

**Resident rights and  
access to ombuds  
services in intensive  
behavioral health  
treatment facilities**

**December 2019**

Chapter 71.24 RCW



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Behavioral Health Section  
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For more information or additional copies of this report:

Timothy M. Farrell, Director  
Policy & Legislative Development  
Health Systems Quality Assurance  
360-545-7388  
[timothy.farrell@doh.wa.gov](mailto:timothy.farrell@doh.wa.gov)

**Report Author**

Timothy M. Farrell

John Wiesman, DrPH  
Secretary of Health

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# Executive Summary

The legislature passed 2SHB 1394 ([Chapter 324, Laws of 2019](#)), which provided for licensing and certification of additional facility types to expand behavioral health treatment options. The bill created a new facility type, an intensive behavioral health treatment facility (IBHTF), to meet the needs of patients with behavioral health conditions whose impairment or behaviors do not meet, or no longer meet, criteria for involuntary inpatient commitment under [chapter 71.05 RCW](#), but whose care needs cannot be met in other community-based placement settings.

The Department of Health was tasked in section 4 to draft a report in consultation with stakeholders to provide recommendations on providing patient rights and access to ombuds services to the residents in IBHTFs. Based on the results of this consultation, the department drafted recommendations, shown below, for addressing these services. The recommendations included changes to statute and suggestions for the IBHTF rules currently under development. The rule suggestions have been incorporated into the current draft rules for IBHTFs.

## Legislative Changes

- IBHTF residents and their guardians should have access to all of the services provided by long-term care, behavioral health, and developmental disabilities ombuds.
- All ombuds serving IBHTF residents must follow a “no wrong door” philosophy to guarantee access to the appropriate ombuds.
- Training and qualifications for all ombuds should be expanded to address how to identify which type of ombuds service will best support an IBHTF resident’s needs.

## Rules Changes

- IBHTF staff and administrators should receive training on the role of ombuds and the rights of residents.
- Facilities should be required to ensure ombuds contact information is readily available.
- Ombuds should have the right to access IBHTFs in order to serve residents.
- Residents and their guardians should have the right to access ombuds at any time in a confidential setting.
- Residents and their guardians should be notified of their rights to access ombuds.
- Residents and their guardians should be educated on their rights.

## Background

The legislature passed 2SHB 1394 ([Chapter 324, Laws of 2019](#)) to expand options for behavioral health treatment by creating a new treatment option known as intensive behavioral health treatment facility (IBHTF). An IBHTF is designed to provide services for voluntary patients with behavioral health conditions, including those with developmental disabilities, whose care needs cannot be met in other settings.<sup>1</sup> The department was tasked by the legislature to draft a report, in consultation with stakeholders, with recommendations on providing rights and access to ombuds services for the residents of IBHTFs<sup>2</sup>.

Patients in IBHTFs could potentially need to access three different types of existing ombuds services: long-term care, behavioral health, and developmental disabilities. The services provided by these ombuds vary widely in their scope and jurisdiction.

**Long-term care ombuds:** Long-term care ombuds include both paid professionals and certified volunteers employed through the independent office of Washington State Long-Term Care Ombudsman Program. They exercise both state and federal authority to promote and protect the rights of long-term care (LTC) residents. They act as advocates for resident rights, work with lawmakers to improve care and quality of life, and provide complaint resolution for residents in long-term care facilities. [RCW 43.190.080](#) and [WAC 365-18.060](#) provide long-term care ombuds the legal authority to access residents in private settings to hear, investigate, and resolve complaints.

**Behavioral health ombuds:** Behavioral health ombuds are peers with lived experience employed through regional behavioral health authorities. They work to navigate and resolve problems within behavioral health care systems on behalf of recipients of behavioral health services. They provide assistance with complaints and grievances, appeals, and administrative hearings. Ombuds are advocates for residents, and can assist them to understand how to self-advocate and work to resolve issues. They are a source for community information and referrals. Behavioral health ombuds are employed either directly by behavioral health agencies or work for third party organizations under contract with behavioral health agencies. Ombuds are required to work with behavioral health agencies to obtain access to residents.

**Developmental disabilities ombuds:** Developmental disabilities ombuds are professionals, some of whom are peers, funded through the Department of Commerce as a program of Disability Rights Washington. They collect and investigate complaints from those who use developmental disability services. The development disability ombuds strive to protect choice and autonomy, and to ensure access to advocacy. They have the right to communicate privately

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<sup>1</sup> This includes patients discharged or diverted from state or local hospitals.

<sup>2</sup> The bill requires the rights for IBHTF patients to be substantially similar to rights for long-term care residents.

with clients located in a state facility or receiving services from a state agency. Unlike other participating ombuds in an IBHTF, they are mandatory reporters and are required to report any behavior warranting criminal or disciplinary proceedings.

## Methodology

We invited the Department of Social and Health Services (DSHS), the Department of Commerce, Health Care Authority (HCA), long-term care ombuds, behavioral health ombuds<sup>3</sup>, developmental disabilities ombuds, resident rights organizations, behavioral health service providers, and behavioral health agency organizations to participate in a discussion on this topic. In July 2019, 30 participants met and offered suggestions that provide the basis for the recommendations offered in this report.

