CERTIFICATION OF ENROLLMENT

**ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1188**

Chapter 345, Laws of 2023

68th Legislature

2023 Regular Session

CHILDREN WITH DEVELOPMENTAL DISABILITIES AND RECEIVING CHILD WELFARE SERVICES

EFFECTIVE DATE: July 23, 2023

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| Passed by the House April 17, 2023  Yeas 96 Nays 0  LAURIE JINKINS  **Speaker of the House of Representatives**  Passed by the Senate April 10, 2023  Yeas 49 Nays 0  DENNY HECK  **President of the Senate** | CERTIFICATE  I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1188** as passed by the House of Representatives and the Senate on the dates hereon set forth.  BERNARD DEAN  Chief Clerk |
| Approved May 9, 2023 10:42 AM | May 10, 2023 |
| JAY INSLEE  **Governor of the State of Washington** | **Secretary of State**  **State of Washington** |

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**ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1188**

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AS AMENDED BY THE SENATE

Passed Legislature - 2023 Regular Session

**State of Washington 68th Legislature 2023 Regular Session**

**By** House Appropriations (originally sponsored by Representatives Senn, Taylor, Reed, Leavitt, Callan, Macri, Simmons, Timmons, Chopp, Lekanoff, Couture, Gregerson, Thai, Wylie, Stonier, Schmick, Santos, Pollet, Kloba, Eslick, and Ormsby)

AN ACT Relating to individuals with developmental disabilities that have also received child welfare services; amending RCW 43.88C.010, 43.88.058, 71A.24.005, 71A.24.010, and 71A.12.370; adding a new section to chapter 71A.12 RCW; and creating a new section.

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

**Sec.**  RCW 43.88C.010 and 2022 c 219 s 2 are each amended to read as follows:

(1) The caseload forecast council is hereby created. The council shall consist of two individuals appointed by the governor and four individuals, one of whom is appointed by the chairperson of each of the two largest political caucuses in the senate and house of representatives. The chair of the council shall be selected from among the four caucus appointees. The council may select such other officers as the members deem necessary.

(2) The council shall employ a caseload forecast supervisor to supervise the preparation of all caseload forecasts. As used in this chapter, "supervisor" means the caseload forecast supervisor.

(3) Approval by an affirmative vote of at least five members of the council is required for any decisions regarding employment of the supervisor. Employment of the supervisor shall terminate after each term of three years. At the end of the first year of each three-year term the council shall consider extension of the supervisor's term by one year. The council may fix the compensation of the supervisor. The supervisor shall employ staff sufficient to accomplish the purposes of this section.

(4) The caseload forecast council shall oversee the preparation of and approve, by an affirmative vote of at least four members, the official state caseload forecasts prepared under RCW 43.88C.020. If the council is unable to approve a forecast before a date required in RCW 43.88C.020, the supervisor shall submit the forecast without approval and the forecast shall have the same effect as if approved by the council.

(5) A councilmember who does not cast an affirmative vote for approval of the official caseload forecast may request, and the supervisor shall provide, an alternative forecast based on assumptions specified by the member.

(6) Members of the caseload forecast council shall serve without additional compensation but shall be reimbursed for travel expenses in accordance with RCW 44.04.120 while attending sessions of the council or on official business authorized by the council. Nonlegislative members of the council shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060.

(7) "Caseload," as used in this chapter, means:

(a) The number of persons expected to meet entitlement requirements and require the services of public assistance programs, state correctional institutions, state correctional noninstitutional supervision, state institutions for juvenile offenders, the common school system, long-term care, medical assistance, foster care, and adoption support;

(b) The number of students who are eligible for the Washington college bound scholarship program and are expected to attend an institution of higher education as defined in RCW 28B.92.030;

(c) The number of students who are eligible for the Washington college grant program under RCW 28B.92.200 and 28B.92.205 and are expected to attend an institution of higher education as defined in RCW 28B.92.030; and

(d) The number of children who are eligible, as defined in RCW 43.216.505, to participate in, and the number of children actually served by, the early childhood education and assistance program.

(8) The caseload forecast council shall forecast the temporary assistance for needy families and the working connections child care programs as a courtesy.

(9) By January 1, 2023, the caseload forecast council shall present the number of individuals who are assessed as eligible for and have requested a service through the individual and family services waiver and the basic plus waiver administered by the developmental disabilities administration as a courtesy. The caseload forecast council shall be presented with the service request list as defined in RCW 71A.10.020 to aid in development of this information.

(10) Beginning with the official forecast submitted in November 2022 and subject to the availability of amounts appropriated for this specific purpose, the caseload forecast council shall forecast the number of individuals who are assessed as eligible for and have requested supported living services, a service through the core waiver, an individual and family services waiver, and the basic plus waiver administered by the developmental disabilities administration as a courtesy. The caseload forecast council shall be presented with the service request list as defined in RCW 71A.10.020 to aid in development of this information.

(11) As a courtesy, beginning with the official forecast submitted in November 2022, the caseload forecast council shall forecast the number of individuals who are expected to reside in state-operated living alternatives administered by the developmental disabilities administration.

(12) The caseload forecast council shall forecast youth participating in the extended foster care program pursuant to RCW 74.13.031 separately from other children who are residing in foster care and who are under eighteen years of age.

