SENATE BILL REPORT
2SHB 1907

As Passed Senate - Amended, April 17, 2019

Title: An act relating to the substance use disorder treatment system.

Brief Description: Concerning the substance use disorder treatment system.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Davis, Appleton, Doglio, Ryu, Goodman and Jinkins).

Brief History: Passed House: 3/08/19, 98-0.
Committee Activity: Behavioral Health Subcommittee to Health & Long Term Care: 3/22/19, 3/29/19 [DPA].
Floor Activity:
Passed Senate - Amended: 4/17/19, 48-0.

Brief Summary of Bill
(As Amended by Senate)

- Changes the name of secure detoxification facility to secure withdrawal management and stabilization facility and expands the definition of this facility.
- Allows a petition for 14 or 180 days of involuntary substance use disorder treatment of a minor to be signed by a chemical dependency professional instead of a mental health professional and an advanced registered nurse practitioner instead of a psychiatric advanced registered nurse practitioner.
- Requires the Health Care Authority to update the Designated Crisis Responder Protocols to include substance use disorder commitment information.
- Prohibits the Department of Health (DOH) from requiring a person applying for registration as an agency-affiliated counselor (AAC) in order to work as a peer counselor to participate in a voluntary substance abuse monitoring program if the person has at least one year of recovery from a substance use disorder.
- Prohibits DOH and certain employers from automatically denying applications for registration as an AAC or employment as a peer counselor based on a history of certain criminal offenses if the person has achieved

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at least one year of recovery from a substance use disorder or untreated mental health disorder.

- Directs the Health Care Authority to certify substance use disorder peer counselors and to include reimbursement for their services in the Medicaid state plan.
- Directs DOH to conduct sunrise reviews to evaluate transfer of the peer support counselor certification program to DOH and to evaluate creation of an advanced peer support specialist credential.

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, Frockt and O'Ban.

Staff: Kevin Black (786-7747)

Background: Integrated Crisis Response. Effective April 1, 2018, the Involuntary Treatment Act (ITA) and the provisions pertaining to involuntary mental health treatment were expanded to include commitments for substance use disorders. Under the ITA, a person may be ordered to undergo involuntary behavioral health treatment if the person, as a result of a mental health or a substance use disorder, poses a likelihood of serious harm, is gravely disabled, or is in need of assisted outpatient behavioral health treatment. Designated crisis responders (DCR) are mental health professionals appointed to conduct evaluations for individuals with mental disorders and substance use disorders under the ITA. A person who poses a likelihood of serious harm or is gravely disabled may be committed for up to 72 hours for an initial evaluation at an evaluation and treatment facility (E&T), secure detoxification facility (secure detox), or approved substance use disorder treatment facility. Upon subsequent petitions and hearings for further treatment, an adult posing a likelihood of serious harm or grave disability may be court ordered to consecutive terms of treatment lasting up to 14 days, up to 90 days, and successive terms of up to 180 days.

Petition Requirements for Continuing Involuntary Treatment. Once a DCR has detained a patient for 72 hours, subsequent involuntary treatment petitions for 14, 90, or 180 days must be filed in court by the treatment facility. State law requires these petitions to be signed by two health care professionals who have each examined the patient. For adult patients, a petition for 14 or more days of involuntary mental health treatment must be signed by:

- one physician, physician assistant, or psychiatric advanced registered nurse practitioner (psychiatric ARNP); and
- one physician, physician assistant, psychiatric ARNP, or mental health professional.

If the petition is for substance use disorder treatment, the petition may be signed by a chemical dependency professional instead of a mental health professional and an advanced registered nurse practitioner (ARNP) instead of a psychiatric ARNP. The involuntary commitment statutes for minors are similarly constructed, but do not contain the provision

allowing a chemical dependency professional to substitute for a mental health professional and an ARNP to substitute for a psychiatric ARNP.

Designated Crisis Responder Protocols. The Health Care Authority (HCA) is required to develop statewide protocols to be utilized by professional persons and designated crisis responders in administration of the ITA. HCA must work with stakeholders to update these proposals every three years. The current DCR protocols are not due for update until 2020.

Certification of Involuntary Treatment Facilities. DOH is responsible for certifying and licensing behavioral health service facilities, including E&Ts, secure detox, and approved substance use disorder treatment facilities. DOH must establish minimum standards for service provision.

