

HOUSE BILL REPORT

SSB 6387

As Passed House - Amended:
March 13, 2014

Title: An act relating to reducing the number of individuals with developmental disabilities who have requested a service but the provision of a specific service would exceed program capacity.

Brief Description: Concerning individuals with developmental disabilities who have requested a service from a program that is already at capacity.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Hill, Hargrove, Ranker, Fain, Braun, Tom, Dammeier, Parlette, Becker, Schoesler, Hewitt, Bailey, King, Angel, Roach, Keiser, Litzow, Kohl-Welles, O'Ban, Conway and Benton).

Brief History:

Committee Activity:

Early Learning & Human Services: 2/24/14, 2/26/14 [DPA];
Appropriations: 2/27/14, 3/1/14 [DPA(APP w/o ELHS)].

Floor Activity:

Passed House - Amended: 3/13/14, 93-4.

**Brief Summary of Substitute Bill
(As Amended by House)**

- Requires the Department of Social and Health Services (DSHS) to implement a Medicaid waiver to replace the Individual and Family Services (IFS) program no later than May 30, 2015.
- Specifies that if additional federal funds are attained through the Community First Choice Option, then by June 30, 2017, at least 4,000 individuals will receive services within the new IFS waiver, and an additional 1,000 individuals will receive services under the existing Basic Plus waiver.
- Extends the certification exemption for individual providers who provide 20 hours or less of care for one person in any calendar year to July 1, 2016.
- Creates a certification exemption for individual providers who only provide respite services and work less than 300 hours in any calendar year until July 1, 2016.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

HOUSE COMMITTEE ON EARLY LEARNING & HUMAN SERVICES

Majority Report: Do pass as amended. Signed by 11 members: Representatives Kagi, Chair; Freeman, Vice Chair; Walsh, Ranking Minority Member; Fagan, Goodman, Ortiz-Self, Roberts, Sawyer, Senn, Young and Zeiger.

Minority Report: Do not pass. Signed by 1 member: Representative Scott, Assistant Ranking Minority Member.

Staff: Luke Wickham (786-7146).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass as amended by Committee on Appropriations and without amendment by Committee on Early Learning & Human Services. Signed by 27 members: Representatives Hunter, Chair; Ormsby, Vice Chair; Ross, Assistant Ranking Minority Member; Buys, Carlyle, Christian, Cody, Dahlquist, Dunshee, Fagan, Green, Haigh, Haler, Harris, Hudgins, G. Hunt, S. Hunt, Jinkins, Kagi, Lytton, Morrell, Parker, Pettigrew, Seaquist, Springer, Sullivan and Tharinger.

Minority Report: Do not pass. Signed by 4 members: Representatives Chandler, Ranking Minority Member; Wilcox, Assistant Ranking Minority Member; Schmick and Taylor.

Staff: James Kettel (786-7123).

Background:

There are a number of services available to individuals with developmental disabilities in Washington. The Developmental Disability Administration (DDA) provides services such as housing, medical care, personal care, and job training.

Some individuals receive care in Residential Habitation Centers (RHCs) and others receive services in community living situations or their own homes. There are four RHCs in Washington including: Lakeland Village, Yakima Valley School, Fircrest School, and Rainer School.

Intermediate Care Facility Services and Medicaid Personal Care (MPC) services are guaranteed under Medicaid if people meet financial and disability eligibility criteria. However, other services available under the Medicaid waiver for Home and Community-Based Services depend on additional eligibility criteria and the availability of funds.

Individual and Family Services Program.

The Individual and Family Services Program (IFS) supports families who are caring for a family member with a developmental disability in their home. The supports provided through the IFS are intended to keep eligible individuals at home with parents or relatives. The IFS services that families may receive include:

- respite care;

- therapies;
- architectural and vehicular modifications;
- equipment and supplies;
- specialized nutrition and clothing;
- excess medical costs not covered by another source;
- co-pays for medical and therapeutic services;
- transportation;
- training;
- counseling;
- behavior support;
- parent/sibling education; and
- recreational opportunities.

Home and Community-Based Services Basic Plus Waiver.

The Medicaid Home and Community-Based Services (HCBS) waiver permits Washington to provide home and community-based services that assist Medicaid beneficiaries to live in the community and avoid institutionalization. The Basic Plus waiver serves individuals who meet the Intermediate Care Facilities for Individuals with Intellectual Disabilities guidelines and choose to live in their community. The HCBS Basic Plus waiver is managed by the Aging and Disability Services Administration and the Division of Developmental Disabilities within the Department of Social and Health Services (DSHS).

Medicaid Personal Care.

