

SENATE BILL REPORT

ESSB 5268

As Amended by House, March 4, 2022

Title: An act relating to transforming services for individuals with intellectual and developmental disabilities by increasing the capabilities of community residential settings and redesigning the long-term nature of intermediate care facilities.

Brief Description: Transforming services for individuals with intellectual and developmental disabilities by increasing the capabilities of community residential settings and redesigning the long-term nature of intermediate care facilities.

Sponsors: Senate Committee on Health & Long Term Care (originally sponsored by Senators Keiser, Braun and Nguyen).

Brief History:

Committee Activity: Health & Long Term Care: 2/01/21, 2/05/21 [DPS-WM, DNP, w/oRec].

Ways & Means: 2/17/21, 2/19/21 [DPS (HLTC)].

Floor Activity: Passed Senate: 3/5/21, 48-0; 1/12/22, 48-0.

Passed House: 3/4/22, 96-0.

Brief Summary of Engrossed First Substitute Bill

- Requires caseload forecasting and budgeting for the number of individuals requesting supported living, services provided through the CORE, Individual and Family Services and Basic Plus Waivers, and the number of individuals expected to reside in state-operated living alternatives.
- Directs the Department of Social and Health Services to examine the need for community respite beds and crisis stabilization services, study Medicaid rates for contracted community residential service providers, develop quality metrics for community residential and residential habilitation centers, coordinate services across systems, establish a staffing plan to achieve one case manager per 35 clients, and create

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

certain procedures when individuals transition to intermediate care facilities for crisis stabilization

- Directs the Joint Legislative Audit and Review Committee to review the Developmental Disabilities Administration's eligibility procedures.

SENATE COMMITTEE ON HEALTH & LONG TERM CARE

Majority Report: That Substitute Senate Bill No. 5268 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Cleveland, Chair; Frockt, Vice Chair; Muzzall, Ranking Member; Conway, Holy, Keiser, Randall, Robinson and Van De Wege.

Minority Report: Do not pass.

Signed by Senator Rivers.

Minority Report: That it be referred without recommendation.

Signed by Senators Padden and Wilson, J.

Staff: LeighBeth Merrick (786-7445)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 5268 as recommended by Committee on Health & Long Term Care be substituted therefor, and the substitute bill do pass.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair, Capital; Robinson, Vice Chair, Operating & Revenue; Wilson, L., Ranking Member; Brown, Assistant Ranking Member, Operating; Honeyford, Assistant Ranking Member, Capital; Schoesler, Assistant Ranking Member, Capital; Braun, Carlyle, Conway, Darneille, Dhingra, Gildon, Hasegawa, Hunt, Keiser, Liias, Mullet, Muzzall, Pedersen, Van De Wege, Wagoner, Warnick and Wellman.

Staff: Maria Hovde (786-7474)

Background: Developmental Disabilities Administration. The Developmental Disability Administration (DDA) is a division of the Department of Social and Health Services (DSHS) which assists persons with developmental disabilities and their families to obtain services and support based on individual preferences, capabilities, and needs. DDA clients live in a variety of settings, including private residences, state-funded community settings, and residential habilitation centers (RHCs).

There are two avenues for which functionally and financially eligible individuals may obtain Medicaid paid services in community settings through DDA: (1) the Community First Choice Option (CFCO) of the Medicaid State Plan, and (2) Home and Community

Based Services (HCBS) waivers. The CFCO is an uncapped entitlement and is provided to those who qualify for institutional care, but would rather be served in their homes or communities. There are five capped HCBS waivers that provide an array of services tailored to the specific populations they serve. Approximately 70 percent of the HCBS waiver caseload receives services through either the Basic Plus or individual family services (IFS) waivers. Basic Plus provides services to clients who are functionally eligible for an institutional level of care, but who choose to remain in a community setting. The IFS waiver serves families caring for an eligible person three years of age or older by providing an annual allocation based on assessed need.

According to information provided by DDA in January 2020, there are 14,128 individuals with a disability that makes them eligible to receive DDA services, but are not receiving paid DDA services. This group of individuals is often referred to as the no-paid services (NPS) caseload. There are 378 individuals, or 3 percent, of the NPS caseload who have requested a paid DDA service, but were denied due to lack of capacity. Of those, 299 individuals requested a service through either the Basic Plus or IFS waivers. By December 1, 2021, DSHS must review the NPS caseload and update it to accurately reflect a current count of eligible persons and the number of individuals who are currently interested in receiving a paid service.