Agency-Affiliated Counselors. An AAC is a person employed by an agency to engage in counseling who has registered or submitted an application for registration with the state of Washington. An AAC must pass a background check and have at least a bachelor's degree in a counseling-related field and pass an examination in risk assessment, ethics, and appropriate screening and referral. An AAC may work for up to 60 days while registration is pending, provided that an application is submitted within seven days of employment. A person who is employed by an agency and has attained an associate's degree in a counseling field may apply to register as a certified advisor. For the purposes of this section, "agency" includes Indian tribes, counties, state agencies, and juvenile courts.

Peer Counselors. HCA administers a program established in 2005 to certify mental health peer counselors. Peer counselors are persons who share life experiences with persons in recovery and who successfully complete a 40-hour training course and pass the state exam. Peer counselors are employed by behavioral health agencies that obtain approval to employ them and must register as AACs. Once employed and registered, peer counselors work under the supervision of mental health professionals in a variety of settings to assist persons in recovery within their scope of practice.

Expansion of Peer Counselor Program. The 2018 supplemental budget included a proviso that directs HCA to incorporate persons with substance use disorders in its peer support certification program. The proviso also directed HCA to submit a state plan amendment which allows for substance use disorder peer services to be included in behavioral health capitation rates beginning July 1, 2019, and to be federally matched.

Sunrise Reviews. DOH makes recommendations to the Legislature on health profession credentialing proposals through a process called a sunrise review.

Substance Abuse Monitoring Programs. A disciplining authority may refer a licensee to a substance abuse monitoring program in lieu of formal discipline if the disciplining authority determines that unprofessional conduct is the product of substance abuse. The licensee must consent to the referral and the referral may include probationary conditions. If the licensee does not consent to the referral or fails to meet the requirements of the program, the disciplining authority may take formal disciplinary action against the licensee.

There are four substance abuse monitoring programs in Washington for credentialed health care providers. Each program serves specific professions or groups of professions. Although the programs do not provide substance use disorder treatment, they contract with and monitor health care providers for compliance with treatment and recovery goals. The contract includes random drug testing and worksite monitoring to ensure a safe return to practice. Some professions pay a fee to cover program expenses, while other professions require the individual to bear the expenses of the program.

Washington Recovery and Monitoring Program. The Washington Recovery and Monitoring Program (WRAMP) is the substance use monitoring program for AACs, among other health care professions, and is operated by the DOH. WRAMP applies to licensed or certified professionals who are referred following a complaint or investigation, professionals who self-refer to the program, and applicants for a license or certification who disclose a history of substance use disorder during the application process. WRAMP requires participants to obtain a chemical dependency evaluation at their expense, the cost of which may in some cases be covered by insurance. If the evaluation determines that the person has a mild substance use disorder, WRAMP requires three years of participation, with credit applied for any time spent in continuous recovery before the evaluation. If the evaluation determines the person has a moderate or severe substance use disorder, WRAMP requires five years of participation, with credit applied for any time spent in continuous recovery before the evaluation. During participation in WRAMP, the person must check in daily with the program during workdays and be subject to random urinalysis, follow any other treatment recommendations, abide by certain restrictions, and participate in a weekly approved peer support group. The cost of urinalysis, the weekly support group, and any other costs must be borne by the participant.

Disqualifying Crimes. Agencies, facilities, and individuals who provide care to vulnerable adults may not employ a person to work in a position that may involve unsupervised access to vulnerable adults if the person has been convicted of certain disqualifying crimes. In some cases a person will not be automatically disqualified from employment if a designated number of years have passed since the date of conviction for the disqualifying crime. A person who has a prior conviction for assault 4, prostitution, or theft 3 may be considered for such employment after three years have passed since the last date of conviction. A person who has a prior conviction for theft 2 or forgery may be considered for such employment after five years have passed from the last date of conviction.

Summary of Amended Bill: Secure detox is renamed secure withdrawal management and stabilization facility. An expanded definition of this facility is established which includes the capacity to provide treatment and stabilization services and to provide voluntary care.

When a minor is detained for involuntary substance use disorder treatment and the facility petitions the court for an additional 14 or 180 days of involuntary treatment, the petition may be signed by a chemical dependency professional instead of a mental health professional and by an ARNP instead of a psychiatric ARNP.

