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**SUBSTITUTE HOUSE BILL 1086**

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**State of Washington**

**67th Legislature**

**2021 Regular Session**

**By** House Health Care & Wellness (originally sponsored by Representatives Simmons, Caldier, Bateman, Ortiz-Self, Shewmake, Ryu, Chopp, Cody, Goodman, Fey, Stonier, Macri, Fitzgibbon, Frame, and Davis)

READ FIRST TIME 01/29/21.

1 AN ACT Relating to the creation of the state office of behavioral  
2 health consumer advocacy; 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 made significant investments in the efficacy of  
17 the 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 consumer advocacy 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, to  
25 the extent it provides behavioral health services;

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

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

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

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

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

35 (3) "Office" means the state office of behavioral health consumer  
36 advocacy.

37 NEW SECTION. **Sec. 3.** (1) By January 1, 2022, the department  
38 shall contract with a private nonprofit organization to provide

1 behavioral health consumer advocacy services. The department shall  
2 assure all program and staff support necessary to enable the director  
3 of the office to effectively protect the interests of persons with  
4 behavioral health needs in accordance with this chapter. The  
5 department shall designate the organization to be the state office of  
6 behavioral health consumer advocacy by a competitive bidding process  
7 and shall assure that the designated agency (a) has demonstrated  
8 financial stability and meets the qualifications for the duties  
9 identified in this chapter, and (b) does not have any conflicts of  
10 interest that would interfere with the duties identified in this  
11 chapter.

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

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

23 NEW SECTION. **Sec. 4.** The state office of behavioral health  
24 consumer advocacy shall have the following powers and duties:

25 (1) Certifying and coordinating the activities of the behavioral  
26 health consumer advocates throughout the state;

27 (2) Establish procedures consistent with this act for appropriate  
28 access by behavioral health consumer advocates to behavioral health  
29 providers or facilities;

30 (3) Establish a toll-free telephone number, website, and other  
31 appropriate technology to facilitate access to office services for  
32 patients, residents, and clients of behavioral health providers or  
33 facilities;

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

1 (5) Establish procedures consistent with section 13 of this act  
2 to protect the confidentiality of the office's records, including the  
3 records of patients, residents, clients, providers, and complainants;

4 (6) Establish a statewide advisory council, a majority of which  
5 must be composed of people with lived experience, that shall include:

6 (a) Individuals with a history of mental illness including one or  
7 more members from the black community, the indigenous community, or a  
8 community of color;

9 (b) Individuals with a history of substance use disorder  
10 including one or more members from the black community, the  
11 indigenous community, or a community of color;

12 (c) Family members of individuals with behavioral health needs  
13 including one or more members from the black community, the  
14 indigenous community, or a community of color;

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

17 (e) Representatives of behavioral health providers and  
18 facilities, including representatives of facilities offering  
19 inpatient and residential behavioral health services;

20 (f) One or more certified peer specialists;

21 (g) One or more medical clinicians serving individuals with  
22 behavioral health needs;

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

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

27 (j) Other community representatives, as determined by the office;  
28 and

29 (k) One representative from a labor union representing workers  
30 who work in settings serving individuals with behavioral health  
31 conditions;

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

36 (8) Develop and deliver educational programs and information  
37 statewide to patients, residents, and clients of behavioral health  
38 providers or facilities, and their families on topics including, but  
39 not limited to, the execution of mental health advance directives,  
40 wellness recovery action plans, crisis services and contacts, peer

1 services and supports, family advocacy and rights, and involuntary  
2 treatment; and

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

8 NEW SECTION. **Sec. 5.** (1) A certified behavioral health consumer  
9 advocate shall:

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

15 (b) Assist and advocate on behalf of patients, residents, and  
16 clients of behavioral health providers or facilities before  
17 government agencies and seek administrative, legal, and other  
18 remedies on their behalf, if appropriate;

19 (c) Inform patients, residents, and clients or their  
20 representatives about applicable patient and resident rights, and  
21 provide information, as appropriate, to patients, residents, clients,  
22 family members, guardians, resident representatives, and others  
23 regarding the rights of patients and residents;

24 (d) Make recommendations through the office for improvements to  
25 the quality of services provided to patients, residents, and clients  
26 of behavioral health providers or facilities; and

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

30 (2) Nothing in this section shall be construed to grant a  
31 certified behavioral health consumer advocate:

32 (a) Statutory or regulatory licensing or sanctioning authority;  
33 or

34 (b) Binding adjudicative authority.

35 NEW SECTION. **Sec. 6.** (1) The certified behavioral health  
36 consumer advocates shall have appropriate access to behavioral health  
37 providers or facilities to effectively carry out the provisions of  
38 this chapter, with provisions made for the privacy of patients,

1 residents, and clients. The office must develop policies and  
2 procedures outlining when such access may be appropriate to carry out  
3 the provisions of this chapter.

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

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

12 NEW SECTION. **Sec. 7.** (1) Every behavioral health provider or  
13 facility shall post in a conspicuous location a notice providing the  
14 state office of behavioral health consumer advocacy's toll-free  
15 number and website as well as the name, address, and phone number of  
16 the office of the appropriate local behavioral health consumer  
17 advocate and a brief description of the services provided by the  
18 state office of behavioral health consumer advocacy. The form of the  
19 notice must be approved by the office. This information must also be  
20 distributed to the patients, residents, and clients of behavioral  
21 health providers or facilities, upon application for behavioral  
22 health services and upon admission to a behavioral health facility.  
23 The information shall also be provided to the family members and  
24 legal guardians of the patients, residents, or clients of a  
25 behavioral health provider or facility, as allowed by state and  
26 federal privacy laws.

