SENATE BILL REPORT
2SSB 6228

As Amended by House, February 29, 2024

Title: An act relating to treatment of substance use disorders.

Brief Description: Concerning treatment of substance use disorders.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Dhingra, Hasegawa, Kuderer, Lovelett, Nobles, Randall, Shewmake, Valdez and Wilson, C.).

Brief History:

Committee Activity: Health & Long Term Care: 1/23/24, 1/26/24 [DPS-WM].
Ways & Means: 2/02/24, 2/05/24 [DP2S, w/oRec].

Floor Activity: Passed Senate: 2/9/24, 49-0.
Passed House: 2/29/24, 84-8.

Brief Summary of Second Substitute Bill

- Requires health plans to authorize at least 14 days of inpatient or residential substance use disorder treatment on the first utilization review, and at least seven days on subsequent reviews.
- Caps certification fees for substance use disorder professionals (SUDPs) and SUDP trainees at $100 until July 1, 2029.
- Removes limitations on license and certification renewals for associate marriage and family therapists, associate mental health counselors, associate social workers, and SUDP trainees.
- Directs the Health Care Authority and Office of the Insurance Commissioner to create standardized authorization review requirements for residential SUD treatment for implementation by July 1, 2025.

SENATE COMMITTEE ON HEALTH & LONG TERM CARE

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.

Majority Report: That Substitute Senate Bill No. 6228 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; Muzzall, Assistant Ranking Member; Conway, Dhingra, Padden, Randall and Van De Wege.

Staff: Kevin Black (786-7747)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 6228 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Robinson, Chair; Mullet, Vice Chair, Capital; Nguyen, Vice Chair, Operating; Wilson, L., Ranking Member, Operating; Gildon, Assistant Ranking Member, Operating; Schoesler, Ranking Member, Capital; Warnick, Assistant Ranking Member, Capital; Billig, Boehnke, Braun, Conway, Dhingra, Hasegawa, Hunt, Keiser, Muzzall, Pedersen, Randall, Saldaña, Torres, Van De Wege, Wagoner and Wellman.

Minority Report: That it be referred without recommendation.

Signed by Senator Rivers, Assistant Ranking Member, Capital.

Staff: Corban Nemeth (786-7736)

Background: Substance Use Disorder. A substance use disorder (SUD) is a diagnosis of a pathological pattern of behavior in which a person continues to use a substance despite experiencing significant substance-related problems, causing a cluster of cognitive, behavioral, and and physiological symptoms.

Health Plans. Three categories of health plans available in Washington, among others, are:

- Medicaid plans administered by managed care organizations (MCOs) which contract with the Health Care Authority (HCA) to provide publicly-funded insurance to enrollees who qualify based on income, age, or disability, the cost of which is divided by the state and federal governments as described by a negotiated agreement referred to as the Medicaid State Plan;
- insurance provided to public employees, school employees, and their families and dependents administered by the Public Employees Benefits Board (PEBB) and School Employees Benefits Board (SEBB); and
- private health plans sold by health carriers to individual consumers.

Utilization Management and Substance Use Disorders. Utilization management is a managed care technique which allows a health insurance company to manage the cost of health care benefits by assessing the appropriateness of care using evidence-based techniques or guidelines. When the assessment is required before care is started as a prerequisite to payment it is referred to as prior authorization. According to Washington law, health plans issued under Medicaid, PEBB, SEBB, and by commercial health carriers

may not require prior authorization for withdrawal management services or inpatient or residential SUD treatment services. Instead, coverage must be covered for no less than two business days, excluding weekends and holidays, in an inpatient or residential SUD treatment facility, or for no less than three days in a facility which provides withdrawal management. At this point the health plan may initiate a utilization management review of the medical necessity for care. Medical necessity review must be based on a standard set of statewide criteria, which is *The ASAM Criteria* published by the American Society of Addiction Medicine.

The American Society of Addiction Medicine and The ASAM Criteria. The American Society for Addiction Medicine is a medical society with over 7500 members, known for publishing *The ASAM Criteria,* which is the most widely used comprehensive set of standards for placement, continued service, and transfer of patients with SUDs and co-occurring disorders. In 2020 HCA and the Office of the Insurance Commissioner were directed in legislation to adopt a single standard set of criteria to define medical necessity for SUD treatment and to define SUD levels of care in Washington by January 1, 2021, following an independent review of rules and practices. *The ASAM Criteria* was selected as this single standard in rules adopted December 24, 2020.

Substance Use Disorder Professionals and Trainees. A substance use disorder professional (SUDP) is a professional certified in SUD counseling. SUDPs must hold an associates degree or have completed 90 quarter or 60 semester college credits, including 45 quarter or 30 semester credit hours in topics related to SUD counseling. An SUDP must additionally undergo up to 2500 hours of supervised training, undergo a character and fitness review, and pass a jurisprudential exam. Alternative training and educational requirements are available. An SUDP trainee is a person who declares they are enrolled in an approved educational program and is working to gain the education and experience required for SUDP certification. An SUDP trainee is limited to four certification renewals, or up to five years of certification.