Caseload Forecast Council. The Caseload Forecast Council (CFC) is a state agency charged with preparing official state forecasts of the number of persons expected to meet entitlement requirements and to require the services of certain public assistance programs, including foster care, adoption support, the prison population, K-12 students, Medicaid, and other specified programs. The CFC itself consists of two individuals appointed by the Governor, and four individuals, one of whom is appointed by the chairperson of each of the two largest political caucuses in the Senate and the House of Representatives. The CFC must present the number of individuals who are assessed as eligible for, and have requested a service through, the Basic Plus and IFS waivers.

Operating Budget. A two-year biennial operating budget appropriates funding for the operation of state government and is adopted every odd-numbered year. Supplemental budgets frequently are enacted in each of the following two years after adoption of the biennial budget.

Budget decisions are often categorized as being either a maintenance level or a policy level decision. For the purpose of the four-year outlook, maintenance level has been defined to mean the estimated appropriations necessary to maintain the continuing costs of program and service levels either funded in the prior biennium or otherwise mandated by other state or federal law. Maintenance level items typically include adjustments for the forecasted changes in entitlement caseloads or enrollments and other mandatory expenses.

All other budget decisions are typically categorized as policy items. Examples include creating a new program; eliminating a current program; increasing or decreasing vendor or

employee payment rates; expanding or contracting program eligibility; and expanding or contracting the value of services provided by a program.

Funding for DDA personal care and respite care services are adjusted annually in maintenance level of the budget on the basis of actual and forecasted caseloads and per capita costs.

Residential Habilitation Centers. DSHS operates the following four residential habilitation centers (RHCs) which provide residential services for persons with developmental disabilities in an institutional setting:

- the Fircrest RHC in Shoreline supports about 180 long-term residents and includes both a nursing facility and an intermediate care facility (ICF);
- the Lakeland Village in Medical Lake RHC supports about 160 long-term residents and includes both a nursing facility and an ICF;
- the Rainier School RHC in Buckley supports about 140 long-term residents and includes an ICF; and
- the Yakima Valley School RHC supports about 50 long-term residents in a nursing facility and provides planned respite services and crisis stabilization stays.

ICF facilities are offered as an option to Medicaid recipients that meet ICF level of care criteria. To be eligible, a person's need for active treatment in an ICF must arise from an intellectual disability. Federal law requires ICF services to be provided to persons needing and receiving active treatment services, meaning a continuous, aggressive, and consistently implemented program of specialized and generic treatment. An ICF facility at Rainier School was closed in September 2019, after loss of federal funding based on insufficient active treatment services being provided. Another ICF at Lakeland Village was closed to new patients by agreement with the federal government. RHC facilities continue to struggle to meet high federal standards for treatment in ICF settings and inability to meet these standard could put their certification at risk. Nursing facilities provide 24-hour nursing care to aging individuals and individuals with developmental disabilities.

Community Residential Services. Some DDA clients receive supported living services in their own home. DDA clients residing in group homes receive supported living services in a facility licensed as an assisted living facility or adult family home. DDA operates state-operated living alternatives (SOLAs) and contracts with supported living providers for these supportive services which may include engagement in community activities, self-advocacy, building relationships, finances, shopping, menu planning and cooking, medication management, medical appointments, personal hygiene, and daily living activities.

2019 Ruckelshaus Report. The 2019-21 operating budget required DSHS to contract with the William D. Ruckelshaus Center to facilitate meetings and discussions about appropriate levels of care for RHC clients. In November 2019, it published a report titled *Rethinking Intellectual and Developmental Disability Policy to Empower Clients, Develop Providers, and Improve Services* (Ruckelshaus report).

The Ruckelshaus report includes the following recommendations regarding community residential services:

- improve case management ratios;
- assess options to expand forecast-based maintenance-level funding adjustments for DDA waiver services;
- expand state-operated community residential options;
- expand quality assurance efforts;
- conduct rate study for contracted community residential service providers;
- assess options for an alternative, opt-in rate structure for contracted supported living; and
- increase funding for community-based overnight planned respite.

The Ruckelshaus report includes the following recommendations regarding cross-system coordination:

- ask the Developmental Disabilities Council to coordinate collaboration efforts;
- expand apprenticeship opportunities;
- continue reforming guardianship;
- prioritize funding housing for people with intellectual and developmental disabilities; and
- expand access to facility professionals.

