

ESHB 1768 - S AMD TO S AMD (S-4327.1/19) **734**
By Senator Dhingra

PULLED 04/17/2019

1 Beginning on page 48, line 29, strike all of sections 21 and 22
2 and insert the following:

3 **"Sec. 21.** 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 (9) In the case of a person who is applying to be a substance use
5 disorder professional or substance use disorder professional trainee
6 certified under chapter 18.205 RCW, if the person is:

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

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

15 **Sec. 22.** RCW 43.43.842 and 2014 c 88 s 1 are each amended to
16 read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 (4) The rules adopted pursuant to subsection (2) of this section
11 may not allow a licensee to automatically deny an applicant with a
12 conviction for an offense set forth in subsection (2) of this section
13 for a position as a substance use disorder professional or substance
14 use disorder professional trainee certified under chapter 18.205 RCW
15 if:

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

19 (b) The offense was committed as a result of the applicant's
20 substance use or untreated mental health symptoms; and

21 (c) The applicant is at least one year in recovery from a
22 substance use disorder, whether through abstinence or stability on
23 medication-assisted therapy, or in recovery from a mental health
24 disorder.

25 (5) In consultation with law enforcement personnel, the secretary
26 of social and health services and the secretary of health shall
27 investigate, or cause to be investigated, the conviction record and
28 the protection proceeding record information under this chapter of
29 the staff of each agency or facility under their respective
30 jurisdictions seeking licensure or relicensure. An individual
31 responding to a criminal background inquiry request from his or her
32 employer or potential employer shall disclose the information about
33 his or her criminal history under penalty of perjury. The secretaries
34 shall use the information solely for the purpose of determining
35 eligibility for licensure or relicensure. Criminal justice agencies
36 shall provide the secretaries such information as they may have and
37 that the secretaries may require for such purpose."

38 Beginning on page 54, line 7, strike all of section 24 and insert
39 the following:

1 **"Sec. 24.** RCW 18.130.055 and 2016 c 81 s 12 are each amended to
2 read as follows:

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

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

8 (b) Has committed any act defined as unprofessional conduct for a
9 license holder under RCW 18.130.180, except as provided in RCW
10 9.97.020;

11 (c) Has been convicted or is subject to current prosecution or
12 pending charges of a crime involving moral turpitude or a crime
13 identified in RCW 43.43.830, except as provided in RCW 9.97.020,
14 section 23 of this act, and section 31 of this act. For purposes of
15 this section, conviction includes all instances in which a plea of
16 guilty or nolo contendere is the basis for the conviction and all
17 proceedings in which the prosecution or sentence has been deferred or
18 suspended. At the request of an applicant for an original license
19 whose conviction is under appeal, the disciplining authority may
20 defer decision upon the application during the pendency of such a
21 prosecution or appeal;

22 (d) Fails to prove that he or she is qualified in accordance with
23 the provisions of this chapter, the chapters identified in RCW
24 18.130.040(2), or the rules adopted by the disciplining authority; or

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

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

38 (ii) An applicant governed by this chapter is deemed to have
39 given consent to submit to a mental, physical, or psychological
40 examination when directed in writing by the disciplining authority

1 and further to have waived all objections to the admissibility or use
2 of the examining health professional's testimony or examination
3 reports by the disciplining authority on the grounds that the
4 testimony or reports constitute privileged communications.

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

7 (3) The disciplining authority shall give written notice to the
8 applicant of the decision to deny a license or grant a license with
9 conditions in response to an application for a license. The notice
10 must state the grounds and factual basis for the action and be served
11 upon the applicant.

12 (4) A license applicant who is aggrieved by the decision to deny
13 the license or grant the license with conditions has the right to an
14 adjudicative proceeding. The application for adjudicative proceeding
15 must be in writing, state the basis for contesting the adverse
16 action, include a copy of the adverse notice, and be served on and
17 received by the department within twenty-eight days of the decision.
18 The license applicant has the burden to establish, by a preponderance
19 of evidence, that the license applicant is qualified in accordance
20 with the provisions of this chapter, the chapters identified in RCW
21 18.130.040(2), and the rules adopted by the disciplining authority."

22 On page 59, after line 10, insert the following:

23 "NEW SECTION. **Sec. 31.** A new section is added to chapter 18.19
24 RCW to read as follows:

25 The department may not automatically deny an applicant for
26 registration under this chapter for a position as an agency
27 affiliated counselor practicing as a peer counselor in an agency or
28 facility based on a conviction history consisting of convictions for
29 simple assault, assault in the fourth degree, prostitution, theft in
30 the third degree, theft in the second degree, or forgery, the same
31 offenses as they may be renamed, or substantially equivalent offenses
32 committed in other states or jurisdictions if:

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

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

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

5 **Sec. 32.** RCW 18.19.210 and 2013 c 338 s 6 are each amended to
6 read as follows:

7 (1)(a) An applicant for registration as an agency affiliated
8 counselor who applies to the department within (~~seven~~) thirty days
9 of employment by an agency may work as an agency affiliated counselor
10 (~~for up to sixty days~~) while the application is processed. The
11 applicant must (~~stop working on the sixtieth day of employment if~~
12 ~~the registration has not been granted for any reason~~) provide
13 required documentation within reasonable time limits established by
14 the department, and if the applicant does not do so, the applicant
15 must stop working.

