

# HOUSE BILL REPORT

## 2SSB 5201

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### As Passed House - Amended:

April 12, 2017

**Title:** An act relating to individuals receiving both employment and community access services.

**Brief Description:** Concerning individuals receiving both employment and community access services.

**Sponsors:** Senate Committee on Ways & Means (originally sponsored by Senators O'Ban, Darneille and Zeiger).

### Brief History:

#### Committee Activity:

Early Learning & Human Services: 3/21/17, 3/29/17 [DPA];  
Appropriations: 4/3/17, 4/4/17 [DPA(ELHS)].

#### Floor Activity:

Passed House - Amended: 4/12/17, 98-0.

### Brief Summary of Second Substitute Bill (As Amended by House)

- Allows high acuity clients of the Department of Social and Health Services' (DSHS) Developmental Disability Administration (DDA) to transition to community access services after participating in employment services for 90 days beginning July 1, 2019.
- Requires that the DDA permit clients to enroll in a community access program without first engaging in nine months or 90 days of employment services when: (a) medical or behavioral health records document a condition or combination of conditions that prevent the individual from successfully participating, engaging, and completing nine consecutive months or 90 consecutive days of supported employment services; (b) employment services were not received by the client within 90 days of being referred for those services; or (c) the DDA otherwise determines that the client should be provided an exception.
- Requires the DDA to adopt accountability and outcome measures for supported employment services and provide a report to the Legislature and the Governor on these measures by December 1, 2017, and require that counties entering into new contracts for supported employment services or

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renewing supported employment contracts include provisions in their contracts that incorporate accountability and outcome measures by July 1, 2019.

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## HOUSE COMMITTEE ON EARLY LEARNING & HUMAN SERVICES

**Majority Report:** Do pass as amended. Signed by 10 members: Representatives Kagi, Chair; Dent, Ranking Minority Member; McDonald, Assistant Ranking Minority Member; Frame, Goodman, Griffey, Kilduff, Klippert, McCaslin and Muri.

**Minority Report:** Do not pass. Signed by 2 members: Representatives Senn, Vice Chair; Ortiz-Self.

**Minority Report:** Without recommendation. Signed by 1 member: Representative Lovick.

**Staff:** Luke Wickham (786-7146).

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** Do pass as amended by Committee on Early Learning & Human Services. Signed by 30 members: Representatives Robinson, Vice Chair; Chandler, Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Stokesbary, Assistant Ranking Minority Member; Bergquist, Buys, Cody, Condotta, Fitzgibbon, Haler, Hansen, Harris, Hudgins, Jinkins, Kagi, Lytton, Manweller, Nealey, Pettigrew, Pollet, Sawyer, Schmick, Springer, Stanford, Sullivan, Taylor, Tharinger, Vick, Volz and Wilcox.

**Minority Report:** Do not pass. Signed by 1 member: Representative Ormsby, Chair.

**Minority Report:** Without recommendation. Signed by 1 member: Representative Senn.

**Staff:** Mary Mulholland (786-7391).

### **Background:**

#### Developmental Disabilities Administration.

The Department of Social and Health Services' (DSHS) Developmental Disability Administration (DDA) assists individuals with developmental disabilities and their families to obtain services and support based on individual preferences, capabilities, and needs.

While some DDA clients live in residential habilitation centers, an institutional setting, most clients live in the community.

Home and Community Based Services (HCBS) waivers are designed to allow clients who live in community settings to receive the same level of services that he or she would receive in an institutional setting. The DDA offers services under four Medicaid HCBS waivers.

To be eligible for a HCBS waiver, the individual must:

- have a qualifying developmental disability;
- require the level of support provided by an intermediate care facility for individuals with an intellectual ability;
- have a disability according to criteria established in the Social Security Act;
- meet financial eligibility criteria;
- choose to receive services in the community rather than in an intermediate care facility;
- have an Individual Support Plan showing how the individual's health, safety, and habilitation needs can be met in the community with a monthly waiver service;
- not be residing in a hospital, jail, prison, nursing facility, intermediate care facility, or other institution; and
- meet additional criteria for the Children's Intensive In-Home Behavioral Support Program.

The services provided to clients are designed to promote everyday activities, routines, and relationships common to most citizens, and they include employment services and community access services, which are contracted with counties.

#### Employment and Community Access Services.

Employment services provide ongoing support services and training for eligible persons in a variety of settings and work sites. These include individual supported employment, group supported employment, prevocational services, and preemployment services.

Community access services assist individuals to participate in activities that promote individualized skill development, independent living, and community integration.

Since 2004 the DDA has had in place a policy that did not authorize services for clients aged 21 through 61 if those services did not emphasize the pursuit or maintenance of employment in integrated settings. For an adult over age 21, but younger than age 62, no community access services were available unless the DSHS granted an exception to its policy.

In 2011 the DDA modified its policy to allow services that do not emphasize the pursuit or maintenance of employment in integrated settings when the client has demonstrated that he or she has pursued employment for at least nine months through the DDA without satisfaction.

