

SENATE BILL REPORT

ESSB 6638

As Passed Senate, February 18, 2020

Title: An act relating to providing reentry services to persons releasing from prison, jail, and other institutions.

Brief Description: Providing reentry services.

Sponsors: Senate Committee on Human Services, Reentry & Rehabilitation (originally sponsored by Senators Wilson, C., Lovelett, Randall, Nguyen, Das and Darneille).

Brief History:

Committee Activity: Human Services, Reentry & Rehabilitation: 2/04/20, 2/06/20 [DPS-WM].

Ways & Means: 2/10/20, 2/11/20 [DPS (HSRR)].

Floor Activity:

Passed Senate: 2/18/20, 36-12.

Brief Summary of Engrossed First Substitute Bill

- Allows the Health Care Authority (HCA) to restore suspended Medicaid benefits up to 90 days before a person's release from incarceration or civil commitment to facilitate reentry and recovery services.
- Expands optional benefits available through the Community Behavioral Health Services Act to include reentry services, defined as supportive services provided to a person immediately before or after release from incarceration or civil commitment.
- Requires HCA, after receiving federal guidance, to apply for a Medicaid waiver to enable expanded use of federal funding to support reentry services.
- Establishes a work group to consider how to improve reentry services for persons with behavioral health service needs.

SENATE COMMITTEE ON HUMAN SERVICES, REENTRY & REHABILITATION

Majority Report: That Substitute Senate Bill No. 6638 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

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.

Signed by Senators Darneille, Chair; Nguyen, Vice Chair; Walsh, Ranking Member; Cleveland, O'Ban, Wilson, C. and Zeiger.

Staff: Kevin Black (786-7747)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair, Operating, Capital Lead; Mullet, Capital Budget Cabinet; Braun, Ranking Member; Brown, Assistant Ranking Member, Operating; Honeyford, Assistant Ranking Member, Capital; Becker, Billig, Carlyle, Conway, Darneille, Dhingra, Hasegawa, Hunt, Keiser, Liias, Muzzall, Pedersen, Rivers, Schoesler, Van De Wege, Wagoner, Warnick and Wilson, L..

Staff: Travis Sugarman (786-7446)

Background: The Community Behavioral Health Services Act. The Community Behavioral Health Services Act, administered by the HCA, provides a mix of federal and state funding to Medicaid managed care organizations (MCOs) and behavioral health administrative services organizations (BH-ASOs) to provide community behavioral health services. The Act requires funding to be used for mandatory services, such as substance use disorder residential treatment, and allows funding to be used for specified optional services, such as crisis diversion and peer support. Federal funding for the Act is provided through the Medicaid program and must be spent only on services authorized by the State Medicaid Plan. The State Medicaid Plan is an agreement between the state and the federal government controlling expenditures of Medicaid funds. Federal law prohibits the use of Medicaid funding for certain purposes, including supportive services for persons with behavioral health disorders and health services for persons who are incarcerated or detained for civil commitment in large psychiatric facilities.

Section 1115 Medicaid Waivers. Section 1115 of the Social Security Act allows the federal government to approve experimental, pilot, or demonstration projects which are likely to assist in promoting the objectives of the Medicaid program. The purpose of these demonstration projects is to demonstrate and evaluate state-specific policy approaches to better serve the Medicaid population. A core objective of the Medicaid program is to serve the health and wellness needs of vulnerable and low-income individuals and families.

Washington has been the recipient of several section 1115 Medicaid waivers. HCA's current Medicaid Transformation Project is supported by an 1115 waiver allowing Washington to provide long-term services and supports to vulnerable adults to avoid the need for institutionalization, and supportive housing and supportive employment services to address key determinants of health. Another 1115 waiver extends family planning services to uninsured men and women below 260 percent of the poverty line. Section 1115 demonstration projects must demonstrate cost effectiveness or budget neutrality for the federal government.

SUPPORT Act. In 2018, Congress enacted the SUPPORT for Patients and Communities Act, which addressed transition services provided to persons who are soon-to-be released from

public institutions such as prisons or jails. The Act contains a provision requiring the Secretary of Health and Human Services to issue a State Medicaid Directors letter by October 2019 providing guidance how states may apply for a Section 1115 Medicaid waiver allowing them to provide Medicaid services to otherwise eligible persons who are within 30 days of expected release from incarceration. This guidance has not yet been released.

In 2019, New York State and the District of Columbia each applied for Section 1115 Medicaid waivers allowing them to provide targeted services to persons 30 days before release from a correctional facility. These applications are pending.

