SENATE BILL REPORT
SB 6275

As Reported by Senate Committee On:
Health & Long Term Care, January 31, 2020

Title: An act relating to increasing patient access rights to timely and appropriate postacute care by addressing the medicaid functional assessment and financial eligibility process for medicaid funded long-term services and supports.

Brief Description: Increasing patient access rights to timely and appropriate postacute care.

Sponsors: Senators Cleveland and O'Ban.

Brief History:
Committee Activity: Health & Long Term Care: 1/27/20, 1/31/20 [DPS-WM].

Brief Summary of First Substitute Bill

- Modifies the Department of Social and Health Services' (DSHS) long-term services and supports assessment process for hospital patients.
- Codifies and establishes new requirements for the exception to the rule process.
- Directs the Washington State Institute of Public Policy to review the DSHS long-term services and supports assessment tool and eligibility determination process.
- Requires DSHS to report certain information about patients who remain in the hospital setting due to barriers in accessing community alternatives.
- Requires DSHS and the Health Care Authority to submit a waiver request to the federal government to authorize presumptive eligibility for long-term services and supports.

SENATE COMMITTEE ON HEALTH & LONG TERM CARE

Majority Report: That Substitute Senate Bill No. 6275 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Cleveland, Chair; Randall, Vice Chair; O'Ban, Ranking Member; Conway, Dhingra, Frockt, Keiser, Muzzall, Rivers and Van De Wege.

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: LeighBeth Merrick (786-7445)

Background: Long-Term Services and Supports Eligibility Determination. Long-term services and supports (LTSS) are for individuals who need assistance with daily living tasks such as bathing, dressing, ambulation, transfers, toileting, medication assistance or administration, personal hygiene, transportation, and other health-related tasks. DSHS administers Medicaid funded long-term services and supports to eligible individuals in Washington State. For an an individual to receive LTSS, they must be determined by DSHS as both functionally and financially eligible. DSHS determines functional eligibility using the comprehensive assessment reporting evaluation (CARE) tool. The CARE tool functions as an assessment, service planning, and care coordination tool and is also used to establish the amount of care—daily rate or monthly hours—a client is eligible to receive. Once an individual is determined eligible for LTSS, they have the option to receive services in their home, from a community residential services provider, or in skilled nursing facility.

Current law requires DSHS to work in partnership with hospitals in assisting patients and their families to find LTSS. DSHS must not delay hospital discharges but must assist and support the activities of hospital discharge planners. DSHS guidelines require a hospital patient's functional assessment be completed within 30 days of the date of receipt of referral.

Exception to Rule. Current rules authorizes DSHS staff to request an exception to a rule for individual cases when:

- the exception would not contradict a specific provision of federal law or state statute;
- the client's situation differs from the majority;
- it is in the interest of overall economy and the client's welfare; and
- either it increases opportunities for the client to function effectively or the client has an impairment or limitation that significantly interferes with the usual procedures required to determine eligibility and payment, and the client is at serious risk of institutionalization, or both.

DSHS must inform clients within ten days of deciding not to file, approve, or deny the exception to rule request. When an exception to rule is granted it often results in more accommodations for the client including more care hours and higher rates for the care provider.

Presumptive Eligibility. Federal and state law allows participating hospitals, which are Washington State Medicaid providers, to determine eligibility for temporary Washington Apple Health—Medicaid—coverage. Those individuals potentially eligible for presumptive eligibility coverage include:

- children up to age 19;
- parents and caretaker relatives;
- adults not receiving Medicare, up to age 65; and
- former foster care children up to age 26.

Summary of Bill (First Substitute): Long-Term Services and Supports Eligibility Determination. DSHS is required to work in partnership with hospitals in assisting patients and their families to find and gain timely access to LTSS of their choice. A hospital may choose to enter into an agreement with DSHS to allow the hospital to support DSHS's

functional assessment for individuals who are hospitalized and likely to need LTSS. Under the agreement, the hospital may prepare and submit preassessment information to DSHS. Preassessment information includes the individual's medical, behavioral, or cognitive care needs and ability to perform activities of daily living. DSHS must take the submitted preassessment information into consideration, and to the extent feasible, use the information in completing the functional assessment of an individual discharging from the hospital. DSHS must make training on their assessment tool and process available for hospital personnel. A hospital employee or contractor who is qualified and has received the training is eligible to prepare and submit preassessment information to DSHS. The individual's medical record must substantiate any preassessment information provided to DSHS. DSHS must complete its assessment and determine a hospitalized individual's LTSS eligibility no later than ten business days after receipt of preassessment information from a hospital. If the hospital has not submitted preassessment information, DSHS must complete the assessment and LTSS eligibility determination no later than 20 business days after receiving the request for an assessment. The timelines for DSHS to complete the assessment is subject to appropriation, if DSHS is not able to determine eligibility within the required timelines due to patient-specific situations beyond DSHS's control, DSHS must notify the hospital of the specific reason for the delay, the status of the assessment and determination, and the expected completion date. DSHS must track and make publicly available data on delays in assessment and eligibility determinations, including the number of and reasons for such delays. Subject to appropriations, DSHS must develop specialty contracts that prioritize the transition of difficult to discharge patients with complex medical and behavioral needs.

Exception to the Rule. A patient, client, health care provider, hospital, facility, or department case manager may submit a request justifying the need for additional personal care services and an increased daily rate to the department's exception to rule committee. The exception to rule committee must provide the requesting person or entity and the client, hospital or long-term care facility with a copy of its final decision, including whether the request was approved, modified, or denied, and the reason for the decision. DSHS must track and make publicly available data on the number of requests and decisions by the committee.

