

HOUSE BILL REPORT

HB 1394

As Reported by House Committee On:
Health Care & Wellness
Appropriations

Title: An act relating to community facilities needed to ensure a continuum of care for behavioral health patients.

Brief Description: Concerning community facilities needed to ensure a continuum of care for behavioral health patients.

Sponsors: Representatives Schmick, Cody, Jinkins, Kilduff, Davis, Griffey, Riccelli, Macri, Harris, Robinson, Goodman, Sullivan, Appleton, Bergquist, Thai, Tharinger, Slatter, Doglio, Pollet, Callan, Leavitt and Ormsby; by request of Office of the Governor.

Brief History:

Committee Activity:

Health Care & Wellness: 1/29/19, 2/8/19 [DPS];
Appropriations: 2/27/19, 2/28/19 [DP2S(w/o sub HCW)].

Brief Summary of Second Substitute Bill

- Establishes intensive behavioral health treatment facilities and provides for the licensing and certification of these facilities by the Department of Health.
- Establishes a pilot program for mental health drop-in centers and requires the Health Care Authority to submit reports on the results to the Governor and the appropriate committees of the Legislature by December 1, 2020, and December 1, 2021.
- Directs the Health Care Authority to assess the capacity of hospitals and evaluation and treatment facilities to become credentialed to provide long-term mental health placements and to contract with those hospitals and evaluation and treatment facilities that choose to provide such services.
- Suspends certificate of need requirements for certain hospitals that are either adding new psychiatric beds, changing the use of current beds to psychiatric uses, or constructing new psychiatric hospitals.

HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

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.

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 15 members: Representatives Cody, Chair; Macri, Vice Chair; Schmick, Ranking Minority Member; Caldier, Assistant Ranking Minority Member; Chambers, Davis, DeBolt, Harris, Jinkins, Maycumber, Riccelli, Robinson, Stonier, Thai and Tharinger.

Staff: Chris Blake (786-7392).

Background:

Long-Term Mental Health Placement Facilities.

Except in regional service areas with fully-integrated medical care, behavioral health organizations are responsible for the administration of community-based commitments and services under the Involuntary Treatment Act. The Involuntary Treatment Act governs the commitment of persons for involuntary mental health treatment if they pose a likelihood of serious harm or are gravely disabled due to a mental disorder. Inpatient commitments for 90 or 180 days of treatment take place at one of two state hospitals operated by the Department of Social and Health Services. Long-term inpatient care beds at the state hospitals are divided among all of the regional service areas with a specific allocation to each based on patient days of care.

Certificate of Need.

The certificate of need process evaluates proposals by certain health care providers to expand health care activities and reviews the potential impact of the expansion on a community's need for the service. A certificate of need from the Department of Health (Department) is required prior to the construction, renovation, or sale of a health care facility; changes in bed capacity; an increase in the number of dialysis stations at a kidney disease treatment center; or the addition of specialized health services. Under the program, the Department reviews the project using specific criteria related to community need, quality of services, financial feasibility, and the impact on health care costs in the community. A facility or service that is subject to the certificate of need program must be approved prior to beginning operations.

Until June 30, 2019, certificate of need requirements have been suspended for hospitals that change the use of licensed beds to increase the number of beds used to provide psychiatric services. For acute care hospitals, the exemption applies to hospitals that are changing the use of licensed beds to psychiatric beds as well as adding new psychiatric beds. For psychiatric hospitals, the exemption applies to the addition of up to 30 new psychiatric beds. The exemption also applies to the construction of a new psychiatric facility that has no more than 16 beds, a portion of which are to be used for treating adults on 90- or 180-day involuntary commitment orders. The Department of Commerce administers grants to hospitals to add new psychiatric beds to their facilities. The certificate of need requirements were suspended in fiscal years 2016 and 2017 for hospitals adding beds through the grant program.

Summary of Substitute Bill:

The Department of Health (Department) is authorized to license or certify intensive behavioral health treatment facilities. An "intensive behavioral health treatment facility" is defined as a community-based residential treatment facility for behavioral health patients whose impairment or behaviors require care that cannot be met in other settings. The Department must work with the Health Care Authority (Authority) and the Department of Social and Health Services (DSHS) to create credentialing standards for intensive behavioral health treatment facilities. The Department must adopt rules to require 24-hour supervision of residents, require staffing levels that meet the acuity of the residents, define the ability to use limited egress, limit the age of residents to persons who are at least 18 years old, and establish resident rights that are similar to the rights of residents of other long-term care facilities. The Secretary of the Department must consult with the DSHS, the Department of Commerce, the Long-Term Care Ombuds, and other relevant stakeholders to provide recommendations on providing resident rights and access to ombuds services to the residents of intensive behavioral health facilities. The report must be submitted to the Governor and the appropriate committees of the Legislature by December 1, 2019.

