
SECOND SUBSTITUTE HOUSE BILL 2386

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)

READ FIRST TIME 02/11/20.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 NEW SECTION. **Sec. 2.** The definitions in this section apply
21 throughout this chapter unless the context clearly requires
22 otherwise.

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

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

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

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

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

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

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

34 NEW SECTION. **Sec. 3.** (1) By January 1, 2021, the department
35 shall contract with a private nonprofit organization to provide
36 behavioral health ombuds services. The department shall assure all
37 program and staff support necessary to enable the ombuds to
38 effectively protect the interests of persons with behavioral health

1 needs in accordance with this chapter. The department shall designate
2 the organization to be the state office of the behavioral health
3 ombuds by a competitive bidding process and shall assure that the
4 designated agency (a) has demonstrated financial stability and meets
5 the qualifications for ombuds identified in this chapter, and (b)
6 does not have any conflicts of interest that would interfere with the
7 duties identified in this chapter.

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

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

19 NEW SECTION. **Sec. 4.** The state office of the behavioral health
20 ombuds shall have the following powers and duties:

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

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

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

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

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

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

39 (a) Individuals with a history of mental illness;

- 1 (b) Individuals with a history of substance use disorder;
2 (c) Family members of individuals with behavioral health needs;
3 (d) One or more representatives of an organization representing
4 consumers of behavioral health services;
5 (e) One or more representatives of behavioral health providers or
6 facilities, including representatives of facilities offering
7 inpatient behavioral health services;
8 (f) One or more certified peer counselors;
9 (g) One medical clinician serving individuals with behavioral
10 health needs;
11 (h) One or more nonmedical providers serving individuals with
12 behavioral health needs;
13 (i) One representative from a behavioral health administrative
14 services organization; and
15 (j) Other community representatives, as determined by the state
16 office of the behavioral health ombuds;
17 (7) Monitor the development of and recommend improvements in the
18 implementation of federal, state, and local laws, rules, regulations,
19 and policies with respect to the provision of behavioral health
20 services in the state and advocate for consumers; and
21 (8) Report to the legislature and all appropriate public agencies
22 regarding the quality of services, complaints, problems for
23 individuals receiving services from behavioral health providers or
24 facilities, and any recommendations for improved services for
25 behavioral health consumers.

26 NEW SECTION. **Sec. 5.** A certified behavioral health ombuds
27 shall:

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

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

37 (3) Inform patients, residents, and clients or their
38 representatives about applicable patient and resident rights, and
39 provide information, as appropriate, to patients, residents, clients,

1 family members, guardians, resident representatives, employees of
2 behavioral health providers or facilities, and others regarding the
3 rights of patients and residents;

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

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

10 NEW SECTION. **Sec. 6.** (1) The state office of the behavioral
11 health ombuds and all certified behavioral health ombuds shall have
12 the right of entry to behavioral health providers or facilities at
13 any time deemed necessary and reasonable to effectively carry out the
14 provisions of this chapter, with provisions made for the privacy of
15 patients, residents, and clients. The state office of the behavioral
16 health ombuds must develop policies and procedures to allow certified
17 behavioral health ombuds to have access to patients, residents, and
18 clients of behavioral health providers or facilities for the purpose
19 of hearing, investigating, and resolving complaints, as well as
20 monitoring the quality of services.

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

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

29 NEW SECTION. **Sec. 7.** (1) Every behavioral health provider or
30 facility shall post in a conspicuous location a notice providing the
31 state office of the behavioral health ombuds' toll-free number and
32 web site as well as the name, address, and phone number of the office
33 of the appropriate local behavioral health ombuds and a brief
34 description of the services provided by the office. The form of the
35 notice must be approved by the office of the behavioral health
36 ombuds. This information must also be distributed to the patients,
37 residents, and clients of behavioral health providers or facilities,
38 upon application for behavioral health services and upon admission to

1 a behavioral health facility. The information shall also be provided
2 to the family members and legal guardians of the patients, residents,
3 or clients of a behavioral health provider or facility, as allowed by
4 state and federal privacy laws.

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

8 NEW SECTION. **Sec. 8.** The state office of the behavioral health
9 ombuds shall develop a process to train and certify all behavioral
10 health ombuds, whether paid or volunteer, authorized by this chapter
11 as follows:

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

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

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

18 (c) Advocacy and supporting self-advocacy;

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

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

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

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

32 NEW SECTION. **Sec. 9.** (1) The state office of the behavioral
33 health ombuds shall develop referral procedures for all certified
34 behavioral health ombuds to refer any complaint, in accordance with a
35 mutually established working agreement, to an appropriate state or
36 local government agency. The appropriate agency shall respond to any
37 complaint referred to it by a certified behavioral health ombuds, in
38 accordance with a mutually established working agreement.

