

# HOUSE BILL REPORT

## SHB 1348

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### As Amended by the Senate

**Title:** An act relating to the provision of medical assistance to incarcerated persons.

**Brief Description:** Providing medical assistance to incarcerated persons.

**Sponsors:** House Committee on Health Care & Wellness (originally sponsored by Representatives Davis, Schmick, Frame, Leavitt, Simmons, Valdez, Fitzgibbon, Orwall, Ortiz-Self, Slatter, Caldier, Stonier, Peterson, Ramel, Goodman, Taylor, Sutherland, Ryu, Hackney, Lovick, Barkis, Pollet, Macri, Callan, Santos, Ormsby, Tharinger, Riccelli, Lekanoff, Harris-Talley and Harris).

#### **Brief History:**

##### **Committee Activity:**

Health Care & Wellness: 2/4/21, 2/11/21 [DPS];  
Appropriations: 2/17/21, 2/18/21 [DPS(HCW)].

##### **Floor Activity:**

Passed House: 2/26/21, 97-0.  
Senate Amended.  
Passed Senate: 4/10/21, 49-0.

#### **Brief Summary of Substitute Bill**

- Prohibits a person's Medicaid eligibility from being affected by the person's incarceration status for up to 29 days.

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### HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 14 members: Representatives Cody, Chair; Bateman, Vice Chair; Schmick, Ranking Minority Member; Caldier, Assistant Ranking Minority Member; Bronoske, Davis, Harris, Macri, Riccelli, Rude, Simmons, Stonier, Tharinger and Ybarra.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

**Staff:** Jim Morishima (786-7191).

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** The substitute bill by Committee on Health Care & Wellness be substituted therefor and the substitute bill do pass. Signed by 33 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Boehnke, Caldier, Chandler, Chopp, Cody, Dolan, Dye, Fitzgibbon, Frame, Hansen, Harris, Hoff, Jacobsen, Johnson, J., Lekanoff, Pollet, Rude, Ryu, Schmick, Senn, Springer, Steele, Stonier, Sullivan and Tharinger.

**Staff:** Meghan Morris (786-7119).

### **Background:**

Medicaid is a program jointly administered by the federal and state government that provides health benefits to eligible individuals. Federal law prohibits Medicaid benefits from being provided to a person who is incarcerated, except for selected inpatient services. State law requires the suspension of Medicaid benefits for a person who is incarcerated, rather than the termination of such benefits. The person must be allowed to apply for suspended Medicaid benefits, regardless of whether the person's release date is known.

### **Summary of Substitute Bill:**

If a person is enrolled in Medicaid at the time of incarceration, the person's incarceration status may not affect his or her enrollment in Medicaid during the first 29 days of incarceration in a state or local correctional institution. A person who is not enrolled in Medicaid at the time of incarceration may enroll in Medicaid during incarceration. The Medicaid status for such a person may not be affected during the first 29 days of incarceration.

After incarceration for 30 days or more, the person's Medicaid benefits are subject to suspension.

The Health Care Authority may seek any necessary state plan amendments or waivers to implement this requirement.

### **EFFECT OF SENATE AMENDMENT(S):**

#### The Senate amendment:

- predicates suspension of Medicaid benefits on the Health Care Authority receiving notice that an enrollee is confined in a setting in which federal financial participation

- is disallowed by the state's agreements with the federal government;
- expands the suspension policy to include persons confined in treatment facilities other than state hospitals; and
  - requires the Department of Corrections or the chief law enforcement officer responsible for the operation of a jail to make reasonable efforts to collaborate with Medicaid managed care organizations for purposes of care coordination activities and improving health care delivery and release planning for persons confined in the jail.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony (Health Care & Wellness):**

(In support) Community reentry is a critical time for incarcerated persons. Allowing Medicaid suspension was a huge step, but did not resolve the issue for everyone. When a person's Medicaid is suspended, it can take a few days to reactivate it. This can cause gaps in care, including delays in service, barriers to medication access (including medications for medication-assisted treatment and anti-psychotic medications), and barriers to direct transfers to inpatient facilities. Most incarcerated persons want to change their lives, but delays in care sometimes reinitiate the criminal cycle. Most people are incarcerated for less than 30 days. Many of these people have complex health needs and most are eligible for Medicaid. Lack of access to care disproportionately impacts people who are poor, disabled, and members of Black, Indigenous, and people of color communities. This is also a reproductive justice issue. Many kids have parents who are incarcerated.

People who need care should receive care. During the pandemic, this policy could not be more urgent. This bill will allow next-day access for persons incarcerated in jail. The bill will also allow cities and counties to bill Medicaid for inpatient services, which will save local revenues. Many counties have insufficient resources for quality reentry. The savings from this bill can be redirected to service expansions and diversions. This bill will reduce recidivism. This bill will allow reentry to be coordinated from jail. This bill will promote healthy families and communities and reduce inequities.

The federal government does not have a problem with allowing people to remain enrolled in Medicaid while incarcerated. A federal waiver may not be necessary.

Jail transitions can be challenging for Medicaid managed care organizations (MCOs). By the time an MCO is aware a person is incarcerated, the person is already released. This bill will help make sure member data are not lost in the transition. The bill should be clarified to indicate that an incarcerated person stays with the MCO and does not revert to fee-for-

service Medicaid.

(Opposed) None.

**Staff Summary of Public Testimony (Appropriations):**

(In support) This bill does not go far enough. People should have access to medical and behavioral health care the day of release, not a day or week later. The Center for Medicare and Medicaid Services (CMS) notified states in 2004 that it is not necessary to change a person's Medicaid eligibility status during incarceration, but states cannot bill Medicaid during that time. Now federal legislation allows states to bill Medicaid for some services while still incarcerated with a Medicaid Section 1115 waiver (waiver). The 2004 CMS letter clarifies that the payment exclusion under Medicaid relating to individuals residing in public institutions does not affect their eligibility. The CMS is clear that eligible Medicaid clients may be enrolled before, during, and after the time they are held involuntarily in secure custody. The costs of this bill could be taken away by simply not suspending people in the first place.

If the waiver is granted, the potential for this bill is great. It allows those in jail in pretrial status who have not been found guilty of a crime to retain their Medicaid status for the first 30 days. This is significant because 85 percent of those in pretrial are in jail for an average of 25 days. This bill allows counties to save health care costs. In terms of numbers, 50 percent have chronic health conditions, 65 percent have major health conditions, 53 percent have substance abuse issues, and 49 percent have coexisting conditions. This bill will help people leaving jails successfully reenter society and receive health care.

(Opposed) None.

**Persons Testifying (Health Care & Wellness):** Representative Davis, prime sponsor; James McMahan, Washington Association of Sheriffs and Police Chiefs; Juliana Roe, Washington State Association of Counties; Cammy Hart-Anderson, Snohomish County; Alan Friedlob, National Alliance on Mental Illness–Washington; Bob Cooper, National Association of Social Workers, Washington Chapter; Ethan Frenchman, Disability Rights Washington; Chris Bandoli, Association of Washington Healthcare Plans; Billie Dickinson, Washington State Medical Association; and Yvette Maganya, Planned Parenthood Votes Northwest and Hawaii.

**Persons Testifying (Appropriations):** Juliana Roe, Washington State Association of Counties; Bob Cooper, National Association of Social Workers Washington State Chapter; and Sanjay Walvekar, Washington Association of Sheriffs and Police Chiefs.

**Persons Signed In To Testify But Not Testifying (Health Care & Wellness):** None.

**Persons Signed In To Testify But Not Testifying (Appropriations):** None.