
SECOND SUBSTITUTE HOUSE BILL 1086

State of Washington

67th Legislature

2021 Regular Session

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

READ FIRST TIME 02/22/21.

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; creating a new section;
4 repealing RCW 71.24.350; and 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) "Contracting advocacy organization" means the organization
35 selected by the office pursuant to section 3 of this act.

36 (3) "Department" means the department of commerce.

37 (4) "Office" means the state office of behavioral health consumer
38 advocacy.

1 NEW SECTION. **Sec. 3.** (1) By July 1, 2022, the department shall
2 establish the state office of behavioral health consumer advocacy to
3 provide behavioral health consumer advocacy services to patients,
4 residents, and clients of behavioral health providers or facilities.
5 The department shall contract with a private nonprofit organization
6 to provide behavioral health consumer advocacy services, according to
7 the standards established by the office. The department shall assure
8 all program and staff support necessary to enable the contracting
9 advocacy organization to effectively protect the interests of persons
10 with behavioral health needs in accordance with this chapter. The
11 department shall select the organization through a competitive
12 bidding process and shall assure that the selected organization (a)
13 has demonstrated financial stability and meets the qualifications for
14 the duties identified in this chapter, and (b) does not have any
15 conflicts of interest that would interfere with the duties identified
16 in this chapter.

17 (2) Following the selection of the organization to carry out the
18 ministerial functions of the office, the department shall not
19 initiate the procurement of a new contract except upon a showing of
20 cause. Prior to ending the contract and conducting a new competitive
21 bidding process, the department shall provide an opportunity for
22 comment by the contracting advocacy organization and to appeal the
23 reselection to the department.

24 (3) The office shall adopt rules to carry out the purposes of
25 this chapter, including:

26 (a) Establishing standards for the contracting advocacy
27 organization to use when certifying behavioral health consumer
28 advocates;

29 (b) Establishing procedures consistent with this act for
30 appropriate access by behavioral health consumer advocates to
31 behavioral health providers or facilities; and

32 (c) Establishing procedures consistent with section 13 of this
33 act to protect the confidentiality of the records of patients,
34 residents, clients, providers, and complainants.

35 NEW SECTION. **Sec. 4.** The state office of behavioral health
36 consumer advocacy shall assure performance of the following
37 activities, as authorized in contract:

1 (1) Certification and coordination of the activities of the
2 behavioral health consumer advocates throughout the state according
3 to standards adopted by the office;

4 (2) Provision of training regarding appropriate access by
5 behavioral health consumer advocates to behavioral health providers
6 or facilities according to standards adopted by the office;

7 (3) Establishment of a toll-free telephone number, website, and
8 other appropriate technology to facilitate access to contracting
9 advocacy organization services for patients, residents, and clients
10 of behavioral health providers or facilities;

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

16 (5) Establishment of procedures consistent with the standards
17 adopted by the office to protect the confidentiality of the office's
18 records, including the records of patients, residents, clients,
19 providers, and complainants;

20 (6) Establishment of a statewide advisory council, a majority of
21 which must be composed of people with lived experience, that shall
22 include:

23 (a) Individuals with a history of mental illness including one or
24 more members from the black community, the indigenous community, or a
25 community of color;

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

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

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

34 (e) Representatives of behavioral health providers and
35 facilities, including representatives of facilities offering
36 inpatient and residential behavioral health services;

37 (f) One or more certified peer specialists;

38 (g) One or more medical clinicians serving individuals with
39 behavioral health needs;

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

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

5 (j) Other community representatives, as determined by the office;
6 and

7 (k) One representative from a labor union representing workers
8 who work in settings serving individuals with behavioral health
9 conditions;

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

14 (8) Development and delivery of educational programs and
15 information statewide to patients, residents, and clients of
16 behavioral health providers or facilities, and their families on
17 topics including, but not limited to, the execution of mental health
18 advance directives, wellness recovery action plans, crisis services
19 and contacts, peer services and supports, family advocacy and rights,
20 and involuntary treatment; and

21 (9) Reporting to the office, the legislature, and all appropriate
22 public agencies regarding the quality of services, complaints,
23 problems for individuals receiving services from behavioral health
24 providers or facilities, and any recommendations for improved
25 services for behavioral health consumers.

