
HOUSE BILL 2386

State of Washington

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By Representatives Cody, Robinson, Leavitt, Tarleton, Thai, Frame, Fitzgibbon, Slatter, Davis, Tharinger, Sells, Macri, and Wylie

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

17 (e) Provide consistent quality services across the state.

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

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

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

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

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

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

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

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

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

1 ombuds by a competitive bidding process and shall assure that the
2 designated agency (a) has demonstrated financial stability and meets
3 the qualifications for ombuds identified in this chapter, and (b)
4 does not have any conflicts of interest that would interfere with the
5 duties identified in this chapter.

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

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

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

19 (1) Provide services for certifying and coordinating the
20 activities of the behavioral health ombuds throughout the state;

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

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

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

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

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

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

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

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

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

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

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

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

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

17 NEW SECTION. **Sec. 5.** A certified behavioral health ombuds
18 shall:

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

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

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

34 (4) Monitor the quality of services provided to patients,
35 residents, and clients or behavioral health providers or facilities;
36 and

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

1 NEW SECTION. **Sec. 6.** (1) The state office of the behavioral
2 health ombuds shall develop procedures governing the right of entry
3 of all certified behavioral health ombuds to behavioral health
4 providers or facilities at any time deemed necessary and reasonable
5 to effectively carry out the provisions of this chapter, with
6 provisions made for the privacy of patients, residents, and clients.
7 The procedures must allow certified behavioral health ombuds to have
8 access to patients, residents, and clients of behavioral health
9 providers or facilities for the purpose of hearing, investigating,
10 and resolving complaints, as well as monitoring the quality of
11 services.

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

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

20 NEW SECTION. **Sec. 7.** Every behavioral health provider or
21 facility shall post in a conspicuous location a notice providing the
22 state office of the behavioral health ombuds' toll-free number and
23 web site as well as the name, address, and phone number of the office
24 of the appropriate local behavioral health ombuds and a brief
25 description of the services provided by the office. The form of the
26 notice must be approved by the office of the behavioral health
27 ombuds. This information must also be distributed to the patients,
28 residents, and clients of behavioral health providers or facilities,
29 upon application for behavioral health services and upon admission to
30 a behavioral health facility. The information shall also be provided
31 to the family members and legal guardians of the patients, residents,
32 or clients of a behavioral health provider or facility, as allowed by
33 state and federal privacy laws.

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

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

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

4 (b) The legal system;

5 (c) Advocacy and supporting self-advocacy;

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

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

10 (2) A certified behavioral health ombuds may not have been
11 employed by any behavioral health provider or facility within the
12 previous three years, except where prior to the effective date of
13 this section the person has been employed by a regional behavioral
14 health ombuds.

15 (3) No certified behavioral health ombuds or any member of a
16 certified behavioral health ombuds' family may have, or have had
17 within the previous three years, any pecuniary interest in the
18 provision of behavioral health services.

19 NEW SECTION. **Sec. 9.** (1) The state office of the behavioral
20 health ombuds shall develop referral procedures for all certified
21 behavioral health ombuds to refer any complaint to an appropriate
22 state or local government agency. The appropriate agency shall act as
23 quickly as possible to respond to any complaint referred to it by a
24 certified behavioral health ombuds.

25 (2) State agencies shall respond to any complaint against a
26 behavioral health provider or facility which was referred to it by a
27 certified behavioral health ombuds and shall forward to that
28 certified behavioral health ombuds a summary of the results of the
29 investigation and action proposed or taken.

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

34 NEW SECTION. **Sec. 10.** (1) The state office of the behavioral
35 health ombuds shall develop and implement working agreements with the
36 protection and advocacy agency, the long-term care ombuds, the
37 developmental disabilities ombuds, the corrections ombuds, and the

1 children and family ombuds, and work in cooperation to assure
2 efficient, coordinated service.

3 (2) The state office of the behavioral health ombuds shall
4 develop working agreements with each managed care organization, the
5 state and private psychiatric hospitals, all appropriate state and
6 local agencies, and other such entities as necessary to carry out
7 their duties.

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

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

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

27 (4) A representative of the state office of the behavioral health
28 ombuds is exempt from being required to testify in court as to any
29 confidential matters except as the court may deem necessary to
30 enforce this chapter.

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

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

36 (2) Federal medicaid requirements be complied with; and

37 (3) The department annually expend at least the amount expended
38 on regional behavioral health ombuds services prior to the effective

1 date of this section to establish the state office of the behavioral
2 health ombuds under this chapter.

3 NEW SECTION. **Sec. 13.** (1) All records and files of the state
4 office of the behavioral health ombuds and any certified behavioral
5 health ombuds related to any complaint or investigation made pursuant
6 to carrying out their duties and the identities of complainants,
7 witnesses, patients, residents, or clients and information that could
8 reasonably identify any of these individuals shall remain
9 confidential unless disclosure is authorized in writing by the
10 subject of the information, or the subject's guardian or legal
11 representative.

12 (2) No disclosures of records and files related to a complaint or
13 investigation may be made outside the state office of the behavioral
14 health ombuds without the written consent of any named witnesses,
15 complainants, patients, residents, or clients unless the disclosure
16 is made without the identity of any of these individuals and without
17 information that could reasonably identify any of these individuals
18 being disclosed.

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

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

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

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

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

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

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

35 (iii) Services related to involuntary commitments under chapters
36 71.05 and 71.34 RCW;

37 (iv) Additional noncrisis behavioral health services, within
38 available resources, to individuals who meet certain criteria set by

1 the authority in its contracts with the behavioral health
2 administrative services organization. These services may include
3 services provided through federal grant funds, provisos, and general
4 fund state appropriations;

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

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

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

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

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

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

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

27 (g) Establish and maintain quality assurance processes;

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

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

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

38 (3) The behavioral health administrative services organization
39 shall:

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

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

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

10 NEW SECTION. **Sec. 15.** RCW 71.24.350 (Behavioral health ombuds
11 office) and 2019 c 325 s 1020, 2018 c 201 s 4019, 2016 sp.s. c 29 s
12 523, 2014 c 225 s 41, 2013 c 23 s 189, & 2005 c 504 s 803 are each
13 repealed.

14 NEW SECTION. **Sec. 16.** Sections 1 through 13 of this act
15 constitute a new chapter in Title 71 RCW.

16 NEW SECTION. **Sec. 17.** Section 15 of this act takes effect
17 January 1, 2021.

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