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SENATE BILL 5943

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State of Washington

62nd Legislature

2011 Regular Session

By Senators Prentice and Zarelli

Read first time 04/14/11. Referred to Committee on Ways & Means.

1 AN ACT Relating to transition services for people with  
2 developmental disabilities; amending RCW 71A.10.020, 71A.20.010,  
3 71A.20.020, 71A.18.040, and 71A.20.080; adding new sections to chapter  
4 71A.20 RCW; creating new sections; providing an effective date; and  
5 declaring an emergency.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** The legislature intends that:

8 (1) Out-of-the-family home residential services supporting  
9 individuals with developmental disabilities should be available in the  
10 most integrated setting appropriate to individual needs; and

11 (2) A person with a developmental disability moving from an  
12 institution to a community setting should have the services and support  
13 arrangements needed to meet the person's assessed health and welfare  
14 needs.

15 **Sec. 2.** RCW 71A.10.020 and 2010 c 94 s 21 are each amended to read  
16 as follows:

17 As used in this title, the following terms have the meanings  
18 indicated unless the context clearly requires otherwise.

1 (1) "Community residential support services," or "community support  
2 services," and "in-home services" means one or more of the services  
3 listed in RCW 71A.12.040.

4 (2) "Crisis stabilization services" means services provided persons  
5 with developmental disabilities who demonstrate behaviors that  
6 jeopardize the safety or stability of their current living situation.  
7 Crisis stabilization services include:

8 (a) Temporary intensive services and supports, typically not to  
9 exceed sixty days, to prevent psychiatric hospitalization or  
10 institutional placement or other out-of-home placement; and

11 (b) Services designed to stabilize the person and strengthen their  
12 current living situation so the person may continue to reside in the  
13 community during and beyond the crisis period.

14 (3) "Department" means the department of social and health  
15 services.

16 ((+3)) (4) "Developmental disability" means a disability  
17 attributable to intellectual disability, cerebral palsy, epilepsy,  
18 autism, or another neurological or other condition of an individual  
19 found by the secretary to be closely related to an intellectual  
20 disability or to require treatment similar to that required for  
21 individuals with intellectual disabilities, which disability originates  
22 before the individual attains age eighteen, which has continued or can  
23 be expected to continue indefinitely, and which constitutes a  
24 substantial limitation to the individual. By January 1, 1989, the  
25 department shall promulgate rules which define neurological or other  
26 conditions in a way that is not limited to intelligence quotient scores  
27 as the sole determinant of these conditions, and notify the legislature  
28 of this action.

29 ((+4)) (5) "Eligible person" means a person who has been found by  
30 the secretary under RCW 71A.16.040 to be eligible for services.

31 ((+5)) (6) "Habilitative services" means those services provided  
32 by program personnel to assist persons in acquiring and maintaining  
33 life skills and to raise their levels of physical, mental, social, and  
34 vocational functioning. Habilitative services include education,  
35 training for employment, and therapy.

36 ((+6)) (7) "Legal representative" means a parent of a person who  
37 is under eighteen years of age, a person's legal guardian, a person's  
38 limited guardian when the subject matter is within the scope of the

1 limited guardianship, a person's attorney-at-law, a person's  
2 attorney-in-fact, or any other person who is authorized by law to act  
3 for another person.

4 ~~((+7))~~ (8) "Notice" or "notification" of an action of the  
5 secretary means notice in compliance with RCW 71A.10.060.

6 ~~((+8))~~ (9) "Residential habilitation center" means a state-  
7 operated facility for persons with developmental disabilities governed  
8 by chapter 71A.20 RCW.

9 ~~((+9))~~ (10) "Respite services" means short-term services provided  
10 to people with disabilities unable to care for themselves because of  
11 the absence of or need for relief by caregivers usually providing the  
12 care. "Respite services" includes both in-home and out-of-home care on  
13 an hourly and daily basis, including twenty-four hour care for several  
14 consecutive days. Respite care workers provide supervision,  
15 companionship, and personal care services temporarily replacing those  
16 provided by the primary caregiver of the person with disabilities.  
17 Respite care may include other services needed by the client, including  
18 medical care which must be provided by a licensed health care  
19 practitioner.

