

HOUSE BILL REPORT

HB 2386

As Reported by House Committee On:
Health Care & Wellness
Appropriations

Title: An act relating to the creation of the state office of the behavioral health ombuds.

Brief Description: Creating the state office of the behavioral health ombuds.

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

Brief History:

Committee Activity:

Health Care & Wellness: 1/14/20, 1/28/20 [DPS];

Appropriations: 2/6/20, 2/8/20 [DP2S(w/o sub HCW)].

Brief Summary of Second Substitute Bill

- Eliminates regional behavioral health ombuds services and establishes the State Office of the Behavioral Health Ombuds to coordinate the activities of behavioral health ombuds across the state.
- Directs the State Office of the Behavioral Health Ombuds to certify and coordinate the activities of behavioral health ombuds throughout the state.
- Requires Medicaid managed care organizations to contract with the State Office of the Behavioral Health Ombuds to reimburse it for behavioral health ombuds services provided to its enrollees.

HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 15 members: Representatives Cody, Chair; Macri, Vice Chair; Schmick, Ranking Minority Member; Caldier, Assistant Ranking Minority Member; Chambers, Chopp, Davis, DeBolt, Harris, Maycumber, Riccelli, Robinson, Stonier, Thai and Tharinger.

Staff: Chris Blake (786-7392).

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Background:

The Health Care Authority provides medical care services to eligible low-income state residents and their families, primarily through the Medicaid program. Coverage for medical services is primarily provided through managed care systems. Managed care is a prepaid, comprehensive system for delivering a complete medical benefits package that is available for eligible families, children under age 19, low-income adults, certain disabled individuals, and pregnant women. Since January 1, 2020, all behavioral health services and medical care services have been fully integrated in a managed care health system for most Medicaid clients.

While most Medicaid clients receive behavioral health services through a managed care health system, behavioral health administrative service organizations administer certain behavioral health services that are not covered by the managed health care system within a specific regional service area. There are 10 behavioral health administrative service organizations in Washington. The services provided by a behavioral health administrative service organization include maintaining continuously available crisis response services, administering services related to the involuntary commitment of adults and minors, coordinating planning for persons transitioning from long-term commitments, maintaining an adequate network of evaluation and treatment services, and providing services to non-Medicaid clients in accordance with contract criteria. In addition, each behavioral health administrative service organization must provide for an independent, separately funded behavioral health ombuds office that maximizes the use of consumer advocates.

Summary of Substitute Bill:

Behavioral health ombuds offices that are supported by each behavioral health administrative services organization to serve a particular region are discontinued and replaced with the State Office of the Behavioral Health Ombuds. By January 1, 2021, the Department of Commerce must contract with a private nonprofit organization to provide behavioral health ombuds services and be designated as the State Office of the Behavioral Health Ombuds. The stated intent of the Legislature is that regional behavioral health ombuds programs be integrated into the statewide program and that regional ombuds be assessed and certified by the State Office of the Behavioral Health Ombuds.

The State Office of the Behavioral Health Ombuds is assigned several responsibilities in relation to patients, residents, and clients of behavioral health providers or facilities. A "behavioral health provider or facility" is defined to include:

- behavioral health providers, such as physicians, osteopathic physicians, physician assistants, osteopathic physician assistants, advanced registered nurse practitioners, registered nurses, psychologists, substance use disorder professionals, mental health counselors, social workers, and marriage and family therapists;
- licensed or certified behavioral health agencies;
- certain long-term care facilities in which adults or children reside;
- state hospitals; or

- facilities or agencies that receive funds from the state to provide residential or treatment services to adults or children with a behavioral health condition.

The State Office of the Behavioral Health Ombuds is authorized to:

- certify and coordinate the activities of the behavioral health ombuds throughout the state;
- establish procedures for appropriate access by behavioral health ombuds to behavioral health providers or facilities;
- establish a toll-free phone number, website, and other technology to facilitate access to ombuds services for patients, residents, and clients of behavioral health providers or facilities;
- establish a uniform reporting system to perform functions related to complaints, conditions, and service quality provided by behavioral health providers or facilities;
- establish procedures to protect the confidentiality of ombuds records of patients, residents, clients, providers, and complainants;
- monitor the development and implementation of laws and policies related to the provision of behavioral health services and advocate for consumers; and
- report to the Legislature and appropriate public agencies regarding the quality of services, complaints, problems for individuals receiving services from behavioral health providers or facilities, and any recommendations for improving services for behavioral health consumers.

There must be a behavioral health ombuds office within the boundaries of the region served by each behavioral health administrative services organization.

In addition, the State Office of the Behavioral Health Ombuds must establish a statewide advisory council. The council's members must include individuals with a history of mental illness, individuals with a history of substance use disorder, family members of individuals with behavioral health needs, one or more representatives of an organization representing consumers of behavioral health services, one or more representatives of behavioral health providers or facilities, peer counselors, medical clinicians and nonmedical providers serving individuals with behavioral health needs, a representative of a behavioral health administrative services organization, and other community representatives.

