
SECOND SUBSTITUTE SENATE BILL 5459

State of Washington 62nd Legislature 2011 1st Special Session

By Senate Ways & Means (originally sponsored by Senators Kline, Keiser, Regala, and McAuliffe)

READ FIRST TIME 05/19/11.

1 AN ACT Relating to services for people with developmental
2 disabilities; amending RCW 71A.10.020, 71A.20.010, 71A.20.020,
3 71A.18.040, 71A.20.080, and 71A.20.170; adding new sections to chapter
4 71A.20 RCW; adding a new section to chapter 70.02 RCW; creating new
5 sections; providing an effective date; and declaring an emergency.

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

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

8 (1) A developmental disability is a natural part of human life and
9 the presence of a developmental disability does not diminish a person's
10 rights or the opportunity to participate in the life of the local
11 community;

12 (2) In Washington state, people living in residential habilitation
13 centers and their families are satisfied with the services they
14 receive, and deserve to continue receiving services that meet their
15 needs if they choose to receive those services in a community setting;

16 (3) The public interest would best be served by a broad array of
17 services that would support people with developmental disabilities at
18 home or in the community, whenever practicable, and that promote
19 individual autonomy, dignity, and choice;

1 (4) As other care options for people with developmental
2 disabilities become more available, the relative need for residential
3 habilitation center beds is likely to decline. The legislature
4 recognizes, however, that residential habilitation centers will
5 continue to be a critical part of the state's long-term care options;
6 and that such services should promote individual dignity, autonomy, and
7 a home-like environment; and

8 (5) In a time of fiscal restraint, the state should consider the
9 needs of all persons with developmental disabilities and spend its
10 limited resources in a manner that serves more people, while not
11 compromising the care people require.

12 NEW SECTION. Sec. 2. It is the intent of the legislature that:

13 (1) Community-based residential services supporting people with
14 developmental disabilities should be available in the most integrated
15 setting appropriate to individual needs; and

16 (2) An extensive transition planning and placement process should
17 be used to ensure that people moving from a residential habilitation
18 center to a community setting have the services and supports needed to
19 meet their assessed health and welfare needs.

20 **Sec. 3.** RCW 71A.10.020 and 2010 c 94 s 21 are each amended to read
21 as follows:

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

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

27 (2) "Crisis stabilization services" means services provided to
28 persons with developmental disabilities who are experiencing behaviors
29 that jeopardize the safety and stability of their current living
30 situation. Crisis stabilization services include:

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

34 (b) Services designed to stabilize the person and strengthen their
35 current living situation so the person may continue to safely reside in
36 the community during and beyond the crisis period.

1 (3) "Department" means the department of social and health
2 services.

3 ~~((+3))~~ (4) "Developmental disability" means a disability
4 attributable to intellectual disability, cerebral palsy, epilepsy,
5 autism, or another neurological or other condition of an individual
6 found by the secretary to be closely related to an intellectual
7 disability or to require treatment similar to that required for
8 individuals with intellectual disabilities, which disability originates
9 before the individual attains age eighteen, which has continued or can
10 be expected to continue indefinitely, and which constitutes a
11 substantial limitation to the individual. By January 1, 1989, the
12 department shall promulgate rules which define neurological or other
13 conditions in a way that is not limited to intelligence quotient scores
14 as the sole determinant of these conditions, and notify the legislature
15 of this action.

16 ~~((+4))~~ (5) "Eligible person" means a person who has been found by
17 the secretary under RCW 71A.16.040 to be eligible for services.

18 ~~((+5))~~ (6) "Habilitative services" means those services provided
19 by program personnel to assist persons in acquiring and maintaining
20 life skills and to raise their levels of physical, mental, social, and
21 vocational functioning. Habilitative services include education,
22 training for employment, and therapy.

23 ~~((+6))~~ (7) "Legal representative" means a parent of a person who
24 is under eighteen years of age, a person's legal guardian, a person's
25 limited guardian when the subject matter is within the scope of the
26 limited guardianship, a person's attorney-at-law, a person's
27 attorney-in-fact, or any other person who is authorized by law to act
28 for another person.

