

# SENATE BILL REPORT

## SB 5304

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As of February 17, 2021

**Title:** An act relating to providing reentry services to persons releasing from state and local institutions.

**Brief Description:** Providing reentry services to persons releasing from state and local institutions.

**Sponsors:** Senators Wilson, C., Dhingra, Darneille, Das, Frockt, Hasegawa, Holy, Lovelett, Nguyen, Rivers and Wellman.

**Brief History:**

**Committee Activity:** Human Services, Reentry & Rehabilitation: 1/28/21, 2/04/21 [DPS-WM].

**Ways & Means:** 2/17/21.

### Brief Summary of First Substitute Bill

- Expands the Medicaid suspension policy to include correctional institutions, state hospitals, and other treatment facilities.
- Requires full reinstatement of Medicaid benefits at the moment of a person's release from confinement, and allows the Health Care Authority (HCA) to reinstate medical assistance prior to the day of release as long as no federal funds are expended for an unauthorized purpose.
- Requires HCA to apply for a Medicaid waiver to allow the state to provide services to confined persons up to 30 days prior to the person's release or discharge to the community.
- Renames the Offender Reentry Community Safety Program the Reentry Community Services (RCS) Program, and makes changes to the program.
- Directs HCA to convene a Reentry Services Work Group and directs the Washington State Institute of Public Policy to update its previous

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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.*

evaluations of the RCS program.

- Alters the definition of county of origin and the process for approving a residence location outside the person's county of origin.

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## SENATE COMMITTEE ON HUMAN SERVICES, REENTRY & REHABILITATION

**Majority Report:** That Substitute Senate Bill No. 5304 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Darneille, Chair; Nguyen, Vice Chair; Gildon, Ranking Member; Dozier, McCune, Saldaña and Wilson, C.

**Staff:** Kelsey-anne Fung (786-7479)

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## SENATE COMMITTEE ON WAYS & MEANS

**Staff:** Corban Nemeth (786-7736)

**Background:** Suspension of Medicaid Benefits. The Health Care Authority (HCA) provides medical care services to eligible low-income state residents and their families, primarily through the Medicaid program. The State Medicaid Plan is an agreement between the state and the federal government controlling expenditures of Medicaid funds. Federal standards for the Medicaid program exclude payments for care or services for any person who is an inmate of a public institution, except for certain inpatient services at a hospital. Historically, HCA maintained a policy of allowing Medicaid status to remain unchanged for up to 30 days while in confinement, after which point the person's Medicaid enrollment would be terminated.

Federal Medicaid standards also prohibit payment for care or services for individuals who are patients at an institution for mental diseases. An institution for mental diseases is a hospital, nursing facility, or other institution of more than 16 beds primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases.

Pursuant to 2016 legislation, HCA must now suspend, rather than terminate, medical assistance for persons who have been incarcerated or committed to a state hospital, regardless of the person's release date. Additionally, a person who has been incarcerated or committed to a state hospital must be able to apply for medical assistance in suspense status while incarcerated or committed.

Medicaid Waivers. Section 1115 of the Social Security Act gives the Secretary of Health and Human Services authority to grant waivers from certain Medicaid requirements to allow states to demonstrate innovative approaches in their Medicaid programs. The purpose of

section 1115 demonstration projects is to demonstrate and evaluate policy approaches such as expanding eligibility, providing services not typically covered, and using innovative service delivery systems.

In 2018, Congress enacted the SUPPORT for Patients and Communities Act, which addressed transition services provided to persons who are soon-to-be released from public institutions such as prisons or jails. The law contains a provision requiring the Secretary of Health and Human Services to issue a State Medicaid Director letter providing guidance on how states may apply for a Section 1115 Medicaid waiver allowing them to provide Medicaid services to otherwise eligible persons who are within 30 days of expected release from incarceration.

Offender Reentry Community Safety Program. The Offender Reentry Community Safety Program (ORCS) was established in 1999 to promote public safety through provision of intensive services to persons at Department of Corrections (DOC) who have a mental disorder and are reasonably believed to be dangerous to themselves or others. In determining a person's dangerousness, DOC must consider behavior known to DOC and factors, based on research, linked to an increased risk for dangerousness of offenders with mental illnesses, and must consider the person's substance use disorder or abuse. Prior to release of a qualifying person, a team consisting of representatives of DOC, HCA, and other agencies and entities as necessary, must develop a plan for delivery of treatment and support services to the person upon release. In appropriate cases, a person may be evaluated in an evaluation and treatment facility for civil commitment under the Involuntary Treatment Act following release.

ORCS participants may receive services for up to five years following release, and services may include coordination of mental health services, assistance with unfunded medical expenses, obtaining substance use disorder treatment, housing, employment services, educational or vocational training, independent living skills, parenting education, anger management services, and any other services the case manager finds necessary.

