SENATE BILL REPORT
E2SHB 1874

As Passed Senate - Amended, April 15, 2019

Title: An act relating to implementing policies related to expanding adolescent behavioral health care access as reviewed and recommended by the children's mental health work group.

Brief Description: Implementing policies related to expanding adolescent behavioral health care access as reviewed and recommended by the children's mental health work group.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Frame, Eslick, Davis, Bergquist and Doglio).

Brief History: Passed House: 3/11/19, 89-8.
Committee Activity: Behavioral Health Subcommittee to Health & Long Term Care: 3/22/19, 3/29/19 [DPA-WM].
Ways & Means: 4/03/19, 4/09/19 [DPA, w/oRec].
Floor Activity:
Passed Senate - Amended: 4/15/19, 48-0.

Brief Summary of Bill
(As Amended by Senate)

- Renames parent-initiated treatment as family-initiated treatment.
- Expands family-initiated treatment provisions related to outpatient treatment.
- Provides guidance to mental health professionals related to disclosure of an adolescent's mental health treatment information to a parent.
- Provides liability protection for the decision to disclose or to not disclose adolescent mental health treatment information to a parent.

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

Majority Report: Do pass as amended and be referred to Committee on Ways & Means.
Signed by Senators Dhingra, Chair; Wagoner, Ranking Member; Darneille, Frockt and O'Ban.

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: Kevin Black (786-7747)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass as amended.
Signed by Senators Rolfes, Chair; Frockt, Vice Chair, Operating, Capital Lead; Mullet, Capital Budget Cabinet; Billig, Carlyle, Conway, Darneille, Hasegawa, Hunt, Keiser, Liias, Palumbo, Pedersen, Rivers, Van De Wege, Wagoner and Warnick.

Minority Report: That it be referred without recommendation.
Signed by Senators Braun, Ranking Member; Brown, Assistant Ranking Member, Operating; Honeyford, Assistant Ranking Member, Capital; Bailey, Becker and Schoesler.

Staff: Travis Sugarman (786-7446)

Background: Age of Consent for Behavioral Health Treatment. A minor age thirteen or older may admit themselves to an evaluation and treatment facility for inpatient mental health treatment or an approved substance use disorder treatment program for inpatient substance use disorder treatment without parental consent. The admission may occur only if the professional person in charge of the facility concurs with the need for inpatient treatment. Parental authorization, or authorization from a person who may consent on behalf of the minor, is required for inpatient treatment of a minor under age thirteen.

When, in the judgment of the professional person in charge of an evaluation and treatment facility or approved substance use disorder treatment program, there is reason to believe that a minor is in need of inpatient treatment because of a mental disorder or substance use disorder, and the facility provides the type of evaluation and treatment needed by the minor, and it is not feasible to treat the minor in any less restrictive setting or the minor's home, the minor may be admitted to the facility.

Written renewal of voluntary consent must be obtained from the applicant no less than once every 12 months. The minor's need for continued inpatient treatments must be reviewed and documented no less than every 180 days.

Any minor age thirteen or older may request and receive outpatient treatment without the consent of the minor's parent. Parental authorization, or authorization from a person who may consent on behalf of the minor, is required for outpatient treatment of a minor under the age of thirteen.

Privacy of Adolescent Behavioral Health Treatment Information. The privacy of health information is governed by both state and federal law. Washington State law permits a treatment provider to share the fact of admission and all information and records related to the mental health treatment of an adolescent with the adolescent's parent. Federal law, under the Health Insurance Portability and Accountability Act, defers to state law to determine a parent's right of access to the mental health treatment information of an adolescent. Federal law relating to substance use disorder treatment services, however, takes a different approach. Under 42 C.F.R. Part Two, federal law prohibits disclosure of information and records relating to the substance use disorder treatment of an adolescent to any third party,

including a parent, unless the adolescent provides a signed release of information, regardless of of state law. In the event of a conflict between state and federal law, the federal law is controlling.

Parent-Initiated Inpatient Treatment. A parent may bring, or authorize bringing, their minor child to:

- an evaluation and treatment facility or a licensed inpatient facility and request that the professional person examine the minor to determine whether the minor has a mental disorder and is in need of inpatient treatment; or
- a secure detoxification facility or approved substance use disorder treatment program and request that a substance use disorder assessment be conducted by a professional person to determine whether the minor has a substance use disorder and is in need of inpatient treatment.

The consent of the minor is not required for admission, evaluation, and treatment if the parent brings the minor to the facility.

