

SHB 1529 - S COMM AMD

By Subcommittee on Behavioral Health

**NOT CONSIDERED 12/23/2019**

1 Strike everything after the enacting clause and insert the  
2 following:

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

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

10 The cost of the treatment shall be the responsibility of the  
11 license holder, but the responsibility does not preclude payment by  
12 an employer, existing insurance coverage, or other sources. Primary  
13 alcoholism or other drug addiction treatment shall be provided by  
14 approved treatment programs under RCW 70.96A.020 or by any other  
15 provider approved by the entity or the commission. However, nothing  
16 shall prohibit the disciplining authority from approving additional  
17 services and programs as an adjunct to primary alcoholism or other  
18 drug addiction treatment. The disciplining authority may also approve  
19 the use of out-of-state programs. Referral of the license holder to  
20 the program shall be done only with the consent of the license  
21 holder. Referral to the program may also include probationary  
22 conditions for a designated period of time. If the license holder  
23 does not consent to be referred to the program or does not  
24 successfully complete the program, the disciplining authority may  
25 take appropriate action under RCW 18.130.160 which includes  
26 suspension of the license unless or until the disciplining authority,  
27 in consultation with the director of the voluntary substance abuse  
28 monitoring program, determines the license holder is able to practice  
29 safely. The secretary shall adopt uniform rules for the evaluation by  
30 the ((disciplinatory—[disciplining])) disciplining authority of a  
31 relapse or program violation on the part of a license holder in the  
32 substance abuse monitoring program. The evaluation shall encourage

1 program participation with additional conditions, in lieu of  
2 disciplinary action, when the ((~~disciplinary~~—[disciplining]))  
3 disciplining authority determines that the license holder is able to  
4 continue to practice with reasonable skill and safety.

5 (2) In addition to approving substance abuse monitoring programs  
6 that may receive referrals from the disciplining authority, the  
7 disciplining authority may establish by rule requirements for  
8 participation of license holders who are not being investigated or  
9 monitored by the disciplining authority for substance abuse. License  
10 holders voluntarily participating in the approved programs without  
11 being referred by the disciplining authority shall not be subject to  
12 disciplinary action under RCW 18.130.160 for their substance abuse,  
13 and shall not have their participation made known to the disciplining  
14 authority, if they meet the requirements of this section and the  
15 program in which they are participating.

16 (3) The license holder shall sign a waiver allowing the program  
17 to release information to the disciplining authority if the licensee  
18 does not comply with the requirements of this section or is unable to  
19 practice with reasonable skill or safety. The substance abuse program  
20 shall report to the disciplining authority any license holder who  
21 fails to comply with the requirements of this section or the program  
22 or who, in the opinion of the program, is unable to practice with  
23 reasonable skill or safety. License holders shall report to the  
24 disciplining authority if they fail to comply with this section or do  
25 not complete the program's requirements. License holders may, upon  
26 the agreement of the program and disciplining authority, reenter the  
27 program if they have previously failed to comply with this section.

28 (4) The treatment and pretreatment records of license holders  
29 referred to or voluntarily participating in approved programs shall  
30 be confidential, shall be exempt from chapter 42.56 RCW, and shall  
31 not be subject to discovery by subpoena or admissible as evidence  
32 except for monitoring records reported to the disciplining authority  
33 for cause as defined in subsection (3) of this section. Monitoring  
34 records relating to license holders referred to the program by the  
35 disciplining authority or relating to license holders reported to the  
36 disciplining authority by the program for cause, shall be released to  
37 the disciplining authority at the request of the disciplining  
38 authority. Records held by the disciplining authority under this  
39 section shall be exempt from chapter 42.56 RCW and shall not be  
40 subject to discovery by subpoena except by the license holder.