Washington State Institute for Public Policy Study. The Washington State Institute for Public Policy (WSIPP) must review the DSHS LTSS assessment tool and eligibility determination process. When conducting the review, WSIPP must consult with DSHS and relevant stakeholders, including the Washington State Hospital Association and certain LTSS providers. By November 15, 2020, WSIPP must submit a report with its findings to the Office of Financial Management (OFM), the DSHS Research and Data Analytics Division (RDA), and the appropriate committees of the legislature. At a minimum, the report must:

- cover a period beginning January 1, 2010, and analyze data from the DSHS assessment tool and other sources to identify trends in:
    - the total number of assessments requested each month;
    - the average and median length of time to perform each step of the assessment process and to complete assessments, disaggregated by county;
    - patients' conditions and identified care needs;
    - the average assisted living Medicaid rates offered using the assessment tool;
    - the percentage of assessments that have been subject to the exception to rule process, disaggregated by county;

- the results of the exception to rule process, including what percentage of requests are approved, modified, or denied, as well as the reasons why requests are approved or modified, disaggregated by county;
- identify the number of full-time equivalent employees needed to complete assessments within the current required time frames; and
- provide any recommendations for changes to the eligibility process related to adequately reflecting the impact of patient behaviors in the delivery of LTSS.

Department of Social and Health Services Report. The DSHS RDA division, in collaboration with the Health Care Authority (HCA), the Washington State Hospital Association, and other stakeholders, must prepare a report regarding patients who remain in a hospital setting due to barriers in accessing community alternatives. When preparing the report, RDA may use administrative data sources in their integrated client databases and will consider information and recommendations provided by the WSIPP study. The Washington State Hospital Association and hospitals may provide data identifying the target populations for RDA to link to its integrated client databases. RDA will work with the Washington State Hospital Association to develop the format hospitals may use in providing the data. The report must, at a minimum:

- describe the physical and behavioral health, cognitive performance, functional support, and housing needs of these patients;
- identify how DSHS's current assessment tool captures patients' personal care needs related to behavioral health and cognitive function;
- identify barriers for patients accessing postacute settings, including funding, services, and supports, not captured or accounted for in the DSHS' current assessment tool;
- identify alternative sources for addressing and resolving the identified barriers; and
- identify the potential types and sources of funding that may be used to transition patients to a postacute care setting.

DSHS must submit the report to the OFM and the appropriate committees of the Legislature by November 15, 2021.

Presumptive Eligibility. By December 31, 2021, HCA and DSHS must submit a waiver request to the federal Department of Health and Human Services to authorize presumptive eligibility for LTSS. HCA and DSHS must hold ongoing stakeholder discussions as they develop the waiver request and must provide opportunities for public review and comment as the request is developed. Upon submission of the waiver request, HCA and DSHS must submit a report to the Governor and the appropriate committees of the Legislature describing the request and identifying any statutory changes that may be necessary if the request is approved.

EFFECT OF CHANGES MADE BY HEALTH & LONG TERM CARE COMMITTEE (First Substitute):

- Makes the timelines for DSHS to complete the assessment subject to appropriations.
- Adds data on the assessment determinations to the items DSHS is required to track and make publicly available.
- Requires DSHS to develop specialty contracts for difficult to discharge patients. This requirement is subject to appropriations.

- Removes the requirements for the exception to rule committee to meet at least once a week; make publicly available the steps involved in receiving, analyzing, and responding to requests; and make their final decision no later than seven business days after the day of the committee meeting where they had the necessary information to make a decision.
- Requires DSHS to track and make publicly available data on the number of exception to rule request and decisions by the exception to rule committee.
- Requires DSHS to provide a copy of its final exception to rule decision to the client and the hospital or long-term care facility where the patient is located.

Appropriation: The bill contains a section or sections to limit implementation to the availability of amounts appropriated for that specific purpose.

Fiscal Note: Requested on January 21, 2020.

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 Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: There is a bi-partisan and collaborative effort to address this issue. Many people are staying at the hospital without a medical need for months because they are waiting to be assessed for Medicaid LTSS. When these individuals stay in the hospital they are taking up necessary beds for people who need medical care and the hospital does not receive payment. This bill will not solve all of the fundamental issues but it is a necessary first step. The CARE assessment process is inefficient and there are no requirements for how long it should take. Hospitals should be included in the assessment process for new and existing clients because they provide necessary information to DSHS to help them complete the assessment and ensure it captures the patient's are needs. Hospitals should be able to request an exception to rule. Hospitals often hear from LTSS providers that they can not take a patient because the Medicaid rate is too low for the patient's medical complexity so the DSHS report will help us collect the necessary data to understand the barriers to discharge. We should be focused on addressing the issues that lead to LTSS clients ending up in the hospital. Clients are receiving the necessary CARE hours due to budget cuts. The presumptive eligibility waiver would expedite the assessment process.

OTHER: This bill creates a fiscal impact that was not included in the Governor's budget and does not create additional community resources to adequately care for these clients. The majority of hospital assessment requests DSHS receives are for new clients. The real issue is that there is a lack of trained providers and we are concerned that the focus on the exception to rule process is solely about getting a higher rate rather than considering the right services are in place for the clients. There is an underlying rate issue that needs to be addressed rather than relying on the exception to rule.

Persons Testifying: PRO: Senator Annette Cleveland, Prime Sponsor; Loren Freeman, Freeman and Associates; Zosia Stanley, Washington State Hospital Association; Kim Cummins, MultiCare Health System; Kim Barwell, CHI Franciscan Health; Kristian Stone,

EvergreenHealth; Jacqueline Butin, UW Medicine; John Ficker, Adult Family Home Council.

OTHER: Bea Rector, Department of Social and Health Services.

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