HOUSE BILL REPORT
2SHB 1394

As Passed Legislature

Title: An act relating to community facilities needed to ensure a continuum of care for behavioral health patients.

Brief Description: Concerning community facilities needed to ensure a continuum of care for behavioral health patients.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Schmick, Cody, Jinkins, Kilduff, Davis, Griffey, Riccelli, Macri, Harris, Robinson, Goodman, Sullivan, Appleton, Bergquist, Thai, Tharinger, Slatter, Doglio, Pollet, Callan, Leavitt and Ormsby; by request of Office of the Governor).

Brief History:

Committee Activity:

Health Care & Wellness: 1/29/19, 2/8/19 [DPS];
Appropriations: 2/27/19, 2/28/19 [DP2S(w/o sub HCW)].

Floor Activity:

Passed House: 3/5/19, 98-0.
Senate Amended.
Passed Senate: 4/17/19, 48-0.
House Concurred.
Passed House: 4/23/19, 96-0.
Passed Legislature.

Brief Summary of Second Substitute Bill

- Establishes intensive behavioral health treatment facilities and provides for the licensing and certification of these facilities by the Department of Health.
- Establishes a pilot program for mental health drop-in centers and requires the Health Care Authority to submit reports on the results to the Governor and the appropriate committees of the Legislature by December 1, 2020, and December 1, 2021.
- Directs the Health Care Authority to assess the capacity of hospitals and evaluation and treatment facilities to become credentialed to provide long-term mental health placements and to contract with those hospitals and evaluation and treatment facilities that choose to provide such services.

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.

- Suspends certificate of need requirements for certain hospitals that are either adding new psychiatric beds, changing the use of current beds to psychiatric uses, or constructing new psychiatric hospitals.
- Establishes mental health peer respite centers to be credentialed by the Department of Health as peer-operated programs.
- Requires the Department of Social and Health Services to track and monitor certain information about clients of the Developmental Disabilities Administration who are taken to a hospital.

HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 15 members: Representatives Cody, Chair; Macri, Vice Chair; Schmick, Ranking Minority Member; Caldier, Assistant Ranking Minority Member; Chambers, Davis, DeBolt, Harris, Jinkins, Maycumber, Riccelli, Robinson, Stonier, Thai and Tharinger.

Staff: Chris Blake (786-7392).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Health Care & Wellness. Signed by 31 members: Representatives Ormsby, Chair; Bergquist, 2nd Vice Chair; Robinson, 1st Vice Chair; Stokesbary, Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Rude, Assistant Ranking Minority Member; Caldier, Chandler, Cody, Dolan, Dye, Fitzgibbon, Hansen, Hoff, Hudgins, Jinkins, Kraft, Macri, Mosbrucker, Pettigrew, Pollet, Ryu, Senn, Springer, Stanford, Steele, Sullivan, Sutherland, Tarleton, Tharinger and Ybarra.

Staff: Andy Toulon (786-7178).

Background:

Long-Term Mental Health Placement Facilities.

Except in regional service areas with fully-integrated medical care, behavioral health organizations are responsible for the administration of community-based commitments and services under the Involuntary Treatment Act. The Involuntary Treatment Act governs the commitment of persons for involuntary mental health treatment if they pose a likelihood of serious harm or are gravely disabled due to a mental disorder. Inpatient commitments for 90 or 180 days of treatment take place at one of two state hospitals operated by the Department of Social and Health Services. Long-term inpatient care beds at the state hospitals are divided among all of the regional service areas with a specific allocation to each based on patient days of care.

Certificate of Need.

The certificate of need process evaluates proposals by certain health care providers to expand health care activities and reviews the potential impact of the expansion on a community's need for the service. A certificate of need from the Department of Health (Department) is required prior to the construction, renovation, or sale of a health care facility; changes in bed capacity; an increase in the number of dialysis stations at a kidney disease treatment center; or the addition of specialized health services. Under the program, the Department reviews the project using specific criteria related to community need, quality of services, financial feasibility, and the impact on health care costs in the community. A facility or service that is subject to the certificate of need program must be approved prior to beginning operations.

