

HOUSE BILL REPORT

HB 1086

As Reported by House Committee On:

Health Care & Wellness
Appropriations

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

Brief Description: Creating the state office of behavioral health consumer advocacy.

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

Brief History:

Committee Activity:

Health Care & Wellness: 1/18/21, 1/27/21 [DPS];
Appropriations: 2/16/21, 2/17/21 [DP2S(w/o sub HCW)].

Brief Summary of Second Substitute Bill

- Eliminates regional behavioral health ombuds services and creates the State Office of Behavioral Health Consumer Advocacy (SOBHCA) to establish rules, standards, and procedures for behavioral health consumer advocacy services across the state.
- Directs the SOBHCA to contract with a private nonprofit organization to provide behavioral health consumer advocacy services including certifying and coordinating the activities of behavioral health advocates throughout the state.
- Requires Medicaid managed care organizations to contract with the SOBHCA to reimburse it for behavioral health consumer advocacy services provided to their enrollees.

HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

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

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 15 members: Representatives Cody, Chair; Bateman, Vice Chair; Schmick, Ranking Minority Member; Caldier, Assistant Ranking Minority Member; Bronoske, Davis, Harris, Macri, Maycumber, Riccelli, Rude, Simmons, Stonier, Tharinger and Ybarra.

Staff: Christopher Blake (786-7392).

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 care health 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 Behavioral Health Consumer Advocacy (SOBHCA). By January 1, 2022, the Department of Commerce must contract with a private nonprofit organization to provide behavioral health consumer advocacy services and be designated as the SOBHCA. 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 SOBHCA.

The SOBHCA 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 to the extent that they provide behavioral health services, 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; and
- 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 SOBHCA is authorized to:

- certify and coordinate the activities of behavioral health consumer advocates throughout the state;
- establish procedures for access by behavioral health consumer advocates to behavioral health providers or facilities;
- establish a toll-free phone number, website, and other technology to facilitate access to SOBHCA 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 SOBHCA 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;
- develop and deliver educational programs and information to patients, residents, and clients of behavioral health providers or facilities and their family on topics such as mental health advance directives, wellness recovery action plans, crisis services and contacts, family advocacy, and involuntary treatment; and
- report to the Legislature and 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.

In addition, the SOBHCA 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, representatives of an organization representing consumers of behavioral health services, representatives of behavioral health providers or facilities, peer specialists, medical clinicians and nonmedical providers serving individuals with behavioral health needs, a representative of a behavioral health administrative services organization, a representative from a labor union representing workers who work in settings serving

individuals with behavioral health conditions, and other community representatives. A majority of the council's members must be people with lived experience.

The SOBHCA must develop a process to train and certify all behavioral health consumer advocates. Certified behavioral health consumer advocates must have training or experience in behavioral health and related social services programs; the legal system; advocacy and supporting self-advocacy; dispute or problem resolution techniques; and patient, resident, and client rights. A certified behavioral health consumer advocate may not have been employed by a behavioral health provider or facility within the previous 12 months, except as a certified peer specialist. Certified behavioral health consumer advocates 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 consumer advocates 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 before government agencies and seeking administrative and legal remedies on their behalf;
- informing patients, residents clients, family members, guardians, resident representatives, and others of the rights of patients and residents;
- making recommendations through the SOBHCA 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.

There must be a behavioral health consumer advocate office within the boundaries of the region served by each behavioral health administrative services organization. Medicaid managed care organizations must contract with the SOBHCA to reimburse it for behavioral health consumer advocacy services provided to their enrollees.

The SOBHCA and certified behavioral health consumer advocates must have appropriate access to behavioral health providers or facilities. The SOBHCA must develop policies and procedures outlining when such access may be appropriate.

The SOBHCA must develop procedures for certified behavioral health consumer advocates to refer complaints to appropriate state or local agencies, in accordance with a mutually established working agreement. The SOBHCA 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 SOBHCA must also develop working agreements with each managed

care organization, behavioral health administrative services organization, state psychiatric hospitals, and all relevant state and local agencies. Working agreements must set the roles of the SOBHCA and the agencies, as well as the processes and procedures to assure timely and seamless information sharing.

Behavioral health providers or facilities must post a notice providing the SOBHCA's toll-free phone number and website. The notice must also include the name, address, and phone number of the appropriate local behavioral health consumer advocate 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 SOBHCA.

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 consumer advocate, and the communications are deemed privileged and confidential. Certified behavioral health consumer advocates are not liable for the good-faith performance of their responsibilities. Records and files of the SOBHCA and certified behavioral health consumer advocates related to complaints and investigations and the identities of complainants, witnesses, patients, residents, and clients are confidential, except by court order. Representatives of the SOBHCA are exempt from testifying in court on confidential matters, unless the client, resident, or patient is the subject of the court proceeding.

Substitute Bill Compared to Original Bill:

The substitute bill limits the jurisdiction of the State Office of Behavioral Health Consumer Advocacy (SOBHCA) over behavioral health providers to only those who provide behavioral health services. The authority of the SOBHCA to collect data related to service quality is removed.

The substitute bill specifies that certified behavioral health consumer advocates do not have licensing or sanctioning authority or binding adjudicative authority and that they may advocate for patients, residents, and clients before government agencies, but not use their own informal and formal complaint resolution and grievance processes. The role of certified behavioral health consumer advocates with respect to employees of behavioral health providers or facilities is removed.

The substitute bill authorizes the SOBHCA to develop and deliver educational programs and information to patients, residents, and clients of behavioral health providers or facilities, and their families, on topics such as mental health advance directives, wellness recovery action plans, crisis services and contacts, peer services and supports, family advocacy, and involuntary treatment.