The MPC program provides assistance with activities of daily living to individuals who are eligible for non-institutional categorically needy or alternative benefit plan medical programs. The services provided through the MPC include assistance with: bathing, dressing, eating, meal preparation, housework, and travel to medical services. This service is provided in the person's own home or adult family home. Federal matching funds cover 50 percent of the cost for personal care services under the MPC.

Community First Choice Option.

The Community First Choice Option (CFCO) is a Medicaid program that allows states to receive a 6 percent increase in federal matching payments. Eligibility for this program is based on income and a determination that, but for the provision of home and community-based services, the individual would need to reside in a nursing home or other institution. The services provided through the CFCO are based on an individual care plan developed through an assessment.

The required services through the CFCO include:

- assistance with activities and instrumental activities of daily living;
- acquisition, maintenance, and enhancement of skills to complete those tasks;
- back-up systems, such as beepers, that will ensure continuity of care and support; and
- training on hiring and dismissing attendants.

There are also additional optional services through the CFCO, including transition costs and additional items that will increase an individual's independence or substitute for personal assistance.

The CFCO is an entitlement program with no caps or targeting by age, severity of disability, or any other criteria.

State Auditor's Developmental Disability Program Evaluation.

The State Auditor released a Developmental Disabilities Program Evaluation (Evaluation) on July 31, 2013. This Evaluation reported that of the 35,150 individuals who have applied and are eligible for services, 15,100 individuals are on the waitlist, 7,800 individuals receive partial services, and 12,500 individuals receive full services. Those on the waitlist have been waiting an average of three and a half years. The report found that supporting a client in an RHC incurs twice the average cost of the most expensive community-based residential service option. It found that there are virtually no crisis stabilization programs at the community care level near the majority of clients. It also found that the opportunities for integrated employment depend largely on where a person lives.

The Evaluation also made recommendations that the Legislature set policy that directs the DDA to develop strategies to maximize cost-effective service options and set policy to reduce the number of eligible people awaiting services. It also recommended that the DDA should provide financial incentives to counties to encourage equal access to integrated, individual employment for clients regardless of where they live in the state.

Long-term Care Workers.

Long-term care (LTC) workers provide care to elderly and disabled clients, many of whom are eligible for publicly funded services through the DSHS. These workers provide personal care assistance (i.e. bathing, eating, toileting, dressing, meal preparation, and household chores) to individuals with developmental disabilities and individuals with other long-term care needs.

The services may be provided: (1) by LTC workers employed in various regulated residential settings; or (2) in the client's home by individual providers who contract directly with the DSHS or by agency providers who are employees of a licensed home care agency. A paid individual provider may be a relative or a household member, although the parent of a client who is a minor or the client's spouse may not be a paid individual provider under most programs.

The term "LTC worker" does not include persons employed in nursing homes, hospitals, hospice agencies, or adult day care or day health care centers.

Most LTC workers are required to complete 75 hours of basic training and 12 hours of continuing education every year thereafter. Most LTC workers are also required to pass written and skill demonstration exams to obtain certification as a home care aides. Prior to July 1, 2014, an individual provider who provides 20 hours or less of care for one person in any calendar month is exempt from certification requirements for becoming a home care aide.

Summary of Amended Bill:

After an individual is considered eligible for services by the DSHS, that individual may request an assessment for eligibility for Medicaid programs and specific services provided by

the DDA. The Secretary of the DSHS shall prioritize services to Medicaid eligible clients. Services available through the state Medicaid plan must be provided to eligible individuals. The DSHS shall develop a service request list database for eligible individuals and have an unmet need for programs offered under a home and community-based waiver, but the provision of a specific service would exceed budgeted capacity.

The DSHS must implement a Medicaid program to replace the IFS program for Medicaid-eligible clients No later than May 1, 2015. The program must offer services that resemble those currently offered by the IFS program. The DSHS must expand the client caseload to the extent possible. To the extent possible, the DSHS must increase the number of clients served in the new Medicaid program. The DSHS is authorized in fiscal year 2015 to use the funds previously provided for the IFS program to cover the costs of increasing the number of clients served in the new Medicaid program.

By June 30, 2017, if federal funds are attained through the CFCO, the clients served on the Medicaid program replacing the IFS program must increase by at least 4,000 and the clients served on the HCBS Basic Plus waiver must increase by 1,000.

The term assessment is defined as an evaluation provided by the DSHS to determine whether an individual meets the functional and financial criteria for Medicaid services and an individual's support needs for service determination.

The term "service request list" is defined as a list of eligible persons who received an assessment which determined eligibility for services, but services were denied due to funding limits.

