

HOUSE BILL REPORT

2SHB 1907

As Passed Legislature

Title: An act relating to the substance use disorder treatment system.

Brief Description: Concerning the substance use disorder treatment system.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Davis, Appleton, Doglio, Ryu, Goodman and Jinkins).

Brief History:

Committee Activity:

Civil Rights & Judiciary: 2/19/19, 2/22/19 [DPS];

Appropriations: 2/26/19, 2/28/19 [DP2S(w/o sub CRJ)].

Floor Activity:

Passed House: 3/8/19, 98-0.

Senate Amended.

Passed Senate: 4/17/19, 48-0.

House Concurred.

Passed House: 4/24/19, 94-0.

Passed Legislature.

Brief Summary of Second Substitute Bill

- Limits the amount of time that an agency-affiliated counselor (AAC) working as a peer counselor in a behavioral health agency must spend in a substance abuse monitoring program to one year.
- Prohibits the Department of Health (DOH) and certain employers from automatically denying employment to an applicant for a position as an AAC in certain instances if the applicant has a past conviction for a disqualifying offense.
- Encourages a pathway for dual licensure as both an evaluation and treatment facility and a secure withdrawal management and stabilization facility.
- Requires the Health Care Authority (HCA) to produce an update to the designated crisis responder statewide protocols to address issues related to behavioral health integration and the applicability of commitment criteria to individuals with substance use disorders by December 1, 2019.

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.

- Directs the HCA to certify substance use disorder (SUD) peer counselors and include reimbursement for SUD peer services in the Medicaid state plan.
- Directs the DOH to conduct sunrise reviews to evaluate the transfer of the current peer support counselor certification from the HCA to the DOH and the need for the creation of an advanced peer support specialist credential.
- Removes the 60-day provisional time period for an applicant who applies for registration as an AAC and allows the applicant to work while their application is pending with the DOH, as long as required documentation is provided within reasonable time limits set by the DOH.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 15 members: Representatives Jinkins, Chair; Thai, Vice Chair; Irwin, Ranking Minority Member; Dufault, Assistant Ranking Minority Member; Goodman, Graham, Hansen, Kilduff, Kirby, Klippert, Orwall, Shea, Valdez, Walen and Ybarra.

Staff: Ingrid Lewis (786-7289).

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 Civil Rights & Judiciary. Signed by 30 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, Cody, Dolan, Dye, Fitzgibbon, Hansen, Hoff, Hudgins, Jinkins, Kraft, Macri, Mosbrucker, Pettigrew, Pollet, Ryu, Senn, Springer, Stanford, Steele, Sullivan, Sutherland, Tarleton, Tharinger and Ybarra.

Minority Report: Do not pass. Signed by 1 member: Representative Chandler.

Staff: Andy Toulon (786-7178).

Background:

Effective April 1, 2018, the Involuntary Treatment Act (ITA) and the provisions pertaining to involuntary mental health treatment were expanded to include commitments for substance use disorders. Under the ITA, a person may be ordered to undergo involuntary behavioral health treatment if the person, as a result of a mental health or a substance use disorder, poses a likelihood of serious harm, is gravely disabled, or is in need of assisted outpatient behavioral health treatment. Designated crisis responders (DCR) are mental health professionals appointed to conduct evaluations for individuals with mental disorders and substance use disorders under the ITA. The Health Care Authority (HCA) is required to develop statewide protocols to be utilized by professional persons and designated crisis

responders in the administration of the ITA and update these proposals every three years. The current DCR protocols are not due for update until 2020.

A person who poses a likelihood of serious harm or is gravely disabled may be committed for up to 72 hours for an initial evaluation at an evaluation and treatment facility, secure detoxification facility, or approved substance use disorder treatment facility. Upon subsequent petitions and hearings for further treatment, an adult posing a likelihood of serious harm or grave disability may be court ordered to consecutive terms of treatment lasting up to 14 days, up to 90 days, and successive terms of up to 180 days.

