

SENATE BILL REPORT

SHB 1826

As Reported by Senate Committee On:
Behavioral Health Subcommittee to Health & Long Term Care, March 29, 2019

Title: An act relating to the disclosure of certain information during the discharge planning process.

Brief Description: Concerning the disclosure of certain information during the discharge planning process.

Sponsors: House Committee on Civil Rights & Judiciary (originally sponsored by Representatives Leavitt, Kilduff and Morgan).

Brief History: Passed House: 3/04/19, 97-0.

Committee Activity: Behavioral Health Subcommittee to Health & Long Term Care: 3/15/19, 3/29/19 [DPA, w/oRec].

Brief Summary of Amended Bill

- Requires state hospitals to disclose publicly accessible forensic reports and criminal history information related to certain patients with a history of violence or criminal justice involvement when the patient is ready for discharge to managed health care organizations, the Aging and Long-Term Support Administration, or the Developmental Disabilities Administration.
- Imposes a civil fine of \$5,000 plus attorneys fees enforceable by the attorney general for any person who misuses or makes an unauthorized disclosure of confidential information received under this act.

SENATE COMMITTEE ON BEHAVIORAL HEALTH SUBCOMMITTEE TO HEALTH & LONG TERM CARE

Majority Report: Do pass as amended.

Signed by Senators Dhingra, Chair; Darneille and Frockt.

Minority Report: That it be referred without recommendation.

Signed by Senators Wagoner, Ranking Member; O'Ban.

Staff: Kevin Black (786-7747)

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.

Background: State Hospitals. Western State Hospital (WSH) and Eastern State Hospital (ESH) are adult psychiatric hospitals that provide involuntary inpatient treatment for persons with mental disorders who are committed by civil and criminal courts. The hospitals are operated by the Department of Social and Health Services.

Behavioral Health Organizations. A behavioral health organization (BHO) is a managed care entity that oversees the delivery of behavioral health services for adults and children, administers community-based commitments and services under the Involuntary Treatment Act, and contracts with local providers to provide behavioral health services. A BHO may be a county, group of counties, or a nonprofit entity. Since 2014, a process has been underway to replace BHOs with a combination of managed care organizations (MCOs) and behavioral health administrative services organizations (BH-ASOs) which together provide fully-integrated health care services. This process must be completed by January 1, 2020.

Discharge Planning. When a state hospital determines a civil commitment patient no longer requires active psychiatric treatment at an inpatient level of care, a BHO, MCO, BH-ASO, or other agency that provides oversight of community care for the person, which may include the Aging and Long-Term Support Administration (AL TSA) if the person has long-term care needs or Developmental Disabilities Administration (DDA) if the person has needs related to a developmental disability, must collaborate with the state hospital to develop an individualized discharge plan to transition the person to the community within 14 days.

History of One or More Violent Acts. "History of one or more violent acts" is a defined phrase under the Involuntary Treatment Act which refers to a ten-year period of time, excluding any time spent, but not any violent acts committed, in a mental health facility, a long-term alcoholism or drug treatment facility, or in confinement as a result of a criminal conviction, during which a person has engaged in behavior that resulted in homicide, attempted suicide, nonfatal injuries, or substantial damage to property.

Confidentiality of Health Care Information. The federal Health Insurance Portability and Accountability Act (HIPAA) establishes standards for the disclosure of protected health information by covered entities. Entities covered by HIPAA must have a patient's authorization to use or disclose health care information, unless there is a specified exception. Some exceptions pertain to disclosures for treatment, payment, and health care operations; public health activities; judicial proceedings; law enforcement purposes; and research purposes.

The state Uniform Health Care Information Act (UH CIA) governs the disclosure of health care information by health care providers and their agents or employees. The UH CIA provides that a health care provider may not disclose health care information about a patient unless there is a statutory exception or a written authorization by the patient. Some exceptions include disclosures for the provision of health care; quality improvement, legal, actuarial, and administrative services; research purposes; directory information; public health and law enforcement activities as required by law; and judicial proceedings. Disclosures to entities are subject to the same disclosure requirements as the health care provider providing the health care information.

Summary of Amended Bill: When a state hospital determines that patient is ready for discharge, the state hospital must disclose publicly accessible forensic reports and relevant details of a civilly committed patient's criminal history to BHOs, MCOs, BH-ASOs, the Aging and Long-Term Care Administration, or the DDA, as appropriate, when:

- the patient has a history of one or more violent acts;
- the patient was committed following dismissal of a criminal charge based on incompetency to stand trial and was civilly found to have committed acts constituting a violent offense; or
- the patient has been previously convicted of a serious violent offense or sex offense.

All information or records received by a law enforcement agency or prosecuting attorney must remain confidential. A civil penalty of \$5,000 is established for misuse or unauthorized disclosure of information or records, plus applicable civil remedies and reasonable attorney's fees, if a suit is brought by the attorney general.

EFFECT OF BEHAVIORAL HEALTH SUBCOMMITTEE TO HEALTH & LONG TERM CARE COMMITTEE AMENDMENT(S): Clarifies that the disclosure of information must occur when the state hospital determines that the patient is ready for discharge from an inpatient level of care.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Substitute House Bill: *The committee recommended a different version of the bill than what was heard.* PRO: This bill is about safety and keeping community members informed about people with a history of violent acts who are living in their neighborhood. Local care providers in my district report they need a better accounting of clients with a criminal history in order to provide appropriate care and maintain safety. When people are informed and able to provide input, decision making can be thoughtful and intentional, keeping public safety at the forefront. There are limited options for care for patients discharged from a state hospital. More and more often, we see these persons being placed in adult family homes. There are almost 100 adult family homes in the city of Lakewood. To ensure the safety of vulnerable residents and to help these persons succeed, the staff should know about a history of violence or sexual offenses. This bill is a good first step.

Persons Testifying: PRO: Representative Mari Leavitt, Prime Sponsor; Eileen McKain, City of Lakewood.

Persons Signed In To Testify But Not Testifying: No one.