The Ruckelshaus report includes the following recommendations regarding state-operated nursing facilities:

- continue to invest in state-operated nursing facilities; and
- rebuild the nursing facility at Fircrest.

The Ruckelshaus report includes the following recommendations regarding redesigning ICFs to function as short-term crisis stabilization and intervention facilities:

- complete DDA assessments for ICF clients at least annually;
- clearly explain to ICF clients and their families the temporary nature of ICFs;
- expand the Family Mentor Project;
- begin transition planning immediately;
- establish transition teams; and
- leverage the resulting ICF capacity to meet crisis stabilization needs.

In 2020, the Legislature passed ESSB 6419 which required DDA to develop a plan to implement the recommendations of the Ruckelshaus report and created a joint executive and legislative task force to oversee the development of the plan. A final plan is due September 1, 2021, but a preliminary plan was submitted to the Legislature in January 2021, which identified four areas needing prompt attention:

- replace the buildings that house the Fircrest Nursing Facility;
- add peer mentors to the Family Mentor Program;
- authorize ICF-based professional staff to serve community clients; and

- continue advancing the Ruckelshaus report recommendations.

Summary of Engrossed First Substitute Bill: Caseload Forecasting and Budgeting. The requirement for the CFC to present the number of eligible individuals who have requested a service through the Basic Plus and IFS waivers expires on January 1, 2023. Beginning with the official forecast submitted in November 2022, two new forecasting requirements are established for DDA services. Subject to appropriations, the CFC must courtesy forecast the number of eligible individuals who have requested supported living and a service through the CORE, IFS and Basic Plus waivers. DDA is required to provide the CFC with the service request list to assist with developing this forecast. Additionally, the CFC must provide a courtesy forecast of the number of individuals who are expected to reside in SOLAs.

Expenditures for the Basic Plus and IFS waivers must be considered by the Governor and the Legislature for inclusion in maintenance level budgets. Funding for these expenditures must be appropriated and DSHS must annually submit a budget for these expenditures. Within existing appropriations, DSHS must annually submit a budget request for expenditures for the number of individuals who are expected to live in SOLAs. The budget requirements must begin with the Governor's budget proposal submitted in December 2022.

Community Respite and Crisis Stabilization Services. Within existing appropriations, DSHS must examine the need for community respite beds to serve eligible individuals and stabilization, assessment, and intervention beds to provide crisis stabilization services for individuals with complex behavioral needs. By October 1, 2022, DSHS must submit a preliminary report to the Governor and the Legislature that estimates the number of beds needed in fiscal years 2023 through 2025, recommends geographic locations of these beds, provides options for contracting with community providers and utilizing existing intermediate care facilities to meet these needs, and recommends whether or not an increase to respite hours is needed. A final report is due by October 1, 2023

Community Residential Medicaid Rates. DSHS must contract with a private vendor to study Medicaid rates for contracted community residential service providers. The study must be submitted to the Governor and the Legislature by December 1, 2023, and must recommend rates needed for facilities to cover their costs and adequately recruit, train, and retain direct care professionals, recommendations for an enhanced rate structure, and options for an alternative, opt-in rate structure for contracted supported living providers who voluntarily serve individuals with complex behaviors, complete additional training, and submit to additional monitoring.

Quality Metrics. Within existing appropriations, DSHS must collaborate with stakeholder to develop uniform quality assurance metrics that are applied across community residential settings, intermediate care facilities, and state-operated nursing facilities. DSHS must submit a report to the Governor and Legislature by June 30, 2023.

DDA Staffing and Eligibility Processes. Within existing appropriations, DSHS must submit a five-year plan to phase-in the appropriate level of funding and staffing to achieve case management ratios of one case manager to 35 clients. The five-year plan must include an analysis of current procedures to hire and train new staff, necessary changes to the procedures to ensure a more efficient and timely process for hiring and training staff, and the number of new hires needed on an annual basis to achieve the phased implementation included in the five-year plan. The plan must be submitted by October 1, 2022.

The Joint Legislative Audit and Review Committee (JLARC) must review DDA's existing processes and staffing methodology used for determining eligibility, assessing for eligibility, delivering services and managing individuals who are waiting for services, and best practices from other states regarding eligibility determination, eligibility assessment, service delivery, management of individuals who are waiting for services, and staffing models. JLARC must identify options for streamlining the eligibility, assessment, service delivery, and management of individuals who are waiting for services, and the potential staffing impacts, and report its findings and recommendations to the Governor and the Legislature by December 1, 2022.