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

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

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

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

15 (i) An approved monitoring treatment program;

16 (ii) The professional association operating the program;

17 (iii) Members, employees, or agents of the program or  
18 association;

19 (iv) Persons reporting a license holder as being possibly  
20 impaired or providing information about the license holder's  
21 impairment; and

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

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

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

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

34 (a) Less than one year in recovery from a substance use disorder,  
35 the duration of time that the person may be required to participate  
36 in the voluntary substance abuse monitoring program may not exceed  
37 the amount of time necessary for the person to achieve one year in  
38 recovery; or

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

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

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

20       (b) A person associated with a licensed agency or facility who  
21 has unsupervised access with a vulnerable adult shall make the  
22 disclosures specified in RCW 43.43.834(2). The person shall make the  
23 disclosures in writing, sign, and swear to the contents under penalty  
24 of perjury. The person shall, in the disclosures, specify all crimes  
25 against children or other persons, all crimes relating to financial  
26 exploitation, and all crimes relating to drugs as defined in RCW  
27 43.43.830, committed by the person.

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

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

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

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

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

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

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

17 (g) The otherwise disqualifying conviction or disposition has  
18 been the subject of a pardon, annulment, or other equivalent  
19 procedure.

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

24 (3) The rules adopted pursuant to subsection (2) of this section  
25 may not allow a licensee to automatically deny an applicant with a  
26 conviction for an offense set forth in subsection (2) of this section  
27 for a position as an agency affiliated counselor registered under  
28 chapter 18.19 RCW practicing as a peer counselor in an agency or  
29 facility if:

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

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

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

39 (4) In consultation with law enforcement personnel, the secretary  
40 of social and health services and the secretary of health shall

1 investigate, or cause to be investigated, the conviction record and  
2 the protection proceeding record information under this chapter of  
3 the staff of each agency or facility under their respective  
4 jurisdictions seeking licensure or relicensure. An individual  
5 responding to a criminal background inquiry request from his or her  
6 employer or potential employer shall disclose the information about  
7 his or her criminal history under penalty of perjury. The secretaries  
8 shall use the information solely for the purpose of determining  
9 eligibility for licensure or relicensure. Criminal justice agencies  
10 shall provide the secretaries such information as they may have and  
11 that the secretaries may require for such purpose.

12 NEW SECTION. **Sec. 3.** A new section is added to chapter 18.19  
13 RCW to read as follows:

14 The department may not automatically deny an applicant for  
15 registration under this chapter for a position as an agency  
16 affiliated counselor practicing as a peer counselor in an agency or  
17 facility based on a conviction history consisting of convictions for  
18 simple assault, assault in the fourth degree, prostitution, theft in  
19 the third degree, theft in the second degree, or forgery, the same  
20 offenses as they may be renamed, or substantially equivalent offenses  
21 committed in other states or jurisdictions if:

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

25 (2) The offense was committed as a result of the person's  
26 substance use or untreated mental health symptoms; and

27 (3) The applicant is at least one year in recovery from a  
28 substance use disorder, whether through abstinence or stability on  
29 medication-assisted therapy, or in recovery from mental health  
30 challenges.

31 **Sec. 4.** RCW 18.130.055 and 2016 c 81 s 12 are each amended to  
32 read as follows:

33 (1) The disciplining authority may deny an application for  
34 licensure or grant a license with conditions if the applicant:

35 (a) Has had his or her license to practice any health care  
36 profession suspended, revoked, or restricted, by competent authority  
37 in any state, federal, or foreign jurisdiction;

1 (b) Has committed any act defined as unprofessional conduct for a  
2 license holder under RCW 18.130.180, except as provided in RCW  
3 9.97.020;

4 (c) Has been convicted or is subject to current prosecution or  
5 pending charges of a crime involving moral turpitude or a crime  
6 identified in RCW 43.43.830, except as provided in RCW 9.97.020 and  
7 section 3 of this act. For purposes of this section, conviction  
8 includes all instances in which a plea of guilty or nolo contendere  
9 is the basis for the conviction and all proceedings in which the  
10 prosecution or sentence has been deferred or suspended. At the  
11 request of an applicant for an original license whose conviction is  
12 under appeal, the disciplining authority may defer decision upon the  
13 application during the pendency of such a prosecution or appeal;

14 (d) Fails to prove that he or she is qualified in accordance with  
15 the provisions of this chapter, the chapters identified in RCW  
16 18.130.040(2), or the rules adopted by the disciplining authority; or

17 (e) Is not able to practice with reasonable skill and safety to  
18 consumers by reason of any mental or physical condition.

