

BILL ANALYSIS

SB 614

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Date of Hearing: August 26, 2015

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Jimmy Gomez, Chair

SB 614
(Leno) - As Amended July 16, 2015

Policy	Health	Vote:	18 - 0
Committee:			

Urgency: No State Mandated Local Program: NoReimbursable: No

SUMMARY:

This bill requires the Department of Health Care Services (DHCS) to establish a certification program for peer and family support specialists (PFSS), for purposes of assisting clients with mental health and substance use disorders, and adds peer support

services as a Medi-Cal service, subject to federal approval. Specifically, this bill:

- 1) Defines four categories of PFSS, including: Adult, transition-age youth, family, and parent peer support specialists.
- 2) Requires DHCS, not later than July 1, 2017, to establish a certification program that establishes a certifying body, either within the department, through contract, or through interagency agreement, to provide certification for the four categories of PFSS.
- 3) Defines other duties of DHCS with regard to the certification program, including: defining the range of responsibilities and practice guidelines, determining curriculum and core competencies, specifying training and continuing education (CE) requirements, determining clinical supervision requirements, establishing a code of ethics, determining processes for certification revocation and renewal, and determining a process to allow existing personnel employed as a PFSS to obtain certification at their option (which appears to be a requirement to "grandfather" in individuals already doing this work).
- 4) Specifies requirements individuals must meet to obtain certification.
- 5) Requires DHCS to amend its state plan to include PFSS as Medi-Cal providers, and peer support services as a distinct covered Medi-Cal service type.
- 6) Requires DHCS to collaborate with specified entities,

including the Office of Statewide Health Planning and Development (OSHPD), in developing, implementing, and administering the certification program. Requires bi-monthly stakeholder meetings and allows DHCS to seek private funds for this purpose.

- 7) Allows DHCS to use Mental Health Services Act (MHSA) funds, as specified, and any designated Workforce Education and Training (WET) Program resources, including funding, as administered by OSHPD as specified, to develop and administer the certification program. Allows MHSA funds to serve as the state's share of funding to develop and administer certification program, and specifies the funds shall be available for purposes of claiming FFP once federal approvals have been obtained.
- 8) Finds and declares it clarifies procedures and terms of the MHSA (a voter-approved initiative).
- 9) Allows the use of exclusive or nonexclusive contracts on a bid or negotiated basis, including those for technical assistance.
- 10) Allows DHCS to issue guidance to implement this bill without issuing regulations, but requires regulations to be issued by January 1, 2019. Requires semiannual status reports to the Legislature until regulations are adopted.

FISCAL EFFECT:

- 1) Assuming federal approval and availability of federal financial participation (FFP), approximately \$1.5 million in administrative staff costs for the first year of

implementation, and conservatively in the range of \$1 million ongoing for DHCS state staff costs for investigation, discipline, and contract oversight (state/federal).

The state share could potentially be MHSA 5% state administrative set-aside funds or OSHPD WET funds, as authorized in the bill, or GF, depending on availability of funds and subsequent budget decisions. Implementation of this bill is contingent on federal approval and FFP. DHCS indicates that there are significant claims on MHSA state administrative dollars, but budget documents were not available at the time of this analysis.

Similarly, OSHPD indicates there is approximately \$5 million in WET funds that were set aside for expenditure in the 2015-16 fiscal year that could potentially be used for purposes of this bill, but that there are significant expectations among stakeholders that ongoing funding will be used for currently funded activities. With respect to the allocation of WET funds, OSHPD currently recommends a funding plan, which must be approved by the Mental Health Planning Council. However, subject to legislative appropriation and redirection of MHSA 5% state administrative set-aside funds or OSHPD WET funds from other planned or potential uses, it appears these funding sources could support the ongoing certification program costs.

