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HOUSE BILL 1623

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State of Washington

58th Legislature

2003 Regular Session

By Representatives Kagi, Boldt, Skinner, Edwards, Linville and Rockefeller; by request of Department of Social and Health Services

Read first time 02/03/2003. Referred to Committee on Children & Family Services.

1 AN ACT Relating to the prioritization of services to persons with  
2 developmental disabilities by the department of social and health  
3 services to promote the independence of the individual and other  
4 natural and community-based supports; amending RCW 71A.10.020,  
5 71A.10.030, 71A.10.050, 71A.12.020, 71A.12.050, 71A.12.090, 71A.18.010,  
6 71A.18.020, 71A.18.030, 71A.18.050, 35.82.285, 71A.20.010, and  
7 84.36.042; adding new sections to chapter 71A.10 RCW; adding new  
8 sections to chapter 71A.18 RCW; repealing RCW 71A.10.010, 71A.10.011,  
9 71A.10.800, 71A.10.805, 71A.10.900, 71A.10.901, 71A.10.902, 71A.16.020,  
10 71A.16.030, 71A.16.040, 71A.16.050, and 71A.16.010; providing an  
11 effective date; and declaring an emergency.

12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

13 NEW SECTION. **Sec. 1.** A new section is added to chapter 71A.10 RCW  
14 to read as follows:

15 The legislature finds the delivery of services to persons with  
16 developmental disabilities should be prioritized based upon individual  
17 needs assessment that measures health and safety concerns. Families or  
18 other natural supports are the primary care system for people with  
19 developmental disabilities. Family and other natural supports should

1 be encouraged through a continuum of services. Limited state resources  
2 should be allocated in a manner that maximizes the use of individual  
3 family and natural supports for the longest period of time, enabling  
4 the individual to be independent and not reliant upon institutional or  
5 residential care services until such time as these services are  
6 required in order to reasonably assure the health and safety of the  
7 individual. The immediate implementation of this act is necessary for  
8 support of state government and its institutions and programs.

9 **Sec. 2.** RCW 71A.10.020 and 1998 c 216 s 2 are each amended to read  
10 as follows:

11 As used in this title, the following terms have the meanings  
12 indicated unless the context clearly requires otherwise.

13 (1) "Community residential support services," or "community support  
14 services," and "in-home services" means one or more of the services  
15 listed in RCW 71A.12.040.

16 (2) "Department" means the department of social and health  
17 services.

18 (3) "Developmental disability" means a disability attributable to  
19 mental retardation, cerebral palsy, epilepsy, autism, or another  
20 neurological or other condition of an individual found by the  
21 ~~((secretary))~~ department to be closely related to mental retardation  
22 ~~((or))~~ and to require treatment similar to that required for  
23 individuals with mental retardation, which disability or other  
24 neurological or other condition originates before the individual  
25 attains age eighteen, and which has continued or can be expected to  
26 continue indefinitely, and which constitutes a substantial handicap to  
27 the individual. ~~((By January 1, 1989, the department shall promulgate  
28 rules which define neurological or other conditions in a way that is  
29 not limited to intelligence quotient scores as the sole determinant of  
30 these conditions, and notify the legislature of this action.~~

31 ~~(4) "Eligible person" means a person who has been found by the  
32 secretary under RCW 71A.16.040 to be eligible for services.~~

33 ~~(5))~~ (4) "Habilitative services" means those services ~~((provided  
34 by program personnel))~~ to assist persons in acquiring and maintaining  
35 life skills and to raise their levels of physical, mental, social, and  
36 vocational functioning. Habilitative services include education,  
37 training for employment, and therapy.

1        ~~((6))~~ (5) "Health and safety" means meeting essential  
2 requirements for providing health care, food, shelter, clothing,  
3 personal hygiene, and other care, including habilitation, without which  
4 serious physical injury or illness is likely to occur to an applicant  
5 requesting services under the provisions of this title.

6        (6) "Legal representative" means a parent of a person who is under  
7 eighteen years of age, a person's legal guardian, a person's limited  
8 guardian when the subject matter is within the scope of the limited  
9 guardianship, a person's attorney at law, a person's attorney in fact,  
10 or any other person who is authorized by law to act for another person.

11        (7) "Natural supports" means the provision of nonpaid assistance,  
12 support, or care which is conducted by mutual agreement between a  
13 person with a developmental disability and any entity in the community  
14 including, but not limited to, family, friends, neighbors, civic  
15 groups, or religious organizations.

16        (8) "Notice" or "notification" of an action of the secretary means  
17 notice in compliance with RCW 71A.10.060.

