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HOUSE BILL 1086

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State of Washington

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2021 Regular Session

**By** Representatives Simmons, Caldier, Bateman, Ortiz-Self, Shewmake, Ryu, Chopp, Cody, Goodman, Fey, Stonier, Macri, Fitzgibbon, Frame, and Davis

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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;

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

36 NEW SECTION. **Sec. 3.** (1) By January 1, 2022, the department  
37 shall contract with a private nonprofit organization to provide  
38 behavioral health consumer advocacy services. The department shall

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

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

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

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

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

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

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

33 (4) Establish a statewide uniform reporting system to collect and  
34 analyze data relating to complaints, conditions, and service quality  
35 provided by behavioral health providers or facilities for the purpose  
36 of identifying and resolving significant problems, with permission to  
37 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 that shall include:

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

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

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

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

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

13 (f) One or more certified peer counselors;

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

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

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

20 (j) Other community representatives, as determined by the office;

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

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

30 NEW SECTION. **Sec. 5.** A certified behavioral health consumer  
31 advocate shall:

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

37 (2) Assist and advocate on behalf of patients, residents, and  
38 clients of behavioral health providers or facilities by using

1 informal complaint resolution methods or formal grievance processes  
2 including, if applicable, a fair hearing process;

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

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

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

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

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

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

34 NEW SECTION. **Sec. 7.** (1) Every behavioral health provider or  
35 facility shall post in a conspicuous location a notice providing the  
36 state office of behavioral health consumer advocacy's toll-free  
37 number and website as well as the name, address, and phone number of  
38 the office of the appropriate local behavioral health consumer

1 advocate and a brief description of the services provided by the  
2 state office of behavioral health consumer advocacy. The form of the  
3 notice must be approved by the office. This information must also be  
4 distributed to the patients, residents, and clients of behavioral  
5 health providers or facilities, upon application for behavioral  
6 health services and upon admission to a behavioral health facility.  
7 The information shall also be provided to the family members and  
8 legal guardians of the patients, residents, or clients of a  
9 behavioral health provider or facility, as allowed by state and  
10 federal privacy laws.

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

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

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

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

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

23 (c) Advocacy and supporting self-advocacy;

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

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

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

33 (3) No certified behavioral health consumer advocate or any  
34 member of a certified behavioral health consumer advocate's family  
35 may have, or have had, within the previous twelve months, any  
36 significant ownership or financial interest in the provision of  
37 behavioral health services.

1        NEW SECTION.     **Sec. 9.**     (1) The office shall develop referral  
2 procedures for all certified behavioral health consumer advocates to  
3 refer any complaint, in accordance with a mutually established  
4 working agreement, to an appropriate state or local government  
5 agency. The appropriate agency shall respond to any complaint  
6 referred to it by a certified behavioral health consumer advocate, in  
7 accordance with a mutually established working agreement.

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

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

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

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

27        (a) The roles of the office and the agency in complaint  
28 investigations, complaint referral criteria, and a process for  
29 sharing information regarding complaint review and investigation, as  
30 appropriate; and

31        (b) Processes and procedures to assure timely and seamless  
32 information sharing among all interested parties and that the office  
33 is responsive to all local 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 office is exempt from being required  
16 to testify in court as to any confidential matters except upon the  
17 express consent of the client, resident, or patient that is subject  
18 to the court proceedings, or their representatives, as applicable.

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

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

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

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

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

31 NEW SECTION. **Sec. 13.** (1) All records and files of the office  
32 and any certified behavioral health consumer advocates related to any  
33 complaint or investigation made pursuant to carrying out their duties  
34 and the identities of complainants, witnesses, patients, residents,  
35 or clients and information that could reasonably identify any of  
36 these individuals shall remain confidential unless disclosure is  
37 authorized in writing by the subject of the information, or the  
38 subject's guardian or legal 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 office without the written consent of any named witnesses,  
4 complainants, patients, residents, or clients unless the disclosure  
5 is made without the identity of any of these individuals and without  
6 information that could reasonably identify any of these individuals  
7 unless such disclosure is required in carrying out its duties under  
8 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 behavioral health consumer advocacy established in section  
23 3 of this act for the provision of behavioral health consumer  
24 advocacy services delivered to individuals enrolled in the managed  
25 care organization. The contract shall require the managed care  
26 organization to reimburse the office of behavioral health consumer  
27 advocacy for behavioral health consumer advocacy services delivered  
28 to individuals enrolled in the 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, 2022.

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