SENATE BILL REPORT
SB 6469

As of February 7, 2020

Title: An act relating to improving access to behavioral health treatment in certified crisis facilities.

Brief Description: Improving access to behavioral health treatment in certified crisis facilities.

Sponsors: Senators Randall, O'Ban, Nguyen, Hasegawa, Saldaña and Wilson, C.

Brief History:
Committee Activity: Behavioral Health Subcommittee to Health & Long Term Care: 2/06/20.

Brief Summary of Bill

- Requires an evaluation and treatment facility or secure withdrawal management and stabilization facility that has treatment capacity available to admit a person detained for involuntary treatment, or applying for transfer from a facility providing involuntary treatment pursuant to a single-bed certification, unless an exception applies.
- Requires managed care organizations and behavioral health administrative services organizations to take action to secure a safe placement or safe discharge for a person who is detained for involuntary treatment during a 24-hour emergency hold period if no other placement is available.
- Requires crisis facilities to provide medically necessary co-occurring disorder treatment to persons receiving involuntary treatment by July 1, 2021.

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

Staff: Kevin Black (786-7747)

Background: Involuntary Commitment for Behavioral Health. A person may be detained for involuntary treatment under the Involuntary Treatment Act (ITA) during a period of crisis if an investigation by a designated crisis responder (DCR) determines that the person has a

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mental disorder or substance use disorder (SUD) that causes them to present a likelihood of serious harm or to be gravely disabled.

Likelihood of serious harm means:

- a substantial risk the person will inflict physical harm upon themself or others, evidenced by threats or attempts to commit suicide, cause physical harm, or place another person in reasonable fear of sustaining such harm;
- a substantial risk the person will inflict physical harm on the property of others, evidenced by behavior which has caused substantial loss or damage; or
- the person has threatened the physical safety of another and has a history of one or more violent acts.

Gravely disabled means:

- being in danger of serious physical harm resulting from failure to provide for the person's essential human needs of health or safety; or
- experiencing severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control and the person is not receiving care essential to their health or safety.

A peace officer or other entity at the request of a DCR may detain a person in an emergency room, triage facility, crisis stabilization unit, evaluation and treatment facility (E&T), or secure withdrawal management and stabilization facility (SWMS) for up to 12 hours for a DCR investigation, or for up to 6 hours if the person self-presents to the facility or is brought to the facility and refuses voluntary admission. If the DCR determines that further detention for treatment is appropriate, the DCR must detain the person within the 6 or 12-hour period to an E&T, SWMS, or facility willing to provide treatment pursuant to a single-bed certification. Continued detention may occur for 72 hours excluding weekends and holidays and triggers a number of rights on behalf of the detained person, including the right to counsel and the right to a court hearing if detention continues beyond the 72-hour period. Detention may continue with court authorization for renewable periods of 14, 90, or 180 days, or the court may dismiss the petition for additional treatment or order treatment in the community as a less restrictive alternative.

Certified Involuntary Treatment Facilities. An E&T is a facility certified to provide involuntary treatment to a person with a mental health disorder. E&Ts may be embedded in community hospitals that provide a wide range of medical services in different areas of the facility or may be provided in standalone facilities with limited resources to address a patient's physical care needs. A SWMS is a facility certified to provide involuntary treatment based on an SUD.

Single-Bed Certifications. The Health Care Authority (HCA) may authorize a single-bed certification to a facility willing and able to provide timely and effective mental health services to a person detained for involuntary commitment. A single bed certification is a 30-day authorization specific to the patient that may be requested for a number of reasons, including when a person needs medical services that are not available in a certified facility, to facilitate continuity of care, to allow a person to receive treatment close to their home community, and to extend the resources available for people detained in the ITA system. A facility must agree to provide services under a single-bed certification. Data from HCA

indicates that an average of 865 single bed certifications per month were authorized during calendar year 2019.

No Bed Reports. When a DCR is unable to find a placement for a person who meets detention criteria under the ITA in an E&T, SWMS, or single-bed certification within the 6 or 12-hour investigation period, and the person cannot be served on a less restrictive alternative, the DCR must end the involuntary commitment investigation and file a report (no bed report) with HCA. The DCR report must be filed within 24 hours, including specified information such as a list of facilities that refused to admit the person. HCA must promptly notify the Medicaid managed care organization (MCO) or behavioral health administrative services organization (BH-ASO) responsible for providing community behavioral health services to the person and the MCO or BH-ASO must attempt to engage the person in appropriate services and report back to HCA within seven days. Data from HCA indicates it received an average of 64 no bed reports per month during calendar year 2019.

Summary of Bill: An E&T or SWMS that has treatment capacity must admit a person to the facility at the request of the DCR who has been detained for involuntary inpatient care unless:

- the person requires medical services not generally available at a certified involuntary treatment facility;
- a more appropriate facility exists to serve the specific needs of the person that has agreed to admit the person; or
- unusual reasons specific to the person or their prior relationship with the facility exist that make the facility unable to admit the person.

