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**SUBSTITUTE HOUSE BILL 1888**

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**State of Washington 64th Legislature 2016 Regular Session**

**By** House Early Learning & Human Services (originally sponsored by Representatives Dent, Kagi, McCabe, Haler, Manweller, Fagan, Walsh, Farrell, Johnson, Van Werven, Moeller, and Buys)

AN ACT Relating to transferring certification responsibilities for chemical dependency treatment programs from the department of social and health services to the department of health; amending RCW 70.96A.090, 70.96A.095, 70.96A.240, and 70.96A.245; reenacting and amending RCW 70.96A.020; adding a new section to chapter 70.96A RCW; adding a new chapter to Title 70 RCW; creating new sections; providing an effective date; and prescribing penalties.

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

NEW SECTION. **Sec.**  It is the intent of the legislature to continue the integration of the behavioral health system into the primary care system by transferring the regulation of chemical dependency treatment programs from the department of social and health services to the department of health. In this way, the department of health will regulate all chemical dependency treatment, from the licensed providers, to the chemical dependency agencies, to the chemical dependency programs, just as it regulates primary care providers, hospitals, and other primary care systems.

This transfer of regulation will promote government efficiency by granting one state agency, the department of health, the regulatory authority over the chemical dependency treatment system. It is also the intent of the legislature to further promote government efficiency by encouraging that national accreditation standards for chemical dependency programs be used in state regulation of these programs to the maximum extent possible. In this way, both costs to the state and to the chemical dependency treatment system will be reduced and administrative consistency will be increased.

Through this transfer of regulation from the department of social and health services to the department of health, Washington's robust chemical dependency treatment system will continue to meet the needs of patients requiring these critical health care services during the time of primary care integration.

NEW SECTION. **Sec.**  The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Approved treatment program" means a discrete program of chemical dependency treatment provided by a treatment program certified by the department as meeting standards adopted under this chapter.

(2) "Chemical dependency" means:

(a) Alcoholism;

(b) Drug addiction; or

(c) Dependence on alcohol and one or more other psychoactive chemicals, as the context requires.

(3) "Department" means the department of health.

(4) "Secretary" means the secretary of health.

(5) "Treatment program" means an organization, institution, or corporation, public or private, engaged in the care, treatment, or rehabilitation of people suffering from chemical dependency.

NEW SECTION. **Sec.**  The secretary shall:

(1) Issue a certification to any treatment program that:

(a) Submits payment of the fee established by the secretary;

(b) Submits:

(i) A completed application that demonstrates the ability to comply with the standards established for operating and maintaining a treatment program in statute and rule; or

(ii) Proof of accreditation by the joint commission on accreditation of health care organizations, the commission on accreditation of rehabilitation facilities, the council on accreditation for alcohol and drug abuse prevention programs, or any other organization that the department has determined to have substantially equivalent standards to those of the department; and

(c) Successfully completes the inspection requirements established in section 4 of this act;

(2) Adopt rules establishing standards for treatment programs applying to the department for certification as an approved treatment program. The standards may concern the health standards to be met and standards of services and treatment to be afforded patients;

(3) Develop an application form for applicants for a certification to operate a treatment program or to renew a certification;

(4) Initiate investigations and enforcement actions for complaints or other information regarding failure to comply with this chapter or the standards and rules adopted under this chapter;

(5) Conduct inspections of facilities, including reviews of treatment records and documents required to be maintained under this chapter or rules adopted under this chapter;

(6) Establish fees for certification, certification renewal, and other associated costs at an amount that is sufficient to defray the costs of administering the program;

(7) Maintain and periodically publish a current list of approved treatment programs; and

(8) Adopt any rules necessary to implement this chapter. When considering the adoption of the initial rules, the secretary shall consider those rules adopted by the department of social and health services under chapter 70.96A RCW.

NEW SECTION. **Sec.**  (1)(a) The department shall inspect applicants for an initial certification and inspect approved public and private treatment programs according to an established schedule.

(b) A treatment program originally certified under chapter 70.96A RCW applying for an initial certification renewal with the department is subject to (a) of this subsection.

(2) The department may deem a public or private treatment program to have met the inspection standards of this section if it submits proof of accreditation by an organization referenced in section 3(1)(b)(ii) of this act.