The substitute bill requires that the majority of members on the Statewide Advisory Council be people with lived experience. At least one of the members with a history of mental illness, at least one of the members with a history of substance use disorder, and at least one of the members who are a family member of an individual with behavioral health needs, must be a member from the black community, the indigenous community, or a community of color.

The substitute bill allows certified behavioral health consumer advocates appropriate access to behavioral health providers or facilities according to SOBHCA policies on appropriate access, rather than right of entry at any reasonable time.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

Effective Date of Substitute Bill: This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for sections 15 and 16, relating to Medicaid managed care funding responsibilities and the disappearance of behavioral health ombuds services provided by behavioral health administrative services organizations, which take effect January 1, 2022.

Staff Summary of Public Testimony:

(In support) The creation of the State Office of Behavioral Health Consumer Advocacy (SOBHCA) is critical to strengthening and providing access to Washington's behavioral health services at a time when the state needs it now more than ever. The SOBHCA will advocate for consumers of the publicly funded behavioral health system and offer services such as finding or changing providers, making sure that services are paid for, and identifying and resolving complaints. This bill is important because the COVID-19 pandemic has had significant behavioral health impacts due to extreme isolation, increased anxiety, and increased use of alcohol and cannabis. Mental health patients are among the most vulnerable people in the community.

Streamlining this point of access will impact people across the state by allowing them to access the services of the SOBHCA. This new office will consolidate 10 existing offices and create a single point of access for easier access and streamlined service across the state while maintaining localized support. The SOBHCA will work with other statewide agencies and represent consumers to provide coordinated services. This office will be empowered to serve patients in psychiatric units in hospitals and ensure that patients receive appropriate treatment while respecting their legal rights. This program could help people being discharged from hospitals. This office will play an important role in systems feedback and accountability.

People have filed complaints with regional ombuds offices and encountered roadblocks in procedures at the local level. Having an independent SOBHCA is important to clients and their family members to avoid the inherent conflicts of being both an ombuds and part of the behavioral health administrative services organization. Patients have experienced systemic dismissal from doctors and staff leading to negative outcomes for patients, but when they have taken issues to patient rights advocates at facilities they have been ignored. Behavioral health patients need advocates who can look out for them and not be inhibited by the employee having a conflict of interest.

There needs to be a reference to equity in staffing and in representation on the advisory board. There needs to be better coordination with designated crisis responders. There needs to be a bridge between the Department of Commerce and the Health Care Authority. There should be an annual report to see how the program is operating.

(Opposed) None.

(Other) While it is important to make sure the best care possible is delivered and that there is coordination among state agencies, there should be clarity about how the SOBHCA would intersect with existing regulatory authorities, such as health professions licensing entities. It needs to be clear that this bill only applies to those health care providers who are actually delivering behavioral health services. The SOBHCA's consumer advocacy role should not be that of a regulator, but as a coordinating entity. The SOBHCA should provide information to patients, residents, and client on topics like mental health advance directives and contacts for crisis and peer services.

Persons Testifying: (In support) Representative Simmons, prime sponsor; Laura Van Tosh; Melanie Smith and Marilyn Roberts, National Alliance on Mental Illness Washington; and Maria Fergus.

(Other) Katie Kolan, Washington State Hospital Association and Washington State Medical Association.

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 33 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Boehnke, Caldier, Chandler, Chopp, Cody, Dolan, Dye, Fitzgibbon, Frame, Hansen, Harris, Hoff, Jacobsen, Johnson, J.,

Lekanoff, Pollet, Rude, Ryu, Schmick, Senn, Springer, Steele, Stonier, Sullivan and Tharinger.

Staff: Andrew Toulon (786-7178).

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

The substitute bill creates the Office of Behavioral Health Consumer Advocacy (SOBHCA) in the Department of Commerce and shifts responsibilities for several policy-related activities from the contracted entity to the SOBHCA. This includes requirements for certifying behavioral health consumer advocates, establishing procedures for appropriate access to behavioral health providers or facilities, and establishing procedures related to confidentiality. The activities of the contracting advocacy organization are modified to focus on the ministerial and operational tasks associated with carrying out the broad policies set by the SOBHCA. References to the SOBHCA and the contracting advocacy organization are modified accordingly. The standard for when the SOBHCA may initiate the procurement of a new contract is changed from a showing of misconduct, neglect of duty, or a conflict of interest to a showing of cause.

The effective date of provisions for Medicaid managed care funding responsibilities and the removal of the duty for behavioral health administrative services organizations to administer behavioral health ombuds services is delayed from January 1, 2022, to July 1, 2022, and the bill is null and void unless funded in the budget.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available. New fiscal note requested February 23, 2021.

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 sections 15 and 16, relating to Medicaid managed care funding responsibilities and the disappearance of behavioral health ombuds services provided by behavioral health administrative services organizations, which take effect July 1, 2022. However, the bill is null and void unless funded in the budget.

Staff Summary of Public Testimony:

(In support) This bill is a good investment facilitating earlier intervention and assistance in keeping people out of high-cost settings. Helping people get into treatment earlier will keep them out of jails and expensive hospital settings. The consolidation of the 10 regional ombuds will provide for better access for consumers through moving to a statewide phone number and website. The new SOBHCA will be free of conflict of interest within the system of payers and provide accountability to the Legislature. The fiscal costs are

indeterminate and the costs of the Department of Health will be paid from licensing fees and not come out of the State General Fund.

(Opposed) None.

Persons Testifying: Melanie Smith, National Alliance on Mental Illness Washington.

Persons Signed In To Testify But Not Testifying: None.