

2SHB 1907 - S AMD TO BH COMM AMD (S-3382.1/19) 730
By Senator Dhingra

ADOPTED 04/17/2019

1 On page 75, after line 37, insert the following:

2 "Sec. 43. RCW 18.130.175 and 2006 c 99 s 7 are each amended to
3 read as follows:

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

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

1 disciplinary action, when the ((disciplinary—[disciplining]))
2 disciplining authority determines that the license holder is able to
3 continue to practice with reasonable skill and safety.

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

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

27 (4) The treatment and pretreatment records of license holders
28 referred to or voluntarily participating in approved programs shall
29 be confidential, shall be exempt from chapter 42.56 RCW, and shall
30 not be subject to discovery by subpoena or admissible as evidence
31 except for monitoring records reported to the disciplining authority
32 for cause as defined in subsection (3) of this section. Monitoring
33 records relating to license holders referred to the program by the
34 disciplining authority or relating to license holders reported to the
35 disciplining authority by the program for cause, shall be released to
36 the disciplining authority at the request of the disciplining
37 authority. Records held by the disciplining authority under this
38 section shall be exempt from chapter 42.56 RCW and shall not be
39 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. 44.** RCW 43.43.842 and 2014 c 88 s 1 are each amended to
5 read 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. 45.** 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. 46.** 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 45 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. 47.** 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. 48.** 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. 49.** (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. 50.** 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. 51.** (1) The authority shall cooperate with
21 the department of health to complete the sunrise review required
22 under section 52 of this act.

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

24 NEW SECTION. **Sec. 52.** (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 48 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. 53.** Sections 48 through 52 of this act
36 constitute a new chapter in Title 70 RCW.

37 NEW SECTION. **Sec. 54.** Sections 48 through 53 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."

3 Renumber the remaining sections consecutively and correct any
4 internal references accordingly.

2SHB 1907 - S AMD TO BH COMM AMD (S-3382.1/19) **730**
By Senator Dhingra

ADOPTED 04/17/2019

5 On page 76, beginning on line 9, after "71.34.780," strike all
6 material through "71.34.780" on line 10 and insert "71.34.780,
7 18.130.175, 43.43.842, 18.130.055, and 18.19.210"

8 On page 76, line 11, after "71.34.750;" insert "adding a new
9 section to chapter 18.19 RCW; adding a new chapter to Title 70 RCW;"

10 On page 76, beginning on line 12, after "section;" strike all
11 material through "date" on line 13 and insert "providing effective
12 dates; providing expiration dates; and declaring an emergency"

EFFECT: This amendment adds the provisions of the SHB 1529 Behavioral Health Subcommittee striking amendment to the 2SHB 1907 striking amendment 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 ---