18        ~~((8))~~ (9) "Residential habilitation center" means a state-  
19 operated facility for persons with developmental disabilities governed  
20 by chapter 71A.20 RCW.

21        ~~((9))~~ (10) "Secretary" means the secretary of social and health  
22 services or the secretary's designee.

23        ~~((10))~~ (11) "Service" or "services" means services provided by  
24 state or local government to carry out this title.

25        ~~((11))~~ (12) "Vacancy" means an opening at a residential  
26 habilitation center, which when filled, would not require the center to  
27 exceed its ~~((biannually [biennially]))~~ biennially budgeted capacity.

28        **Sec. 3.** RCW 71A.10.030 and 1988 c 176 s 103 are each amended to  
29 read as follows:

30        (1) The existence of developmental disabilities does not affect the  
31 civil rights of the person with the developmental disability except as  
32 otherwise provided by law.

33        (2) ~~((The secretary's determination under RCW 71A.16.040 that a~~  
34 ~~person is eligible for services under this title shall not deprive the~~  
35 ~~person of any civil rights or privileges. The secretary's~~  
36 ~~determination alone shall not constitute cause to declare the))~~ A

1 person (~~to be~~) is not legally incompetent solely because he or she is  
2 receiving services under this title.

3 (3) The department shall emphasize to the persons and entities it  
4 contracts with the importance of recognizing the rights of a person  
5 with a developmental disability referenced in 42 U.S.C. Sec. 15009.  
6 The department shall require contractees to post these rights and make  
7 them readily available to persons who have a developmental disability.

8 (4) This title shall not be construed to deprive the parent or  
9 parents of any parental rights with relation to a child residing in a  
10 residential habilitation center, except as provided in this title for  
11 the orderly operation of such residential habilitation centers.

12 **Sec. 4.** RCW 71A.10.050 and 1989 c 175 s 138 are each amended to  
13 read as follows:

14 (1) An applicant or recipient or former recipient of a  
15 developmental disabilities service under this title from the department  
16 of social and health services has the right to appeal the following  
17 department actions:

18 (a) ~~A denial (of an application for eligibility under RCW~~  
19 ~~71A.16.040)), reduction, or termination of a service;~~

20 (b) An unreasonable delay in acting on an application (~~for~~  
21 ~~eligibility,~~) for a service(~~(r)~~) or for an alternative service under  
22 RCW 71A.18.040;

23 (~~A denial, reduction, or termination of a service;~~  
24 ~~(d)~~) A claim that the person owes a debt to the state for an  
25 overpayment;

26 (~~(e)~~) (d) A disagreement with an action of the secretary under  
27 RCW 71A.10.060 or 71A.10.070;

28 (~~(f)~~) (e) A decision to return a resident of (~~(an [a])~~) a  
29 habilitation center to the community; and

30 (~~(g)~~) (f) A decision to change a person's placement from one  
31 category of residential services to a different category of residential  
32 services.

33 The adjudicative proceeding is governed by the Administrative  
34 Procedure Act, chapter 34.05 RCW.

35 (2) This subsection applies only to an adjudicative proceeding in  
36 which the department action appealed is a decision to return a resident  
37 of a habilitation center to the community. The resident or his or her

1 representative may appeal on the basis of whether the specific  
2 placement decision is in the best interests of the resident. When the  
3 resident or his or her representative files an application for an  
4 adjudicative proceeding under this section the department has the  
5 burden of proving that the specific placement decision is in the best  
6 interests of the resident.

7 (3) When the department takes any action described in subsection  
8 (1) of this section it shall give notice as provided by RCW 71A.10.060.  
9 The notice must include a statement advising the recipient of the right  
10 to an adjudicative proceeding and the time limits for filing an  
11 application for an adjudicative proceeding. Notice of a decision to  
12 return a resident of a habilitation center to the community under RCW  
13 71A.20.080 must also include a statement advising the recipient of the  
14 right to file a petition for judicial review of an adverse adjudicative  
15 order as provided in chapter 34.05 RCW.

16 **Sec. 5.** RCW 71A.12.020 and 1988 c 176 s 202 are each amended to  
17 read as follows:

18 ~~(1) ((To the extent that state, federal, or other funds designated  
19 for services to persons with developmental disabilities are available,  
20 the secretary shall provide every eligible person with habilitative  
21 services suited to the person's needs, regardless of age or degree of  
22 developmental disability.~~

23 ~~(2))~~ The secretary shall provide persons who receive services with  
24 the opportunity for integration with ~~((nonhandicapped and less  
25 handicapped persons))~~ people without disabilities to the greatest  
26 extent possible.

