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**HOUSE BILL 2448**

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**State of Washington 66th Legislature 2020 Regular Session**

**By** Representatives Schmick, Chambers, and Cody

AN ACT Relating to enhanced services facilities; amending RCW 70.97.030, 70.97.040, 70.97.050, 70.97.060, 70.97.070, 70.97.080, 70.97.100, 70.97.160, 70.97.200, and 70.97.220; and reenacting and amending RCW 70.97.010.

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

**Sec.**  RCW 70.97.010 and 2019 c 444 s 14 and 2019 c 325 s 5022 are each reenacted and amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) ((~~"Antipsychotic medications" means that class of drugs primarily used to treat serious manifestations of mental illness associated with thought disorders, which includes but is not limited to atypical antipsychotic medications.~~

~~(2) "Attending staff" means any person on the staff of a public or private agency having responsibility for the care and treatment of a patient.~~

~~(3) "Commitment" means the determination by a court that an individual should be detained for a period of either evaluation or treatment, or both, in an inpatient or a less restrictive setting.~~

~~(4) "Conditional release" means a modification of a commitment that may be revoked upon violation of any of its terms.~~

~~(5) "Custody" means involuntary detention under chapter 71.05 RCW, uninterrupted by any period of unconditional release from commitment from a facility providing involuntary care and treatment.~~

~~(6)~~)) "Department" means the department of social and health services.

((~~(7) "Designated crisis responder" has the same meaning as in chapter 71.05 RCW.~~

~~(8) "Detention" or "detain" means the lawful confinement of an individual under chapter 71.05 RCW.~~

~~(9)~~)) (2) "Discharge" means ((~~the termination of facility authority. The commitment may remain in place, be terminated, or be amended by court order~~)) a transfer to another facility or setting.

((~~(10)~~)) (3) "Enhanced services facility" means a facility that provides ((~~treatment~~)) support and services to persons for whom acute inpatient treatment is not medically necessary ((~~and who have been determined by the department to be inappropriate for placement in other licensed facilities due to the complex needs that result in behavioral and security issues~~)).

((~~(11)~~)) (4) "Expanded community services program" means a nonsecure program of enhanced behavioral and residential support provided to long-term and residential care providers serving specifically eligible clients who would otherwise be at risk for hospitalization at state hospital geriatric units.

((~~(12)~~)) (5) "Facility" means an enhanced services facility.

((~~(13) "Gravely disabled" means a condition in which an individual, as a result of a mental disorder, as a result of the use of alcohol or other psychoactive chemicals, or both:~~

~~(a) Is in danger of serious physical harm resulting from a failure to provide for his or her essential human needs of health or safety; or~~

~~(b) Manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over his or her actions and is not receiving such care as is essential for his or her health or safety.~~

~~(14) "History of one or more violent acts" refers to the period of time ten years before the filing of a petition under this chapter or chapter 71.05 RCW, excluding any time spent, but not any violent acts committed, in a mental health facility or a long-term alcoholism or drug treatment facility, or in confinement as a result of a criminal conviction.~~

~~(15) "Licensed physician" means a person licensed to practice medicine or osteopathic medicine and surgery in the state of Washington.~~

~~(16) "Likelihood of serious harm" means:~~

~~(a) A substantial risk that:~~

~~(i) Physical harm will be inflicted by an individual upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on oneself;~~

~~(ii) Physical harm will be inflicted by an individual upon another, as evidenced by behavior that has caused such harm or that places another person or persons in reasonable fear of sustaining such harm; or~~

~~(iii) Physical harm will be inflicted by an individual upon the property of others, as evidenced by behavior that has caused substantial loss or damage to the property of others; or~~

~~(b) The individual has threatened the physical safety of another and has a history of one or more violent acts.~~

~~(17) "Mental disorder"~~)) (6) "Behavioral health condition" means any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or volitional functions.

((~~(18) "Mental~~)) (7) "Behavioral health professional" means a psychiatrist, psychologist, psychiatric nurse, or social worker, and such other ((~~mental~~)) behavioral health professionals as may be defined by rules adopted by the secretary under the authority of chapter 71.05 RCW.