Until June 30, 2019, certificate of need requirements have been suspended for hospitals that change the use of licensed beds to increase the number of beds used to provide psychiatric services. For acute care hospitals, the exemption applies to hospitals that are changing the use of licensed beds to psychiatric beds as well as adding new psychiatric beds. For psychiatric hospitals, the exemption applies to the addition of up to 30 new psychiatric beds. The exemption also applies to the construction of a new psychiatric facility that has no more than 16 beds, a portion of which are to be used for treating adults on 90- or 180-day involuntary commitment orders. The Department of Commerce administers grants to hospitals to add new psychiatric beds to their facilities. The certificate of need requirements were suspended in fiscal years 2016 and 2017 for hospitals adding beds through the grant program.

Developmental Disabilities Administration.

The Department of Social and Health Services (DSHS) Developmental Disability Administration (DDA) assists individuals with developmental disabilities and their families to obtain services and support based on individual preferences, capabilities, and needs. The DDA clients live in residential habilitation centers (RHCs), an institutional setting, as well as in the community.

Eligibility for DDA services hinges on whether the client has a qualified developmental disability, has a functional need, and meets certain income and asset standards.

The services provided to clients are designed to promote everyday activities, routines, and relationships common to most citizens, and they include employment services and community access services, which are contracted with counties.

In December 2018 the Developmental Disabilities Ombuds published a report regarding adults with developmental disabilities in hospitals without any medical need. Many of these individuals were DDA clients who had been receiving residential services. The report included stories from hospital employees and hospitalized individuals. The report includes policy recommendations related to the hospitalization without medical need of individuals with developmental disabilities

Summary of Second Substitute Bill:

Intensive Behavioral Health Treatment Facilities.

The Department of Health (Department) is authorized to license or certify intensive behavioral health treatment facilities. An "intensive behavioral health treatment facility" is defined as a community-based specialized residential treatment facility for people with behavioral health conditions and impairments or behaviors do not meet criteria for involuntary treatment and whose care needs cannot be met in other community-based placement settings, including people discharging from or being diverted from a state or local hospital. The Department must work with the Health Care Authority (Authority) and the Department of Social and Health Services (DSHS) to create credentialing standards for intensive behavioral health treatment facilities.

The Department's rules related to intensive behavioral health treatment facilities must:

- define clinical eligibility criteria in alignment with the definition of the facilities;
- require 24-hour supervision of residents;
- establish staffing standards that include a clinical team and a high staff-to-patient ratio;
- establish requirements for providing services to individuals with intellectual or developmental disabilities;
- require access to regular psychosocial rehabilitation services, including skills training in activities of daily living, social interaction, behavior management, impulse control, and self-management of medications;
- require staffing levels that meet the acuity of the residents;
- define the ability to use limited egress;
- limit the age of residents to persons who are at least 18 years old; and
- establish resident rights that are similar to the rights of residents of other long-term care facilities.

The Secretary of the Department must consult with the DSHS, the Department of Commerce, the Long-Term Care Ombuds, and other relevant stakeholders to provide recommendations on providing resident rights and access to ombuds services to the residents of intensive behavioral health facilities. The report must be submitted to the Governor and the appropriate committees of the Legislature by December 1, 2019.

Mental Health Peer Respite Centers.

The Department shall credential mental health peer respite centers. Mental health peer respite centers are peer-operated programs that serve individuals in need of voluntary, short-term noncrisis services that focus on recovery and wellness. The Department, in consultation with the Health Care Authority and the Department of Social and Health Services, must:

- establish requirements for community behavioral health agencies to provide mental health peer respite center services;
- require credentialed agencies to partner with the local crisis system;
- establish staffing requirements;
- limit services to a maximum of seven days in a month;
- limit services to persons who are experiencing psychiatric distress, but do not meet criteria for involuntary hospitalization; and
- limit services to person who are at least 18 years old.

Mental Health Drop-In Center Services.

The Authority shall establish a pilot program to provide mental health drop-in center services. The mental health drop-in center services shall provide a peer-focused recovery model during the daytime hours through a community-based, therapeutic, less restrictive alternative to hospitalization for acute psychiatric needs. The pilot program shall assist clients in need of voluntary, short-term, noncrisis services that focus on recovery and wellness. The pilot program shall occur between January 1, 2020, and July 1, 2022, in the largest city in a regional service area with at least nine counties. The Authority must submit a preliminary report to the Governor and the appropriate committees of the Legislature by December 1, 2020, that includes a survey of peer mental health programs. A final report must be submitted by December 1, 2021, on the results of the pilot program.