29 ~~((+7))~~ (8) "Notice" or "notification" of an action of the
30 secretary means notice in compliance with RCW 71A.10.060.

31 ~~((+8))~~ (9) "Residential habilitation center" means a state-
32 operated facility for persons with developmental disabilities governed
33 by chapter 71A.20 RCW.

34 ~~((+9))~~ (10) "Respite services" means relief for families and other
35 caregivers of people with disabilities to include both in-home and out-
36 of-home respite care on an hourly and daily basis, including twenty-
37 four hour care for several consecutive days. Respite care workers
38 provide supervision, companionship, and personal care services

1 temporarily replacing those provided by the primary caregiver of the
2 person with disabilities. Respite care may include other services
3 needed by the client, including medical care which must be provided by
4 a licensed health care practitioner.

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

7 ((+10)) (12) "Service" or "services" means services provided by
8 state or local government to carry out this title.

9 ((+11)) (13) "State-operated living alternative" means community
10 residential services which may include assistance with activities of
11 daily living, behavioral, habilitative, interpersonal, protective,
12 medical, nursing, and mobility supports to individuals who have been
13 assessed by the department as meeting state and federal requirements
14 for eligibility in home and community-based waiver programs for
15 individuals with developmental disabilities. State-operated living
16 alternatives are operated and staffed with state employees.

17 (14) "Supported living" means community residential services and
18 housing which may include assistance with activities of daily living,
19 behavioral, habilitative, interpersonal, protective, medical, nursing,
20 and mobility supports provided to individuals with disabilities who
21 have been assessed by the department as meeting state and federal
22 requirements for eligibility in home and community-based waiver
23 programs for individuals with developmental disabilities. Supported
24 living services are provided under contracts with private agencies or
25 with individuals who are not state employees.

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

29 **Sec. 4.** RCW 71A.20.010 and 1988 c 176 s 701 are each amended to
30 read as follows:

31 (1) This chapter covers the operation of residential habilitation
32 centers. The selection of persons to be served at the centers is
33 governed by chapters 71A.16 and 71A.18 RCW. The purposes of this
34 chapter are: To provide for those ((children and adults)) persons who
35 are exceptional in their needs for care, treatment, and education by
36 reason of developmental disabilities, residential care designed to
37 develop their individual capacities to their optimum; to provide for

1 admittance, withdrawal and discharge from state residential
2 habilitation centers upon application; and to insure a comprehensive
3 program for the education, guidance, care, treatment, and
4 rehabilitation of all persons admitted to residential habilitation
5 centers.

6 (2) Effective no later than July 1, 2012, no person under the age
7 of sixteen years may be admitted to receive services at a residential
8 habilitation center. Effective no later than July 1, 2012, no person
9 under the age of twenty-one years may be admitted to receive services
10 at a residential center, unless there are no service options available
11 in the community to appropriately meet the needs of the individual.
12 Such admission is limited to the provision of short-term respite or
13 crisis stabilization services.

14 **Sec. 5.** RCW 71A.20.020 and 1994 c 215 s 1 are each amended to read
15 as follows:

16 The following residential habilitation centers (~~are permanently~~
17 ~~established to~~) may provide services to persons with developmental
18 disabilities: Lakeland Village, located at Medical Lake, Spokane
19 county; Rainier School, located at Buckley, Pierce county; Yakima
20 Valley School, located at Selah, Yakima county; and Fircrest School,
21 located at Seattle, King county (~~and Frances Haddon Morgan Children's~~
22 ~~Center, located at Bremerton, Kitsap county~~)).

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

25 (1) By December 31, 2011, the department shall close Frances Haddon
26 Morgan residential rehabilitation center and relocate current residents
27 consistent with the requirements of section 7 of this act.

28 (2) Upon the effective date of this section, the department shall
29 not permit any new admission to Yakima Valley School unless such
30 admission is limited to the provision of short-term respite or crisis
31 stabilization services. No current resident of Yakima Valley School
32 shall be required or compelled to relocate to a different care setting
33 as a result of this act. The Yakima Valley School shall continue to
34 operate as a residential habilitation center until such time that no
35 client receiving residential habilitation center services on the
36 effective date of this section requires such services.