((~~(19)~~)) (8) "Professional person" means a ((~~mental~~)) behavioral health professional and also ((~~means~~)) includes a physician, registered nurse, and such others as may be defined in rules adopted by the secretary pursuant to the provisions of this chapter.

((~~(20) "Psychiatrist" means a person having a license as a physician and surgeon in this state who has in addition completed three years of graduate training in psychiatry in a program approved by the American medical association or the American osteopathic association and is certified or eligible to be certified by the American board of psychiatry and neurology.~~

~~(21) "Psychologist" means a person who has been licensed as a psychologist under chapter 18.83 RCW.~~

~~(22) "Registration records" include all the records of the authority, department, behavioral health administrative services organizations, managed care organizations, treatment facilities, and other persons providing services to such entities which identify individuals who are receiving or who at any time have received services for mental illness.~~

~~(23) "Release" means legal termination of the commitment under chapter 71.05 RCW.~~

~~(24)~~)) (9) "Resident" means a person admitted to an enhanced services facility.

((~~(25)~~)) (10) "Secretary" means the secretary of the department or the secretary's designee.

((~~(26) "Significant change" means:~~

~~(a) A deterioration in a resident's physical, mental, or psychosocial condition that has caused or is likely to cause clinical complications or life-threatening conditions; or~~

~~(b) An improvement in the resident's physical, mental, or psychosocial condition that may make the resident eligible for release or for treatment in a less intensive or less secure setting.~~

~~(27)~~)) (11) "Social worker" means a person with a master's or further advanced degree from a social work educational program accredited and approved as provided in RCW 18.320.010.

((~~(28) "Substance use disorder" means a cluster of cognitive, behavioral, and physiological symptoms indicating that an individual continues using the substance despite significant substance-related problems. The diagnosis of a substance use disorder is based on a pathological pattern of behaviors related to the use of the substances.~~

~~(29) "Substance use disorder professional" means a person certified as a substance use disorder professional by the department of health under chapter 18.205 RCW.~~

~~(30) "Treatment" means the broad range of emergency, detoxification, residential, inpatient, and outpatient services and care, including diagnostic evaluation, mental health or substance use disorder education and counseling, medical, psychiatric, psychological, and social service care, vocational rehabilitation, and career counseling, which may be extended to persons with mental disorders, substance use disorders, or both, and their families.~~

~~(31) "Treatment records" include registration and all other records concerning individuals who are receiving or who at any time have received services for mental illness, which are maintained by the department or the health care authority, by behavioral health administrative services organizations or their staffs, managed care organizations contracted with the health care authority under chapter 74.09 RCW or their staffs, and by treatment facilities. "Treatment records" do not include notes or records maintained for personal use by an individual providing treatment services for the department, the health care authority, behavioral health administrative services organizations, managed care organizations, or a treatment facility if the notes or records are not available to others.~~

~~(32) "Violent act" means behavior that resulted in homicide, attempted suicide, nonfatal injuries, or substantial damage to property.~~))

**Sec.**  RCW 70.97.030 and 2019 c 444 s 15 are each amended to read as follows:

A person, eighteen years old or older, may be admitted to an enhanced services facility if he or she meets the criteria in subsections (1) through (3) of this section:

(1) The person requires: (a) Daily care by or under the supervision of a ((~~mental~~)) behavioral health professional((~~, substance use disorder professional,~~)) or nurse; ((~~or~~)) and (b) assistance with three or more activities of daily living; and

(2) The person has: (a) A ((~~mental disorder, chemical dependency disorder, or both~~)) behavioral health condition; (b) an organic or traumatic brain injury; or (c) a cognitive impairment that results in symptoms or behaviors requiring supervision and ((~~facility~~)) support services; and

(3) The person has ((~~two or more of the following:~~

~~(a) Self-endangering behaviors that are frequent or difficult to manage;~~

~~(b) Aggressive, threatening, or assaultive behaviors that create a risk to the health or safety of other residents or staff, or a significant risk to property and these behaviors are frequent or difficult to manage;~~

~~(c) Intrusive behaviors that put residents or staff at risk;~~

~~(d) Complex medication needs and those needs include psychotropic medications;~~

~~(e) A history of or likelihood of unsuccessful placements in either a licensed facility or other state facility or a history of rejected applications for admission to other licensed facilities based on the person's behaviors, history, or security needs;~~

