HOUSE BILL REPORT
SSB 6430

As Passed House - Amended:
March 3, 2016

Title: An act relating to providing continuity of care for recipients of medical assistance during periods of incarceration.

Brief Description: Providing continuity of care for recipients of medical assistance during periods of incarceration.

Sponsors: Senate Committee on Human Services, Mental Health & Housing (originally sponsored by Senators Parlette, Darneille, O'Ban and Conway).

Brief History:

Committee Activity:

Health Care & Wellness: 2/24/16, 2/26/16 [DP];

Appropriations: 2/27/16, 2/29/16 [DPA].

Floor Activity:

Passed House - Amended: 3/3/16, 97-0.

Brief Summary of Substitute Bill
(As Amended by House)

- Directs the Health Care Authority (Authority) to suspend, rather than terminate, medical assistance for persons who have been incarcerated or committed to a state hospital.
- Requires the Department of Social and Health Services and the Authority to develop guidance and training on providing outreach, assistance, transition planning, and rehabilitation case management related to persons who are incarcerated or involuntarily committed.
- Directs the Authority to seek federal reimbursement for providing behavioral health services to persons who are incarcerated in local jails.

HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

Majority Report: Do pass. Signed by 14 members: Representatives Cody, Chair; Riccelli, Vice Chair; Schmick, Ranking Minority Member; Harris, Assistant Ranking Minority

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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 a part of the legislation nor does it constitute a statement of legislative intent.

Member; Caldier, Clibborn, DeBolt, Jinkins, Johnson, Moeller, Robinson, Short, Tharinger and Van De Wege.

Staff: Chris Blake (786-7392).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass as amended. Signed by 33 members: Representatives Dunshee, Chair; Ormsby, Vice Chair; Chandler, Ranking Minority Member; Parker, Assistant Ranking Minority Member; Wilcox, Assistant Ranking Minority Member; Buys, Cody, Condotta, Dent, Fitzgibbon, Haler, Hansen, Harris, Hudgins, S. Hunt, Jinkins, Kagi, Lytton, MacEwen, Magendanz, Manweller, Pettigrew, Robinson, Sawyer, Schmick, Senn, Springer, Stokesbary, Sullivan, Taylor, Tharinger, Van Werven and Walkinshaw.

Staff: Erik Cornellier (786-7116).

Background:

Medicaid Coverage for Persons in Confinement or an Institution of Mental Diseases.
The Health Care Authority (Authority) administers the Medicaid program, which is a state-federal program that pays for health care for low-income state residents who meet certain eligibility criteria. Medicaid eligibility is based upon income or a combination of income and other criteria such as age, disability, or pregnancy. Medicaid benefits cover a range of health services, generally provided through managed care plans, including health professional services, prescription medications, hospital services, durable medical equipment, mental health services, and some dental and vision services.

Federal standards for the Medicaid program exclude payments for care or services for any individual who is an inmate of a public institution, except for certain inpatient services at a hospital. At the state level, the Authority has maintained a policy of allowing an incarcerated person's Medicaid status to remain unchanged for up to 30 days while confined at which point the person's Medicaid enrollment is terminated. Over the past several years, the Authority and the Health Benefit Exchange have been working with counties, tribes, and state correctional agencies to train individuals to enroll incarcerated persons in Medicaid prior to release.

Federal Medicaid standards also prohibit payment for care or services for individuals who are patients at an institution for mental diseases. An "institution for mental diseases" is a hospital, nursing facility, or other institution of more than 16 beds that is primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases. In 2014 Washington received federal waiver authority to allow Medicaid funds to be used for short-term stays in an institution for mental diseases.

Adult Behavioral Health Systems Task Force.
The Adult Behavioral Health Systems Task Force (Task Force) was created in 2013 consisting of legislators, agency representatives, county representatives, and a tribal member. The Task Force met over the 2014 and 2015 interims to discuss issues related to the delivery and integration of behavioral health services and physical health services, the availability of

behavioral health crisis services, and public safety practices for persons with mental illness and substance use disorders who have forensic involvement. The Task Force issued its final report in December 2015. Among the recommendations were proposals to suspend, rather than terminate, an individual's Medicaid benefits during incarceration; ensure that individuals have access to behavioral health services while incarcerated and that they are connected to services upon release; and direct the state to seek federal Medicaid funds for persons who are incarcerated.

Jail Records.
The Department of Corrections and law enforcement officers responsible for jail operations must maintain a jail registry. The jail registry includes the name of each person confined in the jail, the date and cause of the confinement, and the person's date and manner of discharge. The records of a person confined in jail are generally held in confidence. The records may only be released to criminal justice agencies, in jail certification proceedings, in court proceedings upon written order of the court, to the Washington Association of Sheriffs and Police Chiefs, to named agencies for the purpose of research in the public interest, or with the permission of the person.

Summary of Amended Bill:

By July 1, 2017, the Health Care Authority (Authority) must suspend, rather than terminate, medical assistance for persons who have been incarcerated or committed to a state hospital, regardless of the person's release date. A person who has been incarcerated or committed to a state hospital must be able to apply for medical assistance in suspense status while incarcerated. By December 1, 2016, the Authority must submit a progress report that describes the design of the program and fiscal estimates to the Governor and the relevant committees of the Legislature.

