

SENATE BILL REPORT

SSB 5593

As Amended by House, April 15, 2015

Title: An act relating to the safe delivery of and reasonable payment for health care services by hospitals for inmates and persons detained by law enforcement.

Brief Description: Concerning delivery and payment for health care services by hospitals for inmates and persons detained by law enforcement.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Dammeier, Padden, Cleveland, O'Ban, Pedersen, Becker and Kohl-Welles).

Brief History:

Committee Activity: Law & Justice: 1/29/15, 2/12/15 [DP-WM].

Ways & Means: 2/24/15, 2/26/15 [DPS].

Passed Senate: 3/05/15, 49-0.

Passed House: 4/15/15, 98-0.

SENATE COMMITTEE ON LAW & JUSTICE

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

Signed by Senators Padden, Chair; Pedersen, Ranking Minority Member; Darneille, Kohl-Welles, Pearson and Roach.

Staff: Lindsay Erickson (786-7465)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 5593 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hill, Chair; Braun, Vice Chair; Dammeier, Vice Chair; Honeyford, Vice Chair, Capital Budget Chair; Hargrove, Ranking Member; Keiser, Assistant Ranking Member on the Capital Budget; Ranker, Ranking Minority Member, Operating; Bailey, Becker, Billig, Brown, Conway, Fraser, Hasegawa, Hatfield, Hewitt, Kohl-Welles, O'Ban, Padden, Parlette, Rolfes, Schoesler and Warnick.

Staff: Travis Sugarman (786-7446)

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.

Background: Washington law currently does not require law enforcement to secure or accompany a hospital patient who is in custody for a violent or sexual crime. When a violent suspect or convict is in the hospital, there is a risk of injury to other hospital patients and hospital staff.

Hospitals are defined in RCW 70.41.020 to mean an institution, place, building, or agency which provides accommodations, facilities, and services over a continuous period of 24 hours or more for observation, medical care, and diagnosis. Hospitals treat illness, injury, deformity, abnormality, or any other condition for which obstetrical, medical, or surgical services would be appropriate for care or diagnosis. Hospitals, as defined, exclude other places including clinics, physician's offices, nursing homes, birthing centers, or institutions specifically intended for use in the diagnosis and care of mental illness, intellectual disability, convulsive disorders, or other abnormal mental conditions. Hospital policy may address safety considerations for patients and staff, and that policy may vary according to institution, facility structure, and circumstances.

Summary of Substitute Bill: Any individual who is brought to a hospital and who is in the custody of a law enforcement officer, corrections officer, or guard supplied by a law enforcement or corrections agency for a violent offense or sex offense must be accompanied or otherwise secured by the officer or guard who brought or accompanied the individual. An exception is provided for individuals being supervised by the Department of Corrections in the community if the custody is solely the result of a sanction for violation of conditions. In addition it is clarified that all current statutes regulating restraints' use for pregnant women and youth in custody remain unchanged.

An individual receiving medical care does not need to be accompanied or otherwise secured if:

1. the individual's medical care provider so indicates; or
2. the law enforcement officer determines, using the officer's best judgment, that:
 - a. the individual does not present an imminent and significant risk of causing physical harm to themselves or another person;
 - b. there is no longer sufficient evidentiary basis to maintain the individual in custody; or
 - c. in the interest of public safety, the presence of the law enforcement officer is urgently required at another location and the officer determines, using the officer's best judgment and in consultation with the officer's supervisor, if available on duty, that the public safety interest outweighs the need to accompany or secure the individual in the hospital.

If the medical care provider determines the individual does not need to be accompanied or otherwise secured, the officer or guard has no ongoing duty to accompany or otherwise secure the individual for the duration of their treatment by the hospital. In that circumstance, the hospital must notify the officer or guard when the individual is expected to be released by the hospital. Even after indicating that an individual need not be accompanied or otherwise secured, the hospital may request the presence of an officer or guard if the individual demonstrates behavior that presents an imminent and significant risk of causing physical harm to himself or others.

