

SENATE BILL REPORT

E2SHB 1086

As Reported by Senate Committee On:
Health & Long Term Care, March 10, 2021
Behavioral Health Subcommittee to Health & Long Term Care, March 19, 2021

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

Brief History: Passed House: 3/1/21, 97-0.

Committee Activity: Health & Long Term Care: 3/10/21 [w/oRec-BH].

Behavioral Health Subcommittee to Health & Long Term Care: 3/12/21, 3/19/21 [DPA].

Brief Summary of Amended Bill

- Requires the Department of Commerce to establish a State Office of Behavioral Health Consumer Advocacy and contract with a nonprofit organization to provide behavioral health consumer advocacy services.
- Requires the contractor to certify regional behavioral health consumer advocates to respond to complaints from individuals who are clients, patients, or residents of behavioral health providers or facilities.
- Provides for protections of confidentiality and against retaliation, discipline, or discrimination for communicating with a behavioral health consumer advocate.

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

Majority Report: Do pass as amended.

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.

Signed by Senators Dhingra, Chair; Wagoner, Ranking Member; Frockt, Nobles and Warnick.

Staff: Kevin Black (786-7747)

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 not covered by the managed care health system within a specific regional service area. There are ten 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. Each behavioral health administrative service organization must provide an independent, separately funded behavioral health ombuds office that maximizes the use of consumer advocates.

An ombuds is an official appointed to investigate and attempt to resolve individual complaints against maladministration. A number of statewide ombuds offices exist in Washington State, including the Long-Term Care Ombuds, Developmental Disabilities Ombuds, Corrections Ombuds, and the Children and Family Ombuds.

Summary of Amended Bill: The Department of Commerce (Commerce) must establish the State Office of Behavioral Health Consumer Advocacy (Office) by July 1, 2022. Commerce must contract with a private nonprofit organization (Advocate) selected through a competitive bid process to provide behavioral health consumer advocacy services to patients, residents and clients of behavioral health providers or facilities. The selected Advocate must demonstrate financial stability, meet qualifications, and not have conflicts of interest that would interfere with its duties. Commerce must encourage persons who have lived experience with behavioral health conditions or who are a family member of a person with behavioral health conditions to apply. Commerce may not initiate a new procurement for the Advocate without cause, and, if there is a move for reselection, must allow the Advocate an opportunity to comment and appeal.

Commerce may adopt rules for the Advocate to use in certifying regional behavioral health consumer advocates, establishing procedures for access by advocates to behavioral health providers or facilities, and to protect the confidentiality of the records of patients, residents, clients, providers, and complainants. All records and files must remain confidential unless disclosure is required by court order.

The Advocate must:

- certify regional behavioral health consumer advocates in every Medicaid purchasing region and coordinate their activities, with the intention that existing regional behavioral health ombuds programs be assessed and certified in these roles;
- provide training to behavioral health consumer advocates regarding access to behavioral health providers or facilities and on other specified topics, including any training which a regional behavioral health ombuds may need to be certified as a behavioral health consumer advocate;
- establish a toll-free number, website, and other appropriate technology to facilitate access to advocacy services by patients, residents, and clients of behavioral health providers or facilities;
- establish a statewide uniform reporting system to collect and analyze data relating to complaints for identifying and resolving significant problems;
- establish procedures to protect the confidentiality of records, patients, residents, clients, providers, and complainants;
- establish a statewide advisory council with a majority of members having lived experience including racially diverse members, members with substance use disorder, and family members of persons with behavioral health disorders;
- monitor the development and implementation of laws, rules, regulations, and policies related to behavioral health and recommend improvements;
- develop and deliver educational programs and information statewide on topics including, but not limited to, mental health advance directives, wellness recovery action plans, crisis services and contacts, peer services and supports, family advocacy and rights, and involuntary treatment;
- develop procedures for certified behavioral health consumer advocates to refer complaints to an appropriate state or local government agency;
- develop and implement working agreements with each managed care organization, behavioral health administrative services organization, state hospital, state and local agencies, and all other state ombuds agencies; 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 recommendations for improved services for behavioral health consumers.