The Department of Social and Health Services (Department) and the Authority must develop written guidance and training regarding the provision of outreach, assistance, transition planning, and rehabilitation case management reimbursable under federal law related to persons who are incarcerated, involuntarily committed, or transitioning out of incarceration or involuntary commitment. The Department and the Authority must provide the guidance and training to behavioral health organizations, managed care organizations, and behavioral health providers. The guidance and trainings may also emphasize preventive activities that may be cost-effective, even if they are not eligible for reimbursement. The Department and the Authority must provide a status update to the Legislature by December 31, 2016.

The Authority must collaborate with the Department, the Washington State Association of Counties, the Washington Association of Sheriffs and Police Chiefs, and Accountable Communities of Health to request expenditure authority from the federal government to provide behavioral health services to persons who are incarcerated in local jails. The request may be narrowed to focus on specific programs or regions of the state that may better demonstrate the potential to achieve savings by integrating medical assistance across community and correctional settings.

Jail records may be released to government agencies to determine eligibility for services, including medical, mental health, chemical dependency treatment, and veterans' services.

Records may also be released to government agencies to allow for the provision of treatment to inmates during their confinement or after release. Government agencies that receive jail records must treat the records as confidential. Jails that provide inmate records under appropriate authority are not responsible for unlawful secondary disclosures of the records.

Legislative understanding of Medicaid coverage is stated to be that persons who are participating in a work release program or other partial confinement programs operated by state, county, or city agencies are not considered "inmates of a public institution." The Authority is directed to obtain confirmation of this understanding from the federal government and report the results to the Governor and the relevant committees of the Legislature.

Findings are made regarding the need for persons with mental illness and substance use disorders who are in custody to have seamless access to care upon release from custody. Legislative intent is stated for the Authority and Department to raise awareness of best clinical practices to engage persons during incarceration to promote good preventive care and practices that support safe transition into the community.

The bill is null and void if it is not funded in the budget.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed. However, the bill is null and void unless funded in the budget.

Staff Summary of Public Testimony (Health Care & Wellness):

(In support) Since 2004 the federal government has recommended that states suspend, rather than terminate, medical assistance for people when they are incarcerated. This bill will ensure that this happens. This is working in the 21 states that have already adopted Medicaid suspension.

Immediate access to Medicaid upon release from jail would prevent a gap in coverage and remove a critical reentry barrier. Access to services upon release is important in establishing a continuum of care and ongoing support to reduce the demand for costly inappropriate supports and services. If benefits are terminated, there is confusion about which health plan is responsible for a person upon release, but suspension allows health plans to know whose health they will be accountable for upon release. This bill helps ensure continuity of care in the correctional setting which has a high prevalence of people with mental health disorders.

Medicaid suspension will address a number of the problems faced by corrections entities and formerly incarcerated individuals. Access to medical coverage reduces recidivism and readmission. Incarcerated people are sicker than the general population and face numerous barriers to successful reentry. This bill will suspend Medicaid coverage indefinitely for the entire length of a person's incarceration. Medicaid suspension would address many problems

such as duplicative enrollment, reapplication churn, protection of Medicaid coverage after an arrest that did not lead to incarceration, and coverage for hospitalizations. Medicaid suspension can be accomplished within existing information technology tools. Medicaid suspension improves outcomes for formerly incarcerated individuals, reduces recidivism and readmission, and protects government budgets. This could apply in juvenile institutions.

(Opposed) None.

Staff Summary of Public Testimony (Appropriations):

(In support) Suspending instead of terminating enrollment is good policy with little fiscal impact and possible downstream savings. There are a large number of mentally ill people that end up in corrections. The Legislature has been trying to reverse the trend but there is still work to do. Because of the legal definition of insanity, many mentally ill people will be confined at some point. This bill will help ensure that they do not come back after discharge. There is almost no cost for doing this for adults, and agencies can do this within current budgets. The federal government recommends suspension as a best practice, and it does not require a waiver. It helps end homelessness because it maintains the connection with medical care upon release. The bill would require a Medicaid waiver to provide behavioral health services in facilities. The Health Care Authority is in favor of this bill and can implement it within their existing information technology plan; it is something they plan to do. The state made investments in the Washington Health Benefit Exchange and ProviderOne and this can be done within those resources. This is a smart move and cementing it in statute ensures it will happen.

(Opposed) None.

Persons Testifying (Health Care & Wellness): Senator Parlette, prime sponsor; Elisabeth Smith, Northwest Health Law Advocates; Seth Dawson, National Alliance of Mental Illness; Bob Cooper, Washington Defender Association and Washington Association of Criminal Defense Lawyers; and Brian Enslow, Washington State Association of Counties.

Persons Testifying (Appropriations): Brian Enslow, Washington State Association of Counties; Bob Cooper, Washington Defenders Association and Washington Association of Criminal Defense Lawyers; and Seth Dawson, National Association on Mental Illness of Washington.

Persons Signed In To Testify But Not Testifying (Health Care & Wellness): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.