~~(f) A history of frequent or protracted behavioral health hospitalizations;~~

~~(g) A history of offenses against a person or felony offenses that created substantial damage to property~~)) been assessed as medically and psychiatrically stable and two or more of the following apply:

(a) Is currently residing in a state mental hospital or psychiatric unit of a hospital and the hospital has found the person to be ready for discharge;

(b) Has a history of an inability to remain medically or psychiatrically stable for more than six months;

(c) Has exhibited serious challenging behaviors within the last year;

(d) Has complex medication needs and an inability to manage these medications, which has affected their ability to live in the community;

(e) Has a history of or likelihood of unsuccessful placements in other licensed long-term care facilities or a history of rejected applications for admission to other licensed facilities based on the person's behaviors, history, or needs;

(f) Has a history of frequent or prolonged behavioral health hospitalizations; or

(g) Requires caregiving staff with training in providing behavioral supports to adults with challenging behaviors.

**Sec.**  RCW 70.97.040 and 2013 c 23 s 179 are each amended to read as follows:

(1)(a) Every person who is a resident of an enhanced services facility shall be entitled to all the rights set forth in this chapter, and chapter((~~s~~)) 71.05 ((~~and 70.96A~~)) RCW, and shall retain all rights not denied him or her under these chapters.

(b) No person shall be presumed incompetent as a consequence of receiving an evaluation or voluntary or involuntary treatment for a mental disorder, ((~~chemical dependency~~)) behavioral health condition, substance use disorder, or ((~~both~~)) any combination of the three, under this chapter, or chapter 71.05 ((~~or 70.96A~~)) RCW, or any prior laws of this state dealing with mental illness. Competency shall not be determined or withdrawn except under the provisions of chapter 10.77 or 11.88 RCW.

(c) At the time of his or her ((~~treatment~~)) service planning meeting, every resident of an enhanced services facility shall be given a written statement setting forth the substance of this section. The department shall by rule develop a statement and process for informing residents of their rights in a manner that is likely to be understood by the resident.

(2) Every resident of an enhanced services facility shall have the right to adequate care and individualized ((~~treatment~~)) services.

(3) The provisions of this chapter shall not be construed to deny to any person ((~~treatment~~)) services by spiritual means through prayer in accordance with the tenets and practices of a church or religious denomination.

(4) ((~~Persons receiving evaluation or treatment under this chapter shall be given a reasonable choice of an available physician or other professional person qualified to provide such services.~~

~~(5) The physician-patient privilege or the psychologist-client privilege shall be deemed waived in proceedings under this chapter relating to the administration of antipsychotic medications. As to other proceedings under chapter 10.77, 70.96A, or 71.05 RCW, the privileges shall be waived when a court of competent jurisdiction in its discretion determines that such waiver is necessary to protect either the detained person or the public.~~

~~(6)~~)) Insofar as danger to the person or others is not created and as part of the resident's behavior support plan, each resident of an enhanced services facility shall have, in addition to other rights not specifically withheld by law, the following rights, a list of which shall be prominently posted in all facilities((~~, institutions, and hospitals~~)) providing such services:

(a) To wear his or her own clothes and to keep and use his or her own personal possessions, except when deprivation of same is essential to protect the safety of the resident or other persons;

(b) To keep and be allowed to spend a reasonable sum of his or her own money for ((~~canteen~~)) personal expenses and small purchases;

(c) To have access to individual storage space for his or her private use;

(d) To have visitors at reasonable times;

(e) To have reasonable access to a telephone, both to make and receive confidential calls((~~, consistent with an effective treatment program~~));

(f) To have ready access to letter writing materials, including stamps, and to send and receive uncensored correspondence through the mails;

(g) ((~~Not to consent to the administration of antipsychotic medications beyond the hearing conducted pursuant to RCW 71.05.215 or 71.05.217, or the performance of electroconvulsant therapy, or surgery, except emergency lifesaving surgery, unless ordered by a court under RCW 71.05.217~~)) To refuse medications;

(h) To discuss and actively participate in ((~~treatment plans~~)) service planning and decisions with professional persons;

(i) ((~~Not to have psychosurgery performed on him or her under any circumstances;~~

~~(j)~~)) To dispose of property and sign contracts unless such person has been adjudicated an incompetent in a court proceeding directed to that particular issue; and

((~~(k)~~)) (j) To complain about rights violations or conditions and request the assistance of a ((~~mental health~~)) long-term care ombuds ((~~or~~)), representative of Washington protection and advocacy, or behavioral health ombuds. The facility may not prohibit or interfere with a resident's decision to consult with an advocate of his or her choice.