1 (3) To assure the successful implementation of subsections (1) and
2 (2) of this section, the department, within available funds:

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

15 (b) Shall establish state-operated living alternatives to provide
16 community residential services to residential habilitation center
17 residents transitioning to the community under this act who prefer a
18 state-operated living alternative. The department shall offer
19 residential habilitation center employees opportunities to work in
20 state-operated living alternatives as they are established;

21 (c) May use existing supported living program capacity in the
22 community for former residential habilitation center residents who
23 prefer and choose a supported living program;

24 (d) Shall establish and operate at Yakima Valley School a minimum
25 of eight crisis stabilization beds and a minimum of eight respite
26 service beds for individuals with developmental disabilities requiring
27 such services; and

28 (e) Shall establish regional or mobile specialty services evenly
29 distributed throughout the state, such as dental care, physical
30 therapy, occupational therapy, and specialized nursing care, which can
31 be made available to former residents of residential habilitation
32 centers and, within available funds, other individuals with
33 developmental disabilities residing in the community.

34 (4) The department shall take no steps to downsize any residential
35 habilitation center not identified in subsections (1) and (2) of this
36 section, except pursuant to implementing the recommendations of the
37 report described in section 8 of this act, as authorized by the
38 legislature.

1 NEW SECTION. **Sec. 7.** A new section is added to chapter 71A.20 RCW
2 to read as follows:

3 The department:

4 (1) May, within sixty days of admission to a residential
5 habilitation center, ensure that each resident's individual
6 habilitation plan includes a plan for discharge to the community;

7 (2) Shall use a person-centered approach in developing the
8 discharge plan to assess the resident's needs and identify services the
9 resident requires to successfully transition to the community,
10 including:

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

16 (b) Employees of the residential habilitation centers and the
17 department providing transition planning for residents. To strengthen
18 continuity of care for residents leaving residential habilitation
19 centers, the department shall provide opportunities for residential
20 habilitation center employees to obtain employment in state-operated
21 living alternatives;

22 (c) Providing choice of community living options and providers,
23 consistent with federal requirements, including offering to place, with
24 the consent of the resident or his or her guardian, each resident of
25 the residential habilitation center on the appropriate home and
26 community-based waiver, as authorized under 42 U.S.C. Sec. 1396n, and
27 provide continued access to the services that meet his or her assessed
28 needs;

29 (d) Providing residents and their families or guardians
30 opportunities to visit state-operated living alternatives and supported
31 living options in the community;

32 (e) Offering residents leaving a residential habilitation center a
33 "right to return" to a residential habilitation center during the first
34 year following their move;

35 (f) Addressing services in addition to those that will be provided
36 by residential services providers that are necessary to address the
37 resident's assessed needs, including:

38 (i) Medical services;

- 1 (ii) Nursing services;
- 2 (iii) Dental care;
- 3 (iv) Behavioral and mental health supports;
- 4 (v) Habilitation services;
- 5 (vi) Employment or other day support; and
- 6 (vii) Transportation or other supports needed to assist family and
- 7 friends in maintaining regular contact with the resident;

8 (3) Shall assure that, prior to discharge from a residential
9 habilitation center, clients continue to be eligible for services for
10 which they have an assessed need;

11 (4) Shall maximize federal funding for transitioning clients
12 through the roads to community living grant;

13 (5) Shall limit the ability of a state-operated living alternative
14 to reject clients;

15 (6) Shall use any savings achieved through efficiencies to extend
16 services, including crisis stabilization and respite services, to
17 people with developmental disabilities currently receiving limited or
18 no services; and

19 (7)(a) Shall employ the quality assurance for people moving process
20 to monitor the adjustment of each resident who leaves a residential
21 habilitation center; and

22 (b) Convene a work group to review findings from the quality
23 assurance for people moving process and provide feedback on the
24 transition process. The work group shall include representatives of
25 the developmental disabilities council, disability rights Washington,
26 University of Washington center for human development and disability,
27 providers, and families and advocates of persons with disabilities.

