

SENATE BILL REPORT

SHB 1826

As Reported by Senate Committee On:
Behavioral Health Subcommittee to Health & Long Term Care, February 27, 2020
Ways & Means, April 5, 2019

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: House Committee on Civil Rights & Judiciary (originally sponsored by Representatives Leavitt, Kilduff and Morgan).

Brief History: Passed House: 3/04/19, 97-0; 1/16/20, 96-0.

Committee Activity: Behavioral Health Subcommittee to Health & Long Term Care:
3/15/19, 3/29/19 [DPA, w/oRec]; 2/21/20, 2/27/20 [DPA, w/oRec].
Ways & Means: 4/03/19, 4/05/19 [DPA(BH), w/oRec].

Brief Summary of Amended Bill

- Requires a hospital to provide publicly-accessible forensic reports and criminal history information within the possession of the hospital to certain entities about long-term involuntary treatment patients who are ready to discharge and were committed following dismissal of violent felony charges based on incompetency to stand trial.
- Establishes a \$5,000 civil fine for misuse or unauthorized disclosure of such information.

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

Majority Report: Do pass as amended.

Signed by Senators Dhingra, Chair; Wagoner, Ranking Member; Darneille and Frockt.

Minority Report: That it be referred without recommendation.

Signed by Senator O'Ban.

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.

Staff: Kevin Black (786-7747)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass as amended by Committee on Behavioral Health Subcommittee to Health & Long Term Care.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair, Operating, Capital Lead; Mullet, Capital Budget Cabinet; Brown, Assistant Ranking Member, Operating; Bailey, Becker, Billig, Carlyle, Conway, Darneille, Hasegawa, Hunt, Keiser, Liias, Palumbo, Pedersen, Schoesler and Van De Wege.

Minority Report: That it be referred without recommendation.

Signed by Senators Honeyford, Assistant Ranking Member, Capital; Wagoner and Warnick.

Staff: Kevin Black (786-7747)

Background: Long-Term Involuntary Inpatient Care. Long-term involuntary inpatient care is involuntary behavioral health treatment provided pursuant to a court order authorizing up to 90 or 180 days of treatment. Long-term involuntary inpatient care is provided by hospitals, evaluation treatment facilities, and state hospitals operated by the Department of Social and Health Services.

Managed Care Organizations and Behavioral Health Administrative Services Organizations. Medicaid managed care organizations (MCOs) and behavioral health administrative services organization (BH-ASOs) contract with the Health Care Authority to provide health services and involuntary behavioral health treatment services to persons in Washington State. Involuntary treatment occurs when a designated crisis responder determines following investigation that a person presents a likelihood of serious harm or is gravely disabled due to a behavioral health disorder. Involuntary treatment begins with a 72-hour hold but can be extended by court order for periods of 14, 90, or 180 days if evidentiary standards are met.

Discharge Planning for Long-Term Involuntary Patients. When a hospital providing long-term involuntary inpatient care determines that a patient no longer requires active psychiatric treatment at an inpatient level of care, the MCO, BH-ASO, or other agency that provides oversight of community care for the person, which may include the Aging and Long-Term Support Administration (AL TSA) if the person has long-term care needs or Developmental Disabilities Administration (DDA) if the person has needs related to a developmental disability, must collaborate with the hospital to develop an individualized discharge plan for the person within 14 days.

History of One or More Violent Acts. Having a "history of one or more violent acts" is defined under the Involuntary Treatment Act to mean that during a ten-year period of time, excluding any time spent, but not any violent acts committed, in a mental health facility, long-term alcoholism or drug treatment facility, or in confinement as a result of a criminal conviction, a person has engaged in behavior that resulted in homicide, attempted suicide, nonfatal injuries, or substantial damage to property.

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 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 made to entities subject those entities to the same disclosure requirements as the health care provider that originally provided the health care information

Summary of Bill: The bill as referred to committee not considered.

Summary of Amended Bill: When a hospital determines that a person who is involuntarily committed to long-term inpatient care following dismissal of a criminal charge that is an offense classified as a violent felony based on incompetency to stand trial is ready to be discharged, the hospital must disclose to the BH-ASO, MCO, or agency overseeing long-term care or developmental disability services any publicly-accessible forensic reports and the relevant details of the person's criminal history that are related to the current admission and within the possession of the hospital.

