

SENATE BILL REPORT

SB 5660

As Reported by Senate Committee On:
Health & Long Term Care, February 16, 2023

Title: An act relating to establishing a mental health advance directive effective implementation work group.

Brief Description: Establishing a mental health advance directive effective implementation work group; creating a new section; and providing an expiration date. [**Revised for 1st Substitute:** Establishing a mental health advance directive effective implementation work group.]

Sponsors: Senators Boehnke, Dhingra, Saldaña, Wellman and Wilson, C..

Brief History:

Committee Activity: Health & Long Term Care: 2/14/23, 2/16/23 [DPS-WM, w/oRec].

Brief Summary of First Substitute Bill

- Directs the Health Care Authority to convene a work group to make recommendations concerning a mental health advance directive (MHAD) statewide repository, and to develop trainings related to MHADs.

SENATE COMMITTEE ON HEALTH & LONG TERM CARE

Majority Report: That Substitute Senate Bill No. 5660 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Cleveland, Chair; Robinson, Vice Chair; Rivers, Ranking Member; Muzzall, Assistant Ranking Member; Conway, Dhingra, Holy, Randall and Van De Wege.

Minority Report: That it be referred without recommendation.

Signed by Senator Padden.

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: Kevin Black (786-7747)

Background: A mental health advanced directive (MHAD) is a document that declares a person's preferences regarding the person's mental health treatment in the event of a temporary period of incapacity due to a behavioral health disorder. Washington State's MHAD law passed in 2003, and was updated in 2021. 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 acknowledged before a notary public or 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. A mental health advanced directive may be revoked at any time except during a period of incapacity, unless the terms of the directive 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 standard form for a mental health advance directive is provided in state law.

Summary of Bill (First Substitute): The Health Care Authority (HCA) must convene a Mental Health Advance Directive Effective Implementation Work Group to develop recommendations concerning:

- a reliable, standardized, and accessible method for MHAD creation, storage, and sharing so individuals, families, agencies, and providers can discover and use MHADs; and
- MHAD document creation and utilization trainings for individuals, families, agencies, and providers.

Deliverables for the work group include the development of training toolkits, program testing and data collection in two pilot locations, and a report to the Governor and relevant committees of the Legislature by December 1, 2023.

The membership of the work group must be representative of the diversity of individuals who use MHADs and behavioral health services and include representatives of 19 named constituencies:

- the peer advocacy community;

- individuals and families with lived experience of behavioral health crises;
- Chad's legacy project;
- licensed or certified behavioral health agencies;
- the Washington State Department of Veterans Affairs;
- Black, Indigenous, and persons of color;
- the Behavioral Health and Recovery Division of the HCA;
- the Washington State Medical Association;
- the Washington State Hospital Association;
- the Washington State Psychiatric Association;
- NAMI Washington; emergency services responders;
- designated crisis responders; emergency departments;
- inpatient hospitals; electronic health record vendors;
- an expert in technical repositories;
- 988 behavioral health crisis response and suicide prevention call centers; and
- individuals with expertise in health care ethics and law.

EFFECT OF CHANGES MADE BY HEALTH & LONG TERM CARE COMMITTEE (First Substitute):

- Adds NAMI Washington and the Washington State Psychiatric Association to the work group.

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: *The committee recommended a different version of the bill than what was heard.* PRO: Mental health is impacting our families, kids, and neighbors, especially after COVID. As a military member, it is important to understand PTSD and the mental health of our troops. This is a small bill with monumental return. A work group sponsored by the Mental Health Summit worked for the last 18 months to determine why MHADs are not widely in use, and what can be done to realize the potential of this policy as a means to bring self-determination into mental health care. We are working on a robust training toolkit and exploring the creation of a statewide repository for housing MHADs. The work group is necessary to mandate this work as a stakeholder community priority. Without this, MHADs will continue to be a well-intended law from 2003 with no path to broad utilization. We want to eliminate trial-and-error treatment and achieve better outcomes. Other states are watching this effort and Washington has the opportunity to lead. MHADs help treatment teams understand what has worked best in the past, what will work best in the future, and what the patient's wishes are. After 2003,

there was a state registry that was defunded during the Great Recession. This puts back in place a robust structure. There are many technical needs to be worked out, including security and interoperability, so we need the work group. Please amend the bill to include NAMI Washington in the work group.

Persons Testifying: PRO: Senator Matt Boehnke, Prime Sponsor; Todd Crooks, Chad's Legacy Project; Melanie Smith, NAMI Washington.

Persons Signed In To Testify But Not Testifying: No one.