If the officer or guard determines the individual need not be accompanied or otherwise secured, the officer or guard must notify the medical care provider that the officer or guard is leaving the individual unattended or unsecured. In that case, the hospital has no duty to notify the officer or guard when the individual is, or is expected to be, released from the hospital.

Additionally if the officer or guard determines that the individual need not be accompanied or otherwise secured, the officer or guard must notify the medical care provider that the individual is unattended or unsecured. If immediate departure by the officer or guard is required, the officer or guard must notify the medical care provider or other hospital staff that the individual is unattended or unsecured and the officer or guard must make a reasonable effort to ensure a replacement officer or guard or other means of accompanying or securing the individual as soon as reasonably possible under the circumstances. The hospital must notify the officer or the officer's designee if the individual is, or is expected to be, released from the hospital prior to the officer or guard, or a replacement officer or guard, returning to resume accompanying or otherwise securing the individual.

Immunity from Civil Liability. Except for actions or omissions constituting gross negligence or willful misconduct, the hospital and health care providers are immune from liability, including civil liability, professional conduct sanctions, and administrative actions resulting from the individual not being accompanied or secured.

Law enforcement officers, corrections officers, guards supplied by a law enforcement or corrections agency, and their employing departments, agencies, and representatives are immune from civil liability arising out of the failure to comply with this act, unless it is shown that, in the totality of the circumstances, the officer or agency acted with gross negligence or bad faith.

Medical Payments. A payment rate structure is created for hospital services provided to patients who are the financial responsibility of the law enforcement entity. Unless other rates are agreed to by the governing unit and the hospital, the hospital must accept as payment in full by the governing units the applicable facility's percent of allowed charges rate or fee schedule as determined, maintained, and posted by the Washington State Department of Labor and Industries. These payments are for inpatient, outpatient, and ancillary services for confined persons that are not already paid by the Medicaid Program.

When an inmate is screened during booking or in preparation for entering jail, general information concerning the inmate's ability to pay for medical care may be identified, including insurance or other medical benefits or resources to which an inmate is entitled. The inmate may also be evaluated for Medicaid eligibility and, if deemed potentially eligible, enrolled in Medicaid. To the extent that federal law allows, a correctional facility, or the correctional facility's designee, is authorized to act on behalf of a confined person for purposes of applying for Medicaid. This information may be made available to the authority, the governing unit, and any provider of health care services.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony on Original Bill (Law & Justice): PRO: There is concern regarding violence committed in emergency rooms around the state. That concern has been focused on persons in custody in hospitals, and this bill addresses the lack of clarity and responsibility regarding who is securing those in custody receiving medical care in hospitals. This bill also provides for effective communication at the hospital regarding the security of those in custody and receiving medical services. Taxpayers and the state will benefit from the clarity this bill provides regarding the costs to be paid for medical services, and Medicaid-eligible inmates may be enrolled so that more of those hospital costs may be covered.

Persons Testifying (Law & Justice): PRO: Senator Dammeier, prime sponsor; James McMahan, WA Assn. of Sheriffs and Police Chiefs; Cassie Sauer, WA State Hospital Assn.; Candice Bock, Assn. of WA Cities.

Staff Summary of Public Testimony on Original Bill (Ways & Means): PRO: Previously, the Hospital Association proposed bills about guarding inmates and the Association of Sheriffs and Police Chiefs had bills that provided discounts on the hospital bills under their responsibility. This bill is a negotiated mutually beneficial bill. The rates portion of the bill provides that Labor and Industries will be the standard for agencies that are currently paying higher rates. If an agency has a contract with lower rates, those contracts will stay in place.

Persons Testifying (Ways & Means): PRO: James McMahan, WA Assn. of Sheriffs and Police Chiefs; Len McComb, WA State Hospital Assn.

House Amendment(s):

- Makes usage of the terms "law enforcement officer," "corrections officer," and "guard supplied by a law enforcement or corrections agency" consistent throughout the bill.
- Clarifies the requirement that the person is secured or accompanied by an officer pertains to the period of time that the individual is receiving care at the hospital.
- Provides that a "jail or jail's designee" may act on behalf of a jail inmate for purposes of applying for Medicaid, rather than a "correctional facility or correctional facility's designee."