **Sec.**  The state office of the behavioral health ombuds shall have the following powers and duties:

(1) Certifying and coordinating the activities of the behavioral health ombuds throughout the state;

(2) Establish procedures consistent with this act for appropriate access by behavioral health ombuds to behavioral health providers or facilities;

(3) Establish a toll-free telephone number, web site, and other appropriate technology to facilitate access to ombuds services for patients, residents, and clients of behavioral health providers or facilities;

(4) Establish a statewide uniform reporting system to collect and analyze data relating to complaints, conditions, and service quality provided by behavioral health providers or facilities for the purpose of identifying and resolving significant problems, with permission to submit the data to all appropriate state agencies on a regular basis;

(5) Establish procedures consistent with section 13 of this act to protect the confidentiality of ombuds records, including the records of patients, residents, clients, providers, and complainants;

(6) Establish a statewide advisory council that shall include:

(a) Individuals with a history of mental illness;

(b) Individuals with a history of substance use disorder;

(c) Family members of individuals with behavioral health needs;

(d) One or more representatives of an organization representing consumers of behavioral health services;

(e) One or more representatives of behavioral health providers or facilities, including representatives of facilities offering inpatient behavioral health services;

(f) One or more certified peer counselors;

(g) One medical clinician serving individuals with behavioral health needs;

(h) One or more nonmedical providers serving individuals with behavioral health needs;

(i) One representative from a behavioral health administrative services organization; and

(j) Other community representatives, as determined by the state office of the behavioral health ombuds;

(7) Monitor the development of and recommend improvements in the implementation of federal, state, and local laws, rules, regulations, and policies with respect to the provision of behavioral health services in the state and advocate for consumers; and

(8) Report to the legislature and all appropriate public agencies regarding the quality of services, complaints, problems for individuals receiving services from behavioral health providers or facilities, and any recommendations for improved services for behavioral health consumers.

NEW SECTION. **Sec.**  A certified behavioral health ombuds shall:

(1) Identify, investigate, and resolve complaints made by, or on behalf of, patients, residents, and clients of behavioral health providers or facilities relating to administrative action, inaction, or decisions that may adversely affect the health, safety, welfare, and rights of these individuals;

(2) Assist and advocate on behalf of patients, residents, and clients of behavioral health providers or facilities by using informal complaint resolution methods or formal grievance processes including, if applicable, a fair hearing process;

(3) Inform patients, residents, and clients or their representatives about applicable patient and resident rights, and provide information, as appropriate, to patients, residents, clients, family members, guardians, resident representatives, employees of behavioral health providers or facilities, and others regarding the rights of patients and residents;

(4) Monitor and make recommendations for improvements to the quality of services provided to patients, residents, and clients of behavioral health providers or facilities; and

(5) With the consent of the patient, resident, or client, involve family members, friends, or other designated individuals in the process of resolving complaints.

NEW SECTION. **Sec.**  (1) The state office of the behavioral health ombuds and all certified behavioral health ombuds shall have the right of entry to behavioral health providers or facilities at any time deemed necessary and reasonable to effectively carry out the provisions of this chapter, with provisions made for the privacy of patients, residents, and clients. The state office of the behavioral health ombuds must develop policies and procedures to allow certified behavioral health ombuds to have access to patients, residents, and clients of behavioral health providers or facilities for the purpose of hearing, investigating, and resolving complaints, as well as monitoring the quality of services.

(2) Nothing in this chapter restricts, limits, or increases any existing right of any organizations or individuals not described in subsection (1) of this section to enter or provide assistance to patients, residents, and clients of behavioral health providers or facilities.

(3) Nothing in this chapter restricts any right or privilege of a patient, resident, or client of a behavioral health provider or facility to receive visitors of their choice.

NEW SECTION. **Sec.**  (1) Every behavioral health provider or facility shall post in a conspicuous location a notice providing the state office of the behavioral health ombuds' toll-free number and web site as well as the name, address, and phone number of the office of the appropriate local behavioral health ombuds and a brief description of the services provided by the office. The form of the notice must be approved by the office of the behavioral health ombuds. This information must also be distributed to the patients, residents, and clients of behavioral health providers or facilities, upon application for behavioral health services and upon admission to a behavioral health facility. The information shall also be provided to the family members and legal guardians of the patients, residents, or clients of a behavioral health provider or facility, as allowed by state and federal privacy laws.

(2) Every behavioral health provider or facility must provide access to a free telephone for the express purpose of contacting the state office of the behavioral health ombuds.

NEW SECTION. **Sec.**  The state office of the behavioral health ombuds shall develop a process to train and certify all behavioral health ombuds, whether paid or volunteer, authorized by this chapter as follows:

(1) Certified behavioral health ombuds must have training or experience in the following areas:

(a) Behavioral health and other related social services programs;

(b) The legal system, including differences in state or federal law between voluntary and involuntary patients, residents, or clients;

(c) Advocacy and supporting self-advocacy;

(d) Dispute or problem resolution techniques, including investigation, mediation, and negotiation; and

(e) All applicable patient, resident, and client rights established by either state or federal law.

