HOUSE BILL REPORT
2SSB 5195

As Passed House - Amended:
April 9, 2021

Title: An act relating to opioid overdose reversal medication.

Brief Description: Concerning opioid overdose reversal medication.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Liias, Muzzall, Das, Dhingra, Nguyen and Wilson, C.).

Brief History:
Committee Activity:
Health Care & Wellness: 3/18/21, 3/24/21 [DP];
Appropriations: 3/30/21, 3/31/21 [DP].
Floor Activity:
Passed House: 4/9/21, 89-8.

Brief Summary of Second Substitute Bill
(As Amended By House)

- Requires a hospital emergency department to provide opioid overdose reversal medication to a patient with symptoms of an opioid overdose or opioid use disorder upon discharge.
- Requires behavioral health agencies to assist a client with symptoms of an opioid use disorder or who reports recent unauthorized opioid use in directly obtaining opioid reversal medication.
- Requires the Health Care Authority (HCA) to establish the opioid overdose reversal medication bulk purchasing and distribution program.
- Requires Medicaid managed care organizations and the Health Care Authority (HCA) to reimburse hospitals and behavioral health agencies for providing opioid overdose reversal medication.

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.

HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

Majority Report: Do pass. Signed by 11 members: Representatives Cody, Chair; Bateman, Vice Chair; Caldier, Assistant Ranking Minority Member; Bronoske, Davis, Macri, Riccelli, Rude, Simmons, Stonier and Tharinger.

Minority Report: Without recommendation. Signed by 4 members: Representatives Schmick, Ranking Minority Member; Harris, Maycumber and Ybarra.

Staff: Kim Weidenaar (786-7120).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass. Signed by 30 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; Boehnke, Caldier, Chandler, Chopp, Cody, Dolan, Dye, Fitzgibbon, Frame, Hansen, Harris, Hoff, Johnson, J., Lekanoff, Pollet, Rude, Ryu, Schmick, Senn, Springer, Steele, Stonier, Sullivan and Tharinger.

Minority Report: Without recommendation. Signed by 3 members: Representatives Stokesbary, Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Jacobsen.

Staff: Meghan Morris (786-7119).

Background:

Opioid Overdose Reversal Medication.
Opioid overdose reversal medications, such as Narcan, Naloxone, and Evzio, can be administered to an individual experiencing an opioid overdose to rapidly restore normal breathing. These medications may be injected intravenously in muscle or sprayed into the nose. Opioid overdose reversal medication is defined as any drug used to reverse an opioid overdose that binds to opioid receptors and blocks or inhibits the effects of opioids acting on those receptors.

The Secretary of Health, or designee, is authorized to issue a standing order for opioid reversal medication to any person at risk of experiencing an opioid related overdose or any person or entity in a position to assist a person at risk of experiencing an opioid-related overdose. Prescribers and dispensers are authorized to provide opioid overdose reversal medication pursuant to the standing order or a collaborative drug therapy agreement to any person at risk of experiencing an opioid overdose or to any person in a position to assist a person at risk of experiencing an opioid overdose. When a pharmacist dispenses an opioid overdose reversal medication, the pharmacist must provide written instructions on the

proper response to an opioid-related overdose, which must include seeking medical attention.

Hospital emergency departments may distribute prepackaged opioid overdose reversal medication when the practitioner determines the patient is at risk of an opioid overdose and it is authorized by the hospital's policies and procedures. The prepackaged medications are exempt from the Pharmacy Commission's labeling requirements.

Prescribing Authority.
Opioid treatment programs may order, possess, dispense, and administer opioid overdose reversal medication and medications approved by the United States Food and Drug Administration (FDA) to treat opioid use disorder. Registered nurses and licensed practical nurses may dispense up to a 31-day supply of FDA-approved medications to patients receiving opioid use disorder treatment under an order or prescription.

Summary of Amended Bill:

Dispensing and Distribution Requirements for Opioid Overdose Reversal Medication.
A hospital emergency department must provide a person with opioid overdose reversal medication upon discharge, unless the provider determines it to be clinically inappropriate to do so or the patient already has the medication, if the person presents with symptoms of an opioid overdose, opioid use disorder, or other adverse event related to opioid use. If the hospital dispenses opioid overdose reversal medication, it must provide directions for use. The medication may be dispensed using technology used to dispense the medication.