27 ~~((3))~~ (2) The secretary shall establish minimum standards for  
28 ~~((habilitative))~~ services through the development of a quality  
29 assurance system. Consumers, advocates, service providers, appropriate  
30 professionals, and local government agencies shall be involved in the  
31 development of the standards.

32 **Sec. 6.** RCW 71A.12.050 and 1988 c 176 s 205 are each amended to  
33 read as follows:

34 The secretary may make payments for nonresidential services which  
35 exceed the cost of caring for an average individual at home, and which  
36 are reasonably necessary for the ~~((care, treatment, maintenance,~~

1 ~~support, and training~~) health and safety of persons with developmental  
2 disabilities, upon application pursuant to RCW 71A.18.050. The  
3 secretary shall adopt rules determining the extent and type of care and  
4 training for which the department will pay all or a portion of the  
5 costs.

6 **Sec. 7.** RCW 71A.12.090 and 1988 c 176 s 209 are each amended to  
7 read as follows:

8 (1) The department shall identify priority populations based upon  
9 assessed need.

10 (2) The department shall emphasize as a criteria whether the person  
11 with a developmental disability is in crisis when determining priority  
12 populations and whether the person with a developmental disability  
13 could function independently or with family or other natural supports  
14 if low cost services, such as employment and family supports, were  
15 authorized.

16 (3) If a person with a developmental ((disabilities)) disability is  
17 the parent of a child who is about to be placed for adoption or foster  
18 care prior to termination under chapter 13.34 RCW by the ((secretary))  
19 department, the parent shall be ((eligible)) a high priority to receive  
20 departmental services in order to promote the integrity of the family  
21 unit.

22 (4) When a caregiver who has provided care for several years to a  
23 person with a developmental disability has reached an age that the  
24 caregiver is considering alternative living arrangements, the person  
25 with a developmental disability shall be a high priority for out-of-  
26 home placement in order to allow the caregiver to assist with the  
27 placement transition prior to the caregiver being unable to care for  
28 the person with a developmental disability.

29 (5) The department shall provide information and referral to other  
30 potential resources that may be able to assist a person with a  
31 developmental disability who does not receive services because he or  
32 she is not within a priority population.

33 NEW SECTION. **Sec. 8.** A new section is added to chapter 71A.18 RCW  
34 to read as follows:

35 It is the intent of the legislature that the department establish

1 a single point of referral for persons with developmental disabilities  
2 and their families so that they may have a place of entry and  
3 continuing contact for services.

4 NEW SECTION. **Sec. 9.** A new section is added to chapter 71A.18 RCW  
5 to read as follows:

6 The department shall develop a tool for the comprehensive  
7 assessment of need for services under this title. The department is  
8 not required to meet all needs of a person with a developmental  
9 disability. The tool shall identify natural supports and any services  
10 that would supplement the natural supports. The assessment tool shall  
11 be implemented by January 2004. Development of a computer-based system  
12 may require additional time and funding, which should be reported to  
13 the legislature by September 2003.

14 **Sec. 10.** RCW 71A.18.010 and 1988 c 176 s 501 are each amended to  
15 read as follows:

16 In order for a person with a developmental disability to access  
17 services that the person with a developmental disability has been  
18 assessed to need and has been authorized to receive, the secretary  
19 ((may)) shall produce and maintain an individual service plan for each  
20 ((eligible)) person with a developmental disability that is reviewed  
21 annually and revised as needed. An individual service plan is a plan  
22 that identifies the needs of a person for services and determines what  
23 services will be in the best interests of the person and will meet the  
24 person's health and safety needs. The service plan shall be developed  
25 collaboratively with the person with a developmental disability and the  
26 person with a developmental disability's natural supports, and any  
27 other person considered integral to the service planning process. The  
28 service plan shall be developed within a reasonable period of time  
29 following the department's needs assessment and authorization that the  
30 person with a developmental disability receive services.

31 **Sec. 11.** RCW 71A.18.020 and 1988 c 176 s 601 are each amended to  
32 read as follows:

33 The ~~((secretary may))~~ department's duty to provide a service to a  
34 person ((eligible)) with a developmental disability under this title  
35 ((if)) is limited by the funds ((are available. If there is an

1 individual service plan, the secretary shall consider the need for  
2 services as provided in that plan)) specifically appropriated to  
3 administer this title.

4 Limitations in funding can be the basis for denying services to a  
5 person with a developmental disability not enrolled in a federal  
6 medicaid waiver program, and limitations in funding can be the basis  
7 for denying nonwaiver services to a person with a developmental  
8 disability enrolled in a federal medicaid waiver program.