Community Long-Term Inpatient Care Capacity.

The Authority and behavioral health organizations must assess the capacity of community hospitals and evaluation and treatment facilities to become certified to provide long-term inpatient care. In addition, the Authority and behavioral health organizations must enter into contracts with those hospitals and evaluation and treatment facilities that choose to provide such services. Community hospitals and evaluation and treatment facilities are not required to become certified to provide long-term mental health placements.

Certificate of Need.

The suspension of certificate of need requirements is extended from June 30, 2019, to June 30, 2021, for:

- acute care hospitals that are changing the use of licensed beds to increase the number of beds to provide psychiatric services;
- acute care hospitals that add new psychiatric beds;
- psychiatric hospitals that add up to 30 new psychiatric beds; and
- entities that construct a new psychiatric hospital that has no more than 16 beds and dedicate a portion of the beds to providing treatment to persons on a 90- or 180-day involuntary commitment order.

The suspension of certificate of need requirements for hospitals receiving grants from the Department of Commerce to add new psychiatric beds is continued for grants received in calendar years 2018 and 2019.

Psychiatric hospitals are exempt from certificate of need requirements for the one-time addition of up to 60 psychiatric beds to be used for 90-day and 180-day civil commitment patients. The exemption applies to hospitals that are awarded a grant by the Department of Commerce to increase behavioral health capacity in fiscal year 2019 and make a commitment to maintain a payer mix of at least 50 percent Medicare and Medicaid patient days for five years. The exemption expires June 30, 2021.

Enhanced Adult Residential Rates.

The DSHS is authorized to provide an enhanced adult residential rate to nursing homes that convert their bed use to provide assisted living or adult residential care. Nursing homes that permanently convert a portion of capacity to assisted living or adult residential care, including serving persons with behavioral health treatment needs may receive a supplemental add-on residential care rate. The authority for the DSHS to provide a supplemental assisted living services rate to nursing homes that permanently convert beds from nursing home use to assisted living is eliminated.

By November 15, 2019, the Authority must confer with the Department, hospitals, and evaluation and treatment facilities to review laws and regulations and identify changes that may be necessary to address health care delivery and cost-effective treatment for adults on 90- or 180-day commitment orders. The Authority must report its findings to the Governor and the appropriate committees of the Legislature by December 15, 2019.

Residential Intensive Behavioral Health and Developmental Disability Services.

The Authority and the DSHS must provide recommendations on short-term and long-term residential intensive behavioral health and developmental disabilities services for certain youth and adults who have, or may have, barriers related to discharging from inpatient behavioral health treatment. The report must be developed in consultation with the Department, the Department of Children, Youth, and Family, representatives from providers serving children's inpatient psychiatric needs in the three largest cities in Washington, representatives from behavioral health and developmental disability service providers, and representatives from developmental disability advocacy organizations. The recommendations must: (1) consider services to support the youth or adult, the family, and the residential service provider; (2) establish staffing and funding requirements that provide an appropriate level of treatment for residents in facilities; and (3) consider how to successfully transition youth to adult services without service disruption. The recommendations must be provided to the Governor's Office and the appropriate committees of the Legislature by July 1, 2020.

Developmental Disabilities Administration Clients Taken to a Hospital.

The DSHS must track and monitor the following items, within existing resources, and make the deidentified information available to the Ombuds, the Legislature, the Washington State Hospital Association, and the public upon request:

- certain information about clients receiving services from a provider that are taken to a hospital; and
- certain information about clients that are taken to a hospital once the provider terminates services.

A provider must notify the DSHS when a client is taken to a hospital so that the DSHS may track and collect information. Providers includes certified residential services and support programs under contract with the Developmental Disabilities Administration and state-operated living alternatives.

Legislative Findings.