(3) Treatment programs shall make the written reports of inspections or surveys conducted by an approved accrediting organization available to the department inspectors during any department inspection, upon request.

(4) Nothing in this section prohibits the department from conducting an inspection at any time in the course of investigating a complaint or other information which indicates potential failure of a program to comply with the requirements of this chapter or the standards or rules adopted under this chapter.

NEW SECTION. **Sec.**  (1) The secretary may deny, suspend, or revoke the certification of any treatment program in any case in which he or she finds the applicant or certified entity knowingly made a false statement of material fact in the application for the certification or any supporting data in any record required by this chapter or matter under investigation by the department.

(2) The secretary shall investigate complaints concerning operation of a treatment program without a certification. The secretary may issue a notice of intention to issue a cease and desist order to any person whom the secretary has reason to believe is engaged in the uncertified operation of a treatment program. If the secretary makes a written finding of fact that the public interest will be irreparably harmed by delay in issuing an order, the secretary may issue a temporary cease and desist order. The person receiving a temporary cease and desist order must be provided an opportunity for a prompt hearing. The temporary cease and desist order remains in effect until further order of the secretary. Any person operating a treatment program under this chapter without a certification is guilty of a misdemeanor, and each day of operation of an uncertified treatment program constitutes a separate offense.

(3) The secretary is authorized to deny, suspend, revoke, or modify a certification or provisional certification in any case in which it finds that there has been a failure or refusal to comply with the requirements of this chapter or the standards or rules adopted under this chapter. RCW 43.70.115 governs notice of a certification denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding.

(4) Pursuant to chapter 34.05 RCW, the secretary may assess monetary penalties of a civil nature not to exceed one thousand dollars per violation.

NEW SECTION. **Sec.**  (1) No person or governmental unit of the state of Washington, acting separately or jointly with any other person or governmental unit, may establish, maintain, or operate a treatment program or advertise or represent itself as an approved treatment program in this state without a certification issued by the department under this chapter.

(2) Upon the expiration of an approved treatment program's certification that was issued by the department of social and health services under chapter 70.96A RCW, the approved treatment program shall apply to the secretary for the renewal of the certification.

(3) Until July 1, 2018, the department shall recognize the unexpired certification of a treatment program issued by the department of social and health services.

NEW SECTION. **Sec.**  (1) Certification as an approved treatment program is effective for one calendar year from the date of issuance of the certificate. The certification must specify the types of services provided by the approved treatment program that meet the standards adopted under this chapter. Renewal of certification must be made in accordance with this chapter for initial approval and in accordance with the standards set forth in rules adopted by the secretary.

(2) Approved treatment programs may not provide chemical dependency treatment services for which the approved treatment program has not been certified. Approved treatment programs may provide services for which approval has been sought and is pending, if approval for the services has not been previously revoked or denied.

NEW SECTION. **Sec.**  Sections 1 through 7 of this act constitute a new chapter in Title 70 RCW.

**Sec.**  RCW 70.96A.020 and 2014 c 225 s 20 are each reenacted and amended to read as follows:

For the purposes of this chapter the following words and phrases shall have the following meanings unless the context clearly requires otherwise:

(1) "Alcoholism" means a disease, characterized by a dependency on alcoholic beverages, loss of control over the amount and circumstances of use, symptoms of tolerance, physiological or psychological withdrawal, or both, if use is reduced or discontinued, and impairment of health or disruption of social or economic functioning.

(2) "Approved treatment program" means a program for persons with a substance use disorder provided by a treatment program certified by the department of ((~~social and health services as meeting standards adopted under this chapter~~)) health under chapter 70.--- RCW (the new chapter created in section 8 of this act).

(3) "Behavioral health organization" means a county authority or group of county authorities or other entity recognized by the secretary in contract in a defined regional service area.

(4) "Behavioral health services" means mental health services as described in chapters 71.24 and 71.36 RCW and chemical dependency treatment services as described in this chapter.

(5) "Chemical dependency" means: (a) Alcoholism; (b) drug addiction; or (c) dependence on alcohol and one or more other psychoactive chemicals, as the context requires.

