HOUSE BILL REPORT
ESHB 1427

As Amended by the Senate

Title: An act relating to opioid treatment programs.

Brief Description: Concerning opioid treatment programs.

Sponsors: House Committee on Health Care & Wellness (originally sponsored by Representatives Cody, Jinkins, Peterson and Pollet).

Brief History:
Committee Activity:
Health Care & Wellness: 1/24/17, 2/17/17 [DPS].
Floor Activity:
Passed House: 3/3/17, 82-15.
Senate Amended.
Passed Senate: 4/12/17, 46-3.
House Refused to Concur.
Senate Receded.
Senate Amended.
Passed Senate: 4/19/17, 49-0.

Brief Summary of Engrossed Substitute Bill

- Modifies the standards for certifying and siting opioid treatment programs and provides for licensing or certification of programs if Substitute House Bill 1388 or Substitute Senate Bill 5259 is enacted.
- Modifies terminology and declarations regarding treatment for opioid use disorder.

HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 17 members: Representatives Cody, Chair; Macri, Vice Chair; Schmick, Ranking Minority Member; Graves, Assistant Ranking Minority Member; Caldier, Clibborn, DeBolt, Harris, Jinkins, MacEwen, Maycumber, Riccelli, Robinson, Rodne, Slatter, Stonier and Tharinger.

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.

Staff: Alexa Silver (786-7190).

Background:

In the Community Mental Health Services Act, the state declares the following:

- There is no fundamental right to opiate substitution treatment.
- While opiate substitution drugs are addictive substances, they also have important and justified uses, including treatment of persons addicted to opioids. Opiate substitution treatment should be used only for participants who are deemed appropriate for this level of intervention and should not be the first treatment intervention.
- The state has authority to control and carefully regulate the clinical uses of opiate substitution drugs in consultation with counties and cities.
- The primary goal of opiate substitution treatment is total abstinence from substance use.
- A small percentage of participants will require treatment for an extended period of time.

The Department of Social and Health Services (Department) certifies opiate substitution treatment programs and is required to establish treatment and operating standards for the programs in consultation with treatment providers, counties, and cities.

In making a decision on a program's application for certification, the Department must, among other things:

- consult with the county and city in which the applicant proposes to locate a program;
- certify only programs that will be sited in accordance with county or city land use ordinances;
- consider the population in need of treatment in the area in which the program would be located;
- demonstrate a need in the community for opiate substitution treatment, and not certify more program slots than justified by the need. No program may exceed 350 participants unless authorized by the county; and
- hold at least one public hearing in the county where the facility is proposed to be located, as well as a hearing in the area where the facility is proposed to be located.

Opiate treatment programs must provide health education information to pregnant clients, including referral options for the addicted baby.

To maintain certification, opiate substitution programs must submit an annual report to the Department and county legislative authority, including data necessary for outcome analysis. The Department must evaluate the data and take corrective action where necessary.

"Opiate substitution treatment" is defined as: (1) dispensing an opiate substitution drug approved by the Food and Drug Administration for the treatment of opiate addiction; and (2) providing a comprehensive range of medical and rehabilitative services.

Summary of Engrossed Substitute Bill:

In making a decision on an application for certification of an opioid treatment program, the Department of Social and Health Services (Department) is not required to: demonstrate a need in the community for opiate substitution treatment; certify only the number of program slots justified by community need; hold a public meeting in the county or area where the facility is to be located; or consider whether the applicant has demonstrated the capability to assist persons in the program with meeting abstinence goals. Instead, the Department must hold one public hearing in the community where the facility is to be located.

Authority for counties and cities to require special use permits for the siting of opioid treatment programs is removed. The 350-participant limit is removed; instead, a county may impose a maximum capacity for an opioid treatment program of not less than 350 participants if necessary to address specific local conditions cited by the county. References to "certification" of a program are changed to "licensing or certification" of a program in the event that either Substitute House Bill 1388 or Substitute Senate Bill 5259 is enacted.

Opioid treatment programs are subject to the same oversight as other substance use disorder treatment programs and are no longer required to submit an annual report with data to the Department and the county legislative authority.

Declarations in the Community Mental Health Services Act (Act) are modified to provide that:

- the state recognizes as evidence-based for the management of opioid use disorder the treatment approaches acknowledged by the University of Washington Alcohol and Drug Abuse Institute, as well as medications approved by the Food and Drug Administration for the treatment of opioid use disorder;
- because some such medications are controlled substances, the state maintains the legal obligation to regulate the clinical uses of these medications in the treatment of opioid use disorder;
- the choice between recognized treatment options should be patient-centered and determined by shared decision-making between patients and providers;
- the primary goals of treatment are cessation of unprescribed opioid use, reduced morbidity, and restoration of the ability to lead a productive and fulfilling life;
- a person who lawfully possesses or uses lawfully prescribed medication for the treatment of opioid use disorder must be treated the same in judicial and administrative proceedings as a person who lawfully possesses or uses other lawfully prescribed medications; and
- the Act does not create an entitlement to medication assisted treatment.

Terms used in the Act are changed to "opioid treatment program," "medication assisted treatment," "opioid use disorder," and "substance-exposed babies" instead of "opiate substitution treatment programs," "methadone treatment," "opiate addiction," and "addicted babies."