The certification exemption for individual providers who provide 20 hours or less of care for one person in any calendar month is extended until July 1, 2016. A certification exemption is created for individual providers who only provide respite services and work less than 300 hours in a calendar year.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony (Early Learning & Human Services):

(In support) The major concern from the developmental disability community is the waitlist of eligible individuals who are not receiving services. There is an understanding that there are 5,000 people that really need to be targeted on the waitlist. The bill would allow us to reach more individuals with developmental disabilities and allow for a net neutral budget impact. This bill passed the Senate with bipartisan support unanimously.

Families on the IFS program will be moved onto a Medicaid program. This bill proposes funding an increase in services using the savings from the CFCO refinance. Some of the

families responding to these issues are fine, and others are in crisis. This bill represents the importance of community-based service funding. This bill is historic and necessary. For many families dealing with developmental disabilities there is a struggle to receive services. This bill addresses an equity issue related to those who receive services and those who are not receiving services. Many individuals experiencing developmental disabilities will bite off their lower lip or gouge out their eyes, and they cannot stop themselves. Many of these individuals also need to be monitored in their sleep and throughout the day to protect themselves. Respite services are necessary for families to keep themselves going and allow them to care for their family members. About one-third of the money generated by the refinancing through the CFCO would be based on individuals on the caseload with developmental disabilities and two-thirds of the money generated would be from the portion of the caseload that receives long term care services. The CFCO would both allow more funding for services and allows for better services. It would be more equitable to distribute the funds generated by the CFCO refinance based on the proportion of the caseload that is being refinanced through the CFCO, both individuals with developmental disabilities and those with long-term care needs. Pursuing the CFCO could be transformative. All advocates are going to support this bill, which may be a first. There are individuals experiencing developmental disabilities that have never applied for services. There are thousands of parents out there that have nowhere to go. The current system is a system of haves and have-nots.

(In support with amendment) The CFCO savings should be reinvested in the caseloads that generate the savings. The aging population is growing rapidly and the CFCO savings need to be reinvested in serving those with long-term care needs. It is necessary to point attention toward the no paid services caseload. There is language in section six of the bill that provides a 3 percent cap, the House version of this cap provides greater specificity that the cap only applies to costs not directly related to the CFCO. It appears that some of the savings generated from the CFCO are not specified, and there should be a requirement to reinvest that savings in programs that serve the populations generating the savings.

(With concerns) This bill should recognize the important role of institutions in the care of individuals with developmental disabilities.

(Opposed) None.

Staff Summary of Public Testimony (Appropriations):

(In support) The state auditor recommended that the state begin addressing the roughly 15,000 people who are waiting to receive paid services from the Developmental Disabilities Administration (DDA). The number of people waiting for services has been growing for the last 15 to 20 years. About 800 people each year come into DDA offices and are eligible to receive services. However, since DDA services are not part of the caseload forecast, many individuals have to wait until the Legislature appropriates additional funding for client services. We are supportive of any effort to find funding to increase the number of people receiving paid services. Implementing the Community First Choice Option and pursuing a Medicaid waiver for Individual and Family Services, both seem like great ideas. So many families cannot receive support under the current system. Serving about 5,000 new people with a developmental disability thrills us. Providing services to families caring for a child

with a developmental disability saves the state a lot of money. The only other alternative for families would be institutional placement, which would be very costly. Please direct the Department of Social and Health Services to start moving on this opportunity immediately. We can work out the details later. Preparing the state for the rapidly increasing number of older adults is also very important. The amendments added in the early learning committee helped clarify the legislative intent to utilize savings for additional investments in home and community based services for older adults and people with developmental disabilities.

(Opposed) None

Persons Testifying (Early Learning & Human Services): (In support) Senator Hill, prime sponsor; Sue Elliott, The Arc of Washington State; Margaret-Lee Thompson, The Arc of the United States; Joe Cunningham, The Arc of King County; Betsy Geib, King County Family Coalition; Jaren Wicklund; Kevin Quigley, Department of Social and Health Services; Ed Holen, Development Disabilities Council; Paul Strand, Action Developmental Disabilities; and Diana Stadden.

(In support with amendment) Mary Clogston, American Association of Retired Persons; Dennis Mahar, Washington Association of Area Agencies on Aging; and Misha Werschkul, Service Employees International Union 775.

(With concerns) Saskia Davis, Action Developmental Disabilities.

Persons Testifying (Appropriations): Senator Hill, prime sponsor; Donna Patrick, Developmental Disabilities Council; Margaret Lee Thompson, The Arc of the United States; Emily Rogers and Brittany Graves, Self-Advocates in Leadership; Diana Stadden; and Misha Werschkul, Service Employees International Union Local 775.

Persons Signed In To Testify But Not Testifying (Early Learning & Human Services): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.