19 (i) The disciplining authority may require the applicant, at his  
20 or her own expense, to submit to a mental, physical, or psychological  
21 examination by one or more licensed health professionals designated  
22 by the disciplining authority. The disciplining authority shall  
23 provide written notice of its requirement for a mental or physical  
24 examination that includes a statement of the specific conduct, event,  
25 or circumstances justifying an examination and a statement of the  
26 nature, purpose, scope, and content of the intended examination. If  
27 the applicant fails to submit to the examination or provide the  
28 results of the examination or any required waivers, the disciplining  
29 authority may deny the application.

30 (ii) An applicant governed by this chapter is deemed to have  
31 given consent to submit to a mental, physical, or psychological  
32 examination when directed in writing by the disciplining authority  
33 and further to have waived all objections to the admissibility or use  
34 of the examining health professional's testimony or examination  
35 reports by the disciplining authority on the grounds that the  
36 testimony or reports constitute privileged communications.

37 (2) The provisions of RCW 9.95.240 and chapter 9.96A RCW do not  
38 apply to a decision to deny a license under this section.

39 (3) The disciplining authority shall give written notice to the  
40 applicant of the decision to deny a license or grant a license with

1 conditions in response to an application for a license. The notice  
2 must state the grounds and factual basis for the action and be served  
3 upon the applicant.

4 (4) A license applicant who is aggrieved by the decision to deny  
5 the license or grant the license with conditions has the right to an  
6 adjudicative proceeding. The application for adjudicative proceeding  
7 must be in writing, state the basis for contesting the adverse  
8 action, include a copy of the adverse notice, and be served on and  
9 received by the department within twenty-eight days of the decision.  
10 The license applicant has the burden to establish, by a preponderance  
11 of evidence, that the license applicant is qualified in accordance  
12 with the provisions of this chapter, the chapters identified in RCW  
13 18.130.040(2), and the rules adopted by the disciplining authority.

14 **Sec. 5.** RCW 18.19.210 and 2013 c 338 s 6 are each amended to  
15 read as follows:

16 (1)(a) An applicant for registration as an agency affiliated  
17 counselor who applies to the department within (~~seven~~) thirty days  
18 of employment by an agency may work as an agency affiliated counselor  
19 (~~for up to sixty days~~) while the application is processed. The  
20 applicant must (~~stop working on the sixtieth day of employment if~~  
21 ~~the registration has not been granted for any reason~~) provide  
22 required documentation within reasonable time limits established by  
23 the department, and if the applicant does not do so, the applicant  
24 must stop working.

25 (b) The applicant may not provide unsupervised counseling prior  
26 to completion of a criminal background check performed by either the  
27 employer or the secretary. For purposes of this subsection,  
28 "unsupervised" means the supervisor is not physically present at the  
29 location where the counseling occurs.

30 (2) Agency affiliated counselors shall notify the department if  
31 they are either no longer employed by the agency identified on their  
32 application or are now employed with another agency, or both. Agency  
33 affiliated counselors may not engage in the practice of counseling  
34 unless they are currently affiliated with an agency.

35 NEW SECTION. **Sec. 6.** The definitions in this section apply  
36 throughout this chapter unless the context clearly requires  
37 otherwise.

38 (1) "Authority" means the Washington state health care authority.



1 (2) "Peer support services" means services authorized under RCW  
2 71.24.385 which are delivered by individuals who have common life  
3 experiences with the people they are serving.

4 NEW SECTION. **Sec. 7.** (1) The authority shall administer a peer  
5 counselor certification program to support the delivery of peer  
6 support services in Washington state.

7 (2) By July 1, 2019, the authority shall incorporate education  
8 and training for substance use disorder peers in its peer counselor  
9 certification program.

