

SENATE BILL REPORT

SB 6274

As of January 24, 2020

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: Senators Keiser, O'Ban, Hasegawa, Conway, Das and Darneille; by request of Department of Health.

Brief History:

Committee Activity: Behavioral Health Subcommittee to Health & Long Term Care: 1/24/20.

Brief Summary of Bill

- Establishes a provisional license with additional oversight requirements for certain psychiatric hospitals.
- Establishes penalties for psychiatric hospitals that fail or refuse to comply with state licensing standards.
- Requires psychiatric hospitals to report deaths and patient elopements that occur on their grounds.

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

Staff: Greg Attanasio (786-7410)

Background: Licensing of Private Establishments. The Department of Health (DOH) regulates "establishments" which are defined as 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 DOH survey of the facility. Establishments must

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operate in compliance with DOH regulations regarding clinical facilities, patient care services, staffing, patient safety, clinical records, and pharmacy and medication services.

DOH may conduct inspections at any time to determine compliance with establishment standards. DOH may issue a statement of deficiencies if it finds 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. DOH licenses several types of health care facilities, including hospitals, establishments, and ambulatory surgical facilities. If an inspection or survey identifies noncompliance with health care facility standards, DOH may require the facility to submit a plan of correction to address each of the deficiencies. DOH may also, for good cause, deny, suspend, revoke, or modify a license or provisional license. In the case of ambulatory surgical facilities, DOH may assess civil monetary penalties up to \$1,000 per violation. Operating an establishment without a license may result in imprisonment and a fine of up to \$1,000.

Incident Reporting. Certain types of health care facilities, including establishments, must report adverse health events to DOH. Under the reporting system, an initial notification must be filed with DOH within 48 hours of confirmation of the 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. Reportable adverse events are grouped into seven categories, including 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 Bill: Provisionally-Licensed Psychiatric Hospitals. A provisional license issued by DOH is established for psychiatric hospitals that are either new hospitals or existing hospitals that changed ownership after July 1, 2020. The provisional license is effective for 24 months and is not renewable. During the provisional licensing period, DOH must provide enhanced oversight through inspections and technical assistance. A provisionally-licensed psychiatric hospital may apply for a full license 60 days before the provisional license expires if it has been substantially compliant with DOH rules for at least three inspections. DOH must establish a provisional license fee.

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 or provisionally licensed psychiatric hospital fails or refuses to comply with state licensing standards, DOH may take one or more of several actions. DOH may:

- refuse to issue a license;
- impose reasonable conditions on a license;
- impose civil fines of at least \$10,000 per violation, up to \$1 million;
- impose civil fines of up to \$10,000 for each day that a person operates a psychiatric hospital without a license;
- suspend, revoke, or refuse to renew a license;

- suspend new admissions to the facility by immediately issuing a stop placement order; or
- suspend the admission of a specific category or categories of patients by imposing a limited stop placement order.

Civil fines collected by DOH may only be used to provide technical assistance to psychiatric hospitals and to offset the cost of psychiatric hospital licensing activities. If DOH issues a stop placement order or limited stop placement order, it must conduct a follow-up inspection within 15 business days of receiving written notice from the psychiatric hospital describing how the violations that were the basis for the order have been corrected. 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. A licensee aggrieved by a DOH action may request an adjudicative proceeding pursuant the Administrative Procedure Act.

Beginning with psychiatric hospitals, DOH must make health care facility inspection reports available to the public on the internet, to the extent that resources allow.

DOH is directed to evaluate the appropriate levels of oversight for the health care facilities it regulates and identify opportunities to consolidate and standardize licensing and enforcement standards across facility types. DOH 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 DOH any deaths and patient elopements that occur on its grounds. The report must be made within three days of the elopement or death. 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.

Appropriation: None.

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: PRO: DOH lacks sufficient oversight and enforcement authority over private behavioral health hospitals. This bill provides needed progressive enforcement tools and mirrors regulations for long-term care facilities. Publishing of investigations will allow the public to know if there have been problems at certain facilities.

OTHER: Fines and other punitive action should be reworked so there is a progressive structure and it is clear when each action would be taken. The use of a provisional license is not necessary and may negatively impact the facilities ability to operate. Enhanced oversight is still possible with full licensure. Publishing of investigations should be accompanied by

outcomes and corrective action plans. DOH should have to reevaluate a stop placement order within five days. Any regulation should apply to all care settings.

Persons Testifying: PRO: Senator Karen Keiser, Prime Sponsor; Michael Uradnik, Cascade Behavioral Health; Lindsey Grad, SEIU Healthcare 1199NW; Christie Spice, Department of Health; Jeff Torgesen, citizen; Michael Torgesen, citizen.

OTHER: Chelene Whiteaker, Washington State Hospital Association; Lisa Thatcher, Washington State Hospital Association; Nick Federici, Fairfax Hospital.

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