20 (11) "Secretary" means the secretary of social and health services  
21 or the secretary's designee.

22 ~~((+10))~~ (12) "Service" or "services" means services provided by  
23 state or local government to carry out this title.

24 ~~((+11))~~ (13) "State-operated living alternative" means community  
25 residential services that may include assistance with activities of  
26 daily living, behavioral, habilitative, interpersonal, protective,  
27 medical, nursing, and mobility supports to individuals who have been  
28 assessed by the department as meeting state and federal requirements  
29 for eligibility in home and community-based waiver programs for  
30 individuals with developmental disabilities. State-operated living  
31 alternatives are staffed with state employees.

32 (14) "Supported living" means community residential services that  
33 may include assistance with activities of daily living, behavioral,  
34 habilitative, interpersonal, protective, medical, nursing, and mobility  
35 supports provided to individuals with disabilities who have been  
36 assessed by the department as meeting state and federal requirements  
37 for eligibility in home and community-based waiver programs for

1 individuals with developmental disabilities. Supported living services  
2 are provided under contracts with private agencies or with individuals  
3 who are not state employees.

4 (15) "Vacancy" means an opening at a residential habilitation  
5 center, which when filled, would not require the center to exceed its  
6 biennially budgeted capacity.

7 **Sec. 3.** RCW 71A.20.010 and 1988 c 176 s 701 are each amended to  
8 read as follows:

9 (1) This chapter covers the operation of residential habilitation  
10 centers. The selection of persons to be served at the centers is  
11 governed by chapters 71A.16 and 71A.18 RCW. The purposes of this  
12 chapter are: To provide for those (~~children and adults~~) persons who  
13 are exceptional in their needs for care, treatment, and education by  
14 reason of developmental disabilities, residential care designed to  
15 develop their individual capacities to their optimum; to provide for  
16 admittance, withdrawal and discharge from state residential  
17 habilitation centers upon application; and to insure a comprehensive  
18 program for the education, guidance, care, treatment, and  
19 rehabilitation of all persons admitted to residential habilitation  
20 centers.

21 (2) Effective no later than July 1, 2012, no person under the age  
22 of twenty-one years may be admitted to receive services at a  
23 residential habilitation center, unless such admission is limited to  
24 the provision of short-term respite or crisis stabilization services.

25 **Sec. 4.** RCW 71A.20.020 and 1994 c 215 s 1 are each amended to read  
26 as follows:

27 The following residential habilitation centers are permanently  
28 established to provide services to persons with developmental  
29 disabilities: Lakeland Village, located at Medical Lake, Spokane  
30 county; (~~Rainier School, located at Buckley, Pierce county;~~) Yakima  
31 Valley School, located at Selah, Yakima county; and Fircrest School,  
32 located at Seattle(~~(, King county; and Frances Haddon Morgan Children's~~  
33 ~~Center, located at Bremerton, Kitsap county)~~)).

34 NEW SECTION. **Sec. 5.** A new section is added to chapter 71A.20 RCW  
35 to read as follows:

1 (1) By December 31, 2011, the department shall close Frances Haddon  
2 Morgan residential rehabilitation center and relocate current residents  
3 consistent with the requirements of section 6 of this act.

4 (2) By June 30, 2014, the department shall close the Rainier school  
5 and relocate current residents consistent with the requirements of  
6 section 6 of this act.

7 (3) To assure the successful implementation of these closures, the  
8 department, within available funds:

9 (a) May offer a nonprofit entity or entities the opportunity to  
10 purchase one or more houses located on the grounds of a closing  
11 facility for the purpose of conversion to state-operated living  
12 alternatives. Before commencing any sale of property, the department  
13 shall first determine the fair market value of the property as well as  
14 estimated costs associated with subdividing lots for the purpose of  
15 determining the cost-effectiveness and viability of any transaction  
16 under this section. For houses located at Frances Haddon Morgan  
17 Center, a nonprofit entity must submit a letter to the department by  
18 September 30, 2011, stating the intent to purchase the house or houses  
19 for conversion to state-operated living alternatives by December 31,  
20 2011;

