

# SENATE BILL REPORT

## SB 5056

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As of February 21, 2019

**Title:** An act relating to providing incentives to reduce involvement by persons with behavioral health disorders in the criminal justice system.

**Brief Description:** Providing incentives to reduce involvement by persons with behavioral health disorders in the criminal justice system.

**Sponsors:** Senators O'Ban, Zeiger and Wagoner.

**Brief History:**

**Committee Activity:** Behavioral Health Subcommittee to Health & Long Term Care: 2/14/19.

### Brief Summary of Bill

- Requires the Health Care Authority (HCA) to amend managed health care contracts by July 1, 2020, to require contractors to implement mandatory performance improvement projects related to reducing client involvement with criminal justice systems where there is an identified behavioral health need.
- Requires HCA to integrate value-based purchasing terms relating to criminal justice outcomes into managed health care contracts by January 1, 2021.
- Requires the Performance Measures Coordinating Committee to establish performance measures that track rates of criminal justice system involvement among public health clients.

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

**Staff:** Kevin Black (786-7747)

**Background:** Policy Development Related to Performance-Based Contracting in Managed Care. HCA contracts with managed care organizations, behavioral health administrative services organizations, and, until January 1, 2020, behavioral health organizations to provide

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health care services, including behavioral health care services, to Medicaid clients. State law requires HCA to employ performance-based contracts in both its role as a service coordination organization and as the state behavioral health authority. The purpose of the performance terms of these contracts is to achieve improved outcomes for adult clients, including through increased use of evidence-based, research-based, and promising practices. According to statute, the contracts must include performance measures targeting the following outcomes:

- improvements in client health status and wellness;
- increases in client participation in meaningful activities including employment and education;
- reductions in client involvement with criminal justice systems;
- enhanced safety and access to treatment for forensic patients;
- reductions in avoidable costs in hospitals, emergency rooms, crisis services, and jail and prisons;
- increases in stable housing in the community;
- improvements in client satisfaction and quality of life; and
- reductions in population-level health disparities.

In 2013-2014, HCA and the Department of Social and Health Services (DSHS) established a cross-system steering committee that identified 51 potential performance measures that could be employed to achieve these outcomes. After the production of a final Behavioral Health System Improvement Strategy Report, this work was turned over to a Performance Measures Coordinating Committee (PMCC) to refine the newly-defined measures, to develop a common measures set, and to select a subset of performance measures appropriate to integrate into the first iteration of performance-based contracts. In the refinement process, the PMCC expanded the list of performance measures in the common measures set to 66, and eliminated all measures related to criminal justice outcomes among Medicaid clients.

Integration of Performance Measures into Health Options Medicaid Contracts. HCA has integrated performance and outcome measures into Apple Health managed care contracts, as reflected in model contracts posted on the HCA website. All managed care organizations (MCOs) are required to have an ongoing program of performance improvement projects that incorporate measures of performance based on objective quality indicators and evaluations of the effectiveness of the interventions. Performance improvement projects are subject to review and approval by HCA, and must include:

- one clinical performance improvement project piloting a behavioral health intervention that is an evidence-based, research-based, or promising practice recognized by the Washington Institute for Public Policy;
- one clinical performance improvement project implemented statewide on improving well-child visit rates in infants, young children, and adolescents, and
- one non-clinical performance improvement project of the MCO's choosing.

In addition, HCA produces certain performance measures and publishes them to each contracting MCO, including penetration rates for mental health and substance use disorder treatment and 30-day psychiatric inpatient readmissions.

HCA has also implemented certain value-based purchasing (VBP) provisions, which are a species of contractual arrangements where payments to the contractor are made based on

outcomes achieved instead of services performed. According to the VBP provisions incorporated in the MCO contracts, a percentage of funds ranging from 1.0 to 1.5 percent of the total funds are withheld from the MCO, to be earned back if the MCO implements certain incentives, creates VBP arrangements among its contractors, and achieves quality improvement and attainment targets. The quality improvement terms of HCA's VBP provisions currently use a selection of nine target measures scores that are derived from nationally used quality measures, in areas including:

- diabetes care and blood pressure control for adult patients;
- antidepressant medication management for adult patients;
- childhood immunization statuses;
- annual well-child visits for children aged three to six; and
- medication management for children with asthma.