Until the opioid overdose reversal medication bulk purchasing and distribution program is operational, the hospital must bill the patient's Medicaid benefit or insurance for the medication and the Health Care Authority (HCA) for patients without insurance coverage.

For any client presenting with symptoms of opioid use disorder or who reports recent use of opioids outside legal authority, all licensed or certified behavioral health agencies that provide individuals treatment for mental health or substance use disorder, withdrawal management, secure withdrawal management, evaluation and treatment, or opioid treatment programs must during the client's intake, discharge, or treatment plan review, as appropriate:

- inform the client about opioid overdose reversal medication and ask whether the client has the medication; and
- if the client does not possess opioid overdose reversal medication, the provider must (unless the provider determines it is not appropriate) prescribe an opioid overdose reversal medication to the client or use the statewide Naloxone standing order, and assist the client in directly obtaining the medication as soon as practicable by:
    - by directly dispensing the medication (if authorized);
    - partnering with a pharmacy;
    - obtaining and distributing the medication through the bulk purchasing and

distribution program; or
- using any other authorized resources or means.

Until the opioid overdose reversal medication bulk purchasing and distribution program is operational and to the extent a behavioral health agency is the billing entity, the agency must bill the patient's Medicaid benefit or insurance for the medication and the HCA for patients without insurance coverage. A pharmacy that dispenses the medication through a partnership or relationship with a behavioral health agency must bill the HCA for the cost of the medication for clients that are not enrolled in a Medicaid program and without any other available insurance coverage.

Until the opioid overdose reversal medication bulk purchasing and distribution program is operational, Medicaid managed care organizations must reimburse hospitals and behavioral health agencies for dispensing or distributing opioid overdose reversal medication to patients enrolled in a managed care plan. For patients not enrolled in a managed care plan and without any other available insurance coverage, the HCA must reimburse the hospital, behavioral health agency, or pharmacy.

A hospital, behavioral health agency, its employees, and providers are immune from suit in any action, civil or criminal, or from professional or other disciplinary action, for action or inaction in compliance with these requirements.

A person who is provided opioid overdose reversal medication must be provided information and resources about medication for opioid use disorder, harm reduction strategies, and services which may be available. The information should be provided in all languages relevant to the community which the hospital or behavioral health agency serves. Opioid overdose reversal medications dispensed or delivered as permitted by this act are exempt from pharmacy labeling requirements for legend drugs.

The HCA, in consultation with the Department of Health, the Office of the Insurance Commissioner (OIC), and the Addictions, Drug, and Alcohol Institute and the University of Washington, must provide technical assistance to hospitals and behavioral health agencies to assist them in complying with this act. The technical assistance provided behavioral health agencies must include: training non-medical providers on distributing and providing client education and directions for opioid overdose reversal medication; providing written guidance for billing for opioid overdose reversal medication; and analyzing the cost of additional behavioral health agency staff time to comply with the requirements to assist clients in obtaining opioid overdose reversal medication and providing written guidance by January 1, 2022.

The HCA must develop written materials in all relevant languages for each hospital and behavioral health agency, including directions for use of the opioid overdose reversal medication, and provide the instructions to all hospitals and behavioral health agencies by January 1, 2022.

Opioid Overdose Reversal Medication Bulk Purchasing and Distribution Program.
As soon as reasonably practicable, the HCA must establish a bulk purchasing and distribution program (program) from opioid overdose reversal medication. The HCA may:

- purchase or enter into contracts as necessary to purchase and distribute opioid overdose reversal medication, collect an assessment, and administer the program;
- bill, charge, and receive payments from health carriers, managed health care systems, and self-insured plans (to the extent self-insured plans choose to participate); and
- perform any other necessary functions to establish and administer the program.

To establish and administer the program, the HCA may adopt rules providing:

- a dosage-based assessment and formula to determine the assessment for each opioid overdose reversal medication provided to an individual through the program that includes administrative costs;
- the mechanism, requirements, and timeline for health carriers, managed health care systems, and self-insured plans to pay the dosage-based assessment;
- the types of health care facilities, providers, and entities that must or may participate in the program and the billing procedures; and
- any other rules necessary to establish, implement, or administer the program.