Cross-System Coordination. Within existing appropriations, DDA must work with the Developmental Disabilities Council to:

- collaborate with stakeholders to develop and disseminate best practices related to serving individuals with co-occurring intellectual and developmental disabilities and mental health conditions;
- work with Washington State's Apprenticeship and Training Council, colleges, and universities to establish medical, dental, nursing, and direct care apprenticeship programs that would address gaps in provider training and overall competence;
- devise options for consideration by the Governor and the Legislature to prioritize funding for housing for individuals with intellectual and developmental disabilities when a lack of affordable housing is the barrier preventing an individual from moving to a least restrictive community setting; and
- collaborate with stakeholders to examine existing guardianship and protective proceedings laws and recommend necessary changes to ensure that guardianship or other protective proceedings are designed to provide individuals with intellectual and developmental disabilities with the decision-making support they require to live as independently as possible in the least restrictive environment.

Within existing appropriations, DSHS must work with the Health Care Authority and managed care organizations to establish the necessary agreements for intellectual and developmental disabilities clients who live in the community to access intermediate care facility-based professionals to receive care covered under the state plan. DSHS must consider methods to deliver these services at mobile or brick-and-mortar clinical settings in the community.

By October 1, 2022, DSHS must report on the cross-system coordination efforts and include

any recommendations for policy or fiscal changes to the Governor and the Legislature for consideration in the 2023 legislative session.

Residential Habilitation Centers. Within existing appropriations, DDA must develop procedures to:

- provide clear information to individuals and families that placement in an ICF is temporary, describe what constitutes continuous aggressive active treatment and all placement options and their requirements;
- ensure discharge planning begins immediately upon placement of an individual within an ICF;
- present the individual with the option to receive any available crisis stabilization services in the community prior to placement in an intermediate care facility; and
- convene the individual's care team to review and make changes to the individual's care plan when the individual has not achieved crisis stabilization after 60 days of initial placement in an intermediate care facility.

Subject to appropriations, DSHS must expand the number of family mentors and establish peer mentors to connect each client in an ICF with a mentor to assist in their transition planning, work with community residential service providers to provide a 90-day bedhold for individuals who are transferred from the provider to an intermediate care facility, and use certain resources to pay rent for individuals who face eviction due to failure to pay caused by the transfer from subsidized housing to an intermediate care facility. By November 1, 2021, DSHS must submit a report on this work and provide any necessary recommendations for policy or fiscal changes to the Governor and Legislature for consideration in the 2022 legislative session.

Appropriation: The bill contains a section or sections to limit implementation to the availability of amounts appropriated for that specific purpose. The bill contains a null and void clause requiring specific funding be provided in an omnibus appropriation act.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill (Health & Long Term Care): *The committee recommended a different version of the bill than what was heard.* PRO: This bill implements many of the Ruckelshaus report's recommendations. It will transition services to more community-based, provide for more SOLAs in communities, and require more accurate caseload forecasting. It is not a rigid process. It is a long-term process for transitioning that will go over five years or more. The bill furthers the commitment to community living. We suggest requiring DSHS to create a five-year plan to close the RHCs. Fourteen other states have closed their RHCs. It is possible to serve everyone in

community-based settings and RHCs continue to be at risk for de-certification and closed by the federal government. There is a federal initiative to reduce people with intellectual and developmental disabilities (IDD) who live in institutions. It is important for the state to downsize the RHCs and does not finance another institutional setting to segregate individuals from their community. We also request there be a more robust investment in community-based crisis stabilization services so people do not have to travel far away from their homes to receive these services. This bill will help improve care for individuals with IDD. We appreciate the caseload forecasting requirements for the IFS and Basic Plus waivers, but ask CORE waiver services and supported living also be forecasted. We appreciate the looking into SOLAs to provide crisis and respite. There is a need to invest in affordable housing for individuals with IDD so more services can be provided in the community. We appreciate the work on reducing case management caseloads, but there is also a need to provide case management for the no-paid services caseload. We would ask crisis stabilization services be defined and community residential services be added to the list of stakeholders in section 13. The medicaid rate study for supported living is extremely important. Turn over in the direct care staff is high and it is difficult to recruit and retain staff when the medicaid payments are so low.