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

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

26 NEW SECTION. **Sec. 33.** The definitions in this section apply
27 throughout this chapter unless the context clearly requires
28 otherwise.

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

30 (2) "Peer support services" means services authorized under RCW
31 71.24.385 which are delivered by individuals who have common life
32 experiences with the people they are serving.

33 NEW SECTION. **Sec. 34.** (1) The authority shall administer a peer
34 counselor certification program to support the delivery of peer
35 support services in Washington state.

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

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

9 NEW SECTION. **Sec. 35.** To ensure an adequate workforce of peer
10 counselors, the authority must approve entities to perform
11 specialized peer training for peer counselor certification using the
12 state curriculum upon request if the entity meets qualifications to
13 perform the training as determined by the authority.

14 NEW SECTION. **Sec. 36.** (1) The authority shall cooperate with
15 the department of health to complete the sunrise review required
16 under section 37 of this act.

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

18 NEW SECTION. **Sec. 37.** (1) The department of health shall
19 conduct a sunrise review under chapter 18.120 RCW to evaluate
20 transfer of the peer support counselor certification program under
21 this chapter to the department of health with modifications to allow
22 the program to become a license or certification under the oversight
23 of the department of health subject to oversight, structure,
24 discipline, and continuing education requirements typical of other
25 programs related to behavioral health administered by the department
26 of health. The plan for modification of the program must allow for
27 grandfathering of current individuals who hold the peer support
28 counselor certification. The sunrise review must evaluate the effect
29 of these modifications on professionalism, portability, scope of
30 practice, approved practice locations, workforce, bidirectional
31 integration, and appropriate deployment of peer support services
32 throughout the health system.

33 (2) The department of health shall conduct a sunrise review under
34 chapter 18.120 RCW to evaluate the need for creation of an advanced
35 peer support specialist credential to provide a license to perform
36 peer support services in the areas of mental health, substance use

1 disorders, and forensic behavioral health. The requirements for this
2 credential must be accessible to persons in recovery and:

3 (a) Integrate with and complement the attributes of the peer
4 counselor certification program administered by the Washington state
5 health care authority under section 33 of this act;

6 (b) Provide education, experience, and training requirements that
7 are more stringent than the requirements for the peer counselor
8 certification program but less extensive than the requirements for
9 licensure or certification under other credentials related to
10 behavioral health which are administered by the department of health;

11 (c) Provide oversight, structure, discipline, and continuing
12 education requirements typical for other professional licenses and
13 certifications;

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

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

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

23 (g) Incorporate consideration of common barriers to certification
24 and licensure related to criminal history and recovery from
25 behavioral health disorders experienced by peers and accommodate
26 applicants who have these lived experiences to the greatest extent
27 consistent with prudence and client safety.

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

29 NEW SECTION. **Sec. 38.** Sections 33 through 37 of this act
30 constitute a new chapter in Title 70 RCW.

31 NEW SECTION. **Sec. 39.** Sections 33 through 38 of this act are
32 necessary for the immediate preservation of the public peace, health,
33 or safety, or support of the state government and its existing public
34 institutions, and take effect July 1, 2019."

35 Renumber the remaining sections consecutively and correct any
36 internal references accordingly.

PULLED 04/17/2019

1 On page 59, line 22, after "43.43.842," strike "and 18.130.055"
2 and insert "18.130.055, and 18.19.210"

3 On page 59, line 25, after "RCW;" insert "adding a new section to
4 chapter 18.19 RCW; adding a new chapter to Title 70 RCW;"

5 On page 59, beginning on line 25, after "dates;" strike all
6 material through "dates" on line 26 and insert "providing expiration
7 dates; and declaring an emergency"

EFFECT: This amendment adds the provisions of the SHB 1529 Behavioral Health Subcommittee striking amendment to the floor striking amendment for ESHB 1768 with the following effect:

(1) Prohibits the Department of Health (DOH) from requiring an applicant for registration as an agency-affiliated counselor (AAC) for the purpose of work as a peer counselor to participate in a voluntary substance abuse monitoring program as a condition of registration if the person has at least one year of recovery from a substance use disorder.

(2) Prohibits DOH and certain employers from automatically denying applications for registration as an AAC or employment as a peer counselor based on a history of theft 2 or 3, assault 4, prostitution, or forgery if the offense was the result of a substance use disorder or untreated mental illness and the person has at least one year of recovery.

(3) Directs the Health Care Authority to certify substance use disorder peer counselors and to include reimbursement for substance use disorder peer services in the Medicaid state plan.

(4) Directs DOH to conduct sunrise reviews to evaluate transfer of the current peer support counselor certification program to DOH with modifications to establish oversight and disciplinary authority and to evaluate the need for creation of an advanced peer support specialist credential that provides more stringent requirements and provides a path for career progression to more advanced credentials.

(5) Removes a 60-day time limit for an applicant for registration as an AAC to work while their application is pending with DOH.

--- END ---