- 2) Contract costs, likely in the hundreds of thousands of dollars (state/federal, as above).
- 3) Increased federal Medi-Cal reimbursement, and possibly increased local funding, for peer support services (local/federal). Currently, some peer services are funded through existing Medi-Cal service classification such as targeted case management, but the explicit recognition would

facilitate reimbursement. This is not likely to increase overall local cost pressure on counties for delivery of mental health and substance abuse services in Medi-Cal.

COMMENTS:

- 1) Purpose. The purpose of this bill is to create a certification program for PFSS. The author notes a substantial body of research shows peer support services improve outcomes and quality of life for clients of the mental health and substance abuse (behavioral health) system and their families, and save money by reducing acute incidents such as hospitalization. Stakeholders in the behavioral health community, based on years of discussion and research, have strongly recommended creating a state certification program in order to standardize training and core competencies, as well as to allow counties who deliver behavioral health services to leverage federal financial participation (FFP) in Medi-Cal.

- 2) Peer specialists and certification. Peer support specialists are persons who used lived experience from mental illness or substance abuse, plus formal training, to deliver services in a behavioral health setting to promote recovery. The federal Substance Abuse and Mental Health Services Administration (SAMHSA) notes peer services are varied and can include the following activity types: (1) peer mentoring or coaching, (2) recovery resource connecting, (3) facilitating and leading recovery groups, and (4) building community. A 2007 Center for Medicare and Medicaid Services (CMS) letter to state health officials clarifies states can seek federal approval to receive Medicaid (Medi-Cal in California) reimbursement for peer support services, but notes state-defined training and certification is required in order to receive reimbursement. County behavioral health directors note these services are often provided to Medi-Cal enrollees but, unlike other behavioral health services they provide, they are not eligible

federal reimbursement because the state does not recognize peer support services as distinct services, nor certify PFSS providers. Behavioral health services for serious mental illnesses and addiction in Medi-Cal are delivered and paid for by counties pursuant to 2011 Realignment.

3) Related State and Stakeholder Activities. Substantial work is ongoing in the behavioral health community to formally recognize and promote PFSS as part of a continuum of care for behavioral health services, including the following:

a) DHCS has included the PFSS as a workforce expansion strategy in the recent 1115 Waiver Renewal "Medi-Cal 2020", which it submitted to the federal Centers for Medicare and Medicaid Services (CMS) on March 27, 2015.

b) A report by the California Mental Health Planning Council notes California is lagging behind in implementing a peer support specialist certification program, and in the inclusion of these valuable services within Medi-Cal. The report notes U.S. Department of Veterans Affairs and more than 34 states have already established programs for certification of peers and have included peer services as a component of their Medicaid plans.

c) The Working Well Together Statewide Technical Assistance Center, a collaborative of peer and client-oriented organizations, produced a final report including a recommendation to proceed with peer certification. This effort identified key issues for laying the foundation of certification in California, including training recommendations and core components for a statewide certification program.

4) DHCS Existing Certification Programs. DHCS currently licenses or certifies drug and alcohol rehabilitation facilities, programs, and counselors. A Center for Investigative Reporting and a CNN series exposed widespread fraud in the Drug Medi-Cal program in 2013. The California State Auditor also concluded that DHCS as well as the prior entity, DADP, failed to implement an effective provider certification process for the Drug Medi-Cal Program. With respect to certified counselors, DHCS oversees counselors indirectly via oversight of three designated certifying entities. This mechanism has been criticized in recent years for being ineffective and providing insufficient consumer protection. For example, a 2013 report by the California Senate Office of Oversight and Outcomes noted the state makes no attempt to review counselors' criminal backgrounds, as well as the existence of loopholes allowing individuals to be employed in facilities as registered counselors even if their certification had been revoked by a different certifying agency. Since this time, DHCS has attempted to address the identified issues through suspension and recertification, and improved oversight.

