
SUBSTITUTE HOUSE BILL 1529

State of Washington

66th Legislature

2019 Regular Session

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

READ FIRST TIME 02/22/19.

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

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

5 **Sec. 1.** RCW 18.130.175 and 2006 c 99 s 7 are each amended to
6 read as follows:

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

12 The cost of the treatment shall be the responsibility of the
13 license holder, but the responsibility does not preclude payment by
14 an employer, existing insurance coverage, or other sources. Primary
15 alcoholism or other drug addiction treatment shall be provided by
16 approved treatment programs under RCW 70.96A.020 or by any other
17 provider approved by the entity or the commission. However, nothing
18 shall prohibit the disciplining authority from approving additional
19 services and programs as an adjunct to primary alcoholism or other
20 drug addiction treatment. The disciplining authority may also approve
21 the use of out-of-state programs. Referral of the license holder to

1 the program shall be done only with the consent of the license
2 holder. Referral to the program may also include probationary
3 conditions for a designated period of time. If the license holder
4 does not consent to be referred to the program or does not
5 successfully complete the program, the disciplining authority may
6 take appropriate action under RCW 18.130.160 which includes
7 suspension of the license unless or until the disciplining authority,
8 in consultation with the director of the voluntary substance abuse
9 monitoring program, determines the license holder is able to practice
10 safely. The secretary shall adopt uniform rules for the evaluation by
11 the ((~~disciplinary~~—[~~disciplining~~])) disciplining authority of a
12 relapse or program violation on the part of a license holder in the
13 substance abuse monitoring program. The evaluation shall encourage
14 program participation with additional conditions, in lieu of
15 disciplinary action, when the ((~~disciplinary~~—[~~disciplining~~]))
16 disciplining authority determines that the license holder is able to
17 continue to practice with reasonable skill and safety.

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

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

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

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

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

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

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

- 28 (i) An approved monitoring treatment program;
- 29 (ii) The professional association operating the program;
- 30 (iii) Members, employees, or agents of the program or
31 association;
- 32 (iv) Persons reporting a license holder as being possibly
33 impaired or providing information about the license holder's
34 impairment; and

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

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

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

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

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

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

15 **Sec. 2.** RCW 43.43.842 and 2014 c 88 s 1 are each amended to read
16 as follows:

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

31 (b) A person associated with a licensed agency or facility who
32 has unsupervised access with a vulnerable adult shall make the
33 disclosures specified in RCW 43.43.834(2). The person shall make the
34 disclosures in writing, sign, and swear to the contents under penalty
35 of perjury. The person shall, in the disclosures, specify all crimes
36 against children or other persons, all crimes relating to financial
37 exploitation, and all crimes relating to drugs as defined in RCW
38 43.43.830, committed by the person.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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