SENATE BILL REPORT
SB 6793

As Reported By Senate Committee On:
Human Services & Corrections, February 21, 2006
Ways & Means, March 3, 2006

Title: An act relating to specifying roles and responsibilities with respect to the treatment of persons with mental disorders.

Brief Description: Specifying roles and responsibilities with respect to the treatment of persons with mental disorders.

Sponsors: Senators Hargrove, Brown, Brandland, McAuliffe, Thibaudeau, Rockefeller and Rasmussen.

Brief History:
Committee Activity: Human Services & Corrections: 1/30/06, 2/21/06 [DPS].
Ways & Means: 3/2/06, 3/3/06 [DP2S].

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: That Substitute Senate Bill No. 6793 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hargrove, Chair; Regala, Vice Chair; Stevens, Ranking Minority Member; Carrell and McAuliffe.

Staff: Indu Thomas (786-7459)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 6793 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Prentice, Chair; Fraser, Vice Chair, Capital Budget Chair; Doumit, Vice Chair, Operating Budget; Brandland, Kohl-Welles, Pflug, Pridemore, Rasmussen, Regala, Rockefeller and Thibaudeau.

Staff: Tim Yowell (786-7435)

Background: Publicly funded mental health services for adults are provided by the state and local entities. Currently, the state provides long-term care at two psychiatric hospitals, designed to serve persons with mental disorders who are committed for long-term care (civil commitment orders for periods of 90 or 180 days) or who voluntarily agree to remain at the state hospital. There are fourteen Regional Support Networks (RSNs) that provide outpatient and short-term care (civil commitment periods for up to 17 days).

In October 2005, a Superior Court judge ruled that persons civilly committed to a state hospital for long-term care are the responsibility of the state. The Department of Social and

Health Services (DSHS) must either promptly admit the person to the state hospital or, if the person is in a community facility pending admission to the state hospital, the DSHS cannot apply the cost of that care against the RSN contract. The court also held that the DSHS did not have the statutory authority to automatically require the RSNs to reimburse the state for using more state hospital beds than the RSN had contracted with the state to use.

In 2005, the Legislature passed ESSHB 1290, requiring the DSHS to implement a request for qualifications (RFQ) process for each of the fourteen RSNs. This process was completed in December 2005. Nine of the fourteen RSNs successfully met the threshold of the RFQ. Concerns have been expressed about the lack of opportunity for corrective action and the manner in which the RFQ was conducted.

Summary of Second Substitute Bill: The state is responsible for treatment services for all long term intensive inpatient care. RSNs must serve at least 90 percent of short-term commitments locally. RSNs are financially responsible for all individuals on the grounds of the state mental hospitals who are voluntary patients receiving less restrictive alternative care, or who are subject to a less restrictive alternative order, except at the Secretary's discretion, or to the extent otherwise provided in the budget. RSNs must be notified of petitions for long-term commitment, and have the option of testifying at commitment hearings.

Each RSN receives an allocated number of state hospital beds that are available for its use at no cost to the RSN. An individual RSN is responsible for reimbursing the department if it uses more than its allocated or contracted number of bed days. Half of those funds are distributed to RSNs who use less than their contracted number of beds at the state hospital; the other half are used for state hospital operating costs. The initial allocation is to be based upon a consensus recommendation from the RSNs. If there is no consensus, the department is directed to allocate state hospital beds and comparable community diversion resources among the RSNs according to the estimated number of acutely and chronically mentally ill adults in each RSN area. RSNs and the department are encouraged to enter performance-based contracts under which an RSN will receive state funding to provide community alternatives to some or all of the beds the RSN would otherwise be allocated at the state hospital.

The RSNs' ability to file statutory claims against the state regarding the allocation of funds, the allocation of state hospital beds, and payment for inpatient care is limited. Disputes are to be resolved according to procedures specified in contract. Contracts must include negotiated provisions for alternative dispute resolution.

The department's authority to withhold 2 percent of appropriated funds to provide incentives for improved performance is removed. Funds are to be allocated in accordance with terms and conditions specified in the budget act.

The RFQ process is extended for one month in order to permit the RSNs who did meet the 70 percent threshold set by the DSHS an opportunity to propose plans for consolidation with those who did not meet the requirements. In addition, a JLARC audit of the RFQ process is required.

Second Substitute Bill Compared to Substitute Bill: The prohibition on statutory claims against the state by RSNs and their contractors is narrowed to apply to three specific topics.

Alternative dispute resolution provisions in their contract must be negotiated between DSHS and the RSN. Disputes are subject to administrative, but not judicial review under the Administrative Procedures Act. RSNs are required to serve at least 90 percent of short-term commitments locally, rather than 100 percent. RSNs are given the opportunity to review all petitions for long-term commitment, rather than required to do so. The option of a second 14-day commitment, in lieu of proceeding next to a long-term commitment, is dropped. Discharge plans are to be mutually developed between the RSN and the state hospital, but the determination that a patient no longer needs inpatient care is the medical director's.

Substitute Bill Compared to Original Bill: The substitute adds provisions limiting the liability of the state for statutory causes of action brought by the regional support networks. Joint decision-making between RSNs and the state hospital in determining when an individual no longer needs to be at the state hospital is required. RSNs are also required to make efforts to divert patients from the state hospital when their needs can be met in a less restrictive environment, including the authority to file an additional 14 day petition prior to or instead of filing a 90 day petition. Court filing fees are waived for commitments of less than 90 days. The definition of RSN is limited to public entities and private nonprofit entities. RSNs which met the department's RFQ threshold are permitted to submit mutually agreed upon proposals to consolidate with RSNs that did not meet the threshold

Appropriation: None.

Fiscal Note: Available on original bill.