The State Office of the Behavioral Health Ombuds must develop a process to train and certify all behavioral health ombuds. Certified behavioral health ombuds must have training or experience in behavioral health and other related social services programs; the legal system; advocacy and supporting self-advocacy; dispute or problem resolution techniques; and all applicable patient, resident, and client rights. A certified behavioral health ombuds may not have been employed by a behavioral health provider or facility within the previous 12 months, except as a certified peer counselor. Certified behavioral health ombuds and their family members may not have had a significant ownership or financial interest in the provision of behavioral health services within the past 12 months.

Certified behavioral health ombuds are responsible for:

- identifying, investigating, and resolving complaints made by, or on behalf of, patients, residents, and clients of behavioral health providers or facilities involving

- administrative action, inaction, or decisions that may adversely affect the health, safety, welfare, and rights of these individuals;
- assisting and advocating on behalf of patients, residents, and clients of behavioral health providers or facilities through informal complaint resolution or formal grievance processes;
 - informing patients, residents clients, family members, guardians, resident representatives, employees and others of the rights of patients and residents;
 - monitoring and making recommendations for improving the quality of services provided to patients, residents, and clients of behavioral health providers or facilities; and
 - involving family members, friends, and other designated individuals in the complaint resolution process with the consent of the patient, resident, or client.

The State Office of the Behavioral Health Ombuds and certified behavioral health ombuds have the right of entry to behavioral health providers or facilities. The State Office of the Behavioral Health Ombuds must develop policies and procedures to allow certified behavioral health ombuds to access patients, residents, and clients for the purpose of hearing, investigating, and resolving complaints, as well as monitoring the quality of services.

The State Office of the Behavioral Health Ombuds must develop procedures for certified behavioral health ombuds to refer complaints to the appropriate state or local agency, in accordance with a mutually established working agreement. The State Office of the Behavioral Health Ombuds must develop working agreements to coordinate services with the protection and advocacy agency, the Long-Term Care Ombuds, the Developmental Disabilities Ombuds, the Corrections Ombuds, and the Children and Family Ombuds. The State Office of the Behavioral Health Ombuds must also develop working agreements with each managed care organization, behavioral health administrative services organization, state and private psychiatric hospitals, and all appropriate state and local agencies. Working agreements must set the roles of the State Office of the Behavioral Health Ombuds and the agencies, as well as the processes and procedures to assure timely and seamless information sharing.

Behavioral health providers or facilities must post in a conspicuous location a notice providing the State Office of the Behavioral Health Ombuds' toll-free phone number and web site. The notice must also include the name, address, and phone number of the appropriate local behavioral health ombuds and a brief description of the available services. The information must also be provided to the patient, residents, and clients of behavioral health providers or facilities, as well as their family members and legal guardians, if appropriate, upon admission to a behavioral health facility. Every behavioral health provider or facility must provide access to a free telephone for the purpose of contacting the State Office of the Behavioral Health Ombuds.

Employees, volunteers, patients, residents, and clients of behavioral health providers or facilities are protected from discriminatory, disciplinary, or retaliatory action for good-faith communications made to a certified behavioral health ombuds, and the communications are deemed privileged and confidential. Certified behavioral health ombuds are not liable for the good-faith performance of their responsibilities. Records and files of the State Office of the Behavioral Health Ombuds and certified behavioral health ombuds related to complaints and

investigations and the identities of complainants, witnesses, patients, residents, and clients are confidential, except by court order. Representatives of the State Office of the Behavioral Health Ombuds are exempt from testifying in court on confidential matters, unless the client, resident, or patient that is the subject of the court proceeding provides express consent.

Substitute Bill Compared to Original Bill:

The substitute bill adds peer counselors, medical clinicians and nonmedical providers serving individuals with behavioral health needs, and behavioral health administrative services organizations to the advisory council for the State Office of the Behavioral Health Ombuds.

The substitute bill requires that there be a behavioral health ombuds office in each behavioral health administrative services organization region and that behavioral health providers or facilities provide access to a free telephone for contacting the State Office of the Behavioral Health Ombuds. The time period for calculating potential conflicts of interest for certified behavioral health ombuds is reduced from three years to 12 months and allows the person to have been a certified peer specialist.

The substitute bill requires that referrals to agencies occur according to mutually established working agreements that set the roles of the State Office of the Behavioral Health Ombuds and the agencies, as well as the processes and procedures. Representatives of the State Office of the Behavioral Health Ombuds are exempt from testifying on confidential matters in court unless the subject of the information provides express consent.

The substitute bill clarifies that the State Office of the Behavioral Health Ombuds and certified behavioral health ombuds have the right of entry to behavioral health providers or facilities. The State Office of the Behavioral Health Ombuds may recommend improvements in the implementation of laws and certified behavioral health ombuds may recommend improvements in the quality of services.