In 2012 legislation was enacted that:

- required that the DDA allow clients to transfer from employment services to community access services after nine months of enrollment;
- does not allow clients to enroll in both community access and employment services at one time; and
- required that the DDA establish rules for exceptions to the rule that clients enroll in employment services for nine months before transferring to community access services.

#### **Summary of Amended Bill:**

The DSHS must allow high acuity clients to transition to community access services after participating in employment services for 90 days beginning July 1, 2019, and subject to federal waiver approval.

The DSHS must allow clients to request an exception to the requirement that individuals engage in nine months of employment services before transitioning into a community access program. The DSHS must provide clients with information about this exception in writing and respond to exception requests within 60 days with a written description of the reason why the request was granted or denied.

The DSHS must permit clients to enroll in a community access program without first engaging in nine months of employment services when: (a) medical or behavioral health records document a condition or combination of conditions that prevent the individual from successfully participating, engaging, and completing nine consecutive months of supported employment services; (b) employment services were not received by the client within 90 days of being referred for those services; or (c) the DSHS otherwise determines that the client should be provided an exception.

The DSHS must permit clients assessed as high acuity to enroll in a community access program without first engaging in 90 days of employment services when: (a) medical or behavioral health records document a condition or combination of conditions that prevent the individual from successfully participating, engaging, and completing 90 consecutive days of supported employment services; (b) employment services were not received by the client within 90 days of being referred for those services; or (c) the DSHS otherwise determines that the client should be provided an exception.

The DSHS must adopt accountability and outcome measures for supported employment services and provide a report to the Legislature and the Governor on these measures by December 1, 2017. The DSHS must ensure counties entering into new contracts for supported employment services or renewing supported employment contracts include provisions in their contracts that incorporate the accountability and outcome measures adopted by the DSHS and mechanisms for reporting data to support the accountability and outcome measures by July 1, 2019.

The DSHS must consult with the Office of the Superintendent of Public Instruction (OSPI) to identify best practices within schools for offering transition services to individuals with developmental disabilities and post the results of this consultation on the DSHS website, as appropriate.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Amended Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony (Early Learning & Human Services):**

(In support) Many clients must wait for nine months without any services because of the preference toward employment services. For many of these clients, employment is not a viable option. Many of the individuals who do receive employment services are receiving only three or four hours per week. Respite needs to be provided to parents who are providing care for clients of the DDA. There are thousands of parents who need this bill.

Most people are at work on weekdays. Just because a client is in an individual employment program does not guarantee that the individual is employable. Employment services includes individual employment, group supported employment, and other employment services and supports.

Some employment providers who dedicate significant resources toward that employment service are not successful in allowing clients to become meaningfully employed. Some of the individuals who are employed are underemployed. This bill is about choice. Individuals with developmental disabilities deserve choice. It is not fair to require individuals to engage in only employment services when those services are failing.

The current system is like handcuffs. Many families are provided two or three hours of work per week, and even one hour per month of employment is considered a success. The result of this practice is isolation for clients. This policy can be characterized as isolation first, not employment first.

Dual services have been removed from this substitute, but individual choice remains. The exception to rule process has been difficult at best, and it is understood that some changes are being proposed to this process. This state ranks forty-first in its support for community engagement for clients. This bill provides families a choice of what is best based on their individual needs. Community services are lacking, which may be because of the disparity in provider rates. Very few exceptions are given to the employment first requirement. The nine-month employment requirement is not meeting the needs of families. The goal of the DDA waiver is to provide a variety of services. If there is a policy that is written to serve individuals properly, there would not be a need for an exception to the rule.

(Opposed) Once a person can get employment, he or she gains choices and freedom. Many individuals do not believe that they are able to work, and it is only after being given an opportunity to work that some individuals discover that they can work. Many people with disabilities will never know that they can work if this nine-month employment service period is removed.

Washington state is a leader in supported employment because of the nine-month employment requirement. Without this employment first policy, the process will focus on expediency and the lowest common denominator. There are individuals with very high acuity and support needs who have become employed because of the nine-month employment service period. There is a severe underfunding problem in Washington for developmental disability services, and this should be corrected.

Because our state values work, individuals are able to increase their enjoyment of life through employment. Everyone wants to be a part of community and contribute to the world,

and for many people these things are accomplished through employment. There is no population that we don't expect to seek employment after completing school.

Employment provides options and money that allows those individuals to do the things that they want to do. It is very important for individuals to be employed so that they can remain busy, satisfied, and independent. Many individuals who were thought to be unemployable are now employed because of the employment first policy. Washington was the first state to require employment first, and 20 states have followed. Every parent should look forward to the nine-month discovery period that allows families to focus on what individuals can do instead of what they cannot do.

Individuals need both work and play. This bill takes away the employment first policy that gives individuals the responsibility to work. Individuals cannot have choices if those individuals don't have income to do the things they want to do. By removing the employment first requirement, individuals with disabilities are reduced to slavery. Individuals with disabilities should pay taxes and work like every other human being. Disabilities shouldn't take away the human right to have choices and employment.

This state has slipped from thirty-eighth to forty-first in per capita funding for individuals with developmental disabilities. Respite care is also not properly funded. The exception process could resolve this problem if the process worked smoothly. There could be a pilot project that allows dual services. There could be a joint legislative or executive work group that looks at these issues. There have been effective work groups in the past, and a workgroup could be helpful in this subject area.