(6) "Chemical dependency program" means expenditures and activities of the department designed and conducted to prevent or treat alcoholism and other drug addiction, including reasonable administration and overhead.

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

(8) "Designated chemical dependency specialist" or "specialist" means a person designated by the behavioral health organization or by the county alcoholism and other drug addiction program coordinator designated under RCW 70.96A.310 to perform the commitment duties described in RCW 70.96A.140 and qualified to do so by meeting standards adopted by the department.

(9) "Director" means the person administering the substance use disorder program within the department.

(10) "Drug addiction" means a disease characterized by a dependency on psychoactive chemicals, loss of control over the amount and circumstances of use, symptoms of tolerance, physiological or psychological withdrawal, or both, if use is reduced or discontinued, and impairment of health or disruption of social or economic functioning.

(11) "Emergency service patrol" means a patrol established under RCW 70.96A.170.

(12) "Gravely disabled by alcohol or other psychoactive chemicals" or "gravely disabled" means that a person, as a result of the use of alcohol or other psychoactive chemicals: (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 a repeated and escalating loss of cognition or volitional control over his or her actions and is not receiving care as essential for his or her health or safety.

(13) "History of one or more violent acts" refers to the period of time ten years prior to the filing of a petition under this chapter, 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.

(14) "Incapacitated by alcohol or other psychoactive chemicals" means that a person, as a result of the use of alcohol or other psychoactive chemicals, is gravely disabled or presents a likelihood of serious harm to himself or herself, to any other person, or to property.

(15) "Incompetent person" means a person who has been adjudged incompetent by the superior court.

(16) "Intoxicated person" means a person whose mental or physical functioning is substantially impaired as a result of the use of alcohol or other psychoactive chemicals.

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

(18) "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 one's self; (ii) physical harm will be inflicted by an individual upon another, as evidenced by behavior that has caused the harm or that places another person or persons in reasonable fear of sustaining the 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.

(19) "Medical necessity" for inpatient care of a minor means a requested certified inpatient service that is reasonably calculated to: (a) Diagnose, arrest, or alleviate a chemical dependency; or (b) prevent the progression of substance use disorders that endanger life or cause suffering and pain, or result in illness or infirmity or threaten to cause or aggravate a handicap, or cause physical deformity or malfunction, and there is no adequate less restrictive alternative available.

(20) "Minor" means a person less than eighteen years of age.

(21) "Parent" means the parent or parents who have the legal right to custody of the child. Parent includes custodian or guardian.

(22) "Peace officer" means a law enforcement official of a public agency or governmental unit, and includes persons specifically given peace officer powers by any state law, local ordinance, or judicial order of appointment.

(23) "Person" means an individual, including a minor.

(24) "Professional person in charge" or "professional person" means a physician or chemical dependency counselor as defined in rule by the department, who is empowered by a certified treatment program with authority to make assessment, admission, continuing care, and discharge decisions on behalf of the certified program.

(25) "Secretary" means the secretary of the department of social and health services.

(26) "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.

(27) "Treatment" means the broad range of emergency, withdrawal management, residential, and outpatient services and care, including diagnostic evaluation, chemical dependency education and counseling, medical, psychiatric, psychological, and social service care, vocational rehabilitation and career counseling, which may be extended to persons with substance use disorders and their families, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons.

(28) "Treatment program" means an organization, institution, or corporation, public or private, engaged in the care, treatment, or rehabilitation of persons with substance use ((~~disorder[s]~~)) disorders.

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

**Sec.**  RCW 70.96A.090 and 2005 c 70 s 2 are each amended to read as follows:

(1) As of July 1, 2017, the department shall no longer issue new or renewal certifications to treatment programs. This section only applies to those approved treatment programs that the department had certified prior to July 1, 2017.

(2) The department shall adopt rules establishing standards for approved treatment programs, the process for the review and inspection program applying to the department for certification as an approved treatment program, and fixing the fees to be charged by the department for the required inspections. The standards may concern the health standards to be met and standards of services and treatment to be afforded patients.

((~~(2)~~)) (3) The department may suspend, revoke, limit, restrict, or modify an approval, or refuse to grant approval, for failure to meet the provisions of this chapter, or the standards adopted under this chapter. RCW 43.20A.205 governs notice of a license denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding.