28 NEW SECTION. **Sec. 8.** A new section is added to chapter 70.02 RCW
29 to read as follows:

30 (1) A task force is established to consider the future uses of the
31 Fircrest School, Rainier School, Yakima Valley School, and Lakeland
32 Village residential habilitation centers.

33 (2) The task force shall be convened by September 1, 2011, and
34 consist of the following members:

35 (a) Two members of the house of representatives appointed by the
36 speaker of the house of representatives, from different political
37 caucuses;

1 (b) Two members of the senate appointed by the president of the
2 senate, from different political caucuses;

3 (c) The following members appointed by the governor:

4 (i) Two advocates for people with developmental disabilities;

5 (ii) A representative from the developmental disabilities council;

6 (iii) A representative of families of residents in residential
7 habilitation centers;

8 (iv) Two representatives of labor unions representing workers who
9 serve residents in residential habilitation centers;

10 (d) The secretary of the department of social and health services
11 or their designee; and

12 (e) The secretary of the department of general administration or
13 their designee.

14 (3) The members of the task force shall select the chair or
15 cochairs of the task force.

16 (4) Staff assistance for the task force will be provided by
17 legislative staff and staff from the agencies listed in subsection (2)
18 of this section.

19 (5) The work group shall make recommendations on:

20 (a) The state's long-term needs for residential habilitation center
21 capacity, including the benefits and disadvantages of maintaining one
22 center in eastern Washington and one center in western Washington;

23 (b) Whether one or more centers should be closed and, if so, a time
24 frame for closure;

25 (c) Strategies for the disposal of surplus property that results
26 from the closure of one or more centers;

27 (d) Strategies for reframing the mission of Yakima Valley School
28 consistent with this act that consider:

29 (i) The opportunity, where cost-effective, to provide medical
30 services, including centers of excellence, to other clients served by
31 the department;

32 (ii) A plan to end Yakima Valley School's designation as a
33 residential habilitation center, to include the conversion of a minimum
34 of two houses to state-operated living alternatives subject to federal
35 requirements; and

36 (iii) The creation of a treatment team consisting of crisis
37 stabilization and short-term respite services personnel, with the long-
38 term goal of expanding to include the provisions of specialty services

1 such as dental care, physical therapy, occupational therapy, and
2 specialized nursing care to individuals with developmental disabilities
3 residing in the surrounding community.

4 (6) The task force shall report their recommendations to the
5 appropriate committees of the legislature by December 1, 2012.

6 (7) Any further closure or downsizing of residential habilitation
7 center capacity as a result of the planning process described in this
8 section shall not commence prior to July 1, 2013.

9 **Sec. 9.** RCW 71A.18.040 and 1989 c 175 s 142 are each amended to
10 read as follows:

11 (1) A person who is receiving a service under this title or the
12 person's legal representative may request the secretary to authorize a
13 service that is available under this title in place of a service that
14 the person is presently receiving.

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

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

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

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

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

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

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

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

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

35 (4) The secretary shall give notice as provided in RCW 71A.10.060
36 of the grant of a request for a change of service. The secretary shall

1 give notice as provided in RCW 71A.10.060 of denial of a request for
2 change of service and of the right to an adjudicative proceeding.

3 (5)(a) When the secretary has changed service from a residential
4 habilitation center to a setting other than a residential habilitation
5 center, the secretary shall reauthorize service at the residential
6 habilitation center if the secretary in reevaluating the needs of the
7 person finds that the person needs service in a residential
8 habilitation center.

9 (b) A person who has moved from a residential habilitation center
10 that has closed to a community-based setting shall be offered a right
11 to return to a residential habilitation center during the first year
12 following their move to the community.

13 (6) If the secretary determines that current appropriations are
14 sufficient to deliver additional services without reducing services to
15 persons who are presently receiving services, the secretary is
16 authorized to give persons notice under RCW 71A.10.060 that they may
17 request the services as new services or as changes of services under
18 this section.