Legislative findings are made regarding the need for additional bed capacity and services for individuals with behavioral health needs, the benefits of receiving treatment in the community, the struggles of the state hospitals to meet the rising demand for services, and the challenge of finding appropriate facilities for individuals with complex behavioral health needs. Legislative intent is stated as providing more options for behavioral health clients by creating new facility types and expanding the capacity of current provider types in the community.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony (Health Care & Wellness):

(In support) There are a number of gaps in the behavioral health system and this bill adds two new types of facilities and gives statutory authority for long-term commitments. This is an important increase in capacity because creating these new facilities can take some of the long-term residents of psychiatric hospitals who no longer need to be in psychiatric hospitals and move them into a more residential setting in the community. There still needs to be a significant investment in community behavioral health agencies and outpatient behavioral health services. This bill removes a time limit on enhanced funding for nursing facilities that care for patients with high behavioral health needs. There are youth who are very hard to serve in the developmental disabilities and mental health systems and this bill will establish a work group to develop recommendations for them. The bill should focus on increasing substance use disorder beds and making sure that everyone is on a work group to address the whole spectrum and continuum of care for behavioral health. Many evaluation and treatment facilities are already providing these services because it is so difficult to get people into the state hospitals. Evaluation and treatment facilities should be part of the Department of Health and hospital regulatory review committee. The bill should clearly indicate that mental health drop-in centers are meant to be 24 hour facilities. There is support for the working group to look at staffing structures and ensuring quality.

The permissive language to allow community hospitals to do 90- and 180-day civil commitments is needed to authorize them to provide these services. The bill will extend a two-year exemption from certificate of need requirements for psychiatric beds. There are three community hospitals in Snohomish and Yakima counties that are willing to provide 20 long-term involuntary commitment psychiatric beds and three psychiatric hospitals in King County that can provide an additional 46 beds with at least six beds will be dedicated to patients on 90- to 180-day commitments will be able to come online with a certificate of need exemption and another 30 short-term psychiatric beds. This bill will potentially bring a lot of beds online to serve the needs of members in the community. Hospitals have a number of certificates of need that are 30 to 120 days delayed because of the number of applications that the Department of Health has and this bill will help expedite getting these beds online. The Governor has proposed a behavioral health teaching campus with up to 150 90- to 180-day psychiatric beds and the University of Washington will need flexibility to add the beds from

that project. This bill will do that by extending the certificate of need exemption. Certificate of need oversight should not be removed for non-state operated facilities.

All of the other residents who live in similar long-term care facilities have a set of resident rights and it is appropriate that individuals who will be living in these facilities have access to those same rights.

(Opposed) None.

(Other) There is no doubt that there is a need for additional bed capacity and services for behavioral health in communities, but it needs to be done in a thoughtful manner. Continuing the exemption from certificate of need does not allow adequate time to determine if the beds are truly needed in a particular area. The certificate of need process makes providers aware of other providers' plans so the community can readjust.

There is a significant staffing shortage and community facilities have a difficult time staffing already and building more facilities will create an increased need for staff and make the shortage more critical and possibly placing patient care at greater risk. The greatest challenge for behavioral health facilities is the ongoing operational costs and if the state does not put more non-Medicaid funds into the system, the facilities could stand empty. In order to make the system work, a bigger workforce and better funding for the operation of the facilities is needed.

There is nothing in the bill about rights for patients or oversight. There should be something like the Long-Term Residents Rights Act which is applicable in most facilities. There is usually some jurisdiction for the Long-Term Care Ombuds or another entity, but it is missing from this bill.

Staff Summary of Public Testimony (Appropriations):

(In support) This bill is important in the context of figuring out how to provide care in the most appropriate settings for individuals with mental health issues in our state. It provides hospitals with the authority needed to treat patients who are on 90- to 180-day involuntary commitment orders. It provides exemptions to the certificate of need process which will allow for needed beds to be brought online more rapidly.

(Opposed) None.

Persons Testifying (Health Care & Wellness): (In support) Representative Schmick, prime sponsor; Caitlin Safford, Amerigroup; Rashi Gupta, Governor's Policy Office; Lisa Thatcher, Washington State Hospital Association; Kristin Frederici, Providence Health; Ian Goodhew, University of Washington School of Medicine Health Systems; Melanie Smith, National Alliance on Mental Illness Washington; Michael Hatchet, Washington Council on Behavioral Health; and Lindsey Grad, Service Employees International Union Healthcare 1199NW.

(Other) Juliana Roe, Washington State Association of Counties; Denise Weber, Cowlitz County; and David Lord, Disability Rights Washington.

Persons Testifying (Appropriations): Lisa Thatcher, Washington State Hospital Association.

Persons Signed In To Testify But Not Testifying (Health Care & Wellness): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.