OTHER: Some clients need RHC services because the appropriate services are not available in the community. The Ruckelshaus group agreed the RHCs are a much needed safety net. Any work to close the RHCs is completely afoul of what was agreed to by the group. Section 13 of the bill is concerning because it could delay replacing the nursing home at Fircrest. Fircrest needs a new nursing home. No further study is necessary. We support the provisions related to caseload forecasting, expansion of peer mentoring and crisis stabilization and respite services. Individuals living in RHCs can be served in the community and will do better in the community. The bill needs a stronger call to close the RHCs. It should clarify what is meant by "short-term crisis intervention model." This bill provides important elements to transform DD services for the better. We support the forecasting for SOLAs, community-based skilled nursing facilities, and the crisis stabilization services referenced in section 4. Crisis stabilization are needed across the state for a variety of reasons. Many IDD individuals are stuck in hospital still and crisis stabilization services could prevent this from happening. The timeline the bill proposes for examining crisis stabilization services is too long. This issue needs to be addressed immediately.

Persons Testifying (Health & Long Term Care): PRO: Senator Karen Keiser, Prime Sponsor; Jeremy Norden-Paul, Developmental Disabilities Council; Stacy Dym, The Arc of Washington State; Melissa Johnson, Community Residential Services Association; Kari Cunningham-Rosvik.

OTHER: Terri Anderson, Ruckelshaus Group Member/RHC Guardian; Gwendine Norton; Kyle Matheon; Beth Leonard, Disability Rights Washington; Matt Zuvich, Washington Federation of State Employees; Noah Seidel, Office of Developmental Disabilities Ombuds.

Persons Signed In To Testify But Not Testifying (Health & Long Term Care): No one.

Staff Summary of Public Testimony on First Substitute (Ways & Means): PRO: This bill carries forward key recommendations from the Ruckleshaus work group and the task force, which comes from two years of working toward consensus among a diverse group of stakeholders. It is a start to an improvement to services we give to individuals with developmental disabilities in this state and provides a path forward to developing a comprehensive system of support, no matter the level of need. RHCs must be preserved as a final part of the continuum of care to maintain a safety net for those individuals who are unable to be served in the community. We like the inclusion of caseload forecasting many of the waived services. Having accurate information on who requires services will allow a reduction in unnecessary services and will help address issues faster by reducing emergencies and thereby costs. We appreciate the bill's focus on stabilizing supported living rates. Turnover rates have been above 50 percent in supported living settings and it is difficult to retain staff when wages hover just above minimum wage. The rate study will help.

OTHER: We want to make sure that the state does not maintain a stabilization program at the RHC because those facilities promote fear and will keep people in an unstable environment. It would be better to invest in more SOLAs and other community living settings for the future. The level of redesign proposed in the bill will take perseverance and investment. The staff at DSHS are already stretched thin and the fiscal note reflects what is needed to meet the work required in the bill that DSHS must do within existing appropriations.

Persons Testifying (Ways & Means): PRO: Senator Karen Keiser, Prime Sponsor; Jeremy Norden-Paul, Developmental Disabilities Council; Stacy Dym, The Arc of Washington State; Melissa Johnson, Community Residential Services Association; Kari Cunningham-Rosvik.

OTHER: Terri Anderson, Ruckleshaus Group Member/RHC Guardian; Gwendine Norton; Kyle Matheon; Beth Leonard, Disability Rights Washington; Matt Zuvich, Washington Federation of State Employees; Noah Seidel, Office of Developmental Disabilities Ombuds.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.

EFFECT OF HOUSE AMENDMENT(S):

- Removes the term "crisis" from the description of stabilization services.
- Adds "state-operated" to intermediate care facility (ICF) references.
- Clarifies that the time frame in which an individual's care team must be convened is after 60 consecutive days in a state-operated ICF rather than after 60 days of initial placement in an ICF.
- Changes reference to "community placement" to "community residential services."

- Changes the term "90-day bedhold" to "90-day vacancy payment" with respect to community residential services.
- Changes the term "client participation" to "client resources" in reference to rent payments.
- Removes the term "subsidized housing."
- Requires DSHS to report in years 2022 through 2024 to the Governor and the Legislature on the average length of stay for clients residing in state-operated intermediate care facilities.
- Modifies reporting dates.
- Makes the bill null and void if funding is not provided in the 2022 supplemental operating budget.