

# SENATE BILL REPORT

## SSB 5157

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As Passed Senate, February 10, 2021

**Title:** An act relating to providing incentives to reduce involvement by persons with behavioral disorders in the criminal justice system.

**Brief Description:** Providing incentives to reduce involvement by persons with behavioral disorders in the criminal justice system.

**Sponsors:** Senate Committee on Behavioral Health Subcommittee to Health & Long Term Care (originally sponsored by Senators Wagoner, Dhingra and Nobles).

**Brief History:**

**Committee Activity:** Health & Long Term Care: 1/13/21 [w/oRec-BH].

Behavioral Health Subcommittee to Health & Long Term Care: 1/22/21, 1/29/21 [DPS].

**Floor Activity:**

Passed Senate: 2/10/21, 49-0.

**Brief Summary of First Substitute Bill**

- Requires the Performance Measures Coordinating Committee to establish performance measures for Medicaid plans which track rates of criminal justice system involvement for clients with an identified behavioral health need and establish improvement targets related to those outcomes by July 1, 2022.
- Requires the Health Care Authority to provide a report with options and recommendations for adding value-based purchasing terms and a performance improvement projects to state Medicaid contracts relating to criminal justice outcome measures by October 1, 2022.

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

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

**Majority Report:** That Substitute Senate Bill No. 5157 be substituted therefor, and the substitute bill do pass.

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

**Staff:** Kevin Black (786-7747)

**Background:** Policy Development Related to Performance-Based Contracting in Managed Care. The Health Care Authority (HCA) contracts with managed care organizations (MCOs) and behavioral health administrative services organizations to provide integrated medical care services, including behavioral health care services, to Medicaid clients. State law requires HCA to employ performance-based contracts in its role as a service coordination organization and as the state behavioral health authority. The purpose of these performance-based contracts specified in law is to achieve improved outcomes for clients, including through increased use of evidence-based, research-based, and promising practices. These contracts must include performance measures targeting the following outcomes:

- improvements in client health status and wellness;
- increases in client participation in meaningful activities including employment and education;
- reductions in client involvement with criminal justice systems;
- enhanced safety and access to treatment for forensic patients;
- reductions in avoidable costs in hospitals, emergency rooms, crisis services, and jail and prisons;
- increases in stable housing in the community;
- improvements in client satisfaction and quality of life; and
- reductions in population-level health disparities.

In 2013-2014, HCA and the Department of Social and Health Services (DSHS) established a cross-system steering committee that produced a report identifying 51 potential performance measures to be employed to achieve these outcomes. The steering committee's work was turned over to a Performance Measures Coordinating Committee (PMCC) for the purpose of refining these measures, developing a common measures set, and selecting a subset of performance measures to integrate into the first iteration of performance-based contracts. In creating the common measures set, the PMCC expanded the list of performance measures to 66, but eliminated every measure relating to criminal justice outcomes among Medicaid clients.

Integration of Performance Measures into Health Options Medicaid Contracts. HCA has integrated performance and outcome measures into Apple Health managed care contracts, as reflected in model contracts posted on the HCA website. All MCOs are required to have an ongoing program of performance improvement projects that incorporate measures of performance based on objective quality indicators and evaluations of the effectiveness of the interventions. Performance improvement projects are subject to review and approval by

HCA, and must include:

- one clinical performance improvement project piloting a behavioral health intervention that is an evidence-based, research-based, or promising practice recognized by the Washington Institute for Public Policy;
- one clinical performance improvement project implemented statewide on improving well-child visit rates in infants, young children, and adolescents; and
- one non-clinical performance improvement project of the MCO's choosing.

In addition, HCA produces certain performance measures and publishes them to each contracting MCO, including penetration rates for mental health and substance use disorder treatment and 30-day psychiatric inpatient readmissions.

HCA has also implemented certain value-based purchasing (VBP) provisions. A VBP is a species of contractual arrangement in which payments to a contractor are made based on outcomes achieved instead of services performed. According to the VBP provisions incorporated in the MCO contracts, a percentage of funds ranging from 1.0 to 1.5 percent of the total funds are withheld from the MCO, to be earned back if the MCO implements certain incentives, creates VBP arrangements among its contractors, and achieves quality improvement and attainment targets. The quality improvement terms of HCA's VBP provisions currently use a selection of nine target measures scores that are derived from nationally used quality measures, in areas including:

- diabetes care and blood pressure control for adult patients;
- antidepressant medication management for adult patients;
- childhood immunization statuses;
- annual well-child visits for children aged three to six; and
- medication management for children with asthma.

None of the quality measures included in the MCO contract relate to criminal justice outcomes.

Status of Criminal Justice Involvement for Persons with Behavioral Health Disorders in Washington. An intent section in this legislation cites a presentation by the Research and Data Analysis division of DSHS as evidence that trends related to interactions between persons with behavioral health disorders and the criminal justice system are worsening in Washington. This presentation, titled "Forensic Risk Modeling in the Medicaid Population," was delivered to the Select Committee for Quality Improvement in State Hospitals on October 18, 2018, and presents certain data relating to Medicaid clients who have an identified behavioral health need. In the period from 2013-2018, the data shows overall arrests of unduplicated adults per month in Washington declined by almost 10 percent according to the Washington State Patrol, while arrests of unduplicated adults with Medicaid enrollment and an identified behavioral health condition increased by 67 percent. During the same period, monthly referrals for competency evaluation services related to persons charged with a criminal offense rose by 56 percent.

**Summary of First Substitute Bill:** The PMCC must establish performance measures which track rates of criminal justice system involvement among public health system clients who have an identified behavioral health need, including but not limited to rates of arrest and incarceration. The PMCC must establish improvement targets related to these measures. The PMCC must report to the Governor and appropriate committees of the Legislature by December 1, 2021, concerning implementation of these items.

HCA must report to the Governor and appropriate committees of the Legislature regarding options and recommendations for integrating value-based purchasing terms and a performance improvement project into managed care contracts relating to criminal justice outcome measures by October 1, 2022.

**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:** *The committee recommended a different version of the bill than what was heard.* PRO: Performance-based and outcome-based contracting works in many areas, but has never been applied to criminal justice outcomes in this context. It is easy to get into a rut where you do the same things and think your outcomes are good. This bill will provide measures of success. We care about doing better. The bill will incentivise us to try different approaches and collaborations to see if we can get improved results. This will help the Medicaid plans and giving them feedback. We have received feedback and are happy to make minor changes that will improve the bill.

OTHER: We support the goals of this legislation and acknowledge that managed care plans have a role in achieving these goals. MCOs can not control access to housing or access to behavioral health services such as prevention services. We have concerns about being able to share data with criminal justice facilities, which has been tried and is not seamless. Clarification is needed whether the bill will apply to just *Trueblood* class members or to any person in a jail who exhibits behavioral health issues. We are happy to be part of the discussion how to improve the bill. If it does move forward, we ask for the reference to value-based purchasing be removed. The infrastructure is not in place to be successful enough for inclusion of that provision to be appropriate.

**Persons Testifying:** PRO: Senator Keith Wagoner, Prime Sponsor.

OTHER: Chris Bandoli, Association of Washington Healthcare Plans.

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