§ 5.06 Behavioral health services advisory council.

(a) There is hereby created within the department a behavioral health services advisory council, the purpose of which shall be to advise the offices of mental health and addiction services and supports on matters relating to the provision of behavioral health services; issues of joint concern to the offices, including the integration of various behavioral health services and the integration of behavioral health services with health services; issues related to the delivery of behavioral health services that are responsive to local, state and federal concerns; and issues related to treatment disparities and treatment equity, as defined in section 19.45 of this chapter. The council shall consist of the commissioners of mental health and of addiction services and supports, who shall not have the right to vote, the chair of the conference of local mental hygiene directors or his or her designee, and thirty-two members appointed by the governor, upon the advice and consent of the senate. Members shall be appointed only if they have professional knowledge in the care of persons receiving behavioral health services, or an active interest in the behavioral health services system.

(b) The governor shall designate one of the members of the council as chair. At least one-half of the members of the council shall not be providers of behavioral health services. Membership shall reflect a balanced representation of persons with interests in mental health and substance use disorder services and shall include:

(1) at least five current or former consumers of behavioral health services;

(2) at least three individuals who are parents or relatives of current or former consumers of behavioral health services;

(3) at least three members who are not providers of behavioral health services and who represent non-governmental organizations, such as not-for-profit entities representing health or behavioral health care employees, private payors of behavioral health services, or other organizations concerned with the provision of behavioral health services;

(4) at least five representatives of providers of services to persons with mental illness and at least five representatives of providers of services to persons with substance use disorders, at least two of whom shall be physicians and at least one of whom shall have provided

services to veterans who served in a combat theater or combat zone of operations;

(5) one member appointed on the recommendation of the state commissioner of the department of veterans' services and one member appointed on the recommendation of the adjutant general of the division of military and naval affairs, at least one of whom shall be a current or former consumer of mental health services or substance use disorder services who is a veteran who has served in a combat theater or combat zone of operations and is a member of a veterans organization;

(6) at least three representatives of local governments or other state and local agencies concerned with the provision of behavioral health services;

(7) at least two members who are also members of the public health and health planning council pursuant to section two hundred twenty of the public health law; and

(8) at least four members that have expertise in issues facing vulnerable populations, as defined in section 19.45 of this chapter, who are receiving or seeking to receive substance use disorder services. Of such members, one member shall be appointed by the governor at the recommendation of the temporary president of the senate, one member shall be appointed by the governor at the recommendation of the minority leader of the senate, one member shall be appointed by the governor at the recommendation of the speaker of the assembly and one member shall be appointed by the governor at the recommendation of the minority leader of the assembly.

(c) Members shall be appointed for terms of three years provided, however, that of the members first appointed, one-third shall be appointed for one year terms and one-third shall be appointed for two year terms. Vacancies shall be filled in the same manner as original appointments for the remainder of any unexpired term. No person shall be an appointed member of the council for more than six years in any period of twelve consecutive years.

(d) The council shall meet at least four times in each full calendar year. The council shall meet at the request of its chair or either commissioner.

(e) The council shall establish such committees as it deems necessary to address the service needs of special populations and to address

particular subjects of importance in the development and management of behavioral health services. Provided however, the council shall establish a committee to specifically focus on substance use disorder treatment disparities that may exist for vulnerable populations, as defined in section 19.45 of this chapter.

(f) The council may consider any matter relating to the improvement of behavioral health services in the state and shall advise the commissioners on any such matter, including, but not limited to:

(1) care and services to persons with behavioral health disorders, including special and underserved populations as determined by the commissioner;

(2) financing behavioral health services;

(3) integration of behavioral health services with health services;

(4) care and services for persons with co-occurring disorders or multiple disabilities;

(5) prevention of behavioral health disorders;

(6) improvement of care in state operated or community based programs, recruitment, education and training of qualified direct care personnel, and protection of the interests of employees affected by adjustments in the behavioral health service system; and

(7) ways to achieve treatment equity, as defined in section 19.45 of this chapter.

(g) The council shall, in cooperation with the commissioners, establish statewide goals and objectives for services to persons with behavioral health disorders, pursuant to section 5.07 of this article.

(h) (1) The council shall review the portion of the statewide plan to be developed and updated annually by the commissioners pursuant to section 5.07 of this article, and report its recommendations thereon to the commissioners.

(2) The council shall review any mental health or substance use component of statewide health plans developed in accordance with any applicable federal law, and shall report its recommendations thereon to the commissioners.

(i) The council shall review applications filed in accordance with:

(1) section 31.22 of this chapter for approval of incorporation or establishment of a facility, and section 31.23 of this chapter for approval of the construction of a facility for which approval from the

commissioner of mental health is required; and

(2) section 32.29 or 32.31 of this chapter for approval of incorporation or establishment or construction of a facility for which approval to operate is required from the commissioner of alcoholism and substance abuse services pursuant to article thirty-two of this chapter, and as otherwise requested by such commissioner;

(j) The council shall be notified of, and may review at its discretion, any closure of a hospital or ward thereof operated by the office of mental health or office of alcoholism and substance abuse services, and may issue recommendations pertaining to issues including community reinvestment and continuity of care. All such recommendations shall be provided to the relevant commissioner or commissioners, the temporary president of the senate and the speaker of the assembly.

(k) At least sixty days prior to the commissioners' final approval of rules and regulations under their respective jurisdiction, other than emergency rules and regulations and regulations promulgated pursuant to section 43.01 of this chapter, the commissioners shall submit such proposed rules and regulations to the council for its review. The council shall review all proposed rules and regulations and report its recommendations thereon to the commissioners within sixty days. The commissioner having statutory jurisdiction over the proposed rule or regulation shall not act in a manner inconsistent with the recommendations of the council without first appearing before the council to report the reasons therefor. The council, upon a majority vote of its members, may require that an alternative approach to the proposed rules and regulations be published with the notice of the proposed rules and regulations pursuant to section two hundred two of the state administrative procedure act. When an alternative approach is published pursuant to this section, the commissioner having statutory jurisdiction of the subject proposed rule or regulation shall state the reasons for not selecting such alternative approach.

(l) The council, by a majority vote of its members, may propose rules and regulations on any matter within the regulatory jurisdiction of the offices of mental health or alcoholism and substance abuse services, other than establishment of fee schedules pursuant to section 43.01 of this chapter, and forward such proposed rules and regulations to both commissioners for review and consideration; provided, however, that only

the approval of the commissioner with statutory jurisdiction of the proposed rule or regulation shall be required. Prior to such commissioner's final approval and promulgation of such proposed rules and regulations, if such rules and regulations are modified in any respect, they shall be submitted to the council pursuant to subdivision (k) of this section. If such commissioner determines not to promulgate such proposed rules and regulations, the commissioner shall appear before the council to report the reasons therefor.

(m) The members of the council shall receive no compensation for their services but shall be reimbursed for expenses actually and necessarily incurred in the performance of their duties.

(n) The commissioners, upon request of the council, shall designate one or more officers or employees from either or both offices to provide administrative support services to the council, and may assign from time to time such other employees as the council may request.

(o) No civil action shall be brought in any court against any member of the behavioral health services advisory council for any act done, failure to act, or statement or opinion made, while discharging his or her duties as a member of the council, without leave from a justice of the supreme court, first had and obtained. In any event, such member shall not be liable for damages in any such action if he or she acted in good faith, with reasonable care and upon probable cause. Members of the council shall be considered public officers for the purposes of section seventeen of the public officers law.

(p) The council may establish written bylaws.