EFFECT OF SENATE AMENDMENT(S):

Opioid Prescribing. The Senate amendment requires the following disciplining authorities to adopt rules establishing requirements for prescribing opioid drugs by January 1, 2019: the Medical Quality Assurance Commission, the Board of Osteopathic Medicine and Surgery, the

Nursing Care Quality Assurance Commission, the Dental Quality Assurance Commission, and the Podiatric Medical Board. It permits the rules to contain exemptions based on education, training, amount of opioids prescribed, patient panel, and practice environment. It requires the disciplining authorities to consider the Agency Medical Directors' Group and Centers for Disease Control guidelines and permits the disciplining authorities to consult with the Department of Health (DOH), the University of Washington, and professional associations in developing the rules.

Prescription Monitoring Program. The Senate amendment permits prescription monitoring program (PMP) data to be shared with: (1) the Health Care Authority (HCA) regarding Medicaid clients for purposes of quality improvement, patient safety, and care coordination, not for contracting or value-based purchasing decisions; (2) DOH personnel for assessing prescribing practices and providing quality improvement feedback to providers; (3) a provider group, health care facility, or health care entity (including those operated by the federal government or a federally recognized Indian tribe) for quality improvement purposes; (4) a local health officer for purposes of patient follow-up and care coordination after a controlled substance overdose event; and (5) the coordinated care electronic tracking program referred to as the Seven Best Practices in Emergency Medicine for purposes of providing PMP data to emergency department personnel when a patient registers in the emergency department, as well as notice to providers, care coordination staff, and prescribers that the patient has experienced a controlled substance overdose event. The amendment requires the DOH to determine the content and format of the notice in consultation with the Washington State Hospital Association (WSHA), the Washington State Medical Association (WSMA), and the HCA, and permits the notice to be modified as necessary.

It requires the DOH to, at least quarterly, provide a facility, entity, or provider group with facility, entity, and prescriber information if the facility, entity, or group: (1) uses the information only for internal quality improvement and prescriber quality improvement feedback purposes and does not use the information as the sole basis for a medical staff sanction or adverse employment action; and (2) provide the DOH with a standardized list of current prescribers, with specific information requirements determined by the DOH in consultation with the WSHA, WSMA, and HCA. It permits the DOH to provide dispenser and prescriber data and data that include indirect patient identifiers to the WSHA for use solely in connection with its coordinated quality improvement program after entering into a data use agreement.

It modifies the immunity granted in current law to recipients of PMP data. It requires the DOH, beginning November 15, 2017, to annually report to the Governor and the Legislature on the number of facilities, entities, and provider groups that have integrated their electronic health records with the PMP.

Opioid Treatment Programs: The Senate amendment modifies the declarations in the Community Mental Health Services Act related to treatment for opioid use disorder. Specifically, the Senate amendment states: (1) There is no fundamental right to medication-assisted treatment for opioid use disorder. (2) Such medications are addictive substances but have important and justified uses, including treatment of persons with opioid use disorder. (3) The medications approved by the Food and Drug Administration for the treatment of opioid use disorder are evidence-based. (4) Medication-assisted treatment

should be used only for participants who are deemed appropriate for this level of intervention. Providers must inform patients of all treatment options available, and the provider and patient must consider alternative treatment options, like abstinence. Treatment plans must include follow-up to work toward abstinence. (5) The main goal of treatment is total abstinence from substance use, but additional goals are reduced morbidity and restoration of the ability to lead a productive and fulfilling life. (6) A small percentage of participants will require treatment for an extended period of time. (7) Opioid treatment programs must provide a comprehensive transition program to eliminate substance use.

The Senate amendment also requires the Department of Social and Health Services (DSHS) to consider whether a program applicant has demonstrated the capability to provide the appropriate services to assist participants in meetings the above goals and requires the DSHS to prioritize certification for applicants who are able to measure their success in meeting such outcomes. It defines opioid treatment programs to include dispensing medication for the reversal of opioid overdose. It restores the requirement in current law that the DSHS analyze and evaluate data submitted by treatment programs and take corrective action to ensure compliance with statutory goals and standards. Finally, it adds legislative findings related to opioid overdoses and treatment.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 3 and 5, relating to certifying opioid treatment programs and statewide treatment standards, which take effect if neither SHB 1388 nor SSB 5259 takes effect, and sections 4 and 6, relating to certifying opioid treatment programs and statewide treatment standards, which take effect if SHB 1388 or SSB 5259 takes effect.

Staff Summary of Public Testimony:

(In support) This bill represents an important step toward reducing barriers to treating people with opioid use disorder. Medication assisted treatment is about recovery and stability and is a necessary component of care for people addicted to heroin and other opiates. The bill removes unnecessary requirements for siting and regulating opioid treatment programs and will expand access to treatment. It also removes outdated, stigmatizing language and reflects current science. It is important to reduce the stigma to be able to talk about opioid addiction because people need to be able to talk about their problems to understand them. There is concern about the lack of focus on upstream prescribing of opiates. There are nonpharmaceutical options for pain management, like acupuncture.

(Opposed) None.

(Other) This bill should include drugless therapies like chiropractic and physical therapy. The Centers for Disease Control opioid guidelines talk about the use of physical therapy as an alternative to opioids and to treat opioid addiction. Chiropractic therapy is effective for pain management.

Persons Testifying: (In support) Jim Vollendroff, King County Behavioral Health and Recovery; Nickolaus Lewis, Lummi Nation; and Leslie Emerick, Washington East Asian Medicine Association.

(Other) Lori Grassi, Washington State Chiropractic Association; and Melissa Johnson, Physical Therapy Association of Washington.

Persons Signed In To Testify But Not Testifying: None.