Trueblood-Funded Diversion Programs. In *Trueblood v. the Department of Social and Health Services* (2015), a federal district court found the State of Washington was violating the constitutional rights of in-jail defendants awaiting competency evaluation and restoration services. As a result, the Department of Social and Health Services was ordered to provide in-jail competency evaluations within 14 days of a court order and inpatient competency evaluation and restoration services within seven days of a court order. The court found the state in contempt for continued noncompliance in 2017, and subsequently assessed over \$83 million in fines before the state reached a settlement in December 2018. As part of the settlement, contempt funds must be used to fund programs aimed at diverting class members from the criminal justice system.

**Summary of Bill (First Substitute):** Medicaid Suspension Policy. When HCA receives information a person enrolled in medical assistance is confined in a setting in which federal

financial participation is not allowed by the state's agreements with the federal government, HCA must suspend rather than terminate medical assistance benefits for these persons, including those who are incarcerated in a correctional institution or committed to a state hospital or other treatment facility. A person who is not currently enrolled in medical assistance must be allowed to apply for medical assistance in suspense status during confinement, and the ability to apply may not depend upon knowledge of the release or discharge date of the person.

The definition of correctional institution is expanded to include juvenile detention centers and facilities operated by the Department of Children, Youth, and Families.

Reinstatement of Medical Assistance Coverage. When persons enrolled in medical assistance prior to confinement, or persons who enroll in medical assistance in suspense status during confinement, are released from confinement, their medical assistance coverage must be fully reinstated at the moment of a person's release. HCA may reinstate medical assistance coverage prior to the person's release as long as no federal funds are expended for any purpose not authorized by the state's agreement with the federal government.

DCYF is added to the list of agencies and organizations HCA must collaborate with to establish procedures to coordinate prompt reinstatement of medical assistance eligibility and speedy eligibility determinations when persons are released from confinement. The procedures must address assurance that notification of the person's release date, current location, and other appropriate information is provided to the person's managed care organization at least 30 days before the person's scheduled release from confinement, or as soon as practicable thereafter.

Medicaid Waiver. To create continuity of care and provide reentry services, HCA must apply for a waiver to allow the state to provide Medicaid services to persons who are confined in a state correctional institution, state hospital, or other treatment facility up to 30 days prior to the person's release or discharge to the community. HCA must consult with the Reentry Services Work Group under the bill to optimize the chances of the waiver application's success, and must inform the Governor and relevant committees of the Legislature when the application is submitted and provide appropriate progress updates. No provision may be interpreted to require HCA to provide Medicaid services to persons who are confined in a correctional institution, state hospital, or other treatment facility up to 30 days prior to the person's release or discharge unless HCA obtains final approval for its waiver application from the Centers for Medicare and Medicaid Services.

Reentry Community Services Program. The Offender Reentry Community Safety Program is renamed as the Reentry Community Services (RCS) Program. Terminology under the RCS program is changed to refer to "persons" instead of "offenders," and services are directed to persons who are "reasonably believed to present a danger to themselves or others if released to the community without supportive services," rather than persons who are "reasonably believed to be dangerous." The objectives of the program are expanded to

include successful reentry and recovery. Reentry community service providers are added to the team that must develop a plan for delivery of treatment and support services upon the person's release. Peer services is added to the list of services that may be provided to program participants. Program participants under consideration for civil commitment following release may be released to, or required to appear at, a secure withdrawal management and stabilization facility, in addition to an evaluation and treatment facility.

Additionally, by January 1, 2022, HCA must revise its contracts with managed care organizations and behavioral health administrative services organizations to ensure enough providers are available to provide services to eligible clients through the RCS program.

Reentry Services Work Group. HCA must convene a Reentry Services Work Group (work group) to consider ways to improve reentry services for persons with an identified behavioral health services need. The work group must:

- advise HCA on its Medicaid waiver application;
- develop a plan to assure notifications of the person's release date, current location, and other appropriate information are provided to the person's managed care organization at least 30 days before the person's scheduled release from confinement;
- consider the value of expanding, replicating, or adapting the essential elements of the RCS program to benefit new populations such as other incarcerated persons at DOC, state hospital patients committed under criminal insanity laws, involuntary treatment patients, persons in juvenile rehabilitation, persons confined in jails, and other populations recommended by the work group;
- consider whether modifications should be made to the RCS program;
- identify potential costs and savings for the state and local governments that could be realized by using telehealth technology to provide mental and behavioral health services, expanding or replicating the RCS program, or other evidence-supported reentry programs;
- consider the sustainability of reentry or diversion services provided by pilot programs funded by contempt fines in *Trueblood vs. DSHS*;
- recommend a means of funding expanded reentry services; and
- consider incorporating peer services into the RCS program.

The work group must provide, to the Governor and appropriate committees of the Legislature, a progress report by December 1, 2021, and a final report by December 1, 2022.

Washington State Institute for Public Policy Evaluation. The Washington State Institute for Public Policy (WSIPP) must update its evaluation of the RCS program and broaden its cost-benefit analysis to include impacts on the use of public services and other factors. WSIPP must collaborate with the Reentry Services Work Group to determine research parameters and help the work group answer additional research questions such as the potential costs, benefit, and risks of expanding or replicating the RCS program and modifications to the RCS program most likely to be advantageous based on specified factors. Certain agencies

listed in the bill must cooperate with WSIPP to facilitate data access necessary to complete the evaluation. WSIPP must provide to the Governor and relevant committees of the Legislature a preliminary report by December 1, 2021, and a final report by November 1, 2022.