Fees for Substance Use Disorder Professional and Trainee Certification. Washington law requires the cost of professional licensing to be fully borne by the members of that profession, including the cost of investigations and discipline in response to adverse information and complaints. Exceptions in law to this principle have been infrequently made, including for certified peer specialists, certified peer specialist trainees, and midwives. According to the Department of Health's website the total fee to certify as an SUDP is currently $555 and the renewal cost is $300. The fee to certify as an SUDP trainee is $110 and the renewal cost is $90.

Licensed Associates. A person with a master's degree in a mental health field who is gaining the supervised experience necessary to become licensed as a social worker, mental health counselor, or marriage and family therapist, is called an associate social worker, mental health counselor, or marriage and family therapist. An associate is limited to six renewals of their license as an associate.

Summary of Second Substitute Bill: When a health plan or MCO issued on or after January 1, 2025, conducts a utilization management review which authorizes inpatient or residential SUD treatment, the health plan or MCO must authorize treatment for a minimum 14-day period from the start of treatment. Any subsequent authorization must be for a minimum of seven days of treatment. The health plan or MCO may not consider the person's length of stay in treatment at a behavioral health agency when authorizing continuing care at the behavioral health agency.

The ASAM Criteria published by the American Society of Addiction Medicine is confirmed as the single standard set of criteria to define medical necessity for SUD treatment and to define SUD levels of care in Washington. HCA and the Office of the Insurance Commissioner (OIC) may jointly determine when updates to *The ASAM Criteria* must be used. No health plan or MCO may make a determination that a person does not meet medical necessity criteria based primarily on the person's length of abstinence from substance use, and if the abstinence was due to incarceration or hospitalization, it may not be considered..

The certification fee for an SUPD or SUPD trainee is capped at $100 for five years, from July 1, 2024 through July 1, 2029, subject to amounts appropriated for the specific purpose.

A SUPD trainee may practice outside a behavioral health agency licensed to provide substance use disorder services. An SUDP trainee may not provide independent SUD counseling or clinical services for a fee.

Limitations are removed on the number of times an applicant may renew an SUPD training certification, and the number of times an applicant may renew an associate license as a marriage and family therapist, mental health counselor, or social worker.

HCA, in collaboration with OIC and in consultation with MCOs, health plans, and SUD residential and inpatient providers must develop standardized clinical documentation requirements for initial authorization and concurrent utilization review for residential SUD treatment. MCOs and health plans must start using the standardized requirements by July 1, 2025.

HCA must provide a gap analysis to the Governor and Legislature of nonemergency transportation benefits provided to Medicaid enrollees in Washington, Oregon, and other comparison states by December 1, 2024. The gap analysis must consider the costs and benefits of available alternatives and the option for an enhanced nonemergency transportation benefit for persons being discharged from a behavioral health emergency services provider to the next level of care.

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 (Health & Long Term Care): *The committee recommended a different version of the bill than what was heard.* PRO: There are great things about integration, but I have heard from providers it has made it harder to get into inpatient and residential SUD treatment. Providers do so much paperwork just to complete 29 days of treatment. These are barriers to people getting the help they need. We need medical necessity evaluations but we need to figure out a way to make them more effective. We should never have a treatment provider say that the best way to get into treatment is to show recent use. If people don't get the transportation they need, too often they won't show up. In the long run, it's cheaper to pay for that ambulance. We are in full support of providers and patients developing care together and providers being reimbursed for medically necessary treatment. Often reimbursement is denied because the client does not report recent use. The client may not be forthcoming even though use has occurred because they are on probation or were recently incarcerated. Staff time is taken away from direct services by the ongoing authorization demands, which increases workforce shortages. We would like to strengthen workforce provisions to stop eight-month delays in credentialing and low wages which make it hard to retain staff. Sometimes 60 days is a more appropriate length of stay than 29 days.

CON: We have concerns with the mandatory authorization period, which will be a cost driver. Our plans tell us that the denial rate for SUD inpatient treatment was less than 5 percent in 2022, a lower rate that you would assume from these conversations. Denials happen for other reasons--because facilities don't have electronic medical records, or because clients lack Medicaid coverage. ASAM Criteria isn't consistent with automatic 29-day authorizations because it says treatment should be tailored to the individual circumstances and individual needs. Please reconsider use of recent substance use as a part of medical necessity evaluations. There is no evidence for any particular length of SUD residential treatment; many people respond differently. We typically grant two weeks initially, which is more than enough time to do a thorough assessment and provide a brief update as to what actual needs are.

OTHER: We have no concerns putting ASAM Criteria into statute, since it is required by our rules. There should be flexibility around how quickly to implement a new version when it is released. Transportation from the behavioral health emergency services provider to the next level of care is not included in the Essential Health Benefits benchmark plan, so it could be considered a new mandate which the state would need to fund.