Within existing resources, HCA must develop an addendum to the DCR statewide protocols by December 1, 2019, which updates the protocols to address the implementation of

behavioral health integration, including the applicability of commitment criteria to persons with substance use disorders.

DOH must develop a process by which a provider may obtain a dual license as an E&T and secure detox.

DOH is prohibited from requiring an applicant for registration as an AAC who intends to practice as a peer counselor for a facility, federally recognized Indian tribe, or county to participate in WRAMP if the applicant has at least one year in recovery from a substance use disorder. If the applicant has less than one year in recovery, DOH may require participation in WRAMP for only the amount of time necessary to achieve one year in recovery.

DOH is prohibited from automatically denying an application for registration as an AAC, and an agency or facility that provides care and treatment to vulnerable adults is prohibited from automatically denying an application for employment, for a person who intends to practice as a peer counselor based upon the applicant's conviction history for assault 4, prostitution, theft 2 or 3, or forgery if:

- at least one year has passed since the applicant's most recent conviction;
- the offense was committed as a result of the applicant's substance use or untreated mental health symptoms; and
- the applicant is at least one year in recovery from a substance use disorder, whether through abstinence, or stability on medication-assisted therapy, or in recovery from mental health challenges.

HCA must incorporate education and training for substance use disorder peers into its peer counselor certification program, and include reimbursement in the Medicaid state plan for substance use disorder peer support services, by July 1, 2019. HCA must approve qualified third parties to conduct the peer counselor certification training using the state's curriculum.

DOH must conduct a sunrise review to evaluate transfer of the peer support counselor certification program to DOH with modifications to bring the program under DOH oversight, with structure, discipline, and continuing education requirements similar to other behavioral health licensure or certification programs. The plan for program modification must allow for grandfathering current individuals who hold a peer support counselor certification. This review must include evaluation the implications of such a transfer on professionalism, portability, scope of practice, approved practice locations, workforce, bidirectional integration, and appropriate deployment of peer counselors throughout the health system.

DOH must conduct a sunrise review to evaluate the need for the creation of an advanced peer support specialist credential for peer support services provided in the areas of mental health, substance use disorders, and forensic behavioral health. The requirements for the credential must:

- be accessible to individuals in recovery;
- integrate with HCA's peer counselor certification program;
- provide requirements that are more stringent than HCA's peer counselor certification program, but are less stringent than DOH's existing behavioral health credentials;
- provide oversight, structure, discipline and continuing education requirements typical for other professional licenses and certifications;

- allow advanced peer support specialists to maximize the scope of practice suitable to their skills, lived experience, education and training;
- allow advanced peer support specialists to practice and receive reimbursement in behavioral health capitation rates in the full range of settings in which clients receive behavioral health services;
- provide a path for career progression to more advanced credentials; and
- incorporate consideration related to criminal history and recovery from behavioral health disorders.

The time limit is eliminated for an AAC who applies for registration to work as an AAC while the application is being processed, provided that the applicant must provide required documentation to DOH within reasonable time limits. The time limit to submit the application to DOH following the start of employment is increased from 7 days to 30 days.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on March 20, 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 on Second Substitute House Bill: *The committee recommended a different version of the bill than what was heard.* PRO: In 2015-2016, I brought Ricky's Law to the Legislature in an effort to help people who are in the throes of addiction achieve recovery. It went into effect in April 2018, and there are now 45 secure detoxification beds located in Chehalis and Spokane. In the past ten months, only 35 percent of the beds have been occupied, which is because of implementation issues and not because of need. People are dying because of preventable overdoses from a treatable disease. Amendments are needed so that no more people are lost. The DCR protocols are not written to assist in analyzing serious harm in the context of addiction where unique risks are presented such as sepsis and overdose. Other issues exist which are being pursued through the budget. The majority of patients detained for care in secure detox are electing to continue receiving voluntary care. The protocol updates will help utilization and clarify who is appropriate for these facilities. Lack of utilization is more of an education piece than anything. Adding stabilization to the title of this facility instead of just detoxification matches more closely the service that we provide.

Persons Testifying: PRO: Representative Lauren Davis, Prime Sponsor; Tony Prentice, American Behavioral Health Systems.

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