The substitute bill changes the standard for redesignating the contracted organization that provides behavioral health ombuds services from a showing of good cause that the organization is failing to provide services, to a showing of misconduct or neglect of duty and proof of failure to provide the services.

Appropriation: None.

Fiscal Note: Requested on January 10, 2020.

Effective Date of Substitute Bill: This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 15, relating to repealing regional behavioral health ombuds offices, which takes effect January 1, 2021.

Staff Summary of Public Testimony:

(In support) The ombuds idea works well in long-term care and there have been concerns with the status of the behavioral health system; there needs to be more advocacy for the patients. This bill is about protecting patients. A statewide ombuds will be an independent office that is free from conflicts of interest to protect consumers who use the publicly funded behavioral health system and their families. The State Office of the Behavioral Health Ombuds will be free to advocate directly for consumers and help them resolve conflicts informally or in formal grievance procedures.

There have been stories recently about patients in in-patient settings being mistreated or neglected and this bill will address those issues by allowing ombuds to enter any in-patient setting regardless of who is paying to talk directly with people in need. It is hard to advocate for oneself when unable to leave the premises. This bill will give people peace of mind to know that there are advocacy services for them with only the best interests of patients and families at heart.

Ombuds can provide numerous services, such as problem solving, complaint resolution, and advocacy. A centralized ombuds system can be flexible and more responsive to a client. An ombuds can be a great resource to the Legislature about industry trends in this state and others. Under the current system an ombuds in one county cannot investigate a facility in another county.

(Opposed) None.

(Other) Inpatient clients should still be informed of ombuds services. Because of the vulnerability of persons who have been involuntarily committed for inpatient mental health treatment, the bill should be applied to any hospital that accepts persons for involuntary commitment. Confidential internal documents should also be exempt from discovery. In some circumstances patients should be allowed to compel testimony or records involving themselves. The bill should have assurances that there will be at least one ombuds in every county. While a statewide office makes sense, there must be a way to assure that there is an adequate regional structure so that things can move back up from the community level. Behavioral health administrative services organizations should be on the statewide advisory council. The State Office of the Behavioral Health Ombuds should have working agreements within communities.

Persons Testifying: (In support) Representative Cody, prime sponsor; Brad Forbes, National Alliance on Mental Illness–Washington; Laura Van Tosh; Marilyn Roberts, National Alliance on Mental Illness–Thurston-Mason; Patricia Hunter, Washington State Long-Term Care Ombudsman Program; and Alan Rodgers.

(Other) Rebecca Faust; and Brad Banks, County Behavioral Health Administrative Service Organizations.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Health Care & Wellness. Signed by 31 members: Representatives Ormsby, Chair; Robinson, 1st Vice Chair; Bergquist, 2nd Vice Chair; Stokesbary, Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Rude, Assistant Ranking Minority Member; Caldier, Chandler, Chopp, Cody, Dolan, Dye, Fitzgibbon, Hansen, Hoff, Hudgins, Kilduff, Kraft, Macri, Mosbrucker, Pettigrew, Pollet, Ryu, Schmick, Senn, Steele, Sullivan, Sutherland, Tarleton, Tharinger and Ybarra.

Staff: Andy Toulon (786-7178).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Health Care & Wellness:

The Appropriations Committee recommended eliminating the jurisdiction of the State Office of the Behavioral Health Ombuds in state-funded residential settings and clarifying that the jurisdiction applies to settings which provide state-funded behavioral health treatment services. Medicaid managed care organizations are required to contract with the State Office of the Behavioral Health Ombuds to reimburse it for behavioral health ombuds services provided to its enrollees.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 1, 2020.

Effective Date of Second Substitute Bill: This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 15, relating to requiring managed care organizations to reimburse the state office of the behavioral health ombuds for services delivered to their enrollees, and section 16, relating to repealing regional behavioral health ombuds offices, which take effect January 1, 2021.

Staff Summary of Public Testimony:

(In support) The intent of this bill is to ensure that individuals receiving publicly funded behavioral health treatment are getting the services that they need. This bill is an important investment that the state can make to ensure that people are getting behavioral health interventions earlier. Duties that ombuds provide include helping individuals find providers and making sure that their claims are paid. This can be an invaluable service for a family or an individual who is in the middle of a behavioral health crisis.

The bill is an important step toward getting individuals into treatment earlier rather than waiting until someone needs to go to a state or private hospital, where treatment is a lot more expensive, or even worse, to the criminal justice system. There is already a lot of money in this program with 10 independent offices so there will be savings in consolidating those offices and streamlining services. Over time, the long term expenditure of this program will go down.

The county administrative services organizations are in support of the bill. There is a lot of benefit from moving the behavioral health ombuds to a model that reflects what is done with other ombuds programs across the state.

(Opposed) None.

Persons Testifying: Melanie Smith, National Alliance on Mental Illness Washington; and Brad Banks, County Behavioral Health Administrative Service Organizations.

Persons Signed In To Testify But Not Testifying: None.