21 (b) Shall establish state-operated living alternatives to provide  
22 community residential services to residential habilitation center  
23 residents transitioning to the community under this chapter who prefer  
24 a state-operated living alternative. The department shall offer  
25 residential habilitation center employees opportunities to work in  
26 state-operated living alternatives as they are established;

27 (c) May use existing or establish new supported living program  
28 capacity in the community for former residential habilitation center  
29 residents who prefer a supported living program;

30 (d) Shall establish community-based crisis stabilization and  
31 respite services for individuals with developmental disabilities  
32 requiring such services;

33 (e) May establish regional or mobile specialty services, such as  
34 dental care, physical therapy, occupational therapy, and specialized  
35 nursing care, which can be made available to former residents of  
36 residential habilitation centers and, within available funds, other  
37 individuals with developmental disabilities residing in the community;  
38 and

1 (f) Provide opportunities for employees of the residential  
2 habilitation centers to compete for employment in state-operated living  
3 alternatives.

4 NEW SECTION. **Sec. 6.** A new section is added to chapter 71A.20 RCW  
5 to read as follows:

6 The department shall:

7 (1) Within sixty days of admission to a residential habilitation  
8 center, ensure that each resident's individual habilitation plan  
9 includes a plan for discharge to the community;

10 (2) Use a person-centered approach in developing the discharge plan  
11 by assessing the resident's needs and specifying services and supports  
12 in the plan to enable the resident to successfully transition to the  
13 community, including:

14 (a) Engaging families and guardians of residents by offering  
15 family-to-family mentoring provided by family members who themselves  
16 experienced moving a family member with developmental disabilities from  
17 an institution to the community. The department may contract with the  
18 developmental disabilities council to provide mentoring services;

19 (b) Providing residents and their families or guardians  
20 opportunities to visit state-operated living alternatives and supported  
21 living options in the community;

22 (c) Informing residents leaving a residential habilitation center  
23 that they have a "right to return" to a residential habilitation center  
24 during the first year following their move;

25 (d) Offering to place, with the consent of the resident or his or  
26 her guardian, each resident of the residential habilitation center on  
27 the appropriate home and community-based waiver, as authorized under 42  
28 U.S.C. Sec. 1396n, and provide continued access to all authorized  
29 waiver services that meet his or her assessed needs;

30 (e) Providing choice of community living options and providers,  
31 consistent with federal requirements and prioritizing community  
32 placement in close proximity to the resident's family, where possible;

33 (3) Maximize federal funding for transitioning clients, including  
34 the roads to community living grant; and

35 (4) Limit the ability of state-operated living alternatives to  
36 reject clients.

1       **Sec. 7.** RCW 71A.18.040 and 1989 c 175 s 142 are each amended to  
2 read as follows:

3       (1) A person who is receiving a service under this title or the  
4 person's legal representative may request the secretary to authorize a  
5 service that is available under this title in place of a service that  
6 the person is presently receiving.

7       (2) The secretary upon receiving a request for change of service  
8 shall consult in the manner provided in RCW 71A.10.070 and within  
9 ninety days shall determine whether the following criteria are met:

10       (a) The alternative plan proposes a less dependent program than the  
11 person is participating in under current service;

12       (b) The alternative service is appropriate under the goals and  
13 objectives of the person's individual service plan;

14       (c) The alternative service is not in violation of applicable state  
15 and federal law; and

16       (d) The service can reasonably be made available.

17       (3) If the requested alternative service meets all of the criteria  
18 of subsection (2) of this section, the service shall be authorized as  
19 soon as reasonable, but not later than one hundred twenty days after  
20 completion of the determination process, unless the secretary  
21 determines that:

22       (a) The alternative plan is more costly than the current plan;

23       (b) Current appropriations are not sufficient to implement the  
24 alternative service without reducing services to existing clients; or

25       (c) Providing alternative service would take precedence over other  
26 priorities for delivery of service.

27       (4) The secretary shall give notice as provided in RCW 71A.10.060  
28 of the grant of a request for a change of service. The secretary shall  
29 give notice as provided in RCW 71A.10.060 of denial of a request for  
30 change of service and of the right to an adjudicative proceeding.