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

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

11 NEW SECTION. **Sec. 10.** (1) The state office of the behavioral
12 health ombuds shall develop and implement working agreements with the
13 protection and advocacy agency, the long-term care ombuds, the
14 developmental disabilities ombuds, the corrections ombuds, and the
15 children and family ombuds, and work in cooperation to assure
16 efficient, coordinated service.

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

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

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

31 NEW SECTION. **Sec. 11.** (1) No certified behavioral health ombuds
32 is liable for good faith performance of responsibilities under this
33 chapter.

34 (2) No discriminatory, disciplinary, or retaliatory action may be
35 taken against an employee or volunteer of a behavioral health
36 provider or facility, or a patient, resident, or client of a
37 behavioral health provider or facility, for any communication made,
38 or information given or disclosed, to aid the certified behavioral

1 health ombuds in carrying out duties and responsibilities under this
2 chapter, unless the same was done maliciously or without good faith.
3 This subsection is not intended to infringe on the rights of the
4 employer to supervise, discipline, or terminate an employee or
5 volunteer for other reasons, and shall serve as a defense to any
6 action in libel or slander.

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

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

17 NEW SECTION. **Sec. 12.** It is the intent of the legislature that:

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

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

25 (3) Federal medicaid requirements be complied with; and

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

30 NEW SECTION. **Sec. 13.** (1) All records and files of the state
31 office of the behavioral health ombuds and any certified behavioral
32 health ombuds related to any complaint or investigation made pursuant
33 to carrying out their duties and the identities of complainants,
34 witnesses, patients, residents, or clients and information that could
35 reasonably identify any of these individuals shall remain
36 confidential unless disclosure is authorized in writing by the
37 subject of the information, or the subject's guardian or legal
38 representative.

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

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

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

15 **Sec. 14.** RCW 71.24.045 and 2019 c 325 s 1008 are each amended to
16 read as follows:

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

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

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

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

25 (iii) Services related to involuntary commitments under chapters
26 71.05 and 71.34 RCW;

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

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

37 (vi) Regional coordination, cross-system and cross-jurisdiction
38 coordination with tribal governments, and capacity building efforts,
39 such as supporting the behavioral health advisory board(~~(7—the~~

1 ~~behavioral health ombuds,~~) and efforts to support access to services
2 or to improve the behavioral health system;

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

7 (c) Coordinate services for individuals under RCW 71.05.365;

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

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

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

16 (g) Establish and maintain quality assurance processes;

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

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

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

27 (3) The behavioral health administrative services organization
28 shall:

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

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

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

38 **Sec. 15.** RCW 71.24.380 and 2019 c 325 s 1022 are each amended to
39 read as follows:

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

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

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

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

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

34 ((+5)) (6) A managed care organization must work closely with
35 designated crisis responders, behavioral health administrative
36 services organizations, and behavioral health providers to maximize
37 appropriate placement of persons into community services, ensuring
38 the client receives the least restrictive level of care appropriate
39 for their condition. Additionally, the managed care organization
40 shall work with the authority to expedite the enrollment or

1 reenrollment of eligible persons leaving state or local correctional
2 facilities and institutions for mental diseases.

3 ~~((6))~~ (7) As an incentive to county authorities to become early
4 adopters of fully integrated purchasing of medical and behavioral
5 health services, the standards adopted by the authority shall provide
6 for an incentive payment to counties which elect to move to full
7 integration by January 1, 2016. Subject to federal approval, the
8 incentive payment shall be targeted at ten percent of savings
9 realized by the state within the regional service area in which the
10 fully integrated purchasing takes place. Savings shall be calculated
11 in alignment with the outcome and performance measures established in
12 RCW 71.24.435, 70.320.020, and 71.36.025, and incentive payments for
13 early adopter counties shall be made available for up to a six-year
14 period, or until full integration of medical and behavioral health
15 services is accomplished statewide, whichever comes sooner, according
16 to rules to be developed by the authority.

17 NEW SECTION. **Sec. 16.** RCW 71.24.350 (Behavioral health ombuds
18 office) and 2019 c 325 s 1020, 2018 c 201 s 4019, 2016 sp.s. c 29 s
19 523, 2014 c 225 s 41, 2013 c 23 s 189, & 2005 c 504 s 803 are each
20 repealed.

21 NEW SECTION. **Sec. 17.** Sections 1 through 13 of this act
22 constitute a new chapter in Title 71 RCW.

23 NEW SECTION. **Sec. 18.** Sections 15 and 16 of this act take
24 effect January 1, 2021.

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