Persons Testifying (Health & Long Term Care): PRO: Senator Manka Dhingra, Prime Sponsor; Robert Emerson, citizen; Julie Mitchell, Lakeside Milam Recovery Centers.

CON: Jennifer Ziegler, Association of Washington Health Care Plans; Dr. Sasha Waring,

Molina.

OTHER: Jane Beyer, Office of the Insurance Commissioner.

Persons Signed In To Testify But Not Testifying (Health & Long Term Care): No one.

Staff Summary of Public Testimony on First Substitute (Ways & Means): *The committee recommended a different version of the bill than what was heard.* PRO: We are in full support of providers and patients creating care plans together, and providers being reimbursed for the medically necessary services they provide. Too often, individuals are denied inpatient treatment because they haven't been using. Proper level of care placement is critical for positive treatment outcomes. The workforce support sections of this bill will help solve our workforce shortage crisis.

CON: The provisions for non-emergency transportation could create a new mandate and increase costs in our system. Instead, we would recommend a gap analysis on the issues that may be present in the current system. I agree with the spirit of the bill and some of the individual provisions, but please remove provisions requiring authorizations for a certain amount of time. This does not happen in other settings and with other conditions. We need to be able to approach these decisions on a case by case basis, in accordance with the ASAM guidelines.

OTHER: Under the Affordable Care Act, plans are required to cover emergency transportation services. The non-emergency transport requirements in the bill would pose a new mandate and the state would be required to defray the costs.

Persons Testifying (Ways & Means): PRO: Senator Manka Dhingra, Prime Sponsor; Julie Mitchell, Lakeside-Milam Recovery Centers.

CON: Jennifer Ziegler, Association of Washington Health Care Plans; Dr. Sasha Waring.

OTHER: Delika Steele, Office of the Insurance Commissioner.

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

EFFECT OF HOUSE AMENDMENT(S):

- Requires behavioral health agencies (BHAs) that provide voluntary inpatient or residential SUD treatment or withdrawal management services to submit their policies regarding involuntary transfer or discharge of a patient to DOH, and requires DOH to adopt a model policy by April 1, 2025, including use of therapeutic progressive disciplinary procedures.
- Requires BHAs to report each instance of involuntary transfer or discharge from inpatient or residential SUD treatment or withdrawal management services or voluntary departure against clinical advice to the Department of Health (DOH) beginning July 1, 2025, using a standard form to be developed by DOH, and exempts these reports from public disclosure.

- Requires the Addictions, Drug & Alcohol Institute at the University of Washington to create a shared decision-making tool to assist providers with discussing medication treatment options with patients related to alcohol use disorders and conduct regular evaluations to update the tool.
- Requires BHAs which treat patients for an alcohol or opioid use disorder to provide patients with unbiased education related to clinically appropriate pharmacological treatment options, and if the patient chooses the option to provide the medication directly or by a warm handoff referral.
- Requires a withdrawal management provider to make a good faith effort to consult a patient's health care provider and engage in individualized, nonjudgmental shared decision-making before assisting the patient in discontinuing or reducing the dosage of a prescribed medication, and prohibits it from categorically requiring patients to discontinue all psychotropic medications.
- Prohibits BHAs which provide voluntary inpatient or residential SUD treatment or withdrawal management services from disqualifying a person for admission to the agency based solely on prior instances of the person leaving the agency against clinical advice.
- Requires HCA to contract with the Washington Association of Designated Crisis Responders to develop a training for emergency department social workers with responsibilities related to involuntary civil commitment by July 1, 2025, and requires all such employees to receive the training by July 1, 2026, or within three months of hire, and to repeat the training every three years thereafter.
- Requires health carriers and MCOs to reimburse hospitals and psychiatric hospitals for dispensing opioid overdose reversal medication and administering long-acting injectable buprenorphine as an outpatient serve separate from any bundled payment arrangements effective January 1, 2025.
- Directs HCA to convene a work group to make recommendations related to standardizing medical necessity review for inpatient or residential SUD treatment, instead of developing and implementing standardization.
- Directs HCA to conduct a feasibility study to create a network of peer-led trauma informed nonemergency transportation providers for behavioral health services clients under Medicaid.
- Prohibits a health carrier or MCO from considering length of abstinence in evaluating medical necessity for inpatient or residential SUD treatment if the abstinence was due to inpatient treatment, in addition to incarceration or hospitalization.
- Removes language acknowledging the state's designation of *The ASAM Criteria* as the single standard set of criteria to define medical necessity for residential and inpatient SUD treatment.
- Removes provisions lifting certain limitations on license and certification renewals and authorized practice settings for individuals training to become mental health counselors, social workers, marriage and family therapists, and substance use disorder professionals.
- Adds an intent section.