Suspension of Medicaid for Incarcerated and Civilly Committed Individuals. The State Medicaid Plan, consistent with federal law, does not allow expenditures of Medicaid funding for a person while they are incarcerated in a prison or jail, or detained for civil commitment in a large psychiatric institution. Historically Medicaid enrollees would lose coverage when they entered such institutions and have to apply again for coverage upon release. In 2016, Washington adopted SSB 6430 calling for coverage to be suspended while the person is confined in an institution and restored automatically upon release. Restoration of suspended benefits is accomplished by means of a report delivered to the Department of Social and Health Services confirming the person's release. Based on program design, there is currently an approximately 24-hour gap between the person's release and the restoration of suspended Medicaid coverage.

Offender Reentry Community Safety Program. The Offender Reentry Community Safety Program (ORCS) is a collaborative program between the Department of Corrections and HCA, established in law in 1999, to provide intensive services to persons incarcerated in prison who have a mental disorder, are reasonably believed to be dangerous, and are within six months of release. ORCS participants receive in-person engagement up to 90 days prior to release followed by supportive community services, including intensive case management that reduces in intensity over time and up to \$1,000 per month in flexible funding that may be spent on supportive services at the direction of a case manager to supplement public assistance benefits. ORCS participants may receive services for up to five years following release. HCA contracts with 12 community behavioral health agencies which provide services to ORCS participants in 19 counties.

In 2017, the Washington State Institute for Public Policy (WSIPP) analyzed effectiveness of 51 reentry programs from incarceration and described ORCS as having a higher effect on recidivism reduction than any other program. A 2009 WSIPP study found that application of ORCS reduces new felony recidivism by 42 percent and new violent felony recidivism by 36 percent. WSIPP's cost-benefit analysis for adult criminal justice programs identifies ORCS as an evidence-based program that returns \$1.90 in benefits for every \$1 spent. Since 2009, ORCS has been supported by a consistent budget appropriation of \$1.8 million per fiscal year.

Conditional Release Orders and Less Restrictive Alternative Treatment Orders. A conditional release order is a civil commitment order issued by superior court requiring a person who has been acquitted of a crime by reason of insanity to abide by certain conditions, typically including participation in community behavioral health treatment, to maintain release to the community. A less restrictive alternative (LRA) treatment order is an order issued by

superior court requiring a person who has been civilly committed to abide by conditions and engage in community behavioral health treatment. In 2015, the Legislature enacted E2SHB 1450 defining minimum standards for treatment that must be provided by a community behavioral health agency to a person subject to an LRA order, including care coordination, a psychiatric evaluation, a schedule of regular contacts with the agency, and an individual crisis plan. These standards have not been applied to persons subject to conditional release orders.

The Trueblood Lawsuit. In 2018, the state reached a settlement in the case of *Trueblood v. DSHS* in which the state was found liable in federal district court for violating the rights of criminal defendants suspected of having mental health disorders by imposing excessive wait times for services related to competency to stand trial. Contempt fines levied against the state prior to settlement have been used to fund diversion programs. Funding for these diversion programs through accumulated contempt fines is time limited to three years from program inception and continued state funding for the diversion pilots was not incorporated as a condition of the 2018 settlement. The settlement terms obligate the state to provide short-term housing vouchers, mobile crisis response services, outpatient competency restoration, and forensic navigator services to class members, among other terms.

Summary of Engrossed First Substitute Bill: Suspension of Medicaid While Incarcerated or Civilly Committed. HCA may restore suspended Medicaid benefits for a person who is incarcerated or civilly committed up to 90 days prior to the person's scheduled release date to facilitate provision of reentry and recovery services, provided that no federal funds may be expended during this period for purposes not permitted under the state Medicaid plan. Effective January 1, 2022, HCA is required to restore suspended Medicaid benefits up to 90 and not less than seven days before a scheduled release date.

Incorporation of Reentry Services as an Optional Community Behavioral Health Service. MCOs and BH-ASOs may provide reentry services as an optional service using Medicaid and non-Medicaid funding under the Community Behavioral Health Services Act. Reentry services is defined as targeted services to support community reintegration and recovery for a person with an identified need for behavioral health services who is scheduled or expected to be released from a prison, jail, juvenile rehabilitation facility, state hospital, or other institution or facility within 90 days, or targeted services provided to such a person following release to support the person's recovery and stability in the community. Reentry services may include:

- engagement, assessment, release planning, and recovery support provided up to 90 days before release provided by a behavioral health clinician, certified peer counselor, or both;
- intensive case management, peer bridger services, or both provided immediately upon the person's release;
- coordination of behavioral health services, assistance with unfunded medical expenses, or assistance obtaining housing, employment, educational or vocational training, transportation, or other services deemed necessary by the case manager; or
- provision of services under the Reentry Community Services program.