((~~(3)~~)) (4) No treatment program may advertise or represent itself as an approved treatment program if approval has not been granted, has been denied, suspended, revoked, or canceled.

((~~(4)~~)) (5) Certification as an approved treatment program is effective for one calendar year from the date of issuance of the certificate. The certification shall specify the types of services provided by the approved treatment program that meet the standards adopted under this chapter. ((~~Renewal of certification shall be made in accordance with this section for initial approval and in accordance with the standards set forth in rules adopted by the secretary.~~

~~(5)~~)) (6) Approved treatment programs shall not provide alcoholism or other drug addiction treatment services for which the approved treatment program has not been certified. Approved treatment programs may provide services for which approval has been sought and is pending, if approval for the services has not been previously revoked or denied.

((~~(6)~~)) (7) The department periodically shall inspect approved public and private treatment programs at reasonable times and in a reasonable manner.

((~~(7)~~)) (8) The department shall maintain and periodically publish a current list of approved treatment programs.

((~~(8) Each approved treatment program shall file with the department on request, data, statistics, schedules, and information the department reasonably requires. An approved treatment program that without good cause fails to furnish any data, statistics, schedules, or information as requested, or files fraudulent returns thereof, may be removed from the list of approved treatment programs, and its certification revoked or suspended.~~

~~(9) The department shall use the data provided in subsection (8) of this section to evaluate each program that admits children to inpatient treatment upon application of their parents. The evaluation shall be done at least once every twelve months. In addition, the department shall randomly select and review the information on individual children who are admitted on application of the child's parent for the purpose of determining whether the child was appropriately placed into treatment based on an objective evaluation of the child's condition and the outcome of the child's treatment.~~

~~(10)~~)) (9) Upon petition of the department and after a hearing held upon reasonable notice to the facility, the superior court may issue a warrant to an officer or employee of the department authorizing him or her to enter and inspect at reasonable times, and examine the books and accounts of, any approved public or private treatment program refusing to consent to inspection or examination by the department or which the department has reasonable cause to believe is operating in violation of this chapter.

((~~(11)~~)) (10)(a) All approved opiate substitution treatment programs that provide services to women who are pregnant are required to disseminate up-to-date and accurate health education information to all their pregnant clients concerning the possible addiction and health risks that their opiate substitution treatment may have on their baby. All pregnant clients must also be advised of the risks to both them and their baby associated with not remaining on the opiate substitute program. The information must be provided to these clients both verbally and in writing. The health education information provided to the pregnant clients must include referral options for the addicted baby.

(b) The department shall adopt rules that require all opiate treatment programs to educate all pregnant women in their program on the benefits and risks of methadone treatment to their fetus before they are provided these medications, as part of their addiction treatment. The department shall meet the requirements under this subsection within the appropriations provided for opiate treatment programs. The department, working with treatment providers and medical experts, shall develop and disseminate the educational materials to all certified opiate treatment programs.

NEW SECTION. **Sec.**  A new section is added to chapter 70.96A RCW to read as follows:

(1) Each approved treatment program shall file with the department, on request, data, statistics, schedules, and information the department reasonably requires. An approved treatment program that without good cause fails to furnish any data, statistics, schedules, or information as requested, or files fraudulent returns thereof, may be removed from the list of approved treatment programs and its certification revoked or suspended.

(2) The department shall use the data provided in subsection (1) of this section to evaluate each program that admits children to inpatient treatment upon application of their parents. The evaluation must be done at least once every twelve months. In addition, the department shall randomly select and review the information on individual children who are admitted on application of the child's parent for the purpose of determining whether the child was appropriately placed into treatment based on an objective evaluation of the child's condition and the outcome of the child's treatment.

**Sec.**  RCW 70.96A.095 and 1998 c 296 s 23 are each amended to read as follows:

Any person thirteen years of age or older may give consent for himself or herself to the furnishing of outpatient treatment by ((~~a~~)) an approved chemical dependency treatment program ((~~certified by the department~~)). Parental authorization is required for any treatment of a minor under the age of thirteen.