((~~(7)~~)) (5) Nothing contained in this chapter shall prohibit a resident from petitioning by writ of habeas corpus for ((~~release~~)) transfer.

((~~(8)~~)) (6) Nothing in this section permits any person to knowingly violate a no-contact order or a condition of an active judgment and sentence or active supervision by the department of corrections.

((~~(9)~~)) (7) A person has a right to refuse ((~~placement, except where subject to commitment, in~~)) to move into an enhanced services facility. No person shall be denied other department services solely on the grounds that he or she has made such a refusal.

((~~(10)~~)) (8) A person has a right to appeal the decision of the department that he or she is eligible for placement at an enhanced services facility, and shall be given notice of the right to appeal in a format that is accessible to the person with instructions regarding what to do if the person wants to appeal.

**Sec.**  RCW 70.97.050 and 2005 c 504 s 407 are each amended to read as follows:

((~~A person who is gravely disabled or presents a likelihood of serious harm as a result of a mental or chemical dependency disorder or co-occurring mental and chemical dependency disorders~~)) An individual served in a facility has a right to refuse antipsychotic medication. ((~~Antipsychotic medication may be administered over the person's objections only pursuant to RCW 71.05.215 or 71.05.217.~~))

**Sec.**  RCW 70.97.060 and 2012 c 10 s 51 are each amended to read as follows:

(1)(a) The department shall not license an enhanced services facility that serves any residents under sixty-five years of age for a capacity to exceed sixteen residents.

(b) The department may contract for services for the operation of enhanced services facilities only to the extent that funds are specifically provided for that purpose.

(2) The facility shall provide an appropriate level of ((~~security~~)) supervision for the characteristics, behaviors, and legal status of the residents.

(3) An enhanced services facility may hold only one license but, to the extent permitted under state and federal law and medicaid requirements, a facility may be located in the same building as another licensed facility, provided that:

(a) The enhanced services facility is in a location that is totally separate and discrete from the other licensed facility; and

(b) The two facilities maintain separate staffing, unless an exception to this is permitted by the department in rule.

(4) Nursing homes under chapter 18.51 RCW, assisted living facilities under chapter 18.20 RCW, or adult family homes under chapter 70.128 RCW, that become licensed as facilities under this chapter shall be deemed to meet the applicable state and local rules, regulations, permits, and code requirements. All other facilities are required to meet all applicable state and local rules, regulations, permits, and code requirements.

**Sec.**  RCW 70.97.070 and 2005 c 504 s 409 are each amended to read as follows:

(1) The enhanced services facility shall complete a comprehensive assessment for each resident within fourteen days of admission, and the assessments shall be repeated upon a significant change in the resident's condition or, at a minimum, every one hundred eighty days if there is no significant change in condition.

(2) The enhanced services facility shall develop an individualized ((~~treatment~~)) behavior support plan for each resident based on the comprehensive assessment and any other information in the person's record. The plan shall be updated as necessary, and shall include a plan for appropriate transfer or discharge and reintegration into the community. Where the person is under the supervision of the department of corrections, the facility shall collaborate with the department of corrections to maximize treatment outcomes and reduce the likelihood of reoffense.

(3) The plan shall maximize the opportunities for independence, recovery, employment, the resident's participation in ((~~treatment~~)) service planning decisions, and collaboration with peer-supported services, and provide for care and ((~~treatment~~)) services in the least restrictive manner appropriate to the individual resident, and, where relevant, to any court orders with which the resident must comply.

**Sec.**  RCW 70.97.080 and 2005 c 504 s 410 are each amended to read as follows:

(1) An enhanced services facility must have sufficient numbers of staff with the appropriate credentials and training to provide residents with the appropriate care and ((~~treatment~~)) support:

(a) ((~~Mental~~)) Behavioral health ((~~treatment~~)) support;

(b) Medication services;

(c) Assistance with the activities of daily living;

(d) ((~~Medical or habilitative treatment~~)) Skilled nursing and support to acquire medical and behavioral health treatment services;

(e) Dietary services;

(f) ((~~Security~~)) Supervision; and

(g) Support to acquire chemical dependency treatment.