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

28 (a) 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 (b) Assist and advocate on behalf of patients, residents, and
34 clients of behavioral health providers or facilities before
35 government agencies and seek administrative, legal, and other
36 remedies on their behalf, if appropriate;

37 (c) 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, and others
2 regarding the rights of patients and residents;

3 (d) Make recommendations through the office and the contracting
4 advocacy organization for improvements to the quality of services
5 provided to patients, residents, and clients of behavioral health
6 providers or facilities; and

7 (e) 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 (2) Nothing in this section shall be construed to grant a
11 certified behavioral health consumer advocate:

12 (a) Statutory or regulatory licensing or sanctioning authority;
13 or

14 (b) Binding adjudicative authority.

15 NEW SECTION. **Sec. 6.** (1) The certified behavioral health
16 consumer advocates shall have appropriate access to behavioral health
17 providers or facilities to effectively carry out the provisions of
18 this chapter, with provisions made for the privacy of patients,
19 residents, and clients, according to the rules, policies, and
20 procedures developed under section 3 of this act.

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 toll-free phone number and website of the contracting advocacy
32 organization, as well as the name, address, and phone number of the
33 office of the appropriate local behavioral health consumer advocate
34 and a brief description of the services provided by the contracting
35 advocacy organization. The form of the notice must be approved by the
36 office. 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 provider or facility. The information shall also
2 be provided to the family members and legal guardians of the
3 patients, residents, or clients of a behavioral health provider or
4 facility, as allowed by 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 contracting advocacy organization.

8 NEW SECTION. **Sec. 8.** The contracting advocacy organization
9 shall develop and submit, for approval by the office, a process to
10 train and certify all behavioral health consumer advocates, whether
11 paid or volunteer, authorized by this chapter as follows:

12 (1) Certified behavioral health consumer advocates must have
13 training or 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 consumer advocate may not have
24 been employed by any behavioral health provider or facility within
25 the 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 consumer advocate.

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

33 NEW SECTION. **Sec. 9.** (1) The contracting advocacy organization
34 shall develop and submit for approval by the office referral
35 procedures for the organization and all certified behavioral health
36 consumer advocates to refer any complaint, in accordance with a
37 mutually established working agreement, to an appropriate state or
38 local government agency. The appropriate agency shall respond to any

1 complaint referred to it by a certified behavioral health consumer
2 advocate, in accordance with a mutually established working
3 agreement.

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

10 (3) State agencies that regulate or contract with behavioral
11 health providers or facilities shall adopt necessary rules to
12 effectively work in coordination with the contracting advocacy
13 organization.

14 NEW SECTION. **Sec. 10.** (1) The contracting advocacy organization
15 shall develop and implement working agreements with the protection
16 and advocacy agency, the long-term care ombuds, the developmental
17 disabilities ombuds, the corrections ombuds, and the children and
18 family ombuds, and work in cooperation to assure efficient,
19 coordinated service.

20 (2) The contracting advocacy organization shall develop working
21 agreements with each managed care organization, behavioral health
22 administrative services organization, the state psychiatric
23 hospitals, all appropriate state and local agencies, and other such
24 entities as necessary to carry out their duties. Working agreements
25 must include:

26 (a) The roles of the contracting advocacy organization and the
27 agency or entity in complaint investigations, complaint referral
28 criteria, and a process for sharing information regarding complaint
29 review and investigation, as appropriate; and

30 (b) Processes and procedures to assure timely and seamless
31 information sharing among all interested parties and that the
32 contracting advocacy organization is responsive to all local
33 information requests.

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

37 (2) No discriminatory, disciplinary, or retaliatory action may be
38 taken against an employee or volunteer of a behavioral health

1 provider or facility, or a patient, resident, or client of a
2 behavioral health provider or facility, for any communication made,
3 or information given or disclosed, to aid the certified behavioral
4 health consumer advocate in carrying out duties and responsibilities
5 under this chapter, unless the same was done maliciously or without
6 good faith. This subsection is not intended to infringe on the rights
7 of the employer to supervise, discipline, or terminate an employee or
8 volunteer for other reasons, and shall serve as a defense to any
9 action in libel or slander.

