

SENATE BILL REPORT

SB 5397

As of February 2, 2021

Title: An act relating to improving access to behavioral health treatment in certified crisis facilities.

Brief Description: Improving access to behavioral health treatment in certified crisis facilities.

Sponsors: Senators Randall, Dhingra, Kuderer, Lovelett, Nguyen, Nobles, Saldaña and Wilson, C..

Brief History:

Committee Activity: Behavioral Health Subcommittee to Health & Long Term Care: 2/05/21.

Brief Summary of Bill

- Requires an evaluation and treatment facility or secure withdrawal management and stabilization facility that has treatment capacity to admit a person detained for involuntary treatment, or who is applying for transfer from a single-bed certification facility, unless an exception applies.
- Requires managed care organizations and behavioral health administrative services organizations to secure a safe placement or safe discharge for a person who is detained for involuntary treatment if no other placement is available.
- Requires crisis facilities to provide medically necessary co-occurring disorder treatment to persons receiving involuntary treatment by July 1, 2022.

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

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.

Staff: Kevin Black (786-7747)

Background: Involuntary Commitment for Behavioral Health. A person may be detained for involuntary treatment under the Involuntary Treatment Act (ITA) during a period of crisis if an investigation by a designated crisis responder (DCR) determines that the person has a mental disorder or substance use disorder (SUD) that causes them to present a likelihood of serious harm or to be gravely disabled.

Likelihood of serious harm means:

- a substantial risk the person will inflict physical harm upon themselves or others, evidenced by threats or attempts to commit suicide, cause physical harm, or place another person in reasonable fear of sustaining such harm;
- a substantial risk the person will inflict physical harm on the property of others, evidenced by behavior which has caused substantial loss or damage; or
- the person has threatened the physical safety of another and has a history of one or more violent acts.

Gravely disabled means:

- being in danger of serious physical harm resulting from failure to provide for the person's essential human needs of health or safety; or
- experiencing severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control and the person is not receiving care essential to their health or safety.

A peace officer or other entity, at the request of a DCR, may detain a person in an emergency room, triage facility, crisis stabilization unit, evaluation and treatment facility (E&T), or secure withdrawal management and stabilization facility (SWMS) for up to 12 hours for a DCR investigation, or up to 6 hours if the person self-presents to the facility or is brought to the facility and refuses voluntary admission. If the DCR determines further detention for treatment is appropriate, the DCR must detain the person within the 6 or 12-hour period to an E&T, SWMS, or facility willing to provide treatment pursuant to a single-bed certification. Continued detention may occur for 120 hours excluding weekends and holidays and triggers a number of rights on behalf of the detained person, including the right to counsel and the right to a court hearing if detention continues beyond the 120-hour period. Detention may continue with court authorization for renewable periods of 14, 90, or 180 days, or the court may dismiss the petition for additional treatment or order treatment in the community as a less restrictive alternative.

Certified Involuntary Treatment Facilities. An E&T is a facility certified to provide involuntary treatment to a person with a mental health disorder. E&Ts may be embedded in community hospitals that provide a wide range of medical services in different areas of the facility, or may be provided in standalone facilities with limited resources to address a patient's physical care needs. A SWMS is a facility certified to provide involuntary treatment based on an SUD.

Single-Bed Certifications. The Health Care Authority (HCA) may authorize a single-bed certification to a facility willing and able to provide timely and effective mental health services to a person detained for involuntary commitment. A single bed certification is a 30-day authorization specific to the patient that may be requested for a number of reasons, including when a person needs medical services that are not available in a certified facility, to facilitate continuity of care, to allow a person to receive treatment close to their home community, and to extend the resources available for people detained in the ITA system. A facility must agree to provide services under a single-bed certification. Data from HCA indicates an average of 931 single-bed certifications per month were authorized in the first half of 2020, up from 865 per month during calendar year 2019.

No Bed Reports. When a DCR is unable to find a placement for a person who meets detention criteria under the ITA in an E&T, SWMS, or single-bed certification within the 6 or 12-hour investigation period, and the person cannot be served on a less restrictive alternative, the DCR must end the involuntary commitment investigation and file a no bed report with HCA. The DCR report must be filed within 24 hours, including specified information such as a list of facilities that refused to admit the person. HCA must promptly notify the Medicaid managed care organization (MCO) or behavioral health administrative services organization (BH-ASO) responsible for providing community behavioral health services to the person, and the MCO or BH-ASO must attempt to engage the person in appropriate services and report back to HCA within seven days. Data from HCA indicates it received an average of 46 no bed reports in the first six months of 2020, down from 64 no bed reports per month during calendar year 2019.

Summary of Bill: An E&T or SWMS that has treatment capacity must admit a person to the facility at the request of the DCR who has been detained for involuntary inpatient care unless:

- the person requires medical services not generally available at a certified involuntary treatment facility;
- a more appropriate facility exists to serve the specific needs of the person that has agreed to admit the person;
- unusual reasons specific to the person or their prior relationship with the facility exist that make the facility unable to admit the person; or
- the services offered by the facility are targeted for a specific population and the person is not among that specific population and therefore is not appropriate for admission.

The E&T or SWMS must also admit a person who is receiving temporary involuntary treatment services pursuant to a single-bed certification if it has treatment capacity upon application for transfer by the single-bed certification facility if the attending physician considers the person to be medically stable, unless a similar exception applies.

An E&T or SWMS that declines to admit a person under the above circumstances must

document the request for admission and the reason for declining admission in its records, and immediately provide a copy to the requesting DCR or single-bed certification facility. The E&T or SWMS with capacity must determine whether to admit the person at the request of a DCR within two hours of receiving the DCR's admission request.

When a DCR or single-bed certification facility determines they are unable to find a placement for a person who meets ITA detention criteria, and the DCR or facility has received at least two denials of admission from an E&T or SWMS, the DCR or facility must immediately transmit notification to the MCO responsible for the cost of the person's care, or the BH-ASO if the person is not enrolled in Medicaid, of the need for emergency intervention to secure access to crisis services for the person. The MCO or BH-ASO must obtain a safe placement or safe discharge for the person within 24 hours. If the person is being held for initial evaluation by a DCR, the initial evaluation hold is extended during this 24-hour emergency period. The DCR must serve notice of the emergency hold period on the person, and the person must be provided access to a mental health professional during the 24-hour period.

If an MCO or BH-ASO is unable to find a safe placement or safe discharge for the person during the 24-hour period, the hold dissolves and the MCO or BH-ASO must file a no bed report to HCA. The obligation of the DCR to make a no bed report is eliminated. The MCO or BH-ASO is responsible for the cost of care for the person during the 24-hour emergency hold period, unless coverage is provided by another entity.

Effective July 1, 2022, an E&T must provide medically necessary SUD services to a person admitted to the E&T who has a co-occurring SUD, and a SWMS must provide medically necessary mental health services to a person admitted to the SWMS who has a co-occurring mental health disorder.

DOH must review denials of admission requests by E&Ts and SWMS under this act during its regular facility licensure inspections and analyze the denials to determine if there are means for the facility to improve its availability to provide services to persons in crisis, including the receipt of technical assistance from DOH or other entities.

Appropriation: None.

Fiscal Note: Requested on February 1, 2021.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.