Department of Corrections County of Origin. References to "offender" are changed to "persons." The definition of county of origin is changed from the county of the person's first felony conviction to county of the person's residence at the time of the person's first felony conviction. If a person meets the definition of a homeless person or the person's residence is unknown, the county of origin is the county of the person's first felony conviction.

The presumption is changed for determining county of origin for persons being discharged to community custody. DOC may approve a residence location that is not in the person's county of origin if DOC determines the residence location would be appropriate based on any court-ordered condition of the person's sentence, victim safety concerns, and factors that increase opportunities for successful reentry and long-term support including, but not limited to, location of family and other sponsoring person or organizations that will support the person, availability of appropriate programming or treatment, and access to housing, employment, and prosocial influences on the person in the community. DOC must approve residence locations in a manner that will not cause any one county to be disproportionately impacted.

**EFFECT OF CHANGES MADE BY HUMAN SERVICES, REENTRY & REHABILITATION COMMITTEE (First Substitute):**

- Prohibits any interpretation that requires HCA to provide Medicaid services to persons who are confined in a correctional institution, state hospital, or other treatment facility up to 30 days prior to the person's release or discharge unless HCA obtains final approval for its waiver application from the Centers for Medicare and Medicaid Services.
- Directs HCA, by January 1, 2022, to revise its contracts with managed care organizations and behavioral health administrative services organizations to ensure enough providers are available to serve eligible clients in the RCS program at DOC.
- Adds to the work group's charge to develop a plan for assuring managed care organizations are notified of the person's release date, current location, and other appropriate information at least 30 days before the person's scheduled release.
- Requires the work group to identify potential costs and savings from the use of telehealth technology to provide mental and behavioral health services.
- Requires DOC to approve residence locations in a manner that will not cause any one county to be disproportionately impacted.

**Appropriation:** None.



**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** Yes.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Original Bill (Human Services, Reentry & Rehabilitation):** *The committee recommended a different version of the bill than what was heard.* PRO: Reintegration into the community can be daunting for so many reasons, especially during a pandemic. Often there is a gap in service between release from confinement and the ability to access services that puts the individual back into the situation or setting they were in before they become incarcerated. It is in everyone's best interest when someone returns to the community and is able to successfully reenter. This bill will help those who have paid their debt to society, and are seeking to reintegrate into the community successfully and productively.

Any gap in service can make a huge difference in a person's life if they cannot get immediate access to prescriptions or services upon release. This bill will help close those gaps by allowing reinstatement of Medicaid prior to the day of release if no federal funds are expended. This will result in savings to local governments who pay for healthcare costs for those confined in the jail.

With regard to the Reentry Community Services program, updating the name will reduce stigma of those with mental illness who are justice-involved. Several components of the bill will increase the availability of information prior to release and allow more opportunities to communicate with providers, creating more comprehensive continuity of care plans as individuals are released to the community. Also, persons should be releasing to a location that is most conducive to successfully reentry, not necessarily where the first felony conviction occurred that may not be a healthy plan for the individual to return.

The period before an individual's release to the community is critical to reducing recidivism and health implications for the individual. Without immediate access to medical coverage upon release, medications may run out and result in hospitalizations. Access to mental health care may be hindered, exposing the person to potentially new criminal charges or community custody violations. A waiver would increase the ability of corrections staff to enroll persons in Medicaid, improve access of providers to persons in jails to coordinate transition planning, create positive systems change between health and criminal justice systems, and promote continuity of care, medication, and treatment.

OTHER: Agencies will need additional staff, information technology systems, and communication materials to implement the bill's requirements. There are some feasibility concerns such as consistent data sharing, ensuring coverage in every service area, and knowing exact length of jail stays.

**Persons Testifying (Human Services, Reentry & Rehabilitation):** PRO: Senator Claire Wilson, Prime Sponsor; Alan Friedlob, National Alliance on Mental Illness Washington; James McMahan, Washington Association of Sheriffs and Police Chiefs; Christopher Poulos, Washington Statewide Reentry Council; Juliana Roe, Washington State Association of Counties.

OTHER: Angela Sauer, Department of Corrections; Chris Bandoli, Association of Washington Healthcare Plans.

**Persons Signed In To Testify But Not Testifying (Human Services, Reentry & Rehabilitation):** No one.

**Staff Summary of Public Testimony (Ways & Means):** PRO: This waiver language is helpful for individuals incarcerated less than thirty days. This program has been successful in New Mexico. The bigger goal here should be to keep individuals enrolled in Medicaid throughout the incarceration process, therefore eliminating paperwork barriers throughout. This bill does not go far enough because those who meet Medicaid requirements can be enrolled before, during, and after incarceration so long as Medicaid isn't billed for services.

**Persons Testifying (Ways & Means):** PRO: James McMahan, Washington Association of Sheriffs & Police Chiefs; Bob Cooper, National Association of Social Workers Washington Chapter; Sai Samineni, 30th LD PCO.

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