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

15 (4) A representative of the contracting advocacy organization is
16 exempt from being required to testify in court as to any confidential
17 matters except upon the express consent of the client, resident, or
18 patient that is subject to the court proceedings, or their
19 representatives, as applicable.

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

21 (1) Regional behavioral health ombuds programs existing prior to
22 this act be integrated into this new statewide program and the ombuds
23 from those programs be assessed and certified by the contracting
24 advocacy organization as behavioral health consumer advocates;

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

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

29 (4) The department annually expend at least the amount expended
30 on regional behavioral health ombuds services prior to the effective
31 date of this section on the office and for the procurement of
32 services from the contracting advocacy organization under this
33 chapter.

34 NEW SECTION. **Sec. 13.** (1) All records and files of the office,
35 the contracting advocacy organization, and any certified behavioral
36 health consumer advocates related to any complaint or investigation
37 made pursuant to carrying out their duties and the identities of
38 complainants, witnesses, patients, residents, or clients and

1 information that could reasonably identify any of these individuals
2 shall remain confidential unless disclosure is authorized in writing
3 by the subject of the information, or the subject's guardian or legal
4 representative.

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

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

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

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

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

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

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

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

29 (iii) Services related to involuntary commitments under chapters
30 71.05 and 71.34 RCW;

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

37 (v) Care coordination, diversion services, and discharge planning
38 for nonmedicaid individuals transitioning from state hospitals or

1 inpatient settings to reduce rehospitalization and utilization of
2 crisis services, as required by the authority in contract; and

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

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

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

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

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

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

21 (g) Establish and maintain quality assurance processes;

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

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

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

32 (3) The behavioral health administrative services organization
33 shall:

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

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

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

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

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

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

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

26 (4) A managed care organization must contract with the
27 contracting advocacy organization selected by the state office of
28 behavioral health consumer advocacy established in section 3 of this
29 act for the provision of behavioral health consumer advocacy services
30 delivered to individuals enrolled in the managed care organization.
31 The contract shall require the managed care organization to reimburse
32 the office of behavioral health consumer advocacy for behavioral
33 health consumer advocacy services delivered to individuals enrolled
34 in the managed care organization.

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

1 ~~((5))~~ (6) A managed care organization must work closely with
2 designated crisis responders, behavioral health administrative
3 services organizations, and behavioral health providers to maximize
4 appropriate placement of persons into community services, ensuring
5 the client receives the least restrictive level of care appropriate
6 for their condition. Additionally, the managed care organization
7 shall 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 ~~((6))~~ (7) As an incentive to county authorities to become early
11 adopters of fully integrated purchasing of medical and behavioral
12 health services, the standards adopted by the authority shall provide
13 for an incentive payment to counties which elect to move to full
14 integration by January 1, 2016. Subject to federal approval, the
15 incentive payment shall be targeted at ten percent of savings
16 realized by the state within the regional service area in which the
17 fully integrated purchasing takes place. Savings shall be calculated
18 in alignment with the outcome and performance measures established in
19 RCW 71.24.435, 70.320.020, and 71.36.025, and incentive payments for
20 early adopter counties shall be made available for up to a six-year
21 period, or until full integration of medical and behavioral health
22 services is accomplished statewide, whichever comes sooner, according
23 to rules to be developed by the authority.

24 NEW SECTION. **Sec. 16.** RCW 71.24.350 (Behavioral health ombuds
25 office) and 2019 c 325 s 1020, 2018 c 201 s 4019, 2016 sp.s. c 29 s
26 523, 2014 c 225 s 41, 2013 c 23 s 189, & 2005 c 504 s 803 are each
27 repealed.

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

30 NEW SECTION. **Sec. 18.** Sections 15 and 16 of this act take
31 effect July 1, 2022.

32 NEW SECTION. **Sec. 19.** If specific funding for the purposes of
33 this act, referencing this act by bill or chapter number, is not

1 provided by June 30, 2021, in the omnibus appropriations act, this
2 act is null and void.

--- **END** ---