None of the quality measures included in the MCO contract relate to criminal justice outcomes.

Status of Criminal Justice Involvement for Persons with Behavioral Health Disorders in Washington. An intent section in this legislation cites a presentation by the Research and Data Analysis division of DSHS as evidence that trends related to interactions between persons with behavioral health disorders and the criminal justice system are worsening in Washington. This presentation, entitled "Forensic Risk Modeling in the Medicaid Population," was delivered to the Select Committee for Quality Improvement in State Hospitals on October 18, 2018, and presents certain data relating to Medicaid clients who have an identified behavioral health need. In the period from 2013-2018, the data shows overall arrests of unduplicated adults per month in Washington declined by almost 10 percent according to the Washington State Patrol, while arrests of unduplicated adults with Medicaid enrollment and an identified behavioral health condition increased by 67 percent. During the same period, monthly referrals for competency evaluation services related to persons charged with a criminal offense rose by 56 percent.

**Summary of Bill:** HCA must amend managed health care contracts by July 1, 2020, to require contractors to implement mandatory performance improvement projects relating to achieving outcomes to reduce client involvement with criminal justice systems where there is an identified behavioral health need.

HCA must integrate VBP terms relating to criminal justice outcomes into managed health care contracts by January 1, 2021.

The performance measures coordinating committee must establish performance measures that track rates of criminal justice system involvement among public health clients with an identified behavioral health need, including but not limited to rates of arrest and incarceration, and establish an improvement target in relation to these measures.

**Appropriation:** None.

**Fiscal Note:** Requested on January 14, 2019.

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

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

**Staff Summary of Public Testimony:** PRO: This is an attempt to incentivize better services for those in our criminal justice system. Our jails are becoming the largest behavioral health providers in many counties and they should not be. Jail is not a good way to deal with an underlying mental illness or substance use disorder that brings a person into the criminal justice system. People come into criminal justice to pay for addictions. The *Trueblood* lawsuit illustrates the need to incentivize health networks to come up with programs to divert people away from criminal justice and into behavioral health care. Doing this will create a better alignment of incentives at the local level to develop effective diversion programs. Investing here will save money across the board, because the same people use hospitals, emergency rooms, and other expensive services. Let us look holistically at the system and improve care for a population who should not remain in our jails. Community behavioral health agencies are front-line providers of mental health and substance use disorder treatment. We can help divert people from the criminal justice system. Estimates say that 20 to 30 percent of prison inmates have a mental illness. MCOs have performance measures for other health factors like hypertension and diabetes; it makes sense to also look at involvement with the criminal justice system as a performance measure.

OTHER: We support the concept and intent and understand the need to increase MCO involvement in the continuum of care our members experience, including their experience with the criminal justice system. We have concerns about the timing. The transition to managed care is not done in one year. *Trueblood* settlement implementation should be aligned with this implementation so that more services are available for people who are in criminal justice facilities. We need more access to information about what happens within the criminal justice system; this is a black box for us. We need better information linkages with the jails. It is hard to know when our members enter criminal justice, even less when they leave. We support having the PMCC start to look at criminal justice-related performance measures. Improving access to addiction treatment will make a huge impact. We should start there and considering how to develop of metrics and performance measures. Developing a richer set of behavioral health metrics should precede a jump to criminal justice. We understand the link between behavioral health and criminal justice. Tracking criminal justice involvement is positive, but please do not tie it to our withhold until MCOs have more tools to help us manage the risk.

**Persons Testifying:** PRO: Senator Steve O'Ban, Prime Sponsor; Abby Moore, Washington Council for Behavioral Health.

OTHER: Andrea Davis, Coordinated Care; Caitlin Safford, Amerigroup.

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