The Health Care Authority (HCA) must assure that, for any minor admitted to inpatient treatment under parent-initiated treatment, a review is conducted by a physician or other mental health professional who is employed by HCA, or an agency under contract with HCA, and who neither has a financial interest in continued inpatient treatment of the minor nor is affiliated with the facility providing the treatment. The physician or other mental health professional shall conduct the review not less than seven, but no more than, 14 days following the date the minor was brought to the facility to determine whether it is a medical necessity to continue the minor's treatment on an inpatient basis. In conducting this review, HCA must consider the opinion of the treatment provider, the safety of the minor, and the likelihood the minor's mental health will deteriorate if released from inpatient treatment. HCA must also consult with the parent in advance of making its determination.

If HCA determines it is no longer a medical necessity for a minor to receive inpatient treatment, HCA must immediately notify the parents and the facility. The facility must release the minor to the parents within 24 hours of receiving notice. If the professional person in charge and the parent believe it is a medical necessity for the minor to remain in inpatient treatment, the minor must be released to the parent on the second day following the HCA's determination in order to allow the parent time to file an at-risk youth petition. If the HCA determines it is a medical necessity for the minor to receive outpatient treatment and the minor declines to obtain such treatment, such refusal must be grounds for the parent to file an at-risk youth petition.

Following the HCA review, a minor child may petition the superior court for their release from a facility. This petition may be filed five days following the review. The court must release the minor unless it finds, upon a preponderance of the evidence, that it is a medical necessity for the minor to remain at the facility.

Parent-Initiated Outpatient Treatment. A parent may bring, or authorize bringing, their minor child to:

- a provider of outpatient mental health treatment and request that an appropriately trained professional person examine the minor to determine whether the minor has a mental disorder and is in need of outpatient treatment; or
- a provider of outpatient substance use disorder treatment and request that an appropriately trained professional person examine the minor to determine whether the minor has a substance use disorder and is in need of outpatient treatment.

The consent of the minor is not required for evaluation if the parent brings the minor to the provider. The professional person may evaluate whether the minor has a mental disorder or substance use disorder and is in need of outpatient treatment.

Summary of Amended Bill: Parent-initiated treatment is renamed family-initiated treatment. Adolescent is defined as a person aged thirteen through seventeen. The range of persons authorized to consent on behalf of the adolescent as a parent under family-initiated treatment is expanded to include:
- a person to whom a parent has given a signed authorization to make health care decisions on behalf of the adolescent;
- a stepparent who is actively involved in caring for the adolescent;
- a kinship caregiver who is actively involved in caring for the adolescent; and
- another relative who is responsible for the health care of the adolescent, who may be requires to provide a declaration under penalty of perjury.

If a dispute arises between individuals authorized to act as a parent, the disagreement must be resolved through an established hierarchy:
- the appointed guardian or legal custodian;
- a person authorized by the court to consent to medical care for a child in out-of-home placement;
- parents of the minor patient;
- an individual given the authorization to make health decisions if given signed authorization by the parent; and
- an adult that is a relative responsible for the minor patient.

If the treatment initiated by the family-initiated treatment process includes substance use disorder treatment, the treatment agency must redact patient-identifying information before providing notice of treatment to HCA, unless the adolescent consents to the disclosure of information.

Family-initiated treatment provisions for outpatient treatment are expanded to specify that the parent may access up to 12 outpatient sessions for an adolescent occurring with a specific professional person within a three-month period. Partial hospitalization and intensive outpatient treatment are authorized if recommended by a professional. The provider must convene a treatment review at least every 30 days including the adolescent and parent to re-determine whether continuing treatment is medically necessary. HCA must conduct an independent review of the medical necessity for treatment at least every 45 days.

A mental health professional who provides mental health treatment to an adolescent who self-refers to treatment through the adolescent-initiated treatment process must not proactively provide information and records related to treatment to a parent unless the

adolescent states a clear desire for this, unless the professional has concern for the adolescent's imminent health and safety. If the professional discloses information to the parent, the professional must provide notice to the adolescent, giving the adolescent reasonable opportunity to express any concerns about this disclosure, and document any objections by the adolescent to disclosure in the treatment record.

A mental health professional who provides mental health treatment to an adolescent who is referred by a parent through the family-imitated treatment process is encouraged to exercise their discretion to proactively release information and records related to the adolescent's mental health treatment to a parent, excluding psychotherapy notes. The legislation provides an exemplary list of appropriate mental health treatment information and records for sharing with a parent, including treatment plan, medications, and coaching on parenting and behavioral management strategies.