9 NEW SECTION. Sec. 12. A new section is added to chapter 71A.18  
10 RCW to read as follows:

11 (1) An applicant enrolled in a medicaid waiver or receiving waiver  
12 services must be ICF/MR eligible.

13 (2) Accessing medicaid for an applicant by enrolling an applicant  
14 in a medicaid waiver is prohibited, unless the applicant is assessed to  
15 need waiver services and is a person assessed to meet the criteria of  
16 a priority population.

17 (3) The department shall evaluate medicaid cost-sharing options for  
18 applicants enrolled in a medicaid waiver and report to the legislature  
19 regarding its findings by September 2003.

20 (4) The department shall evaluate available cost-effective options  
21 for covering an applicant assessed to need medical coverage and report  
22 to the legislature regarding its findings by September 2003.

23 **Sec. 13.** RCW 71A.18.030 and 1988 c 176 s 602 are each amended to  
24 read as follows:

25 ((An eligible)) A person with a developmental disability or the  
26 ((person's)) person with a developmental disability's legal  
27 representative may reject an authorized service. Rejection of an  
28 authorized service shall not affect the person's eligibility for  
29 services and shall not eliminate the person from consideration for  
30 other services or for the same service at a different time or under  
31 different circumstances.

32 **Sec. 14.** RCW 71A.18.050 and 1988 c 176 s 604 are each amended to  
33 read as follows:

34 (1) When considering the discontinuance of a service that is being

1 provided to a person, the secretary shall consult as required in RCW  
2 71A.10.070.

3 ~~(2) ((The discontinuance of a service under this section does not~~  
4 ~~affect the person's eligibility for services.))~~ Other services may be  
5 provided or the same service may be restored when it is again available  
6 or when it is again needed.

7 (3) Except when the service is discontinued at the request of the  
8 person receiving the service or that person's legal representative, the  
9 secretary shall give notice as required in RCW 71A.10.060.

10 NEW SECTION. **Sec. 15.** A new section is added to chapter 71A.18  
11 RCW to read as follows:

12 The department shall coordinate with the office of the  
13 superintendent of public instruction to access funding to the fullest  
14 extent possible so that a person with a disability can achieve the  
15 maximum level of self-sufficiency, including employability. The  
16 department shall coordinate with all other state agencies to achieve  
17 early intervention that may prevent the need for more complex and  
18 costly services later in the person's development.

19 NEW SECTION. **Sec. 16.** A new section is added to chapter 71A.10  
20 RCW to read as follows:

21 The department is authorized to adopt rules to implement this act.  
22 This authority includes, but is not limited to, adoption of rules that  
23 clarify the term developmental disability, formulate implementation  
24 provisions, and set criteria for determination and redetermination of  
25 developmental disability, priority populations, and assessment.

26 **Sec. 17.** RCW 35.82.285 and 1991 c 167 s 3 are each amended to read  
27 as follows:

28 Housing authorities created under this chapter may establish and  
29 operate group homes or halfway houses to serve juveniles released from  
30 state juvenile or correctional institutions, or to serve the  
31 developmentally disabled as defined in RCW 71A.10.020(~~(+2)~~).  
32 Authorities may contract for the operation of facilities so  
33 established, with qualified nonprofit organizations as agent of the  
34 authority. Authorities may provide support or supportive services in

1 facilities serving juveniles, the developmentally disabled or other  
2 persons under a disability, and the frail elderly, whether or not they  
3 are operated by the authority.

4 Action under this section shall be taken by the authority only  
5 after a public hearing as provided by chapter 42.30 RCW. In exercising  
6 this power the authority shall not be empowered to acquire property by  
7 eminent domain, and the facilities established shall comply with all  
8 zoning, building, fire, and health regulations and procedures  
9 applicable in the locality.

10 **Sec. 18.** RCW 71A.20.010 and 1988 c 176 s 701 are each amended to  
11 read as follows:

12 This chapter covers the operation of residential habilitation  
13 centers. The selection of persons to be served at the centers is  
14 governed by (~~chapters 71A.16 and 71A.18 RCW~~) this title. The  
15 purposes of this chapter are: To provide for those children and adults  
16 who are exceptional in their needs for care, treatment, and education  
17 by reason of developmental disabilities, residential care designed to  
18 develop their individual capacities to their optimum; to provide for  
19 admittance, withdrawal and discharge from state residential  
20 habilitation centers upon application; and to insure a comprehensive  
21 program for the education, guidance, care, treatment, and  
22 rehabilitation of all persons admitted to residential habilitation  
23 centers.