(2) A certified behavioral health ombuds may not have been employed by any behavioral health provider or facility within the previous twelve months, except as a certified peer specialist or where prior to the effective date of this section the person has been employed by a regional behavioral health ombuds.

(3) No certified behavioral health ombuds or any member of a certified behavioral health ombuds' family may have, or have had, within the previous twelve months, any significant ownership or financial interest in the provision of behavioral health services.

NEW SECTION. **Sec.**  (1) The state office of the behavioral health ombuds shall develop referral procedures for all certified behavioral health ombuds to refer any complaint, in accordance with a mutually established working agreement, to an appropriate state or local government agency. The appropriate agency shall respond to any complaint referred to it by a certified behavioral health ombuds, in accordance with a mutually established working agreement.

(2) State agencies shall review a complaint against a behavioral health provider or facility which was referred to it by a certified behavioral health ombuds, in accordance with a mutually established working agreement, and shall forward to that certified behavioral health ombuds a summary of the results of the review or investigation and action proposed or taken.

(3) State agencies that regulate or contract with behavioral health providers or facilities shall adopt necessary rules to effectively work in coordination with the state office of the behavioral health ombuds.

NEW SECTION. **Sec.**  (1) The state office of the behavioral health ombuds shall develop and implement working agreements with the protection and advocacy agency, the long-term care ombuds, the developmental disabilities ombuds, the corrections ombuds, and the children and family ombuds, and work in cooperation to assure efficient, coordinated service.

(2) The state office of the behavioral health ombuds shall develop working agreements with each managed care organization, behavioral health administrative services organization, the state and private psychiatric hospitals, all appropriate state and local agencies, and other such entities as necessary to carry out their duties. Working agreements must include:

(a) The roles of the state office of the behavioral health ombuds and the agency in complaint investigations, complaint referral criteria, and a process for sharing information regarding complaint review and investigation, as appropriate; and

(b) Processes and procedures to assure timely and seamless information sharing among all interested parties and that the state office of the behavioral health ombuds is responsive to all local information requests.

NEW SECTION. **Sec.**  (1) No certified behavioral health ombuds is liable for good faith performance of responsibilities under this chapter.

(2) No discriminatory, disciplinary, or retaliatory action may be taken against an employee or volunteer of a behavioral health provider or facility, or a patient, resident, or client of a behavioral health provider or facility, for any communication made, or information given or disclosed, to aid the certified behavioral health ombuds in carrying out duties and responsibilities under this chapter, unless the same was done maliciously or without good faith. This subsection is not intended to infringe on the rights of the employer to supervise, discipline, or terminate an employee or volunteer for other reasons, and shall serve as a defense to any action in libel or slander.

(3) All communications by a certified behavioral health ombuds, if reasonably related to the requirements of that individual's responsibilities under this chapter and done in good faith, are privileged and confidential, subject to the procedures established by the state office of the behavioral health ombuds.

(4) A representative of the state office of the behavioral health ombuds is exempt from being required to testify in court as to any confidential matters except upon the express consent of the client, resident, or patient that is subject to the court proceedings, or their representatives, as applicable.

NEW SECTION. **Sec.**  It is the intent of the legislature that:

(1) Regional behavioral health ombuds programs existing prior to this act be integrated into this new statewide program and the ombuds from those programs be assessed and certified by the state office of the behavioral health ombuds;

(2) There shall be a behavioral health ombuds office within the boundaries of the region served by each behavioral health administrative services organization;

(3) Federal medicaid requirements be complied with; and

(4) The department annually expend at least the amount expended on regional behavioral health ombuds services prior to the effective date of this section to establish the state office of the behavioral health ombuds under this chapter.

NEW SECTION. **Sec.**  (1) All records and files of the state office of the behavioral health ombuds and any certified behavioral health ombuds related to any complaint or investigation made pursuant to carrying out their duties and the identities of complainants, witnesses, patients, residents, or clients and information that could reasonably identify any of these individuals shall remain confidential unless disclosure is authorized in writing by the subject of the information, or the subject's guardian or legal representative.

(2) No disclosures of records and files related to a complaint or investigation may be made to any organization or individual outside the state office of the behavioral health ombuds without the written consent of any named witnesses, complainants, patients, residents, or clients unless the disclosure is made without the identity of any of these individuals and without information that could reasonably identify any of these individuals unless such disclosure is required in carrying out its duties under this chapter.

(3) Notwithstanding subsections (1) and (2) of this section, disclosures of records and files may be made pursuant to a court order.

(4) All disclosures must be compliant with state and federal privacy laws applicable to the type of information that is sought for disclosure.