The requirement for notice to parents when an adolescent admits themselves for inpatient mental health treatment is modified to allow the professional person in charge of the facility to withhold notice if the professional person determines there is a compelling reason to believe that notice would be detrimental to the adolescent. If the professional person makes this determination, or if contact cannot be made, the professional person must document the reasons in the medical chart and the facility must check the Washington State Patrol missing persons database every eight hours for the first 72-hours and once every 24-hours thereafter, until such time as the facility has had contact with a parent of the adolescent. If the adolescent is listed as missing, the facility must provide notice of the whereabouts of the adolescent and a description of their condition to the Department of Children, Youth, and Families (DCYF). The notice to parents requirement is eliminated for admissions that involve substance use disorder treatment, unless the adolescent provides written consent or permitted by federal law. Notification efforts must begin as soon as reasonably practicable considering the adolescent's immediate medical needs.

A mental health professional is not civilly liable for disclosing or failing to disclose mental health treatment information relating to an adolescent to a parent as long as the decision was reached in good faith and without gross negligence.

The following actions are not permitted if an adolescent is admitted for substance use disorder treatment or begins a course of outpatient substance use disorder treatment unless the adolescent consents, or permitted by federal law:

- notification to an attorney, the designated crisis responder, and the parent of an adolescent's intent to leave voluntary treatment;
- notification to HCA which identifies the adolescent when a adolescent is admitted to a facility through family-initiated treatment procedures;
- random selection and review to determine if the adolescent was properly admitted through family-initiated treatment procedures based on an objective evaluation;
- independent review of medical necessity for outpatient treatment accessed through family-initiated treatment by HCA;
- conducting a treatment review with parents and the provider at least every 30 days following the commencement of outpatient treatment through family-initiated treatment procedures; or
- disclosure of treatment information to a parent.

DCYF may disclose limited mental health treatment information to the care provider of a minor placed in out-of-home care without the consent of the minor.

Subject to appropriations, HCA must provide an online training for behavioral health providers regarding state law and best practices for providing services to children, youth, and families and permitted disclosures of behavioral health treatment information. The training must be free for providers and provide information about family-accessed treatment and adolescent-accessed treatment.

Subject to appropriations, HCA must conduct an annual survey to measure the impact of family-initiated treatment policies for three years following the implementation of this act. HCA must provide a report each November, ending on November 1, 2022, with recommendations for statutory change, if needed, based on survey results.

This act may be known and cited as the Adolescent Behavioral Health Care Access Act.

Appropriation: The bill contains a null and void clause requiring specific funding be provided in an omnibus appropriation act.

Fiscal Note: Available.

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

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

Staff Summary of Public Testimony on Engrossed Second Substitute House Bill (Behavioral Health Subcommittee to Health & Long Term Care): *The committee recommended a different version of the bill than what was heard.* PRO: This bill came through the Children's Mental Health Work Group and is the product of what has been an amazingly positive collaborative effort centering around families. There is a cultural shift away from punishment toward treatment. This bill centers families in the treatment process. The name change for parent-initiated treatment is designed to reduce stigma. The changes in the House bring the bill closer to the original work group recommendation. My son now lives independently in his own apartment after struggling with mental health issues. This bill represents a fundamental mind shift, which is overdue. This bill is a balancing act. Everyone is not going to be 100 percent happy, but the group feels it makes a major improvement. The parent-initiated treatment process has not worked for many families for a long time. This bill improves the process by making sure that parents have a role and are able to access information. I am pleased that kinship caregivers will be able to initiate parent-initiated treatment. The work group process was very inclusive and thorough.

Persons Testifying (Behavioral Health Subcommittee to Health & Long Term Care): PRO: Laurie Lippold, Partners for Our Children; Peggy Dolane, citizen.

Persons Signed In To Testify But Not Testifying (Behavioral Health Subcommittee to Health & Long Term Care): No one.

Staff Summary of Public Testimony on the Bill as Amended by Behavioral Health Subcommittee to Health & Long Term Care (Ways & Means): *The committee recommended a different version of the bill than what was heard.* PRO: This is a very well vetted bill. There were 21 meetings this summer and it was reviewed twice in the Children's Mental Health Workgroup. This bill is long overdue. It will help a lot of families who are desperate to get early intervention for their children. The Children's Mental Health Work Group looked at a parent initiated treatment process and made recommendations for improving it so it would work more effectively for families. This bill is the result of that work and is supported by parents, providers, and others. It is a delicate balance of interests with all having the overarching goal to ensure that families receive quality effective services.

Persons Testifying (Ways & Means): PRO: Peggy Dolane, parent advocate; Alejandra Villa, Partners for Our Children.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.