

FINAL BILL REPORT

E2SSB 5304

PARTIAL VETO C 243 L 21 Synopsis as Enacted

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

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Wilson, C., Dhingra, Darneille, Das, Frockt, Hasegawa, Holy, Lovelett, Nguyen, Rivers and Wellman).

Senate Committee on Human Services, Reentry & Rehabilitation
Senate Committee on Ways & Means
House Committee on Health Care & Wellness
House Committee on Appropriations

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 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

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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 by providing 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. When 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 delivering 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 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. 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.

Statewide Reentry Council. The Washington Statewide Reentry Council (council) was created in 2016 for promoting successful reentry of incarcerated individuals after incarceration. The council may appoint an executive director. The council is located within the Department of Commerce (Commerce), which must administer the council by providing its facilities and managing grants and funds received, used, and disbursed by the council. Except during the 2019-2021 fiscal biennium, Commerce may not designate additional full-time staff to the administration of the council beyond the executive director.

Summary: 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 (MCO) 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.

The HCA director must ensure HCA has coverage in all counties of the state for providing reentry community services program services.

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 MCO 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 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 July 1, 2022, and a final report by December 1, 2023.

HCA must also convene a subcommittee of the work group consisting of a representative from HCA, one representative from each MCO under contract with HCA, representatives from the Washington Association of Sheriffs and Police Chiefs, representatives of jails, and other members the work group determines are appropriate to inform the tasks of the work group. The subcommittee must:

- determine and make progress toward implementing a process for transmitting real-time location information of incarcerated individuals to the MCO in which the individual is enrolled;
- develop a process to transmit patient health information between jails and MCOs to ensure high quality health care for incarcerated individuals enrolled in a MCO; and
- improve collaboration between HCA, MCOs, and jails for care coordination both when an individual enters custody and upon release.

The subcommittee must submit to the relevant committees of the Legislature an initial report by December 1, 2021, and a final report by December 1, 2022. The reports must evaluate the progress of MCOs in meeting their contractual obligations regarding clinical coordination when an individual enters custody, as well as care coordination and connection to reentry services upon release, including any corrective action taken by HCA against a MCO for noncompliance. The reports must also identify any barriers to effective care coordination for individuals in jail and recommendations to overcome those barriers.

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 work group to determine research parameters and help answer additional research questions such as the potential costs, benefits, 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 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 July 1, 2022, and a final report by November 1, 2023.

Statewide Reentry Council. The prohibition on Commerce from designating additional full-time staff to the administration of the council is removed.

Votes on Final Passage:

Senate	48	0	
House	74	23	(House amended)

Senate 49 0 (Senate concurred)

Effective: July 25, 2021

Partial Veto Summary:

- Removed language duplicating and conflicting with changes made in HB 1044 relating to county of origin.