

# SENATE BILL REPORT

## ESSB 5536

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As of Third Reading

**Title:** An act relating to intermediate care facilities for individuals with intellectual disability.

**Brief Description:** Concerning intermediate care facilities for individuals with intellectual disability.

**Sponsors:** Senate Committee on Ways & Means (originally sponsored by Senators Braun, Keiser, Darneille and Honeyford).

**Brief History:**

**Committee Activity:** Health & Long Term Care: 2/06/19, 2/13/19 [DP-WM].  
Ways & Means: 2/26/19, 2/27/19 [DPS].

**Brief Summary of Engrossed First Substitute Bill**

- Requires that residents of an intermediate care facility for individuals with intellectual disability be assessed quarterly by the Department of Social and Health Services (DSHS) to determine if the resident is benefiting from active treatment.
- Requires DSHS to develop a plan to preserve supported living and expand state-operated living alternatives to ensure residents of residential habilitation centers can transition to these settings when necessary.

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### SENATE COMMITTEE ON HEALTH & LONG TERM CARE

**Majority Report:** Do pass and be referred to Committee on Ways & Means.

Signed by Senators Cleveland, Chair; Randall, Vice Chair; O'Ban, Ranking Member; Bailey, Becker, Conway, Dhingra, Frockt, Keiser and Van De Wege.

**Staff:** LeighBeth Merrick (786-7445)

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### SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** That Substitute Senate Bill No. 5536 be substituted therefor, and the substitute bill do pass.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

Signed by Senators Rolfes, Chair; Frockt, Vice Chair, Operating, Capital Lead; Mullet, Capital Budget Cabinet; Braun, Ranking Member; Brown, Assistant Ranking Member, Operating; Honeyford, Assistant Ranking Member, Capital; Bailey, Becker, Billig, Carlyle, Conway, Darneille, Hasegawa, Hunt, Keiser, Liias, Palumbo, Pedersen, Rivers, Schoesler, Van De Wege, Wagoner, Warnick and Wilson, L..

**Staff:** Michele Alishahi (786-7433)

**Background:** The Developmental Disabilities Administration (DDA) is a subdivision of the Department of Social and Health Services (DSHS) and administers a broad range of services and programs for individuals with developmental disabilities in Washington State. These services and programs may include case management, personal care, respite, employment, community engagement, crisis stabilization services, and residential supports.

DDA also operates four residential habilitation centers (RHCs): Fircrest, Lakeland, Rainier, and Yakima Valley, which are 24-hour care facilities for individuals with developmental disabilities. The RHCs operate as a certified intermediate care facility for individuals with intellectual disability (ICF/ID) or skilled nursing facilities (SNF) or both. Fircrest and Lakeland each have one ICF/ID and one SNF; Rainier has three ICF/IDs; and Yakima Valley has an SNF, and a 16 bed respite/crisis stabilization program.

The ICF/IDs are certified by the Centers of Medicare and Medicaid services (CMS) and required to provide active treatment. CMS defines active treatment as aggressive, consistent implementation of a program, or specialized and generic training, treatment, and health services. Active treatment does not include services to maintain generally independent clients who are able to function with little supervision and who do not require a continuous program of habilitation services. CMS will decertify ICF/IDs caring for residents that do not require or will not participate in active treatment. This can result in denial of payment for new admissions, specialty agreements, and ultimately losing all federal funding.

The 2017-2019 operating budget funded a work group to discuss how to support appropriate levels of care for RHC clients based on the clients' needs and ages. The work group released its report to the Legislature in January 2019.

**Summary of Engrossed First Substitute Bill:** By January 1, 2020, and quarterly thereafter, DSHS must assess all ICF/ID residents to determine if the resident is benefiting from active treatment. If the assessment determines the resident is no longer benefiting from active treatment, DSHS must transition the resident to an alternative setting that more appropriately meets the resident's needs. DSHS is required to conduct the ICF/ID resident assessments within its appropriations.

Active treatment means a continuous, aggressive, and consistently implemented program of specialized and generic training, treatment, and health or related services directed toward helping the client function with as much self-determination and independence as possible.

DSHS is required to develop a plan to preserve supported living and expand state-operated living alternatives to ensure residents of residential habilitation centers can transition to these settings when necessary.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony (Health & Long Term Care):** PRO: There has been a push by the federal government to ensure that the RHCs are providing active treatment and it is important we are compliant with that. This bill clearly defines active treatment and requires DDA to evaluate if active treatment is truly happening and/or the best thing for the clients. This would allow for RHCs to be used crisis situations. People do not need or want active treatment all of their lives and as people age they should have the opportunity to transition to nursing care. The state should consider using the Rainier campus to provide more nursing care.

OTHER: Everyone living at the RHCs should have the option to move into the community when they choose and to a place that meets their needs. However, there are not enough resources in the community to support this. We like that this bill defines active treatment and think it is important that people be educated on what active treatment means.

**Persons Testifying (Health & Long Term Care):** PRO: Senator John Braun, Prime Sponsor; Matt Zuvich, Washington Federation of State Employees.

OTHER: Noah Seidel, Office of Developmental Disabilities Ombuds.

**Persons Signed In To Testify But Not Testifying (Health & Long Term Care):** No one.

**Staff Summary of Public Testimony on Original Bill (Ways & Means):** *The committee recommended a different version of the bill than what was heard.* PRO: This bill is good for residents at the ICFs. It frees up capacity in the RHCs for other clients around the state that need respite care, other services, or active treatment. This bill might be the place to start the process of converting Department of Natural Resource's land at Fircrest over to DSHS so we can start making better use of the excess land at Fircrest.

**Persons Testifying (Ways & Means):** PRO: Senator John Braun, Prime Sponsor; Donna Patrick, Developmental Disabilities Council.

**Persons Signed In To Testify But Not Testifying (Ways & Means):** No one.