Application for Section 1115 Medicaid Waiver. HCA must, after the release of federal guidance, apply for a section 1115 Medicaid waiver asking the federal government for

permission to use federal funds to provide reentry services to Medicaid clients. HCA must consult with the Reentry Services Work Group and consider how such a waiver could be used for the following purposes:

- to provide federal funding to support the Reentry Community Services program (RCS program);
- to provide sustainable funding for cost-effective or cost-neutral reentry or diversion services provided by pilot programs funded by the *Trueblood* settlement; and
- to accommodate the special needs of persons in jail.

HCA must update the Governor and Legislature in writing when its waiver application is submitted and when it has been approved or denied.

Provision of Community Behavioral Health Services to Persons Subject to Conditional Release Orders. A community behavioral health agency must provide equivalent community behavioral health services to a person who is subject to a conditional release order from civil commitment following acquittal of a crime by reason of insanity as the agency would be required to provide to a person who is subject to an LRA order under the Involuntary Treatment Act.

Reentry Community Services Program. The ORCS program is renamed the RCS program. Terminology under the RCS program is revised to refer to "persons" instead of "offenders" and services are directed to persons who are "reasonably believed to present a danger to themselves or others if released to the community without supportive services," rather than persons who are "reasonably believed to be dangerous."

Reentry Services Work Group. HCA must convene a reentry services work group (work group) to consider ways to improve reentry services for persons with an identified behavioral health need. The work group must:

- advise HCA on its Section 1115 Waiver application;
- consider how to expand, replicate, or adapt the essential elements of the RCS program to serve additional populations in prison, state hospitals, and juvenile rehabilitation institutions, and jail;
- identify costs and savings that could be realized through expansion of the RCS program and other reentry services and make recommendations related to funding and administration;
- evaluate the sustainability of reentry and diversion services funding by contempt fines in *Trueblood v. DSHS*; and
- consider the role of peer services in providing reentry services.

The work group must report to the Governor and Legislature by December 1, 2020, and December 1, 2021.

Contracts With RCS Program Community Providers. HCA must revise its contracts with MCOs and BH-ASOs to require those entities to ensure that RCS program contractors are available in every regional service area.

Research and Evaluation. WSIPP must update its evaluations of the RCS program and collaborate with the work group to evaluate advantageous elements of reentry services

programs and provide cost benefit analysis. WSIPP must deliver reports by December 1, 2020, and November 1, 2021.

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 Original Bill (Human Services, Reentry & Rehabilitation): *The committee recommended a different version of the bill than what was heard.* PRO: When I visited community behavioral health agencies over the interim and talked to them about their challenges, I learned we do not support people before they leave the system, we let them leave and try to support them afterwards. When someone loses support, and does not know where to go to access to housing or mental health, they can get lost. It is important to facilitate referrals and handoffs and make sure recovery and reentry is successful. We set people up to fail when we do not provide the support that we know individuals need. Anyone who has paid their debt deserves the support they need to succeed. It is also a public safety issue for the community at large. My stepdaughter has been in and out of the system. This program will help, but it has to be funded. You are doing a good thing by using a different definition of "dangerous" in this program.

OTHER: Law enforcement measures success by the number of victimizations we prevent. We avidly support reentry services, especially proven programs. Jails may have difficulty determining release dates in advance for persons in custody. We want to be part of the solution and make this successful. We support the policy of pre-engagement for persons reentering the community. We know that in-reach works because ORCS is successful. This initiative will support continuity of care and provides an opportunity for DOC to do its work more effectively. We totally support using a work group to study how to expand the program. We turn away two to three times as many people as we are able to serve in ORCS. We can help more people.

Persons Testifying (Human Services, Reentry & Rehabilitation): PRO: Senator Claire Wilson, Prime Sponsor; Zachary Kinneman, citizen.

OTHER: James McMahan, Washington Association of Sheriffs and Police Chiefs; Angela Sauer, Department of Corrections.

Persons Signed In To Testify But Not Testifying (Human Services, Reentry & Rehabilitation): No one.

Staff Summary of Public Testimony on First Substitute (Ways & Means): OTHER: We avidly support reentry services, especially proven programs. Jails may have difficulty determining release dates in advance for persons in custody. We want to be part of the solution and make this successful. We support the policy of pre-engagement for persons reentering the community. We know that in-reach works because ORCS is successful.

Persons Testifying (Ways & Means): OTHER: James McMahan, Washington Association of Sheriffs and Police Chiefs.

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