**Sec.**  RCW 70.96A.240 and 1998 c 296 s 26 are each amended to read as follows:

(1) The parent of a minor is not liable for payment of inpatient or outpatient chemical dependency treatment unless the parent has joined in the consent to the treatment.

(2) The ability of a parent to apply to ((~~a certified~~)) an approved treatment program for the admission of his or her minor child does not create a right to obtain or benefit from any funds or resources of the state. However, the state may provide services for indigent minors to the extent that funds are available therefor.

**Sec.**  RCW 70.96A.245 and 1998 c 296 s 27 are each amended to read as follows:

(1) A parent may bring, or authorize the bringing of, his or her minor child to ((~~a certified~~)) an approved treatment program and request that a chemical dependency assessment be conducted by a professional person to determine whether the minor is chemically dependent and in need of inpatient treatment.

(2) The consent of the minor is not required for admission, evaluation, and treatment if the parent brings the minor to the program.

(3) An appropriately trained professional person may evaluate whether the minor is chemically dependent. The evaluation shall be completed within twenty-four hours of the time the minor was brought to the program, unless the professional person determines that the condition of the minor necessitates additional time for evaluation. In no event shall a minor be held longer than seventy-two hours for evaluation. If, in the judgment of the professional person, it is determined it is a medical necessity for the minor to receive inpatient treatment, the minor may be held for treatment. The facility shall limit treatment to that which the professional person determines is medically necessary to stabilize the minor's condition until the evaluation has been completed. Within twenty-four hours of completion of the evaluation, the professional person shall notify the department if the child is held for treatment and of the date of admission.

(4) No provider is obligated to provide treatment to a minor under the provisions of this section. No provider may admit a minor to treatment under this section unless it is medically necessary.

(5) No minor receiving inpatient treatment under this section may be discharged from the program based solely on his or her request.

NEW SECTION. **Sec.**  (1) All powers, duties, and functions of the department of social and health services pertaining to certification of chemical dependency treatment programs are transferred to the department of health. All references to the secretary or the department of social and health services in the Revised Code of Washington shall be construed to mean the secretary or the department of health when referring to the functions transferred in this section.

(2)(a) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the department of social and health services pertaining to the powers, functions, and duties transferred shall be delivered to the custody of the department of health. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the department of social and health services in carrying out the powers, functions, and duties transferred shall be made available to the department of health. All funds, credits, or other assets held in connection with the powers, functions, and duties transferred shall be assigned to the department of health.

(b) Any appropriations made to the department of social and health services for carrying out the powers, functions, and duties transferred shall, on the effective date of this section, be transferred and credited to the department of health.

(c) Whenever any question arises as to the transfer of any personnel, funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, the director of financial management shall make a determination as to the proper allocation and certify the same to the state agencies concerned.

(3) All employees of the department of social and health services engaged in performing the powers, functions, and duties transferred are transferred to the jurisdiction of the department of health. All employees classified under chapter 41.06 RCW, the state civil service law, are assigned to the department of health to perform their usual duties upon the same terms as formerly, without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing state civil service.

(4) All rules and all pending business before the department of social and health services pertaining to the powers, functions, and duties transferred shall be continued and acted upon by the department of health. All existing contracts and obligations shall remain in full force and shall be performed by the department of health.

(5) The transfer of the powers, duties, functions, and personnel of the department of social and health services shall not affect the validity of any act performed before the effective date of this section.

(6) If apportionments of budgeted funds are required because of the transfers directed by this section, the director of financial management shall certify the apportionments to the agencies affected, the state auditor, and the state treasurer. Each of these shall make the appropriate transfer and adjustments in funds and appropriation accounts and equipment records in accordance with the certification.

(7) All classified employees of the department of social and health services assigned to the certification of chemical dependency treatment programs under this section whose positions are within an existing bargaining unit description at the certification of chemical dependency treatment programs shall become a part of the existing bargaining unit at the certification of chemical dependency treatment programs and shall be considered an appropriate inclusion or modification of the existing bargaining unit under the provisions of chapter 41.80 RCW.

NEW SECTION. **Sec.**  This act takes effect July 1, 2017.

NEW SECTION. **Sec.**  The secretary of health may take the necessary steps to ensure that this act is implemented on its effective date.

**--- END ---**