The Department of Health (DOH) is responsible for certifying and licensing behavioral health service providers, including evaluation and treatment facilities, secure detoxification facilities, and approved substance use disorder treatment facilities, and establishing minimum standards for service provision. The DOH also regulates several types of mental health professionals, including agency-affiliated counselors (AAC).

Agency-Affiliated and Peer Counselors.

Agency-affiliated counselors are counselors that are employed by a county, or an agency or facility operated, licensed or certified by the State of Washington. Agency-affiliated counselors must register with the DOH by demonstrating that they are employed by an agency or have an offer of employment by an agency, and by passing a background check. Applicants for registration as AACs may work in that capacity for up to 60 days while their applications are being processed by the DOH.

Peer counselors are individuals who share life experiences with persons in recovery and who successfully complete a 40-hour training course and pass the state exam. Peer counselors are certified by the HCA to provide recovery support to individuals participating in Medicaid funded mental health services and are employed by behavioral health agencies that obtain approval to employ them and must register as AACs.

Substance Abuse Monitoring Programs.

A disciplining authority may refer a licensee to a substance abuse monitoring program in lieu of formal discipline if the disciplining authority determines that unprofessional conduct is the product of substance abuse. The licensee must consent to the referral and the referral may include probationary conditions. If the licensee does not consent to the referral or fails to meet the requirements of the program, the disciplining authority may take formal disciplinary action against the licensee.

There are four substance abuse monitoring programs in Washington for credentialed health care providers. Each program serves specific professions or groups of professions. Although the programs do not provide substance use disorder treatment, they contract with and monitor health care providers for compliance with treatment and recovery goals. The contract includes random drug testing and worksite monitoring to ensure a safe return to practice. Some professions pay a fee to cover program expenses, while other professions require the individual to bear the expenses of the program.

Washington Recovery and Monitoring Program.

The Washington Recovery and Monitoring Program (WRAMP) is the substance use monitoring program for AACs, among other health care professions, and is operated by the DOH. The WRAMP applies to licensed or certified professionals who are referred following a complaint or investigation, professionals who self-refer to the program, and applicants for a license or certification who disclose a history of substance use disorder during the application process. The WRAMP requires participants to obtain a chemical dependency evaluation at their expense, the cost of which may in some cases be covered by insurance. If the evaluation determines that the person has a mild substance use disorder, the WRAMP requires three years of participation, with credit applied for any time spent in continuous recovery before the evaluation. If the evaluation determines the person has a moderate or severe substance use disorder, the WRAMP requires five years of participation, with credit applied for any time spent in continuous recovery before the evaluation. During participation in the WRAMP, the person must check in daily with the program during workdays and be subject to random urinalysis, follow any other treatment recommendations, abide by certain restrictions, and participate in a weekly approved peer support group.

Disqualifying Crimes.

Agencies, facilities, and individuals who provide care to vulnerable adults may not allow persons to work in a position that may involve unsupervised access to minors or vulnerable adults if the person has been convicted of or has a pending charge for certain disqualifying crimes. In some cases a person will not be automatically disqualified from employment if a designated number of years have passed since the date of conviction for the disqualifying crime.

Summary of Second Substitute Bill:

References to "secure detoxification facility" are changed to "secure withdrawal management and stabilization facility" in the adult and minor involuntary treatment acts.

The Department of Health (DOH) is required to develop a process by which a provider of behavioral health services can become dually licensed as both an evaluation and treatment facility and a secure withdrawal management and stabilization facility.

The Health Care Authority (HCA) is required to develop an addendum to the designated crisis responder statewide protocols in consultation with specified stake holders concerned with mental illness and substance use disorders. The update must address implementation of the integration of mental health and substance use disorder treatment systems, to include the applicability of commitment criteria and general processes for referrals and investigations of individuals with substance use disorders. The HCA shall adopt and submit the addendum to the Governor and the Legislature by December 1, 2019.

