

SENATE BILL REPORT

SB 6591

As of February 12, 2020

Title: An act relating to establishing a work group to address mental health advance directives.

Brief Description: Establishing a work group to address mental health advance directives.

Sponsors: Senators Dhingra, Das, Darneille, Keiser, Rivers and Wilson, C.

Brief History:

Committee Activity: Behavioral Health Subcommittee to Health & Long Term Care:
1/31/20, 2/06/20 [DPS-WM].

Ways & Means: 2/10/20.

Brief Summary of First Substitute Bill

- Requires the Health Care Authority to convene a work group to examine mental health advance directives.
- Provides stakeholders who must be invited to participate in the work group.
- Requires the work group to produce a final report by October 1, 2021.

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

Majority Report: That Substitute Senate Bill No. 6591 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Dhingra, Chair; Wagoner, Ranking Member; Darneille, Frockt and O'Ban.

Staff: Kevin Black (786-7747)

SENATE COMMITTEE ON WAYS & MEANS

Staff: Travis Sugarman (786-7446)

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: Washington State's mental health advance directive (MHAD) law passed in 2003. An MHAD is a written directive made by a person describing what the person wants to happen if they become incapacitated by mental illness. An MHAD may include:

- the person's preferences and instructions for mental health treatment;
- consent to specific types of mental health treatment;
- refusal to consent to specific types of mental health treatment;
- consent to admission to and retention in a facility for mental health treatment for up to 14 days; or
- appointment of an agent to make mental health treatment decisions on behalf of a person, including empowering that person to consent to voluntary mental health treatment on behalf of the person.

An MHAD must provide a person with a full range of choices and be signed by two witnesses who know the person and attest that the person does not appear to be acting under incapacity, fraud, undue influence, or duress. An MHAD may be revoked at any time except during a period of incapacity, unless the terms of the MHAD allow revocation during periods of incapacity.

A health care provider must act in accordance with the terms of an MHAD to the fullest extent possible, unless compliance would violate an accepted standard of care, the requested treatment is not available, or another exception applies. Liability protections apply to providers who provide treatment according to an MHAD. A person may not be required to execute or refrain from executing an MHAD, nor may the existence of an MHAD be a condition for being insured or receiving services or admission to a facility. A standard form for MHADs is provided in state law.

Summary of Bill (First Substitute): The Health Care Authority (HCA) must facilitate a work group to examine:

- the use of MHADs in Washington;
- how to improve and promote awareness and utilization of MHADs;
- barriers and outcomes; and
- how the MHAD law should be updated.

HCA must invite participation by behavioral health advocates, peers and peer advocates, hospitals, community behavioral health agencies, dementia advocates, the Washington State Bar Elder Law Section, Seattle University School of Law, the Washington State Long-Term Care Ombuds, managed care organizations, designated crisis responders, physicians, jails, and others at their discretion.

The work group must hold its first meeting by June 30, 2020, and submit a final report to the Governor and Legislature by October 1, 2021.

EFFECT OF CHANGES MADE BY BEHAVIORAL HEALTH SUBCOMMITTEE TO HEALTH & LONG TERM CARE COMMITTEE (First Substitute): HCA must invite participation by physicians in the MHAD work group. The time for a final report is shortened until October 1, 2021.

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 Original 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 is about trying to see what tools we have in our toolbox to provide individuals with the help that they need. MHADs empower individuals living with mental health concerns live a self-directed life by specifying how they want to be cared for when they are most vulnerable. When a person's rights are not respected, it can be traumatizing and decrease trust in the system. MHADs help people communicate their wishes when they would otherwise not be able to do so. This idea started when a group of us got together over the summer to talk about why the MHAD law is not more effective. Hospitals do not use it because of the lack of a registry; there is a lack of communication among providers; and there is some disconnect about whether it can be used in jails. Advocates and stakeholders need to come together and hash out the details about how we can get this law to work. There are technical issues around using advanced directives in a hospital setting, which is why we asked for a long time horizon. Perhaps the time was not right in 2003. Working on this is a great idea if only to get buy in from everyone.

Persons Testifying (Behavioral Health Subcommittee to Health & Long Term Care): PRO: Senator Manka Dhingra, Prime Sponsor; Melanie Smith, NAMI Washington; David Lord, Disability Rights Washington; Celia Jackson, King County.

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

Staff Summary of Public Testimony on First Substitute (Ways & Means): PRO: This bill is about trying to see what tools we have in our toolbox to provide individuals with the help that they need. MHADs empower individuals living with mental health concerns live a self-directed life by specifying how they want to be cared for when they are most vulnerable.

Persons Testifying (Ways & Means): PRO: Melanie Smith, NAMI Washington.

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