The Department is authorized to license or certify mental health drop-in centers. A "mental health drop-in center" is defined as a 24-hour peer-run program to serve individuals in need of voluntary, short-term, noncrisis services that focus on an individual's recovery and wellness. The Department must work with the Authority and the DSHS to create credentialing standards for mental health drop-in centers. The Department must adopt rules related to physical plant and service requirements to provide mental health drop-in center services, requirements that agencies partner with the local crisis system, staffing standards, the limitation of services to seven days in a month, limitations on serving persons in psychiatric distress who do not meet involuntary commitment standards, and limitations of the age of persons receiving services to those who are at least 18 years old.

The Authority and behavioral health organizations must assess the capacity of community hospitals and evaluation and treatment facilities to become certified to provide long-term inpatient care. In addition, the Authority and behavioral health organizations must enter into contracts with those hospitals and evaluation and treatment facilities that choose to provide such services. Community hospitals and evaluation and treatment facilities are not required to become certified to provide long-term mental health placements.

The suspension of certificate of need requirements is extended from June 30, 2019, to June 30, 2021, for:

- acute care hospitals that are changing the use of licensed beds to increase the number of beds to provide psychiatric services;
- acute care hospitals that add new psychiatric beds;
- psychiatric hospitals that add up to 30 new psychiatric beds; and
- entities that construct a new psychiatric hospital that has no more than 16 beds and dedicate a portion of the beds to providing treatment to persons on a 90- or 180-day involuntary commitment order.

The suspension of certificate of need requirements for hospitals receiving grants from the Department of Commerce to add new psychiatric beds is continued for grants received in calendar years 2018 and 2019.

The DSHS is authorized to provide an enhanced adult residential rate to nursing homes that convert their bed use to provide assisted living or adult residential care. Nursing homes that permanently convert a portion of capacity to assisted living or adult residential care, including serving persons with behavioral health treatment needs may receive a supplemental add-on residential care rate. The authority for the DSHS to provide a supplemental assisted living services rate to nursing homes that permanently convert beds from nursing home use to assisted living is eliminated.

By November 15, 2019, the Authority must confer with the Department, hospitals, and evaluation and treatment facilities to review laws and regulations and identify changes that may be necessary to address health care delivery and cost-effective treatment for adults on 90- or 180-day commitment orders. The Authority must report its findings to the Governor and the appropriate committees of the Legislature by December 15, 2019.

By December 1, 2019, the Secretary of the Department must provide recommendations to the Governor's Office and the appropriate committees of the Legislature on youth short-term residential intensive behavioral health and developmental disabilities services. The recommendations must address staffing requirements and developmental disability-related services to support youth and their families in preparation for discharge. The Department must develop the report in consultation with DSHS, the Department of Children, Youth, and Family, and the Authority.

Legislative findings are made regarding the need for additional bed capacity and services for individuals with behavioral health needs, the benefits of receiving treatment in the community, the struggles of the state hospitals to meet the rising demand for services, and the challenge of finding appropriate facilities for individuals with complex behavioral health needs. Legislative intent is stated as providing more options for behavioral health clients by creating new facility types and expanding the capacity of current provider types in the community.

Substitute Bill Compared to Original Bill:

The substitute bill specifies that mental health drop-in centers are 24 hour facilities and that the seven day limitation on services is seven days in a month.

The substitute bill changes a reference to "long-term mental health placements" to the defined term "long-term inpatient care."

The substitute bill adds evaluation and treatment facilities to the review of laws and regulations to be conducted by the Department of Health and the hospitals.

The substitute bill directs the Secretary of Health to adopt rules related to the rights of residents in intensive behavioral health treatment facilities. The Department of Health, in consultation with the Department of Social and Health Services, the Department of Commerce, the Long-Term Care Ombuds, and relevant stakeholders, must make recommendations on providing resident rights and access to ombuds services for the residents of intensive behavioral health treatment facilities. The Department of Health must

submit the report to the Governor and the appropriate committees of the Legislature by December 1, 2019.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) There are a number of gaps in the behavioral health system and this bill adds two new types of facilities and gives statutory authority for long-term commitments. This is an important increase in capacity because creating these new facilities can take some of the long-term residents of psychiatric hospitals who no longer need to be in psychiatric hospitals and move them into a more residential setting in the community. There still needs to be a significant investment in community behavioral health agencies and outpatient behavioral health services. This bill removes a time limit on enhanced funding for nursing facilities that care for patients with high behavioral health needs. There are youth who are very hard to serve in the developmental disabilities and mental health systems and this bill will establish a work group to develop recommendations for them. The bill should focus on increasing substance use disorder beds and making sure that everyone is on a work group to address the whole spectrum and continuum of care for behavioral health. Many evaluation and treatment facilities are already providing these services because it is so difficult to get people into the state hospitals. Evaluation and treatment facilities should be part of the Department of Health and hospital regulatory review committee. The bill should clearly indicate that mental health drop-in centers are meant to be 24 hour facilities. There is support for the working group to look at staffing structures and ensuring quality.