Health carriers, managed health care systems administering Medicaid managed care plans, and the HCA for purposes of health plans offered to public employees, individuals enrolled in Medicaid without a managed care plan, and uninsured individuals must participate in the program. A health plan may not impose enrollee cost sharing for opioid overdose reversal medication provided through the program.

The HCA may establish an interest charge for late payments and assess a civil penalty for failure to pay the assessment within three months of billing. The HCA may file liens and seek judgement to recover amounts in arrears, civil penalties, and reasonable collection costs. The Opioid Overdose Reversal Medication Account is created in the State Treasury where all collections from the program must be deposited. Contracts entered into for the purchase of opioid overdose reversal medication for the program are exempt from competitive solicitation requirements.

The HCA is authorized to adopt rules necessary to implement the provisions related to the program and the OIC is authorized to adopt rules for the provisions of the program related to health carriers.

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) We have lost half a million people to opioid overdoses in the last 20 years. The goal of this bill is to get more Naloxone in the hands of more people and to do so by having insurance pay for the opioid overdose reversal medication instead of using flexible federal dollars that could be spent elsewhere. Expanded access to these medications reduces the number of overdose deaths.

When individuals come out of a facility, they need access to Naloxone without having to ask for it or having to fill a prescription. Recovery is possible and if we make these medications more accessible, we can save more lives.

Since the beginning of the pandemic there has been an increase in the number of people struggling to get into and stay in recovery. Many support systems have been lost. This winter King County had the highest number of overdoses in a two-week period ever and the biggest year over year increase in overdoses last year. One in 20 that present at the emergency department for an overdose will die in the next year.

There have been a number of steps taken to increase access to opioid overdose reversal medications, but the state has not implemented all available tools. Unless you get Naloxone in the hands of the person, they may never receive it. This bill will get these life saving medications in the hands of those who need it.

(Opposed) None.

(Other) There are some concerns about operationalizing the bill and some questions about who the bill applies to, particularly in terms of behavioral health settings. Medicaid is able to reimburse for this medication, but the bill must ensure that there is coverage for all types of plans.

Washington has made great strides in addressing opioid overdoses, but they have spiked with the introduction of illicit fentanyl. There is a need to get this medication in the hands of people when and where they need it, but more work is needed to make sure that this can be operationalized. There are still some questions about how reimbursement would work in both hospital emergency departments and behavioral health settings. There have been some assurances that reimbursement is available from Medicaid, but the same reassurances are needed for private plans. There are also some concerns about training nonmedical staff so that they know how to talk to patients about this before they walk out the door. This will take staff time and so ensuring that agencies can recoup these costs is necessary.

Staff Summary of Public Testimony (Appropriations):

(In support) None.

(Opposed) None.

(Other) This bill is good policy for public health. Everyone who needs opioid overdose reversal medication should have no troubles getting it. However, the bill has operational issues. For example, it is not clear how the drug will be paid for by commercial insurers. While opioid overdose reversal medication is a Medicaid-covered drug, there are no assurances commercial insurers will pay for it in all situations. There are also unanswered questions about to whom the bill applies in terms of behavioral health agencies.

There is currently no framework in the bill that allows behavioral health agency providers to be reimbursed, but that framework exists for hospitals. There is also no way for these agencies to bill for the time it takes to comply with this bill. About 85 to 95 percent of clients seen by behavioral health agencies are on Medicaid, and the Medicaid world is very prescriptive about what can be billed.

Persons Testifying (Health Care & Wellness): (In support) Senator Liias, prime sponsor; Colleen Keefe and Ely Hernandez, Washington Recovery Alliance; Phil Skolnick, Opiant Pharmaceuticals; and Brad Finegood, King County.

(Other) Katie Kolan, Washington State Hospital Association; Jeb Shepard, Washington State Medical Association; Susie Tracy, Washington Chapter–American College of Emergency Physicians; and Abby Moore, Washington Council for Behavioral Health.

Persons Testifying (Appropriations): Katie Kolan, Washington State Hospital Association; and Abby Moore, Washington Council for Behavioral Health.

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

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