HOUSE BILL REPORT
HB 2426

As Reported by House Committee On:
Health Care & Wellness

Title: An act relating to protecting patient safety in psychiatric hospitals and other health care facilities regulated by the department of health through improvements to licensing and enforcement.

Brief Description: Protecting patient safety in psychiatric hospitals and other health care facilities.

Sponsors: Representatives Cody, Robinson, Kilduff, Tharinger, Davis, Macri, Riccelli and Pollet; by request of Department of Health.

Brief History:
Committee Activity:
Health Care & Wellness: 1/24/20, 2/7/20 [DPS].

Brief Summary of Substitute Bill

- Establishes penalties for psychiatric hospitals that fail or refuse to comply with state licensing standards, including civil fines and stop placements.
- Requires psychiatric hospitals to report patient elopements and specified types of deaths that occur on their grounds.
- Requires the Department of Health to post health care facility inspection-related information on its website.

HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Cody, Chair; Macri, Vice Chair; Caldier, Assistant Ranking Minority Member; Chambers, Chopp, Davis, Riccelli, Robinson, Stonier, Thai and Tharinger.

Minority Report: Do not pass. Signed by 1 member: Representative Schmick, Ranking Minority Member.

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.

Minority Report: Without recommendation. Signed by 1 member: Representative Harris.

Staff: Chris Blake (786-7392).

Background:

Licensing of Private Establishments.
The Department of Health (Department) regulates "establishments" which are places receiving or caring for persons with mental illness or substance use disorder. To become licensed to operate an establishment, a person must receive a certificate of need for the project, obtain approval of facility plans under the construction review process, obtain approval from the State Director of Fire Protection, and successfully complete a Department survey of the facility. Establishments must operate in compliance with Department regulations regarding clinical facilities, patient care services, staffing, patient safety, clinical records, and pharmacy and medication services.

The Department may conduct inspections at any time to determine compliance with establishment standards. The Department may issue a statement of deficiencies if it finds that the establishment is not in compliance with operating standards. The failure to correct the deficiencies may result in the denial, suspension, modification, or revocation of the establishment license.

Sanctions for Health Care Facilities.
The Department licenses several types of health care facilities, including hospitals, establishments, and ambulatory surgical facilities. In the event that an inspection or survey identifies noncompliance with health care facility standards, the Department may require the facility to submit a plan of correction to address each of the deficiencies. For these facilities, the Department has the established authority to deny, suspend, revoke, or modify a license or provisional license. In the case of ambulatory surgical facilities, the Department may assess civil monetary penalties up to $1,000 per violation. In addition, the operation of an establishment without a license may result in imprisonment and a fine of up to $1,000.

Incident Reporting by Hospitals.
Certain types of health care facilities, including establishments, must report adverse health events to the Department. Under the reporting system, an initial notification must be filed with the Department within 48 hours of confirmation of the adverse event. Full reports must be submitted within 45 days of confirmation. Adverse health events include the 29 serious reportable events identified by the National Quality Forum in 2011. These are categorized among surgical or invasive procedure events, product or device events, patient protection events, care management events, environmental events, radiologic events, and potential criminal events.

Summary of Substitute Bill:

Licensed Psychiatric Hospitals.

For newly licensed psychiatric hospitals or existing psychiatric hospitals that change ownership after July 1, 2020, the Department of Health (Department) must provide enhanced oversight through inspections and technical assistance for the first 24 months.

"Psychiatric hospitals" are defined as a hospital caring for any person with mental illness or substance use disorder. The term does not include acute care hospitals, state psychiatric hospitals, or residential treatment facilities.

Enforcement of Health Care Facility Licensing Standards.
If a licensed psychiatric hospital fails or refuses to comply with state licensing standards, the Department may take one or more of several actions.

The Department may either impose conditions on a psychiatric hospital, including training or the hiring of a consultant, or assess a civil fine of up to $10,000 per violation, for a total of no more than $1 million, if the psychiatric hospital is in violation of licensing standards and has been previously subject to an enforcement action for the violation, has been given a previous statement of deficiency for the violation, or has failed to correct the noncompliance by an established date. The Department may impose civil fines of up to $10,000 for each day that a person operates a psychiatric hospital without a license. Civil fines collected by the Department may only be used to provide technical assistance to psychiatric hospitals and to offset the cost of psychiatric hospital licensing activities.

The Department may suspend admissions to a psychiatric hospital by imposing a limited stop placement on one or more categories of patients or a stop placement on the entire facility if it finds practices or conditions that constitute an immediate jeopardy. The term "immediate jeopardy" means a situation in which the noncompliance has placed the health and safety of patients at risk for death or serious injury, harm, or impairment. Before imposing a limited stop placement or stop placement, the Department must give the psychiatric hospital notification of the practices or conditions that constitute an immediate jeopardy and allow the psychiatric hospital 24 hours to correct the violation. If the Department issues a limited stop placement or stop placement, it must conduct a follow-up inspection within five business days of receiving written notice from the psychiatric hospital that describes how the violations that were the basis for the order have been corrected, unless the psychiatric hospital requests more time. The stop placement order or limited stop placement order must be terminated if the violations have been corrected and the psychiatric hospital is able to maintain the corrections. Lastly, the Department may suspend, revoke, or refuse to renew a license.

Beginning with psychiatric hospitals, the Department must make health care facility inspection and investigation statements of deficiencies, plans of correction, notice of acceptance of plans of correction, enforcement actions, and notices of resolution available to the public on the Internet, to the extent that resources allow.