Information or records transmitted pursuant to this act must be kept confidential. A civil penalty of \$5,000 is established for misuse or unauthorized disclosure of information or records pursuant to this act by any person. The attorney general may bring a suit to enforce this prohibition and recover reasonable attorney's fees.

These requirements must not be construed to authorize the disclosure of health information that is protected under state or federal law.

EFFECT OF BEHAVIORAL HEALTH SUBCOMMITTEE TO HEALTH & LONG TERM CARE COMMITTEE AMENDMENT(S):

- Reduces scope of disclosure requirements to records in the possession of the hospital that are related to patients who were committed following dismissal of violent felony charges based on incompetency to stand trial.
- Removes language in civil penalty referring to law enforcement entities and prosecuting attorney's offices.
- Specifies that requirements must not be construed to require disclosure of protected health information.

Appropriation: None.

Fiscal Note: Available.

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 on Substitute House Bill (Behavioral Health Subcommittee to Health & Long Term Care) (Regular Session 2019): *The committee recommended a different version of the bill than what was heard.* PRO: This bill is about safety and keeping community members informed about people with a history of violent acts who are living in their neighborhood. Local care providers in my district report they need a better accounting of clients with a criminal history in order to provide appropriate care and maintain safety. When people are informed and able to provide input, decision making can be thoughtful and intentional, keeping public safety at the forefront. There are limited options for care for patients discharged from a state hospital. More and more often, we see these persons being placed in adult family homes. There are almost 100 adult family homes in the city of Lakewood. To ensure the safety of vulnerable residents and to help these persons succeed, the staff should know about a history of violence or sexual offenses. This bill is a good first step.

Persons Testifying (Behavioral Health Subcommittee to Health & Long Term Care): PRO: Representative Mari Leavitt, Prime Sponsor; Eileen McKain, City of Lakewood.

Persons Signed In To Testify But Not Testifying (Behavioral Health Subcommittee to Health & Long Term Care): No one.

Staff Summary of Public Testimony on Bill as Amended by Behavioral Health Subcommittee to Health & Long Term Care (Ways & Means) (Regular Session 2019): None.

Persons Testifying (Ways & Means): No one.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.

Staff Summary of Public Testimony on Proposed Striking Amendment (Behavioral Health Subcommittee to Health & Long Term Care) (Regular Session 2020): *The committee recommended a different version of the bill than what was heard.* PRO: This bill is about keeping the public informed about people with a history of violent acts living in their neighborhoods. It allows public input so that decision makers can be more thoughtful, keeping public safety at the forefront. While much of this information is publicly available, it takes a lot to discover it. Agencies should get access to information in a quicker way. Private hospitals should not be exempted because they receive the information from the designated crisis responders, local law enforcement, and others. Patients have ended up in facilities where there have been subsequent instances of criminal activity or even death. The agency says afterwards that they might have done something differently if they had known

about the history. The concerns of my community are that this has made them less safe. Individuals providing care should know about the needs of patients.

CON: We do not oppose sharing this type of information with the public, but whose responsibility is it to share it? Community hospitals now partner with the state to provide long-term involuntary treatment. If the intent is just to capture the state hospitals, the bill should be amended. It is not a hospital's role to share this type of information, which is not readily available. Hospitals have personal health information, not criminal records. This duty would affect the therapeutic relationship. This function could be done at the agency level. There are too many ways this could be interpreted. Forensic evaluations are often sealed by the court but the hospital would have no way to know that if they have a copy. "Relevant details" of the crime is not defined. The criminal history that is provided with competency referrals is unverified and often has errors. These are not certified copies of records. There should not be disclosure of information that has not been verified.

Persons Testifying (Behavioral Health Subcommittee to Health & Long Term Care):

PRO: Representative Mari Leavitt, Prime Sponsor; Mike Brandstetter, City of Lakewood, Councilmember.

CON: Lisa Thatcher, Washington State Hospital Association; Kari Reardon, Washington Defender Association/Washington Association of Criminal Defense Lawyers.

Persons Signed In To Testify But Not Testifying (Behavioral Health Subcommittee to Health & Long Term Care): No one.