31       (5) When the secretary has changed service from a residential  
32 habilitation center to a setting other than a residential habilitation  
33 center, the secretary shall reauthorize service at the residential  
34 habilitation center if the secretary in reevaluating the needs of the  
35 person finds that the person needs service in a residential  
36 habilitation center. A person who has moved from a residential  
37 habilitation center to a community-based setting shall be offered a

1 right to return to a residential habilitation center during the first  
2 year following his or her move to the community.

3 (6) If the secretary determines that current appropriations are  
4 sufficient to deliver additional services without reducing services to  
5 persons who are presently receiving services, the secretary is  
6 authorized to give persons notice under RCW 71A.10.060 that they may  
7 request the services as new services or as changes of services under  
8 this section.

9 **Sec. 8.** RCW 71A.20.080 and 1989 c 175 s 143 are each amended to  
10 read as follows:

11 (1) Whenever in the judgment of the secretary, the treatment and  
12 training of any resident of a residential habilitation center has  
13 progressed to the point that it is deemed advisable to return such  
14 resident to the community, the secretary may grant placement on such  
15 terms and conditions as the secretary may deem advisable after  
16 consultation in the manner provided in RCW 71A.10.070. The secretary  
17 shall give written notice of the decision to return a resident to the  
18 community as provided in RCW 71A.10.060. The notice must include a  
19 statement advising the recipient of the right to an adjudicative  
20 proceeding under RCW 71A.10.050 and the time limits for filing an  
21 application for an adjudicative proceeding. The notice must also  
22 include a statement advising the recipient of the right to judicial  
23 review of an adverse adjudicative order as provided in chapter 34.05  
24 RCW.

25 (2) A placement decision shall not be implemented at any level  
26 during any period during which an appeal can be taken or while an  
27 appeal is pending and undecided, unless authorized by court order so  
28 long as the appeal is being diligently pursued.

29 ~~((The department of social and health services shall periodically  
30 evaluate at reasonable intervals the adjustment of the resident to the  
31 specific placement to determine whether the resident should be  
32 continued in the placement or returned to the institution or given a  
33 different placement.))~~

34 NEW SECTION. **Sec. 9.** A new section is added to chapter 71A.20 RCW  
35 to read as follows:

36 Beginning November 1, 2012, and annually thereafter through 2015,



1 the department shall submit information to the appropriate committees  
2 of the legislature regarding persons who have transitioned from  
3 residential habilitation centers to the community under this chapter,  
4 including:

5 (1) Number of residential habilitation residents moved from each  
6 facility and the type of facility or community placement the resident  
7 was moved to;

8 (2) Client and guardian satisfaction with services;

9 (3) Stability of placement and provider turnover, including  
10 information on individuals who have returned to a residential  
11 habilitation center;

12 (4) Safety and health outcomes;

13 (5) Types of services received by clients transitioned to the  
14 community; and

15 (6) Continued accessibility of former residents to family.

16 NEW SECTION. **Sec. 10.** A new section is added to chapter 71A.20  
17 RCW to read as follows:

18 There is established in the state treasury the community  
19 residential investment account. Moneys in the account may be spent  
20 only after appropriation. Any savings achieved through the  
21 consolidation or closure of a residential habilitation center may be  
22 deposited into the community residential investment account.  
23 Expenditures from the account may only be used to extend service to  
24 people with developmental disabilities currently receiving limited or  
25 no services or to enhance rates paid to community residential service  
26 businesses.

27 NEW SECTION. **Sec. 11.** If any provision of this act or its  
28 application to any person or circumstance is held invalid, the  
29 remainder of the act or the application of the provision to other  
30 persons or circumstances is not affected.

31 NEW SECTION. **Sec. 12.** If any part of this act is found to be in  
32 conflict with federal requirements that are a prescribed condition to  
33 the allocation of federal funds to the state, the conflicting part of  
34 this act is inoperative solely to the extent of the conflict and with  
35 respect to the agencies directly affected, and this finding does not

1 affect the operation of the remainder of this act in its application to  
2 the agencies concerned. Rules adopted under this act must meet federal  
3 requirements that are a necessary condition to the receipt of federal  
4 funds by the state.

5 NEW SECTION. **Sec. 13.** Section 6 of this act is necessary for the  
6 immediate preservation of the public peace, health, or safety, or  
7 support of the state government and its existing public institutions,  
8 and takes effect June 30, 2011.

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