

# HOUSE BILL REPORT

## SSB 6387

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### As Reported by House Committee On: Early Learning & Human Services

**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].

#### **Brief Summary of Substitute Bill (As Amended by Committee)**

- Requires the Department of Social and Health Services (DSHS) to implement a Medicaid program to replace the Individual and Family Services program by May 30, 2016, and the number of clients served in this new program must increase by at least 4,000 by 2017.
- Requires the DSHS to expand the Home and Community-Based Services Basic Plus waiver client caseload beginning June 30, 2015, which must be increased by at least 1,000 individuals by 2017.
- Requires the DSHS to refinance Medicaid Personal Care services under the Community First Choice Option.

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### 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.

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*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.*

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

**Staff:** Luke Wickham (786-7146).

**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.

## **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 as soon as May 1, 2015, and no later than May 30, 2016. The program must offer services that resemble those currently offered by the IFS program. The DSHS must expand the client caseload beginning June 1, 2015. By June 30, 2017, the DSHS must increase the number of clients served in the new Medicaid program by at least 4,000 individuals from the number of individuals served in 2014 by IFS. The DSHS is authorized 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. Any remaining State General Fund savings from the implementation of the Medicaid program replacing IFS must be reserved for potential investment in home and community-based services for individuals with developmental disabilities. To the extent possible, the DSHS must use savings from refinancing MPC services under the CFCO to offset costs for the increased client caseloads in fiscal years 2016 through 2019.

The DSHS must expand the HCBS Basic Plus waiver client caseload beginning June 30, 2015. By June 30, 2017, the DSHS must increase the number of individuals served on this program by at least 1,000 individuals from those served in 2014. The DSHS is authorized to use funds previously provided for the IFS program to cover the costs of increasing the number of clients served in the Basic Plus waiver program. To the extent possible, the DSHS must use savings from refinancing the MPC services under the CFCO to offset costs for the increased client caseloads in fiscal years 2016 through 2019.

The DSHS shall refinance the MPC services under the CFCO. Beginning July 1, 2014, the DSHS must seek stakeholder input on the program design prior to the submission of a proposal. The CFCO must be designed in a way to meet the federal minimum maintenance of effort requirements and all service requirements.

During the first year of the CFCO implementation, the cost of all services offered by the CFCO may not exceed a 3 percent increase over the per capita cost of the services provided to this population before the refinance. The 3 percent limit on new expenditures does not apply to cost increases that are not a result of implementing the CFCO and does not apply beyond the initial benefit design.

The CFCO must be fully implemented as soon as July 1, 2015, and no later than June 30, 2016. In fiscal year 2015, the DSHS must use savings from the implementation of a Medicaid program replacing the IFS program to cover the 2015 costs of refinancing under the CFCO. For the 2015-2017 and 2017-2019 biennia, the DSHS shall use savings from the refinance under the CFCO to offset costs related to implementation of the Medicaid program

replacing the IFS and expanding the caseload of that program and the home and community-based services Basic Plus waiver program. Any remaining savings from the CFCO refinance shall be reserved for potential investments in home and community-based services for individuals with developmental disabilities or individuals with long-term care needs.

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.

**Amended Bill Compared to Substitute Bill:**

The striking amendment adds intent language describing the growing demand for long-term care services. It specifies that the new Medicaid program that replaces the IFS must serve at least 4,000 additional clients and that the HCBS Basic Plus waiver caseload must increase by at least 1,000 additional clients.

The striking amendment specifies that any remaining savings from the implementation of a Medicaid program replacing the IFS program must be reserved for potential investment in HCBS for individuals with developmental disabilities. It specifies that any remaining savings from the refinance of Medicaid personal care services through the CFCO shall be reserved for potential investments HCBS for individuals with developmental disabilities or individuals with long-term care needs.

The striking amendment specifies that the 3 percent limit on new expenditures applies only during the first full-year of the CFCO implementation and does not apply to cost increases that are not the result of implementing the CFCO and does not apply beyond the initial benefit design.

The striking amendment changes the implementation date of the CFCO from August 30, 2015, to as soon as July 1, 2015, and no later than June 30, 2016. It also changes the implementation date of the Medicaid program replacing the IFS program from May 1, 2015, to as soon as May 1, 2015, and no later than May 30, 2016.

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**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:**

(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.

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