The permissive language to allow community hospitals to do 90- and 180-day civil commitments is needed to authorize them to provide these services. The bill will extend a two-year exemption from certificate of need requirements for psychiatric beds. There are three community hospitals in Snohomish and Yakima counties that are willing to provide 20 long-term involuntary commitment psychiatric beds and three psychiatric hospitals in King County that can provide an additional 46 beds with at least six beds will be dedicated to patients on 90- to 180-day commitments will be able to come online with a certificate of need exemption and another 30 short-term psychiatric beds. This bill will potentially bring a lot of beds online to serve the needs of members in the community. Hospitals have a number of certificates of need that are 30 to 120 days delayed because of the number of applications that the Department of Health has and this bill will help expedite getting these beds online. The Governor has proposed a behavioral health teaching campus with up to 150 90- to 180-day psychiatric beds and the University of Washington will need flexibility to add the beds from that project. This bill will do that by extending the certificate of need exemption. Certificate of need oversight should not be removed for non-state operated facilities.

All of the other residents who live in similar long-term care facilities have a set of resident rights and it is appropriate that individuals who will be living in these facilities have access to those same rights.

(Opposed) None.

(Other) There is no doubt that there is a need for additional bed capacity and services for behavioral health in communities, but it needs to be done in a thoughtful manner. Continuing the exemption from certificate of need does not allow adequate time to determine if the beds are truly needed in a particular area. The certificate of need process makes providers aware of other providers' plans so the community can readjust.

There is a significant staffing shortage and community facilities have a difficult time staffing already and building more facilities will create an increased need for staff and make the shortage more critical and possibly placing patient care at greater risk. The greatest challenge for behavioral health facilities is the ongoing operational costs and if the state does not put more non-Medicaid funds into the system, the facilities could stand empty. In order to make the system work, a bigger workforce and better funding for the operation of the facilities is needed.

There is nothing in the bill about rights for patients or oversight. There should be something like the Long-Term Residents Rights Act which is applicable in most facilities. There is usually some jurisdiction for the Long-Term Care Ombuds or another entity, but it is missing from this bill.

Persons Testifying: (In support) Representative Schmick, prime sponsor; Caitlin Safford, Amerigroup; Rashi Gupta, Governor's Policy Office; Lisa Thatcher, Washington State Hospital Association; Kristin Frederici, Providence Health; Ian Goodhew, University of Washington School of Medicine Health Systems; Melanie Smith, National Alliance on Mental Illness Washington; Michael Hatchet, Washington Council on Behavioral Health; and Lindsey Grad, Service Employees International Union Healthcare 1199NW.

(Other) Juliana Roe, Washington State Association of Counties; Denise Weber, Cowlitz County; and David Lord, Disability Rights Washington.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Health Care & Wellness. Signed by 31 members: Representatives Ormsby, Chair; Bergquist, 2nd Vice Chair; Robinson, 1st Vice Chair; Stokesbary, Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Rude, Assistant Ranking Minority Member; Caldier, Chandler, Cody, Dolan, Dye, Fitzgibbon, Hansen, Hoff, Hudgins, Jinkins, Kraft, Macri, Mosbrucker, Pettigrew, Pollet, Ryu, Senn, Springer, Stanford, Steele, Sullivan, Sutherland, Tarleton, Tharinger and Ybarra.

Staff: Andy Toulon (786-7178).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Health Care & Wellness:

The Appropriations Committee recommended removing provisions which created mental health drop-in centers and required the Department of Health to create standards, adopt rules, and license and certify facilities that meet the standards. The Health Care Authority (Authority) is directed to conduct a pilot program for mental health drop-in center services in the largest city in a regional service area with at least nine counties. Funds to support the pilot program shall be distributed through the behavioral health administrative service organization that serves the pilot program. The pilot program is to take effect between January 1, 2020 and July 1, 2022. The Authority is required to submit a preliminary report to the Governor and the appropriate committees of the Legislature by December 1, 2020, that includes a survey of peer mental health programs. The Authority is required to submit a final report on the results of the pilot program by December 1, 2021.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available. New fiscal note requested on February 22, 2019.

Effective Date of Second Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill is important in the context of figuring out how to provide care in the most appropriate settings for individuals with mental health issues in our state. It provides hospitals with the authority needed to treat patients who are on 90- to 180-day involuntary commitment orders. It provides exemptions to the certificate of need process which will allow for needed beds to be brought online more rapidly.

(Opposed) None.

Persons Testifying: Lisa Thatcher, Washington State Hospital Association.

Persons Signed In To Testify But Not Testifying: None.