The Department is directed to evaluate the appropriate levels of oversight for the health care facilities that it licenses and identify opportunities to consolidate and standardize licensing and enforcement standards across facility types. The types of facilities licensed by the Department include birthing centers, pharmacies, hospitals, medical test sites, in-home services agencies, ambulatory surgical facilities, establishments, and behavioral health

service providers. The Department must work with stakeholders to create recommendations to develop a uniform health care facility enforcement act.

Elopement and Death Reporting by Psychiatric Hospitals.
Psychiatric hospitals must report to the Department every patient elopement that occurs on their grounds. An "elopement" is defined as any situation in which a patient admitted to the psychiatric hospital is cognitively, physically, mentally, emotionally, or chemically impaired and leaves the psychiatric hospital unsupervised, unnoticed, and without the staff's knowledge prior to scheduled discharge. In addition, psychiatric hospitals must report to the Department every patient death associated with patient elopement, patient suicide, patient death associated with medication error, patient death associated with a fall, patient death associated with the use of physical restraints or bedrails, and patient or staff member death resulting from a physical assault. The reports must be made within three days of the elopement or death.

Substitute Bill Compared to Original Bill:

The substitute bill specifies that the imposition of conditions or civil fines for regulatory violations only apply when a psychiatric hospital has been subject to an enforcement action for the same or similar violation, has been given a previous statement of deficiency for the same or similar violation, or failed to correct noncompliance by an agreed-upon date.

The substitute bill specifies that the Department of Health (Department) approved consultant may only be imposed when the psychiatric hospital cannot demonstrate that it has sufficient internal resources. The civil fines for licensed psychiatric hospitals are changed from a minimum of $10,000 per violation to a maximum of $10,000 per violation. The Department must adopt rules to specify fine amounts in relation to the severity of the noncompliance.

The substitute bill limits the application of stop placements and limited stop placements to only those situations in which the noncompliance results in immediate jeopardy to patient care or safety. The term "immediate jeopardy" is defined as a situation in which the noncompliance has placed the health and safety of patients at risk for death or serious injury, harm, or impairment.

The substitute bill maintains the provision of technical assistance and additional inspection requirements for newly licensed psychiatric hospitals and psychiatric hospitals with a change of ownership, but removes the "provisional licensing" structure for them.

The substitute bill specifies that the deaths that psychiatric hospitals must report are only deaths that occur in six specified circumstances.

The substitute bill adds plans of correction, notice of acceptance of plans of correction, enforcement actions, and notices of resolution to the information to be made public on the Department's website.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony:

(In support) There have been several articles regarding the difficulty that the Department of Health (Department) has had with regulating psychiatric hospitals. The Department has few options for taking actions on a license, there are no options that may be taken immediately to protect patient safety during the enforcement process, and there are no enforcement tools for when a hospital is chronically noncompliant. This bill is designed to protect patients in private psychiatric hospitals through stronger regulatory oversight. Some psychiatric hospitals have struggled to comply with licensing rules in ways that pose serious risks to patient safety. This bill adds enforcement options to fill regulatory gaps, such as stop placements and fines. This bill creates a provisional license to ensure that new psychiatric hospitals get off to a good start and can sustain compliance. This bill will require the reporting of patient deaths and elopements for possible investigation and increase transparency by making inspection reports available on the Internet. The bill directs the Department to work with all stakeholders on a uniform approach to enforcement for all facility types. This bill is critical to protect the safety of vulnerable psychiatric hospital patients and will promote access to quality care.

These additional proposed regulatory concepts are being applied only to free-standing psychiatric hospitals and there could be implications from putting different regulations on just one type of facility. The facility-wide stop placement language should be removed and the limited stop placement language should be adjusted because a facility-wide stop placement would create a problem in the psychiatric care continuum and result in boarding patients at other hospitals. The use of the limited stop placement should be similar to immediate jeopardy findings with the ability for an action plan to be implemented and corrections made immediately. Requiring a psychiatric hospital to hire a consultant is not an effective way to achieve improvements at a facility.

(Opposed) None.

(Other) Other licensing statutes do not have similar fining authority and not at this high level. This is not a graduated process with criteria around the fining authority, so there should be language about when the fines can be imposed. The stop placement is a serious action and has impacts on patients seeking treatment and who are in crisis, and the bill has no boundaries or guidance around these orders. The time for follow up after a stop placement order should be changed from 15 days to five days. The reporting of every patient elopement or death can be overly burdensome. The bill should stay with the National Quality Forum reporting requirements. This bill will make it less likely that hospitals will accept older patients. The term "provisional" in the licensing context implies that there is something wrong with the facility. The heightened inspection process for new hospitals makes sense, but it is not necessary to call these facilities "provisionally licensed." Fines should only be used when the facility is noncompliant. The bill's requirement to post inspection reports should specify the statement of deficiency, the plan of correction, and the final outcome. The

posting requirement should also apply to evaluation and treatment facilities and state hospitals. A graduated approach is best so the Department has a range of tools to apply in a more nuanced fashion. This should apply to all inpatient behavioral health settings, including state hospitals.

Persons Testifying: (In support) Representative Cody, prime sponsor; Christie Spice, Department of Health; Michael Uradnik, Cascade Behavioral Health; and Lindsey Grad, Service Employees International Union Healthcare 1199 Northwest.

(Other) Chelene Whiteaker and Lisa Thatcher, Washington State Hospital Association; and Nick Federici, Fairfax Hospital.

Persons Signed In To Testify But Not Testifying: None.