The DOH is prohibited from requiring an applicant for registration as an agency-affiliated counselor (AAC) who intends to practice as a peer counselor to participate in the Washington Recovery and Monitoring Program (WRAMP) if the applicant has at least one year in recovery from a substance use disorder. If the applicant has less than one year in recovery, the DOH may require participation in the WRAMP for only the amount of time necessary to achieve one year in recovery.

The DOH is prohibited from automatically denying an application for registration as an AAC, and an agency or facility that provides care and treatment to vulnerable adults is prohibited from automatically denying an application for employment if:

- at least one year has passed since the most recent conviction and the date of application;
- the offense was committed as a result of the applicant's substance use; and
- the applicant has been in recovery from a substance use disorder for at least one year, whether through abstinence or stability on medication-assisted therapy, or in recovery from mental health challenges.

The HCA must incorporate education and training for substance use disorder peer counselors into its peer counselor certification program, and include reimbursement in the Medicaid state plan for substance use disorder peer support services, by July 1, 2019.

The DOH must conduct a sunrise review to evaluate the following:

- transfer of the peer support counselor certification program to DOH to bring the program under DOH oversight, with structure, discipline, and continuing education requirements similar to other behavioral health licensure or certification programs; and
- the need for the creation of an advanced peer support specialist credential for peer support services provided in the areas of mental health, substance use disorders, and forensic behavioral health.

Transfer of the program to the DOH must allow for grandfathering current individuals who hold a peer support counselor certification.

The time limit is eliminated for an AAC who applies for registration to work as an AAC while the application is being processed, provided that the applicant must provide required documentation to the DOH within reasonable time limits.

Appropriation: None.

Fiscal Note: Available.

Effective Date: This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for sections 48 through 53, which relate to incorporating education and training for substance use disorder peers into the Health Care Authority certified peer counselor program and including reimbursement for substance use peer support services, which contains an emergency clause and take effect July 1, 2019; and sections 5, 7, 9, 12, 15, 31, 33, 35, 38, 40, and 42, relating to expiring the language stating that commitments to secure detoxification facilities and approved substance use disorder treatment programs are subject to facility availability and available space, which take effect July 1, 2026.

Staff Summary of Public Testimony (Civil Rights & Judiciary):

(In support) Ricky's Law was passed in 2016 and integrated the mental health and substance use disorder treatment involuntary treatment systems in April 2018. There are 45 secure detoxification beds for adults located in Chehalis and Spokane. Since the law has been in

effect, only 30 percent of the beds are being used for individuals detained under Ricky's Law. There have been several implementation obstacles. There should be an ability to dually certify secure detoxification facilities and evaluation and treatment facilities so that an individual can receive the appropriate care if they have co-occurring conditions. Many individuals may need to detox, but a mental illness is the underlying issue. Substance use disorder facilities are not funded to provide those services and cannot staff mental health professionals on an ongoing basis. Current law defines risk of harm to self and grave disability primarily in the context of mental illness, and this does not capture an individual who survives a nearly fatal overdose or an individual who has a life threatening medical condition due to substance use. Transport to a security detoxification facility from an emergency department occurs via ambulance. The most populous county in Washington has not been implementing the law because the county is unable to find an ambulance company who will contract for the rate.

Individuals suffering from a substance use disorder cannot make rational decisions because the disease chemically changes the logical thought process.

(Opposed) None.

Staff Summary of Public Testimony (Appropriations):

(In support) None.

(Opposed) None.

Persons Testifying (Civil Rights & Judiciary): Representative Davis, prime sponsor; Debra Mayer; Len McComb, Washington State Hospital Association; and Tony Prentice, American Behavioral Health Systems.

Persons Testifying (Appropriations): None.

Persons Signed In To Testify But Not Testifying (Civil Rights & Judiciary): None.

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