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**SUBSTITUTE HOUSE BILL 1529**

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**State of Washington 66th Legislature 2019 Regular Session**

**By** House Health Care & Wellness (originally sponsored by Representatives Davis, Corry, Frame, Kloba, Doglio, and Ormsby)

AN ACT Relating to removing barriers for agency affiliated counselors practicing as peer counselors; and amending RCW 18.130.175 and 43.43.842.

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

**Sec.**  RCW 18.130.175 and 2006 c 99 s 7 are each amended to read as follows:

(1) In lieu of disciplinary action under RCW 18.130.160 and if the disciplining authority determines that the unprofessional conduct may be the result of substance abuse, the disciplining authority may refer the license holder to a voluntary substance abuse monitoring program approved by the disciplining authority.

The cost of the treatment shall be the responsibility of the license holder, but the responsibility does not preclude payment by an employer, existing insurance coverage, or other sources. Primary alcoholism or other drug addiction treatment shall be provided by approved treatment programs under RCW 70.96A.020 or by any other provider approved by the entity or the commission. However, nothing shall prohibit the disciplining authority from approving additional services and programs as an adjunct to primary alcoholism or other drug addiction treatment. The disciplining authority may also approve the use of out-of-state programs. Referral of the license holder to the program shall be done only with the consent of the license holder. Referral to the program may also include probationary conditions for a designated period of time. If the license holder does not consent to be referred to the program or does not successfully complete the program, the disciplining authority may take appropriate action under RCW 18.130.160 which includes suspension of the license unless or until the disciplining authority, in consultation with the director of the voluntary substance abuse monitoring program, determines the license holder is able to practice safely. The secretary shall adopt uniform rules for the evaluation by the ((~~disciplinary [disciplining]~~)) disciplining authority of a relapse or program violation on the part of a license holder in the substance abuse monitoring program. The evaluation shall encourage program participation with additional conditions, in lieu of disciplinary action, when the ((~~disciplinary [disciplining]~~)) disciplining authority determines that the license holder is able to continue to practice with reasonable skill and safety.

(2) In addition to approving substance abuse monitoring programs that may receive referrals from the disciplining authority, the disciplining authority may establish by rule requirements for participation of license holders who are not being investigated or monitored by the disciplining authority for substance abuse. License holders voluntarily participating in the approved programs without being referred by the disciplining authority shall not be subject to disciplinary action under RCW 18.130.160 for their substance abuse, and shall not have their participation made known to the disciplining authority, if they meet the requirements of this section and the program in which they are participating.

(3) The license holder shall sign a waiver allowing the program to release information to the disciplining authority if the licensee does not comply with the requirements of this section or is unable to practice with reasonable skill or safety. The substance abuse program shall report to the disciplining authority any license holder who fails to comply with the requirements of this section or the program or who, in the opinion of the program, is unable to practice with reasonable skill or safety. License holders shall report to the disciplining authority if they fail to comply with this section or do not complete the program's requirements. License holders may, upon the agreement of the program and disciplining authority, reenter the program if they have previously failed to comply with this section.

(4) The treatment and pretreatment records of license holders referred to or voluntarily participating in approved programs shall be confidential, shall be exempt from chapter 42.56 RCW, and shall not be subject to discovery by subpoena or admissible as evidence except for monitoring records reported to the disciplining authority for cause as defined in subsection (3) of this section. Monitoring records relating to license holders referred to the program by the disciplining authority or relating to license holders reported to the disciplining authority by the program for cause, shall be released to the disciplining authority at the request of the disciplining authority. Records held by the disciplining authority under this section shall be exempt from chapter 42.56 RCW and shall not be subject to discovery by subpoena except by the license holder.

(5) "Substance abuse," as used in this section, means the impairment, as determined by the disciplining authority, of a license holder's professional services by an addiction to, a dependency on, or the use of alcohol, legend drugs, or controlled substances.

(6) This section does not affect an employer's right or ability to make employment-related decisions regarding a license holder. This section does not restrict the authority of the disciplining authority to take disciplinary action for any other unprofessional conduct.

(7) A person who, in good faith, reports information or takes action in connection with this section is immune from civil liability for reporting information or taking the action.

(a) The immunity from civil liability provided by this section shall be liberally construed to accomplish the purposes of this section and the persons entitled to immunity shall include:

(i) An approved monitoring treatment program;

(ii) The professional association operating the program;

(iii) Members, employees, or agents of the program or association;

(iv) Persons reporting a license holder as being possibly impaired or providing information about the license holder's impairment; and

(v) Professionals supervising or monitoring the course of the impaired license holder's treatment or rehabilitation.