10 (3) By July 1, 2019, the authority must include reimbursement for  
11 peer support services by substance use disorder peers in its  
12 behavioral health capitation rates and allow for federal matching  
13 funds, consistent with the directive enacted in section 213(5)(ss),  
14 chapter 299, Laws of 2018 (ESSB 6032).

15 NEW SECTION. **Sec. 8.** To ensure an adequate workforce of peer  
16 counselors, the authority must approve entities to perform  
17 specialized peer training for peer counselor certification using the  
18 state curriculum upon request if the entity meets qualifications to  
19 perform the training as determined by the authority.

20 NEW SECTION. **Sec. 9.** (1) The authority shall cooperate with the  
21 department of health to complete the sunrise review required under  
22 section 10 of this act.

23 (2) This section expires June 30, 2021.

24 NEW SECTION. **Sec. 10.** (1) The department of health shall  
25 conduct a sunrise review under chapter 18.120 RCW to evaluate  
26 transfer of the peer support counselor certification program under  
27 this chapter to the department of health with modifications to allow  
28 the program to become a license or certification under the oversight  
29 of the department of health subject to oversight, structure,  
30 discipline, and continuing education requirements typical of other  
31 programs related to behavioral health administered by the department  
32 of health. The plan for modification of the program must allow for  
33 grandfathering of current individuals who hold the peer support  
34 counselor certification. The sunrise review must evaluate the effect  
35 of these modifications on professionalism, portability, scope of  
36 practice, approved practice locations, workforce, bidirectional

1 integration, and appropriate deployment of peer support services  
2 throughout the health system.

3 (2) The department of health shall conduct a sunrise review under  
4 chapter 18.120 RCW to evaluate the need for creation of an advanced  
5 peer support specialist credential to provide a license to perform  
6 peer support services in the areas of mental health, substance use  
7 disorders, and forensic behavioral health. The requirements for this  
8 credential must be accessible to persons in recovery and:

9 (a) Integrate with and complement the attributes of the peer  
10 counselor certification program administered by the Washington state  
11 health care authority under section 6 of this act;

12 (b) Provide education, experience, and training requirements that  
13 are more stringent than the requirements for the peer counselor  
14 certification program but less extensive than the requirements for  
15 licensure or certification under other credentials related to  
16 behavioral health which are administered by the department of health;

17 (c) Provide oversight, structure, discipline, and continuing  
18 education requirements typical for other professional licenses and  
19 certifications;

20 (d) Allow advanced peer support specialists to maximize the scope  
21 of practice suitable to their skills, lived experience, education,  
22 and training;

23 (e) Allow advanced peer support specialists to practice and  
24 receive reimbursement in behavioral health capitation rates in the  
25 full range of settings in which clients receive behavioral health  
26 services which are appropriate for their participation;

27 (f) Provide a path for career progression to more advanced  
28 credentials for those who are interested in pursuing them; and

29 (g) Incorporate consideration of common barriers to certification  
30 and licensure related to criminal history and recovery from  
31 behavioral health disorders experienced by peers and accommodate  
32 applicants who have these lived experiences to the greatest extent  
33 consistent with prudence and client safety.

34 (3) This section expires June 30, 2021.

35 NEW SECTION. **Sec. 11.** Sections 6 through 10 of this act  
36 constitute a new chapter in Title 70 RCW.

37 NEW SECTION. **Sec. 12.** Sections 6 through 11 of this act are  
38 necessary for the immediate preservation of the public peace, health,

1 or safety, or support of the state government and its existing public  
2 institutions, and take effect July 1, 2019."

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3 On page 1, line 2 of the title, after "counselors;" strike the  
4 remainder of the title and insert "amending RCW 18.130.175,  
5 43.43.842, 18.130.055, and 18.19.210; adding a new section to chapter  
6 18.19 RCW; adding a new chapter to Title 70 RCW; providing an  
7 effective date; providing expiration dates; and declaring an  
8 emergency."

--- END ---