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

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

35 (2) A placement decision shall not be implemented at any level
36 during any period during which an appeal can be taken or while an

1 appeal is pending and undecided, unless authorized by court order so
2 long as the appeal is being diligently pursued.

3 ~~((The department of social and health services shall periodically
4 evaluate at reasonable intervals the adjustment of the resident to the
5 specific placement to determine whether the resident should be
6 continued in the placement or returned to the institution or given a
7 different placement.))~~

8 NEW SECTION. **Sec. 11.** A new section is added to chapter 71A.20
9 RCW to read as follows:

10 Beginning November 1, 2012, and annually thereafter, the department
11 shall submit information to the appropriate committees of the
12 legislature regarding persons who have transitioned from residential
13 habilitation centers to the community, including:

- 14 (1) Progress toward meeting the requirements of this act;
- 15 (2) Client and guardian satisfaction with services;
- 16 (3) Stability of placement and provider turnover, including
17 information on returns to a residential habilitation center under
18 section 7(2)(e) of this act;
- 19 (4) Safety and health outcomes;
- 20 (5) Types of services received by clients transitioned to the
21 community; and
- 22 (6) Continued accessibility of former residents to family.

23 **Sec. 12.** RCW 71A.20.170 and 2008 c 265 s 1 are each amended to
24 read as follows:

25 (1) The developmental disabilities community trust account is
26 created in the state treasury. All net proceeds from the use of excess
27 property identified in the 2002 joint legislative audit and review
28 committee capital study or other studies of the division of
29 developmental disabilities residential habilitation centers (~~at
30 Lakeland Village, Yakima Valley school, Francis Haddon Morgan Center,
31 and Rainier school~~) that would not impact current residential
32 habilitation center operations must be deposited into the account.

33 (2) Proceeds may come from the lease of the land, conservation
34 easements, sale of timber, or other activities short of sale of the
35 property, except as permitted under section 7 of this act.

1 (3) "Excess property" includes that portion of the property at
2 Rainier school previously under the cognizance and control of
3 Washington State University for use as a dairy/forage research
4 facility.

5 (4) Only investment income from the principal of the proceeds
6 deposited into the trust account may be spent from the account. For
7 purposes of this section, "investment income" includes lease payments,
8 rent payments, or other periodic payments deposited into the trust
9 account. For purposes of this section, "principal" is the actual
10 excess land from which proceeds are assigned to the trust account.

11 (5) Moneys in the account may be spent only after appropriation.
12 Expenditures from the account shall be used exclusively to provide
13 family support and/or employment/day services to eligible persons with
14 developmental disabilities who can be served by community-based
15 developmental disability services. It is the intent of the legislature
16 that the account should not be used to replace, supplant, or reduce
17 existing appropriations.

18 (6) The account shall be known as the Dan Thompson memorial
19 developmental disabilities community trust account.

20 NEW SECTION. **Sec. 13.** If any provision of this act or its
21 application to any person or circumstance is held invalid, the
22 remainder of the act or the application of the provision to other
23 persons or circumstances is not affected.

24 NEW SECTION. **Sec. 14.** If any part of this act is found to be in
25 conflict with federal requirements that are a prescribed condition to
26 the allocation of federal funds to the state, the conflicting part of
27 this act is inoperative solely to the extent of the conflict and with
28 respect to the agencies directly affected, and this finding does not
29 affect the operation of the remainder of this act in its application to
30 the agencies concerned. Rules adopted under this act must meet federal
31 requirements that are a necessary condition to the receipt of federal
32 funds by the state.

33 NEW SECTION. **Sec. 15.** Any savings achieved through the
34 consolidation or closure of a residential habilitation center shall be
35 deposited into the community residential investment account created in

1 the state treasury. These savings shall be used to extend service to
2 people with developmental disabilities currently receiving limited or
3 no services or to enhance rates paid to community residential service
4 businesses.

5 NEW SECTION. **Sec. 16.** Section 7 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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