(b) The courts are strongly encouraged to impose sanctions on clients and their attorneys whose allegations under this subsection are not made in good faith and are without either reasonable objective, substantive grounds, or both.

(c) The immunity provided in this section is in addition to any other immunity provided by law.

(8) In the case of a person who is applying to be an agency affiliated counselor registered under chapter 18.19 RCW and practices or intends to practice as a peer counselor in an agency, as defined in RCW 18.19.020, if the person is:

(a) Less than one year in recovery from a substance use disorder, the duration of time that the person may be required to participate in the voluntary substance abuse monitoring program may not exceed the amount of time necessary for the person to achieve one year in recovery; or

(b) At least one year in recovery from a substance use disorder, the person may not be required to participate in the substance abuse monitoring program.

**Sec.**  RCW 43.43.842 and 2014 c 88 s 1 are each amended to read as follows:

(1)(a) The secretary of social and health services and the secretary of health shall adopt additional requirements for the licensure or relicensure of agencies, facilities, and licensed individuals who provide care and treatment to vulnerable adults, including nursing pools registered under chapter 18.52C RCW. These additional requirements shall ensure that any person associated with a licensed agency or facility having unsupervised access with a vulnerable adult shall not be the respondent in an active protective order under RCW 74.34.130, nor have been: (i) Convicted of a crime against persons as defined in RCW 43.43.830, except as provided in this section; (ii) convicted of crimes relating to financial exploitation as defined in RCW 43.43.830, except as provided in this section; or (iii) found in any disciplinary board final decision to have abused a vulnerable adult under RCW 43.43.830.

(b) A person associated with a licensed agency or facility who has unsupervised access with a vulnerable adult shall make the disclosures specified in RCW 43.43.834(2). The person shall make the disclosures in writing, sign, and swear to the contents under penalty of perjury. The person shall, in the disclosures, specify all crimes against children or other persons, all crimes relating to financial exploitation, and all crimes relating to drugs as defined in RCW 43.43.830, committed by the person.

(2) The rules adopted under this section shall permit the licensee to consider the criminal history of an applicant for employment in a licensed facility when the applicant has one or more convictions for a past offense and:

(a) The offense was simple assault, assault in the fourth degree, or the same offense as it may be renamed, and three or more years have passed between the most recent conviction and the date of application for employment;

(b) The offense was prostitution, or the same offense as it may be renamed, and three or more years have passed between the most recent conviction and the date of application for employment;

(c) The offense was theft in the third degree, or the same offense as it may be renamed, and three or more years have passed between the most recent conviction and the date of application for employment;

(d) The offense was theft in the second degree, or the same offense as it may be renamed, and five or more years have passed between the most recent conviction and the date of application for employment;

(e) The offense was forgery, or the same offense as it may be renamed, and five or more years have passed between the most recent conviction and the date of application for employment;

(f) The department of social and health services reviewed the employee's otherwise disqualifying criminal history through the department of social and health services' background assessment review team process conducted in 2002, and determined that such employee could remain in a position covered by this section; or

(g) The otherwise disqualifying conviction or disposition has been the subject of a pardon, annulment, or other equivalent procedure.

The offenses set forth in (a) through (g) of this subsection do not automatically disqualify an applicant from employment by a licensee. Nothing in this section may be construed to require the employment of any person against a licensee's judgment.

(3) The rules adopted pursuant to subsection (2) of this section may not allow a licensee to automatically deny an applicant with a conviction for an offense set forth in subsection (2) of this section for a position as an agency affiliated counselor registered under chapter 18.19 RCW practicing as a peer counselor in an agency or facility if:

(a) At least one year has passed between the applicant's most recent conviction for an offense set forth in subsection (2) of this section and the date of application for employment;

(b) The offense was committed as a result of the person's substance use or untreated mental health symptoms; and

(c) The applicant is at least one year in recovery from a substance use disorder, whether through abstinence or stability on medication-assisted therapy, or in recovery from mental health challenges.

(4) In consultation with law enforcement personnel, the secretary of social and health services and the secretary of health shall investigate, or cause to be investigated, the conviction record and the protection proceeding record information under this chapter of the staff of each agency or facility under their respective jurisdictions seeking licensure or relicensure. An individual responding to a criminal background inquiry request from his or her employer or potential employer shall disclose the information about his or her criminal history under penalty of perjury. The secretaries shall use the information solely for the purpose of determining eligibility for licensure or relicensure. Criminal justice agencies shall provide the secretaries such information as they may have and that the secretaries may require for such purpose.

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