The Advocate must not have been employed by a behavioral health provider or facility within the last 12 months except as a certified peer specialist, or employment by a regional behavioral health consumer advocate, and may not have significant ownership or financial interest in the provision of behavioral health services.

For state hospitals, the Office must work with the Department of Social and Health Services to establish training, procedures, protocols, and guidelines to work with forensic and criminal justice involved populations, including those awaiting state hospital admission in a jail. The guidelines must address how to work and collaborate with existing state employees who serve in an ombuds or advocate role for the state hospitals. This work must be completed by July 1, 2023, and before behavioral health consumer advocates are deployed in state hospitals.

Certified regional behavioral health advocates must:

- identify, investigate, and resolve complaints made by or on behalf of patients, residents, and clients of behavioral health providers and facilities respecting the health, safety, welfare, and rights of individuals;
- assist and advocate on behalf of patients, residents, and clients of behavioral health providers and facilities before government agencies and seek administrative, legal and other remedies on their behalf;
- inform patients, residents, and clients about applicable patient and resident rights;
- make recommendations through the Advocate for improvements to the quality of services provided by behavioral health providers or facilities; and
- involve family members, friends, or other designated individuals in the resolution of complaints with the permission of the individual.

Every behavioral health provider or facility must provide appropriate access to certified behavioral health consumer advocates with provisions made for patient or resident privacy. The provider or facility must post notice in a conspicuous location providing the toll-free phone number and website of the Advocate, and provide access to a free telephone for the express purpose of contacting this Advocate.

State agencies must respond to complaints referred by the Advocate and certified behavioral health consumer advocates according to a mutually established working agreement.

Medicaid managed care organizations must contract with and reimburse the Advocate for behavioral health consumer advocacy services.

Certified behavioral health consumer advocates are not liable for good faith performance of duties and may not be required to testify in court without express consent by the client, resident, or patient who is the subject of court proceedings.. No discriminatory, disciplinary, or retaliatory action may be taken against a person by a behavioral health provider or facility for communicating with the Advocate, unless the communication was made maliciously and without good faith.

Commerce must solicit recommendations from the community and the statewide advisory council for options to rename the Office in a way that shows respect for the community. The renaming must occur before the Office begins operations.

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

- Requires Commerce to encourage persons with lived experience of behavioral health disorders or their family members to apply to become the Advocate.
- Requires the Advocate to provide any training needed for a regional behavioral health ombuds to be certified as a behavioral health consumer advocate.
- Requires the Office to work with the Department of Social and Health Services to develop training, protocols, procedures, and guidelines around providing behavioral health consumer advocacy services in state hospitals.

Appropriation: None.

Fiscal Note: Available.

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

Effective Date: The bill contains several effective dates. Please refer to the bill.

Staff Summary of Public Testimony on Engrossed Second Substitute House Bill: *The committee recommended a different version of the bill than what was heard.* PRO: We should build a healthy community for all. This bill will make sure people experiencing behavioral health challenges will have an advocate to help them navigate treatment issues. The regional ombuds provide an important service for the 1.5 million people who use our behavioral health system. It will make these services easier to find and access, and offer more consistency and better services when clients move between regions. State hospitals have had instability in their ombuds positions and positions have frequently been left vacant. There must be a reliable way to serve patients in all hospital settings. As a patient, I have had experiences with behavioral health treatment that cause more trauma and stress than the behavioral health crisis. I have been denied help, given wrong therapies, and threatened with the loss of my children. My concerns were dismissed and I received verbal abuse and neglect. Patients fear to self-advocate for fear of retaliation from staff. When we do not have enough beds, people are shuffled from jurisdiction to jurisdiction which is unfair. This new office will be able to advocate for services beyond medication, and for psychosocial services which we all need. It will help us see what kind of treatment people are asking for, which is the future of behavioral health care. I commend this bill for involving people with lived experience in the advisory committee.

Persons Testifying: PRO: Representative Tarra Simmons, Prime Sponsor; Laura Van Tosh; Melanie Smith, NAMI Washington; Maria Fergus, NAMI Washington; Alan Rodgers, NAMI Washington.

Persons Signed In To Testify But Not Testifying: No one.