An E&T or SWMS that has treatment capacity must admit a person who is receiving temporary involuntary treatment services pursuant to a single-bed certification upon application for transfer by the single-bed certification facility when the attending physician considers the person to be medically stable unless a similar exception applies.

An E&T or SWMS that has treatment capacity and declines to admit a person under the above circumstances must document the request for admission and statutorily permitted reason for declining admission to the person in its records and immediately provide a copy to the requesting DCR or single-bed certification facility. The E&T or SWMS must provide its admission determination to a DCR within two hours of receiving the DCR's admission request for the person.

When a DCR or single-bed certification facility determines they are unable to find a placement for a person who meets ITA detention criteria, and the DCR or facility has received at least two denials of admission from an E&T or SWMS, the DCR or facility must immediately transmit notification to the MCO responsible for the cost of the person's care, or the BH-ASO if the person is not enrolled in Medicaid, of the need for emergency intervention to secure access to crisis services for the person. The MCO or BH-ASO must use its network and authority to obtain a safe placement or safe discharge for the person within 24 hours. If the person is being held for initial evaluation by a DCR, the initial evaluation hold is extended during this 24-hour emergency period, with a requirement for the DCR to serve notice of the emergency hold period on the person and for the person to be provided access to a mental health professional during the 24-hour period.

If an MCO or BH-ASO is unable to find a safe placement or safe discharge for the person during this 24-hour emergency hold period, the hold must dissolve and the MCO or BH-ASO must make a no bed report to HCA. The obligation of the DCR to make no bed report is eliminated. The MCO or BH-ASO must be responsible for the cost of care for the person during the 24-hour emergency hold period, unless coverage is provided by another entity.

Effective July 1, 2021, an E&T must provide medically necessary SUD services to a person admitted to the E&T who has a co-occurring SUD, and a SWMS must provide medically necessary mental health services to a person admitted to the SWMS who has a co-occurring mental health disorder.

DOH must review denials of admission requests by E&Ts and SWMS under this act during its regular facility licensure inspections and analyze the denials to determine if there are means available to the facility to improve their availability to provide services to persons in crisis, including the receipt of technical assistance from DOH or other entities.

Appropriation: None.

Fiscal Note: Requested on January 22, 2020.

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: PRO: Our state has made huge strides towards equity and accessibility for behavioral health care, but there is more to do. This bill puts empathetic stabilizing care within reach for more Washingtonians, ensuring that facilities with capacity to treat individuals will not turn them away. MCOs and BH-ASO will be brought to the table to help find placements for persons in need. Persons with co-occurring disabilities are not getting the best care. My son was detained for involuntary treatment and languished for four months in regular hospitals. He was refused admission twice from an E&T and expelled from a third because of his blood pressure. When treatment is denied the purpose of mental health care is short circuited. This anemic law needs a blood transfusion. This bill would help prevent abuses. This bill is needed to push the system to work the way it should. As DCRs we struggle all the time with not being able to place clients who we have determined meet the criteria for detention in an available facility. Please expand this to include help for people where no single-bed certifications are available. Streamlining reporting requirements would help the process go more smoothly. DCRs work 24 hours a day, seven days a week. Please increase the timeline to allow follow up from MCOs and BH-ASOs which only work during business hours.

OTHER: This is an important issue. Hospitals are uniquely positioned to understand the problem. We share to goal of making sure people are in the right facilities, getting the right treatment, from the right providers. Available beds do not always equate to certified beds, because you need to have the right treatment available. Mental health and SUD treatment techniques are different and so are the providers. We do not think it's a realistic expectation to treat SUD in mental health facilities. Two hours is not enough time to make an admission

decision, and could lead to more single-bed certifications. We are pleased this legislation is dressing a real concern. E&Ts turn down individuals who have developmental disabilities, dementia, and other conditions besides mental health. King County did a report documenting the reasons for declines. We are not sure why a 24-hour emergency hold is necessary. DCRs should identify if there is a problem and coordinate with services in the time available. We recognize the need for mental health treatment in SWMS programs. This seems to be trying to make E&Ts and SWMS into more similar programs, but there are vast regulatory, staffing, and cost differences. The rates for SWMS would need to be increased. It is hard to find the staffing in rural areas. Please work with DOH to examine requirements for E&Ts and SWMS.

Persons Testifying: PRO: Senator Emily Randall, Prime Sponsor; Donald Bremner, citizen; Jessica Shook, Olympic Health and Recovery Services.

OTHER: Lisa Thatcher, Washington State Hospital Association; Tony Prentice, American Behavioral Health Systems; David Lord, Disability Rights Washington.

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