5) Comments. Though a strong case exists that California should recognize certification for peer counselors in order to claim FFP, the bill's approach raises some specific questions relating to lack of specificity and delegation of authority, as well as fees, that should be resolved. Other technical notes and a comment about applicability to non-Medi-Cal populations are listed below.

a) Delegation of Authority. As compared to the detailed specifications in statute of other licensed and certified health care providers, this bill appears to delegate a high level of legislative authority to a state department. The day-to-day work of certification raises significant practical issues and decisions- for example: what disqualifies someone from certification? What standards are

is in place to guard against arbitrary disciplinary action? How will decisions be made? Will there be a board or task force vested with decision-making authority? If so, who will comprise the board or task force? How can the state ensure individuals with adequate expertise are responsible for making decisions related to curricula, exams, and continuing education requirements? Under what circumstances and how can existing PFSS providers receive certification through an expedited path? The bill delegates such policy issues to DHCS. For other licensed or certified professions, such policy issues appear to be more clearly resolved in statute. On the other hand, there is also statutory precedent for delegating broader authority. The question is, what level of delegation is desirable for this program?

This bill delegates even the definition of the services, as well as the scope of competency and practice for a peer support specialist, to DHCS. The author and sponsor of this bill point to significant workload that has been conducted by existing entities, including the Mental Health Planning Council, OSHPD's workforce development efforts, and the Working Well Coalition, with respect to training, curricula, and identification of various components of a certification program. However, none of the specific material the author suggests should be relied on is referenced in the bill. If it is the intention of the author that the department rely heavily on resources that have already been created, the bill should direct them to do so in a clear and specific manner.

The level of specificity provided is a policy issue with fiscal implications. There is lower cost and risk if some of these issues are vetted through the legislative process and simply carried out through the administrative process based on clear statutory direction. Greater specificity may also provide greater certainty to all parties about the

scope, intent, and operations of certification.

b) Fees? Unlike most state certification programs, this bill has no provisions for certification fees. Ideally, a certification program is entirely and appropriately supported by fees. If a fee-supported program is inappropriate in this case, the burden should be to demonstrate why, instead of defaulting to the certification program being state-funded. For example, is fee collection practically unworkable or overly burdensome for the population to be certified? Similarly, if it is the intent that fees may be charged by a non-state certifying entity under contract with DHCS to perform certification, this should be clarified. If it the intent not to allow fees to be charged, this should be specified as well.

c) Specific to Medi-Cal? Unlike most other licensed and certified professionals, certification as created in this bill is specific to the Medi-Cal program, but substance abuse and mental health issues are not exclusive to the Medi-Cal program. If this is indeed a highly promising model of service delivery, it is unclear that it should be limited to the Medi-Cal program. At the same time, the establishment of state certification appears urgently needed in order to allow counties, who are in many cases already delivering these services, to leverage federal dollars the state is otherwise leaving on the table. Not receiving federal funds available for these services is a missed opportunity to use local funds more efficiently and effectively. Thus, a focus on fulfilling Medi-Cal requirements seems appropriate at this time in order to leverage federal funding, but the author might consider either modifying the bill to allow flexibility for a broader recognition by removing some references that appear to restrict certification to those providers participating in Medi-Cal-or following up at a later time to ensure the implementation of state certification supports the adoption

of the peer support model outside Medi-Cal if appropriate.

d) Technical Notes. Section 14045.22 requires FFP and federal approval in order to implement the bill. However, the bill does not specify whether FFP is required for the services or for the DHCS administrative or contract costs of a certification program, or both. Additionally, DHCS notes "while the bill assumes the program would secure federal funds through FFP, those funds cannot be used for the program until it receives federal approval. Once the program is approved, FFP would be at a 50/50 matching level, meaning additional state funds would still be needed to pay for ongoing obligations. Thus, it would be necessary to use State General Fund seed funding to start the program for an indeterminate amount of time." This section should be clarified in order to allow DHCS to move forward with certification program activities prior to federal approval and FFP, if that is the intent.

Analysis Prepared by: Lisa Murawski / APPR. / (916)
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