(2) Where an enhanced services facility specializes in medically fragile persons with ((~~mental disorders~~)) behavioral health conditions, the on-site staff must include at least one licensed nurse twenty-four hours per day. The nurse must be a registered nurse for at least sixteen hours per day. If the nurse is not a registered nurse, a registered nurse or a doctor must be on call during the remaining eight hours.

(3) Any employee or other individual who will have unsupervised access to vulnerable adults must successfully pass a background inquiry check.

**Sec.**  RCW 70.97.100 and 2013 c 23 s 180 are each amended to read as follows:

(1) The department shall establish licensing rules for enhanced services facilities to serve the populations defined in this chapter.

(2) No person or public or private agency may operate or maintain an enhanced services facility without a license, which must be renewed annually.

(3) A licensee shall have the following readily accessible and available for review by the department, residents, families of residents, and the public:

(a) Its license to operate and a copy of the department's most recent inspection report and any recent complaint investigation reports issued by the department;

(b) Its written policies and procedures for all ((~~treatment,~~)) care((~~,~~)) and services provided directly or indirectly by the facility; and

(c) The department's toll-free complaint number, which shall also be posted in a clearly visible place and manner.

(4) Enhanced services facilities shall maintain a grievance procedure that meets the requirements of rules established by the department.

(5) No facility shall discriminate or retaliate in any manner against a resident or employee because the resident, employee, or any other person made a complaint or provided information to the department, the long-term care ombuds, Washington protection and advocacy system, or a ((~~mental~~)) behavioral health ombuds.

(6) Each enhanced services facility will post in a prominent place in a common area a notice by the Washington protection and advocacy system providing contact information.

**Sec.**  RCW 70.97.160 and 2005 c 504 s 418 are each amended to read as follows:

(1) The department shall make or cause to be made at least one inspection of each facility prior to licensure and an unannounced full inspection of facilities at least once every eighteen months. The statewide average interval between full facility inspections must be fifteen months.

(2) Any duly authorized officer, employee, or agent of the department may enter and inspect any facility at any time to determine that the facility is in compliance with this chapter and applicable rules, and to enforce any provision of this chapter. Complaint inspections shall be unannounced and conducted in such a manner as to ensure maximum effectiveness. No advance notice shall be given of any inspection unless authorized or required by federal law.

(3) During inspections, the facility must give the department access to areas, materials, and equipment used to provide care or support to residents, including resident and staff records, accounts, and the physical premises, including the buildings, grounds, and equipment. The department has the authority to privately interview the provider, staff, residents, and other individuals familiar with resident care and ((~~treatment~~)) service plans.

(4) Any public employee giving advance notice of an inspection in violation of this section shall be suspended from all duties without pay for a period of not less than five nor more than fifteen days.

(5) The department shall prepare a written report describing the violations found during an inspection, and shall provide a copy of the inspection report to the facility.

(6) The facility shall develop a written plan of correction for any violations identified by the department and provide a plan of correction to the department within ten working days from the receipt of the inspection report.

**Sec.**  RCW 70.97.200 and 2005 c 504 s 422 are each amended to read as follows:

The facility shall:

(1) Maintain adequate resident records to enable the provision of necessary ((~~treatment~~)) behavior support, care, and services and to respond appropriately in emergency situations;

(2) Comply with all state and federal requirements related to documentation, confidentiality, and information sharing, including chapters 10.77, 70.02, 70.24, ((~~70.96A,~~)) and 71.05 RCW; and

(3) Where possible, obtain signed releases of information designating the department, the facility, and the department of corrections where the person is under its supervision, as recipients of health care information.

**Sec.**  RCW 70.97.220 and 2005 c 504 s 424 are each amended to read as follows:

No facility providing care and ((~~treatment~~)) behavior support for individuals placed in a facility, or agency licensing or placing residents in a facility, acting in the course of its duties, shall be civilly or criminally liable for performing its duties under this chapter, provided that such duties were performed in good faith and without gross negligence.

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