## Recommendations

The department gathered and synthesized stakeholder comments to create recommendations based on their input. The first set of recommendations will require changes in statute for implementation. The department suggests updating each of the three participating ombuds statutes<sup>4</sup> to address the recommendations below and their ability to serve IBHTF residents.

We are currently creating rules for IBHTFs to implement 2SHB 1394 and have included the rule change recommendations in the CR-102 draft. The draft rules have been shared with stakeholders and their feedback has been incorporated. The final rules are expected to be effective by May 2020.

The following are the recommendations suggested by the department and stakeholders.

### Statutory Changes

**IBHTF residents and their guardians should have access to all of the services provided by long-term care, behavioral health and developmental disabilities ombuds:** Residents of IBHTFs should be conferred all the applicable rights they would receive as a resident of a long-term care facility receiving behavioral health and/or developmental disability services.

**Ombuds serving IBHTF residents must follow a “no wrong door” philosophy to guarantee access to the appropriate ombuds:** The department recommends using existing ombuds programs to serve residents of an IBHTF. These residents should be afforded the same rights as any person receiving behavioral health, developmental disability, or long-term care services. As IBHTF residents may require the services of several different types of ombuds, the ombuds

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<sup>3</sup> Several Behavioral Health Ombuds participated in the development of these recommendations. Their lived experience was a critical asset to developing these recommendations.

<sup>4</sup> Long-Term Care (RCW 43.190.020), Behavioral Health (RCW 71.24.350), and Developmental Disabilities Ombuds (RCW 43.382.020).

program should develop a “no wrong door” philosophy of providing these services. “No wrong door” means residents can access any type of ombuds at any time, and ombuds who serve these facilities will be cross-trained and possess the knowledge to efficiently direct residents to the most appropriate ombuds to receive requested services. The ombuds must have the ability to collaborate and serve all patients regardless of payer.

**Expand qualifications for ombuds who serve residents in an IBHTF:** Ombuds serving a resident in an IBHTF should be qualified to identify which ombuds services will best support a resident’s needs. This would require all ombuds who serve residents in IBHTFs to receive enhanced training that would allow them to identify which ombuds expertise would best serve the resident. The training should be developed in conjunction with HCA, DSHS, and the long-term care ombuds office. Ombuds working with a resident should have the knowledge to assist residents in creating mental health advanced directives, assist in the admission and discharge process, and participate in treatment planning if asked by the resident.

## Rules Changes

The department is in the process of developing a rules package to regulate IBHTFs. Many of the participants of the stakeholder meeting that developed the recommendations for this report also participated in the IBHTF rule drafting. This collaboration led to the following recommendations which stakeholders have suggested be incorporated into the new IBHTF rules under development. The rules are expected to be implemented by May 2020.

**IBHTF staff and administrators should receive training on the role of ombuds and the rights of residents:** Ombuds programs are a benefit to both patients and facilities. Ombuds work to resolve disputes at the lowest possible level, thereby saving time and resources for the resident and the facility. Staff and administrators should be required to receive mandatory training on the role of long-term care, developmental disability, and behavioral health ombuds, and on the rights of patients in their care. This training should be required as part of the onboarding and orientation process for new staff and administrators. The department should monitor IBHTFs to ensure that all staff and administrators have received this training through the existing inspection process. All IBHTFs should be required to maintain a current list of local behavioral health, developmental disabilities, and long-term care ombuds.

**IBHTFs are required to ensure ombuds contact information is readily available:** IBHTFs should be required to make information on all ombuds services readily available to residents at all times. This includes, but is not limited to, posting information in public areas with contact information, allowing for participating ombuds to visit the facility to talk with residents and answer questions, and providing contact information upon admission.

**Ombuds should have the right to access an IBHTF to serve residents:** Ombuds should have the ability to access an IBHTF at any reasonable time for resident rights training, to speak to a resident, or to review the conditions of the facility. The department recommends that behavioral health ombuds have the same ability as long-term care ombuds to access the

residents they are serving in IBHTFs. Ombuds should assist any resident regardless of payor status.

**IBHTF residents and their guardians should have the right to access ombuds at any time in a confidential setting:** Residents should have the right to access communication devices to contact ombuds at all times. Ombuds should be able to initiate advocacy on behalf of a resident by either a verbal or written request. Residents should be allowed to maintain privacy and confidentiality in their discussions with ombuds, and to be free from retaliation. Facilities should maintain a private location for ombuds to confer with residents.

**IBHTF residents and their guardians should be educated on their rights:** Resident rights information and information on ombuds services should be presented in an understandable format upon admission on a form approved by the department. Information should be provided in the resident's language or with the help of an interpreter. If the resident is illiterate, then the information should be shared orally in a language the resident can understand. This format includes, but is not limited to oral presentations and audio recordings. The facility should be required to document that this information was shared upon admission and the manner in which it was shared. This information should be reviewed with the resident regularly during care planning sessions.

**Residents and their guardians should be notified of their rights to access ombuds:** Residents should be notified upon admission of their rights to access all ombuds services and be given contact information for the ombuds serving the facility. This information should be posted in public areas of the facility. It should include names, contact information, and the services provided by each ombuds.