Committee/Commission/Task Force Created: No.

Effective Date: This bill contains an emergency clause and takes effect immediately.

Testimony For (Human Services & Corrections): There are currently two levels for the regional support networks to appeal decisions of the department. The Legislature should specify that alternative dispute resolution is the method of appeal in the statute. The idea of delaying implementation, requiring an audit, and providing RSNs a chance to have an opportunity to correct the stated deficiencies is appreciated. The implementation of the RFQ has and will take money away from direct services. The scoring of the RFQ was not objective or reliable. If the partnership with the state and the community is strong and positive, there will be less resistance to passing the 1/10th percent tax which was authorized in SB 5763.

Testimony Against (Human Services & Corrections): None.

Testimony Other (Human Services & Corrections): There is an additional cost to requiring that the regional support networks serve all of the short term patients and the less restrictive alternative patients who are served on the hospital grounds. The program for adaptive living skills serves an important role in the continuum of services that are available to mentally ill individuals. Imposing the cost of this service to the RSNs will cause a shift in financial responsibility which must be addressed with additional funding. The limitation on the ability to appeal under the administrative procedures act should not be eliminated. There are patients who are detained by designated mental health professionals who are held in facilities such as emergency rooms and community hospitals that are not equipped to serve the needs of those patients. The Legislature expanded the criteria for detention to include people who might be a danger to public safety. This resulted in an increase in the number of people detained and

increased the length of stay at the state hospital. At the same time the number of state hospital beds was decreased. There does not appear to be solutions to the problems presented but rather simply a shifting of responsibility to the community and away from the state. Any downsizing of the state hospitals must be done in conjunction with building up of community resources.

Who Testified (Human Services & Corrections): PRO: Richard Kellogg, Mental Health Division; Sharon Wylie, Kitsap County.

OTHER: Amnon Schoenfeld, King County RSN; Jean Wessman, Association of Counties; Dave Stewart, Pierce County RSN; Chuck Benjamin, North Sound RSN; Marie Jube, North Sound RSN; Larry Kellar, Washington Community Mental Health Council; Seth Dawson, Washington State Psychiatric Association; David Lord, Washington Protection and Advocacy System.

Testimony For (Ways & Means): The bill attempts to do three things: (1) clarify how the RFQ/RFP process is to work, since there were misunderstandings about that after last year's legislation passed; (2) assure that state hospital beds are available, without running waiting lists, for people who really need them because they are truly a danger to themselves or their community; and (3) deal with the problem of liquidated damages, so that money can be put into new community services rather than into paying for past problems. The legislation tries to strike a middle ground among all these goals, so that we can provide good and compassionate care for people within the mental health system where they belong, rather than in jails and prisons, without busting the state's checkbook. The revised RFP provisions in the bill would help keep county government in the system. The state shouldn't leave county government and county commissioners out of the loop, because they are close to the people, the problems, and the agencies. The North Central and Northeast Washington RSNs believe they have a good plan for consolidating, but need more time to work it out. Grays Harbor also has a plan to consolidate with two other counties, but please don't make us go through another difficult and expensive RFP process in order to do so. The RFQ process has been very time-consuming, trying, and expensive for county governments. The RFQ requirements weren't just difficult to respond to, but complying with those requirements will take hundreds of thousands of dollars out of direct services and put it into administration. It is good that the bill provides for a JLARC audit of those requirements. The bill and the budget both make community services the first and best option, which is the way to go. The Mental Health Division's plan to provide community services in lieu of state hospital care is a good one, and it recognizes the need for time and resources to put those services into place. The bill provides for mutual responsibility and accountability between DSHS and the RSNs. Governor Gregoire believes the Human Services and Corrections Committee has done a great job of grappling with these difficult problems and outlining a good long-term solution. The Governor agrees that it is appropriate to limit the state's liability, since the House and Senate budgets both provide significant amounts of additional funding for community rate increases and the development of new services. However, she agrees that the language in the substitute bill may be too broad and needs to be refined.

Testimony Other (Ways & Means): Please don't require King County to pay for use of PALS beds at Western State Hospital immediately. That would take $8 million out of community services. The RSN needs 18 months to develop new programs for PALS patients,

who can be difficult to serve. There needs to be a commitment to continue providing resources on an ongoing basis, not just immediately after people leave the hospital. Managed care should be shared risk, not shifted risk. Some aspects of the bill shift risk to the RSNs, rather than sharing it with them. RSNs should only be responsible for services to the extent funds are available. The bill requires the RSNs to pay for care in the state hospital if they use more than their allocated number of beds, but RSNs don't have the authority to control how many people go into the hospital. If the RSN is going to have to pay for it, every admission to the state hospital ought to have to be approved by the RSN. The bill shouldn't prohibit for-profit organizations from applying to operate as RSNs, because they could add value and expertise to the system. DSHS has concerns that the bill doesn't strike the right balance of responsibility and authority between the department and the RSNs.

Who Testified (Ways & Means): PRO: Senator Hargrove; Mary Lou Peterson, Okanogan County Commissioner; Ken Oliver, Pend Oreille County Commissioner; Merrill Ott, Stevens County Commissioner; Bob Beerbower, Grays Harbor County Commissioner; Todd Mielke, Spokane County Commissioner; Larry Keller, Kitsap Mental Health Services; Kari Burrell, Governor's Office; Ann Christian, Washington Community Mental Health Council.

OTHER: Amnon Shoenfeld, King County Regional Support Network; Jerry Reilly, United Behavioral Health; Doug Porter, DSHS Assistant Secretary for Health and Recovery Services.

Signed in, Unable to Testify & Submitted Written Testimony: Marie Manlangit, SEIU 1199 NW.