

# SENATE BILL REPORT

## 2SHB 2386

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As of March 2, 2020

**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:** House Committee on Appropriations (originally sponsored by Representatives Cody, Robinson, Leavitt, Tarleton, Thai, Frame, Fitzgibbon, Slatter, Davis, Tharinger, Sells, Macri and Wylie).

**Brief History:** Passed House: 2/14/20, 98-0.

**Committee Activity:** Behavioral Health Subcommittee to Health & Long Term Care: 2/21/20, 2/27/20 [DPA-WM].

**Ways & Means:** 2/29/20.

### Brief Summary of Amended 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.

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### SENATE COMMITTEE ON BEHAVIORAL HEALTH SUBCOMMITTEE TO HEALTH & LONG TERM CARE

**Majority Report:** Do pass as amended and be referred to Committee on Ways & Means.

Signed by Senators Dhingra, Chair; Wagoner, Ranking Member; Darneille, Frockt and O'Ban.

**Staff:** Kevin Black (786-7747)

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### SENATE COMMITTEE ON WAYS & MEANS

*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.*

**Staff:** Travis Sugarman (786-7446)

**Background:** The Health Care Authority (HCA) 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 Medicaid managed care organization (MCO), behavioral health administrative service organizations (BH-ASOs) administer certain behavioral health services that are not covered by the managed health care system within a specific regional service area. There are ten BH-ASOs in Washington, administered by a combination of county authorities and private contractors, one for each of the ten regional service areas in Washington. The services provided by a BH-ASO 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.

Behavioral Health Ombuds. HCA contracts with BH-ASOs to provide independent behavioral health ombuds services in each regional service area. These regional behavioral health ombuds are required to maximize the use of consumer advocates.

**Summary of Amended Bill:** The Department of Commerce must contract with a private nonprofit organization to serve as the State Office of the Behavioral Health Ombuds (Ombuds) by January 1, 2021. The Ombuds must be selected through a competitive bidding process. Once awarded, the Ombuds must not be redesignated except upon showing of misconduct, neglect of duty, or conflict of interest, or for reasons specified in contract.

The Ombuds must have the following powers and duties:

- coordinating behavioral health ombuds services throughout the state and within each regional service area;
- establishing procedures for access to behavioral health providers or facilities;
- establishing a toll-free number and website;
- establishing a unified reporting system to collect and analyze data;
- protecting confidentiality;
- establishing a statewide advisory council with specified membership;
- monitoring the development and implementation of laws and regulations related to behavioral health;
- advocating for consumers; and
- reporting to the Legislature.

The Ombuds must investigate and resolve complaints made by or on behalf of patients, residents, and clients of the behavioral health system, advocate for these persons, and inform

them of their rights. The Ombuds must make recommendations for improvement to behavioral health providers and facilities.

The Ombuds must have the right of entry to behavioral health providers and facilities at any time deemed necessary and reasonable. Providers and facilities must post notices informing patients, clients, and residents how to contact the Ombuds. The Ombuds must train and certify behavioral health ombuds, whether paid or volunteer. The Ombuds must establish working agreements with state and local government agencies to refer complaints about providers or facilities and to track the results of the referred complaint. A certified ombuds is not liable for good faith performance of their responsibilities.

The Ombuds must coordinate with the protection and advocacy organization; Long-Term Care Ombuds; Developmental Disability Ombuds; and Children and Family Ombuds. HCA, the Department of Social and Health Services, Department of Health, and Department of Commerce may adopt rules necessary to coordinate with the Ombuds.

No retaliation may be taken against a person for communicating with the Ombuds. Communications with the Ombuds are privileged and confidential.

The requirement for HCA to contract with BH-ASOs to provide independent ombuds services in each regional service area is repealed. It is the intent of the Legislature for existing regional ombuds to be integrated into the Ombuds. Records and files related to complaints must remain confidential absent the written consent of any named witnesses, complainants, patients, residents, or clients, unless subject to court order. MCOs must contract with the Ombuds for services to their enrolled members.

#### **EFFECT OF BEHAVIORAL HEALTH SUBCOMMITTEE TO HEALTH & LONG TERM CARE COMMITTEE AMENDMENT(S):**

- Allows the designation of the Ombuds to be rescinded for reasons specified in contract.
- Removes statement of intent regarding level of spending for Ombuds.
- Allows executive agencies to adopt rules necessary to coordinate with the Ombuds.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Second Substitute House Bill (Behavioral Health Subcommittee to Health & Long Term Care):** *The committee recommended a different version of the bill than what was heard.* PRO: The creation of a statewide ombuds will consolidate regional ombuds, creating a state system which is uniform, consistent, and completely independent of the payer. Currently there are concerns about independence. It will help people in inpatient settings by allowing the ombuds to enter and determine what is

happening and whether rights are being respected. The office will be accountable to the Legislature and provide you with reports and data as to how the behavioral health system is doing. I struggled for over 15 years trying to get services for my son. When responsibility for the behavioral health system transferred from the Department of Social and Health Services to HCA, the regional ombuds became much less helpful to me. An independent ombuds can better advocate for clients without conflict of interest. It is great to see the community and Legislature working together to develop statewide data. This will help us have confidence as we continue to make changes to the continuum of care. It will be good for persons in facilities to have access to ombuds services.

CON: This bill is missing a critical element. Previously the ombuds have been required to have lived experience in behavioral health or to have family members who do. In my previous experience I felt compassion from the ombuds who advocated for me even when they weren't successful. It is stigmatizing to eliminate the requirement for the ombuds be a person with lived experience.

**Persons Testifying (Behavioral Health Subcommittee to Health & Long Term Care):**

PRO: Melanie Smith, NAMI Washington; Marilyn Roberts, citizen; Laura Van Tosh, citizen.

CON: Jennifer Bliss, citizen.

**Persons Signed In To Testify But Not Testifying (Behavioral Health Subcommittee to Health & Long Term Care):** No one.

**Staff Summary of Public Testimony on Bill as Amended by Behavioral Health Subcommittee to Health & Long Term Care (Ways & Means):**

PRO: There are two important reasons for this bill—(1) It consolidates the regional ombuds under one office, to create consistency and help with warm handoffs between regions and ombuds; the goal is to assist people who need services with getting access to those services; and (2) it creates a resource for people in inpatient settings when they are at their most vulnerable. Having one central office for the state should also help people to better find their ombuds and be able to access them, this is currently a difficult task.

**Persons Testifying (Ways & Means):** PRO: Melanie Smith, NAMI Washington.

**Persons Signed In To Testify But Not Testifying (Ways & Means):** No one.