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

30 NEW SECTION. **Sec. 8.** The office shall develop a process to  
31 train and certify all behavioral health consumer advocates, whether  
32 paid or volunteer, authorized by this chapter as follows:

33 (1) Certified behavioral health consumer advocates must have  
34 training or experience in the following areas:

- 35 (a) Behavioral health and other related social services programs;
- 36 (b) The legal system, including differences in state or federal  
37 law between voluntary and involuntary patients, residents, or  
38 clients;

1 (c) Advocacy and supporting self-advocacy;

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

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

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

11 (3) No certified behavioral health consumer advocate or any  
12 member of a certified behavioral health consumer advocate's family  
13 may have, or have had, within the previous twelve months, any  
14 significant ownership or financial interest in the provision of  
15 behavioral health services.

16 NEW SECTION. **Sec. 9.** (1) The office shall develop referral  
17 procedures for all certified behavioral health consumer advocates to  
18 refer any complaint, in accordance with a mutually established  
19 working agreement, to an appropriate state or local government  
20 agency. The appropriate agency shall respond to any complaint  
21 referred to it by a certified behavioral health consumer advocate, in  
22 accordance with a mutually established working agreement.

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

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

32 NEW SECTION. **Sec. 10.** (1) The office shall develop and  
33 implement working agreements with the protection and advocacy agency,  
34 the long-term care ombuds, the developmental disabilities ombuds, the  
35 corrections ombuds, and the children and family ombuds, and work in  
36 cooperation to assure efficient, coordinated service.

37 (2) The office shall develop working agreements with each managed  
38 care organization, behavioral health administrative services

1 organization, the state psychiatric hospitals, all appropriate state  
2 and local agencies, and other such entities as necessary to carry out  
3 their duties. Working agreements must include:

4 (a) The roles of the office and the agency or entity in complaint  
5 investigations, complaint referral criteria, and a process for  
6 sharing information regarding complaint review and investigation, as  
7 appropriate; and

8 (b) Processes and procedures to assure timely and seamless  
9 information sharing among all interested parties and that the office  
10 is responsive to all local information requests.

11 NEW SECTION. **Sec. 11.** (1) No certified behavioral health  
12 consumer advocate is liable for good faith performance of  
13 responsibilities under this chapter.

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

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

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

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

35 (1) Regional behavioral health ombuds programs existing prior to  
36 this act be integrated into this new statewide program and the ombuds  
37 from those programs be assessed and certified by the office as  
38 behavioral health consumer advocates;



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

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

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

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

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

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

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

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

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

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

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

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

3 (iii) Services related to involuntary commitments under chapters  
4 71.05 and 71.34 RCW;

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

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

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

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

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

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

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

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

33 (g) Establish and maintain quality assurance processes;

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

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

39 (2) The behavioral health administrative services organization  
40 must collaborate with the authority and its contracted managed care

1 organizations to develop and implement strategies to coordinate care  
2 with tribes and community behavioral health providers for individuals  
3 with a history of frequent crisis system utilization.

4 (3) The behavioral health administrative services organization  
5 shall:

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

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

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

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

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

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

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

37 (4) A managed care organization must contract with the state  
38 office of behavioral health consumer advocacy established in section  
39 3 of this act for the provision of behavioral health consumer

1 advocacy services delivered to individuals enrolled in the managed  
2 care organization. The contract shall require the managed care  
3 organization to reimburse the office of behavioral health consumer  
4 advocacy for behavioral health consumer advocacy services delivered  
5 to individuals enrolled in the managed care organization.

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

11 ((+5)) (6) A managed care organization must work closely with  
12 designated crisis responders, behavioral health administrative  
13 services organizations, and behavioral health providers to maximize  
14 appropriate placement of persons into community services, ensuring  
15 the client receives the least restrictive level of care appropriate  
16 for their condition. Additionally, the managed care organization  
17 shall work with the authority to expedite the enrollment or  
18 reenrollment of eligible persons leaving state or local correctional  
19 facilities and institutions for mental diseases.

20 ((+6)) (7) As an incentive to county authorities to become early  
21 adopters of fully integrated purchasing of medical and behavioral  
22 health services, the standards adopted by the authority shall provide  
23 for an incentive payment to counties which elect to move to full  
24 integration by January 1, 2016. Subject to federal approval, the  
25 incentive payment shall be targeted at ten percent of savings  
26 realized by the state within the regional service area in which the  
27 fully integrated purchasing takes place. Savings shall be calculated  
28 in alignment with the outcome and performance measures established in  
29 RCW 71.24.435, 70.320.020, and 71.36.025, and incentive payments for  
30 early adopter counties shall be made available for up to a six-year  
31 period, or until full integration of medical and behavioral health  
32 services is accomplished statewide, whichever comes sooner, according  
33 to rules to be developed by the authority.

34 NEW SECTION. Sec. 16. RCW 71.24.350 (Behavioral health ombuds  
35 office) and 2019 c 325 s 1020, 2018 c 201 s 4019, 2016 sp.s. c 29 s  
36 523, 2014 c 225 s 41, 2013 c 23 s 189, & 2005 c 504 s 803 are each  
37 repealed.

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

3        NEW SECTION.    **Sec. 18.**    Sections 15 and 16 of this act take  
4    effect January 1, 2022.

--- **END** ---