24 **Sec. 19.** RCW 84.36.042 and 1998 c 202 s 1 are each amended to read  
25 as follows:

26 (1) All real and personal property owned or leased by a nonprofit  
27 organization, corporation, or association to provide housing for  
28 (~~eligible~~) persons with developmental disabilities is exempt from  
29 property taxation.

30 (a) To qualify for this exemption, the nonprofit organization,  
31 corporation, or association must be qualified for exemption under  
32 section 501(c)(3) of the internal revenue code of 1986 (26 U.S.C. Sec.  
33 501(c)(3)). It must also have been organized for charitable purposes  
34 to create and preserve long-term affordable housing for low-income  
35 developmentally disabled persons.

1 (b) The housing must be occupied by (~~eligible~~) persons with a  
2 developmental disability who have a low income.

3 (2) As used in this section:

4 (a) "Developmental disability" means the same as defined in RCW  
5 71A.10.020;

6 (~~(b) ("Eligible person" means the same as defined in RCW~~  
7 ~~71A.10.020; and~~

8 ~~(c)~~) "Low income" means the adjusted gross income of the resident  
9 is at eighty percent or less of the median income adjusted for family  
10 size, as most recently determined by the federal department of housing  
11 and urban development for the county in which the housing is located  
12 and in effect as of January 1st of the assessment year for which the  
13 exemption is sought. "Adjusted gross income" is as defined in the  
14 federal internal revenue code of 1986, as it exists on June 11, 1998,  
15 or such subsequent date as the director may provide by rule consistent  
16 with the purpose of this section.

17 (3) To be exempt under this section, the property must be used  
18 exclusively for the purposes for which the exemption is granted, except  
19 as provided in RCW 84.36.805.

20 (4) If the real or personal property for which exemption is sought  
21 is leased, the benefit of the exemption must inure to the nonprofit  
22 organization, corporation, or association leasing the property to  
23 provide the housing for developmentally disabled persons.

24 NEW SECTION. Sec. 20. A new section is added to chapter 71A.10  
25 RCW to read as follows:

26 This act is not intended to, and shall not be construed to, create  
27 any right of action on the part of any individual beyond those in  
28 existence under any common law or other statutory provisions.

29 NEW SECTION. Sec. 21. The following acts or parts of acts are  
30 each repealed:

31 (1) RCW 71A.10.010 (Legislative finding--Intent--1988 c 176) and  
32 1988 c 176 s 1;

33 (2) RCW 71A.10.011 (Intent--1995 c 383) and 1995 c 383 s 1;

34 (3) RCW 71A.10.800 (Application of Title 71A RCW to matters pending  
35 as of June 9, 1988) and 1988 c 176 s 1008;

- 1 (4) RCW 71A.10.805 (Headings in Title 71A RCW not part of law) and  
2 1988 c 176 s 1002;
- 3 (5) RCW 71A.10.900 (Severability--1988 c 176) and 1988 c 176 s  
4 1003;
- 5 (6) RCW 71A.10.901 (Saving--1988 c 176) and 1988 c 176 s 1004;
- 6 (7) RCW 71A.10.902 (Continuation of existing law--1988 c 176) and  
7 1988 c 176 s 1001;
- 8 (8) RCW 71A.16.020 (Eligibility for services--Rules) and 1988 c 176  
9 s 402;
- 10 (9) RCW 71A.16.030 (Outreach program--Determination of eligibility  
11 for services--Application) and 1998 c 216 s 4 & 1988 c 176 s 403;
- 12 (10) RCW 71A.16.040 (Determination of eligibility--Notice--Rules  
13 for redetermination) and 1989 c 175 s 141 & 1988 c 176 s 404; and
- 14 (11) RCW 71A.16.050 (Determination of eligibility--Effect--  
15 Determination of appropriate services) and 1988 c 176 s 405.

16 NEW SECTION. **Sec. 22.** RCW 71A.16.010 (Referral for services--  
17 Admittance to residential habilitation centers--Expiration of  
18 subsections) and 1998 c 216 s 3 & 1988 c 176 s 401 are each repealed,  
19 effective June 30, 2003.

20 NEW SECTION. **Sec. 23.** If any provision of this act or its  
21 application to any person or circumstance is held invalid, the  
22 remainder of the act or the application of the provision to other  
23 persons or circumstances is not affected.

24 NEW SECTION. **Sec. 24.** This act is necessary for the immediate  
25 preservation of the public peace, health, or safety, or support of the  
26 state government and its existing public institutions, and takes effect  
27 immediately.

--- END ---