**Sec.**  RCW 71.24.045 and 2019 c 325 s 1008 are each amended to read as follows:

(1) The behavioral health administrative services organization contracted with the authority pursuant to RCW 71.24.381 shall:

(a) Administer crisis services for the assigned regional service area. Such services must include:

(i) A behavioral health crisis hotline for its assigned regional service area;

(ii) Crisis response services twenty-four hours a day, seven days a week, three hundred sixty-five days a year;

(iii) Services related to involuntary commitments under chapters 71.05 and 71.34 RCW;

(iv) Additional noncrisis behavioral health services, within available resources, to individuals who meet certain criteria set by the authority in its contracts with the behavioral health administrative services organization. These services may include services provided through federal grant funds, provisos, and general fund state appropriations;

(v) Care coordination, diversion services, and discharge planning for nonmedicaid individuals transitioning from state hospitals or inpatient settings to reduce rehospitalization and utilization of crisis services, as required by the authority in contract; and

(vi) Regional coordination, cross-system and cross-jurisdiction coordination with tribal governments, and capacity building efforts, such as supporting the behavioral health advisory board((~~, the behavioral health ombuds,~~)) and efforts to support access to services or to improve the behavioral health system;

(b) Administer and provide for the availability of an adequate network of evaluation and treatment services to ensure access to treatment, investigation, transportation, court-related, and other services provided as required under chapter 71.05 RCW;

(c) Coordinate services for individuals under RCW 71.05.365;

(d) Administer and provide for the availability of resource management services, residential services, and community support services as required under its contract with the authority;

(e) Contract with a sufficient number, as determined by the authority, of licensed or certified providers for crisis services and other behavioral health services required by the authority;

(f) Maintain adequate reserves or secure a bond as required by its contract with the authority;

(g) Establish and maintain quality assurance processes;

(h) Meet established limitations on administrative costs for agencies that contract with the behavioral health administrative services organization; and

(i) Maintain patient tracking information as required by the authority.

(2) The behavioral health administrative services organization must collaborate with the authority and its contracted managed care organizations to develop and implement strategies to coordinate care with tribes and community behavioral health providers for individuals with a history of frequent crisis system utilization.

(3) The behavioral health administrative services organization shall:

(a) Assure that the special needs of minorities, older adults, individuals with disabilities, children, and low-income persons are met;

(b) Collaborate with local government entities to ensure that policies do not result in an adverse shift of persons with mental illness into state and local correctional facilities; and

(c) Work with the authority to expedite the enrollment or reenrollment of eligible persons leaving state or local correctional facilities and institutions for mental diseases.

**Sec.**  RCW 71.24.380 and 2019 c 325 s 1022 are each amended to read as follows:

(1) The director shall purchase behavioral health services primarily through managed care contracting, but may continue to purchase behavioral health services directly from providers serving medicaid clients who are not enrolled in a managed care organization.

(2) The director shall require that contracted managed care organizations have a sufficient network of providers to provide adequate access to behavioral health services for residents of the regional service area that meet eligibility criteria for services, and for maintenance of quality assurance processes. Contracts with managed care organizations must comply with all federal medicaid and state law requirements related to managed health care contracting, including RCW 74.09.522.

(3) A managed care organization must contract with the authority's selected behavioral health administrative services organization for the assigned regional service area for the administration of crisis services. The contract shall require the managed care organization to reimburse the behavioral health administrative services organization for behavioral health crisis services delivered to individuals enrolled in the managed care organization.

(4) A managed care organization must contract with the state office of the behavioral health ombuds established in section 3 of this act for the provision of behavioral health ombuds services delivered to individuals enrolled in the managed care organization. The contract shall require the managed care organization to reimburse the state office of the behavioral health ombuds for behavioral health ombuds services delivered to individuals enrolled in the managed care organization.

(5) A managed care organization must collaborate with the authority and its contracted behavioral health administrative services organization to develop and implement strategies to coordinate care with tribes and community behavioral health providers for individuals with a history of frequent crisis system utilization.

((~~(5)~~)) (6) A managed care organization must work closely with designated crisis responders, behavioral health administrative services organizations, and behavioral health providers to maximize appropriate placement of persons into community services, ensuring the client receives the least restrictive level of care appropriate for their condition. Additionally, the managed care organization shall work with the authority to expedite the enrollment or reenrollment of eligible persons leaving state or local correctional facilities and institutions for mental diseases.

((~~(6)~~)) (7) As an incentive to county authorities to become early adopters of fully integrated purchasing of medical and behavioral health services, the standards adopted by the authority shall provide for an incentive payment to counties which elect to move to full integration by January 1, 2016. Subject to federal approval, the incentive payment shall be targeted at ten percent of savings realized by the state within the regional service area in which the fully integrated purchasing takes place. Savings shall be calculated in alignment with the outcome and performance measures established in RCW 71.24.435, 70.320.020, and 71.36.025, and incentive payments for early adopter counties shall be made available for up to a six-year period, or until full integration of medical and behavioral health services is accomplished statewide, whichever comes sooner, according to rules to be developed by the authority.

NEW SECTION. **Sec.**  RCW 71.24.350 (Behavioral health ombuds office) and 2019 c 325 s 1020, 2018 c 201 s 4019, 2016 sp.s. c 29 s 523, 2014 c 225 s 41, 2013 c 23 s 189, & 2005 c 504 s 803 are each repealed.

NEW SECTION. **Sec.**  Sections 1 through 13 of this act constitute a new chapter in Title 71 RCW.

NEW SECTION. **Sec.**  Sections 15 and 16 of this act take effect January 1, 2021.

**--- END ---**