The employment first policy is based on the philosophy that individuals with disabilities want to and can work regardless of the level of disability. Individuals with disabilities should have the ability to explore their gifts, earn their own money, and become taxpayers. Not working really should be the exception.

Last year, families expressed their concerns about the exception to rule process. The DDA convened a work group with these parents that resulted in changes to the process. All caseworkers were trained on the exception to rule process, the process was moved to the DSHS headquarters, and the rule itself has changed.

The assumptions in the fiscal note are that about 1,600 or 1,700 individuals may immediately request community access services. There is a maximum amount that can be spent per client. For employment services, counties may pay up to \$75 per hour, and community access service providers are paid about \$32 per hour.

There is an exception for individuals who request employment services when no provider is available for 90 days. It is rare that employment services are not provided within that first 90-day period, but the exception exists in case there is not an employment provider available.

Of the individuals that the DDA supports in employment, 63 percent gain employment at an average of 12 hours per week. About 50 percent of individuals with high acuity receive wages, over 80 percent of individuals with medium acuity receive wages, and over 90 percent of individuals with low acuity receive wages.

(Other) Employment has been one of the most powerful ways to decrease poverty, increase community engagement, and increase overall life enjoyment.

**Staff Summary of Public Testimony (Appropriations):**

(In support) The revised fiscal note on the bill as it passed out of the Senate reduces the fiscal impact from roughly \$11 million State General Fund to \$3 million State General Fund. The Senate budget provides funding at a somewhat lower level than the revised fiscal note, and the final funding level can be determined through the budget process. The version of the bill that passed the Senate is recommended. It focuses on a meaningful policy change of person-centered planning and personal choice for individuals and their families.

The Department of Social and Health Services' (DSHS) Division of Vocational Rehabilitation is required to provide transition services through the federal Work Innovation and Opportunity Act, and skills to transition to employment may be addressed in schools. Under current law, individuals receiving an employment service may request the Secretary of the DSHS to offer an alternate waiver service without the nine-month employment requirement.

(Opposed) None.

(Other) Washington is a leader in disability employment. The United States Department of Labor has recognized Washington for its employment-first policies for people with disabilities. Washington ranks first among states in employment for developmentally disabled individuals, but forty-first in its fiscal efforts.

The original goals of the legislation were to provide dual services (which allow individuals to receive employment and community access services simultaneously), personal choice, and more funding. There have been many changes, most recently in the House policy committee striking amendment. Dual services are excluded at this point. The Developmental Disability Administration clarified its exception to rule policy in March, so the additional clarification on exceptions to rule may not be necessary. The language around identifying best practices for high school graduates is supported. The data collection is also supported, but it is already done in current practice. The 90-day employment requirement for high-acuity clients is opposed. High-acuity clients are the clients who have the most need for nine months of employment support. It is unknown where the money would go under the new fiscal note, but funding for expanded community access services would be supported.

Parents of individuals with developmental disabilities approached their legislators with concerns about access to services for their children. There is about 80 percent unemployment among disabled people and a lack of community access services. Parents support the Senate version but have severe reservations about the House policy committee striker. The exception to rule process is onerous to families. Current policy compels individuals to choose employment, but this should be a matter of individual choice. Individuals may choose to opt out of employment for a variety of reasons such as medical conditions, mental health issues, and religious or cultural reasons.

The employment-first policy assumes that everyone is employable with the right support, and it should be maintained for all individuals. Counties find that employment is a path out of poverty and a way for individuals to contribute and feel included in the community. The employment-first policy has changed the expectations for individuals with developmental disabilities, and efforts should be made to continue this trend. The 90-day employment requirement for high-acuity individuals perpetuates the myth that these individuals are not capable of work. People need nine months to fully explore the possibilities of employment. Most individuals need less support over time and pay taxes.

**Persons Testifying** (Early Learning & Human Services): (In support) Senator O'Ban, prime sponsor; Scott Rapp, Tahoma Associates; Arzu Forough, Washington Autism Alliance & Advocacy; Loren Freeman, Freeman & Associates; Francie Peltier; and Kelley Nesbitt.

(Opposed) Noah Seidel, Self Advocates in Leadership; Michael Hatzenbeler, Provail; Carrie Morehouse; Monica Meyer; Robert Kleeger; Margaret-Lee Thompson; Ivanova Smith, AtWork!; Seth Dawson, Community Employment Alliance; and Evelyn Perez, Department of Social and Health Services.

(Other) Juliana Roe, Washington State Association of Counties.

**Persons Testifying** (Appropriations): (In support) Senator O'Ban, prime sponsor; and Scott Rapp, Tahoma Associate.

(Other) Marcie Taylor, Community Employment Alliance; Deborah Gill; Juliana Roe, Washington State Association of Counties; and Margaret-Lee Thompson.

**Persons Signed In To Testify But Not Testifying** (Early Learning & Human Services): None.

**Persons Signed In To Testify But Not Testifying** (Appropriations): None.