

HOUSE BILL REPORT

HB 1826

As Reported by House Committee On: Civil Rights & Judiciary

Title: An act relating to the disclosure of certain information during the discharge planning process.

Brief Description: Concerning the disclosure of certain information during the discharge planning process.

Sponsors: Representatives Leavitt, Kilduff and Morgan.

Brief History:

Committee Activity:

Civil Rights & Judiciary: 2/13/19, 2/20/19 [DPS].

Brief Summary of Substitute Bill

- Requires the Department of Social and Health Services to disclose publicly accessible and relevant criminal history for certain persons during the discharge planning process.
- Imposes a civil penalty of \$5,000 for the misuse and unauthorized disclosure of protected health information by an entity authorized to receive the information.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 15 members: Representatives Jinkins, Chair; Thai, Vice Chair; Irwin, Ranking Minority Member; Dufault, Assistant Ranking Minority Member; Goodman, Graham, Hansen, Kilduff, Kirby, Klippert, Orwall, Shea, Valdez, Walen and Ybarra.

Staff: Ingrid Lewis (786-7289).

Background:

Western State Hospital (WSH) and Eastern State Hospital (ESH) are adult psychiatric hospitals that provide involuntary inpatient treatment for persons with mental disorders who

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are committed by civil and criminal courts. The hospitals are operated by the Department of Social and Health Services.

A behavioral health organization (BHO) oversees the delivery of behavioral health services for adults and children, administers community-based commitments and services under the Involuntary Treatment Act, and contracts with local providers to provide behavioral health services. A BHO may be a county, group of counties, or a nonprofit entity. All BHOs must be integrated into Medicaid managed care organizations by April 2020.

When it has been determined by the superintendent or professional person in charge at the WSH or the ESH that a person who was involuntarily committed for 90 or 180 days no longer requires active psychiatric treatment at an inpatient level of care, the hospital is required to collaborate with the BHO, fully integrated entity, or agency providing oversight of services responsible for the person in the development of an individualized discharge plan to transition the person into the community within 14 days of a determination.

A person may be discharged to various less restrictive placements, including but not limited to adult family homes, enhanced services facilities, and other types of community-based facilities.

Relevant Terms and Provisions.

"History of one or more violent acts" refers to the period of time 10 years prior to the filing of a petition for commitment, excluding any time spent, but not any violent acts committed, in a mental health facility, a long-term alcoholism or drug treatment facility, or in confinement as a result of a criminal conviction.

"Violent act" is defined as behavior that resulted in homicide, attempted suicide, nonfatal injuries, or substantial damage to property.

A person who has had felony charges dismissed due to incompetency may be committed for a period of up to 180 days if a petitioner can prove by clear, cogent, and convincing evidence that the person has committed acts constituting a felony and, as a result of a mental disorder, the person presents a substantial likelihood of repeating similar acts. If the grounds for commitment have been proven, but treatment less restrictive than detention will be in the best interest of the person or others, the court may order a less restrictive alternative placement for the term of commitment.

Confidentiality of Health Care Information.

The federal Health Insurance Portability and Accountability Act (HIPAA) establishes standards for the disclosure of protected health information by covered entities. Entities covered by the HIPAA must have a patient's authorization to use or disclose health care information, unless there is a specified exception. Some exceptions pertain to disclosures for treatment, payment, and health care operations; public health activities; judicial proceedings; law enforcement purposes; and research purposes.

The state Uniform Health Care Information Act (UHCIA) governs the disclosure of health care information by health care providers and their agents or employees. The UHCIA provides that a health care provider may not disclose health care information about a patient

unless there is a statutory exception or a written authorization by the patient. Some exceptions include disclosures for the provision of health care; quality improvement, legal, actuarial, and administrative services; research purposes; directory information; public health and law enforcement activities as required by law; and judicial proceedings. Disclosures to entities are subject to the same disclosure requirements as the health care provider providing the health care information.

Summary of Substitute Bill:

The Department of Social and Health Services is required to disclose to the behavioral health organization, fully integrated entity, managed care entity, administrative service organization, or agency providing oversight of services, any publicly accessible forensic reports or assessments and relevant criminal history of the following persons referred for discharge:

- a person who has a 'history of one or more violent acts' as defined in statute;
- a person who is civilly committed under the Involuntary Treatment Act (ITA), where the charge underlying the finding of incompetence is for a violent felony as defined in statute; and
- a person who has been convicted of a serious violent offense or sex offense, as defined in statute.

Confidentiality of Health Care Information.

A civil penalty of \$5,000 is created for the misuse or unauthorized release of confidential health information received by an entity authorized in the ITA to receive such information. Persons subject to suit include the person making the disclosure, the entity or office with which the person is associated, or both. The suit shall be brought by the Attorney General, and all penalties recovered shall be paid into the State Treasury and credited to the State General Fund.

Substitute Bill Compared to Original Bill:

The substitute bill makes a correction to the disclosing entity and imposes a civil penalty of \$5,000 for the misuse and unauthorized disclosure of the private and protected health information of a person subject to commitment under the Involuntary Treatment Act by a person or entity authorized by law to receive the information.

Appropriation: None.

Fiscal Note: Requested on February 6, 2019.

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

Staff Summary of Public Testimony:

(In support) This bill is about safety and keeping community members informed about individuals with a history of violent acts living in local neighborhoods. There needs to be a better accounting of a patient's criminal history in order to maintain safety and provide appropriate care to vulnerable populations. It is important to set an individual up for success after discharge from either of the state psychiatric hospitals. This is an opportunity to address the behavioral health and public safety needs for communities that have populations of residents with mental illnesses. The bill ensures that important information about a patient's history is forwarded to relevant agencies. The staff developing a discharge plan should know if a patient has a history of violence or sexual offenses. Adult family home providers who have direct contact with residents should have access to the same information.

(Opposed) None.

Persons Testifying: Representative Leavitt, prime sponsor; and John Caulfield, City of Lakewood.

Persons Signed In To Testify But Not Testifying: None.