(13) The caseload forecast council shall forecast the number of youth expected to receive behavioral rehabilitation services while involved in the foster care system and the number of screened in reports of child abuse or neglect.

(14) The caseload forecast council shall forecast the number of individuals who are functionally and financially eligible for medicaid waiver services administered by the developmental disabilities administration who also meet the criteria outlined in RCW 71A.12.370 and are expected to utilize a medicaid waiver service.

(15) Unless the context clearly requires otherwise, the definitions provided in RCW 43.88.020 apply to this chapter.

((~~(15)~~)) (16) During the 2021-2023 fiscal biennium, and beginning with the November 2021 forecast, the caseload forecast council shall produce an unofficial forecast of the long-term caseload for juvenile rehabilitation as a courtesy.

**Sec.**  RCW 43.88.058 and 2021 c 334 s 1904 are each amended to read as follows:

For the purposes of this chapter, expenditures for the following ((~~foster care, adoption support and related services, and child protective~~)) services must be forecasted and budgeted as maintenance level costs:

(1) Behavioral rehabilitation services placements;

(2) Social worker and related staff to receive, refer, and respond to screened-in reports of child abuse or neglect((~~, except in fiscal year 2021~~));

(3) Court-ordered parent-child and sibling visitations delivered by contractors; ((~~and~~))

(4) Those activities currently being treated as maintenance level costs for budgeting or forecasting purposes on June 7, 2018, including, but not limited to: (a) Adoption support and other adoption-related expenses; (b) foster care maintenance payments; (c) child-placing agency management fees; (d) support goods such as clothing vouchers; (e) child aides; and (f) child care for children in foster or relative placements when the caregiver is at work or in school; and

(5) Developmental disability waiver slots that are anticipated to be utilized by individuals eligible for a medicaid waiver service under RCW 71A.12.370.

**Sec.**  RCW 71A.24.005 and 2009 c 194 s 1 are each amended to read as follows:

(1) The legislature recognizes that the number of children who have developmental disabilities along with intense behaviors is increasing, and more families are seeking out-of-home placement for their children.

(2) The legislature intends to create services and to develop supports for these children, family members, and others involved in the children's lives to avoid disruption to families ((~~and eliminate~~)), help prevent the need for out-of-home placement, and supplement the child welfare services a child may be receiving from the department of children, youth, and families.

(3) The legislature directs the department to maintain a federal waiver through which services may be provided to allow children with developmental disabilities and intense behaviors to maintain permanent and stable familial relationships. The legislature intends for these services to be locally based and offered as early as possible to avoid family disruption and out-of-home placement, but also offered to children in out-of-home placement when necessary.

**Sec.**  RCW 71A.24.010 and 2009 c 194 s 2 are each amended to read as follows:

(1) To the extent funding is appropriated for this purpose, intensive behavior support services may be provided by the department, directly or by contract, to children who have developmental disabilities and intense behaviors and to their families.

(2) The department shall be the lead administrative agency for children's intensive behavior support services and shall:

(a) Collaborate with appropriate parties to develop and implement the intensive in-home support services program within the division of developmental disabilities;

(b) Use best practices and evidence-based practices;

(c) Provide coordination and planning for the implementation and expansion of intensive in-home services;

(d) Contract for the provision of intensive in-home and planned out-of-home services;

(e) Monitor and evaluate services to determine whether the program meets standards identified in the service contracts;

(f) Collect data regarding the number of families served, and costs and outcomes of the program;

(g) Adopt appropriate rules to implement the program;

(h) License out-of-home respite placements on a timely basis; and

(i) Maintain an appropriate staff-to-client ratio.

(3) A child may receive intensive behavior support services when the department has determined that:

(a) The child is under the age of twenty-one;

(b) The child has a developmental disability and has been determined eligible for these services;

(c) The child/family acuity scores are high enough in the assessment conducted by the division of developmental disabilities to indicate the child's behavior puts the child or family at significant risk or is very likely to require an out-of-home placement;

(d) The child meets eligibility for the home and community-based care waiver;

(e) The child resides in his or her family home or is ((~~temporarily~~)) in an out-of-home placement ((~~with a plan to return home~~)); and

(f) The family agrees to participate in the program and complete the care and support steps outlined in the completed individual support plan((~~; and~~

~~(g) The family is not subject to an unresolved child protective services referral~~)).

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

(1) No later than January 1, 2024, the department shall submit to the federal government a request for approval to modify eligibility requirements for the services provided through a medicaid waiver administered by the department to include eligible individuals as specified in RCW 71A.12.370. To the extent consistent with federal law and federal funding requirements, the department shall provide services to eligible individuals as specified in RCW 71A.12.370 through a medicaid waiver administered by the department beginning no later than December 1, 2024.

(2)(a) The legislature recognizes that children and youth with developmental disabilities who are subject to a dependency have unique support needs. To this end, the legislature intends to explore establishing a new medicaid waiver for this population.

(b) By December 1, 2025, the department shall submit a report to the governor and the appropriate committees of the legislature on the feasibility of establishing a new medicaid waiver tailored to meet the needs of dependent children and youth with developmental disabilities who are age 20 or younger and who meet the criteria identified in RCW 71A.12.370(1) and cannot be adequately served through one of the five medicaid waivers administered by the department as of the effective date of this section. The services provided in this waiver shall supplement, and not supplant, the child welfare services and supports a child or youth is entitled to or receives under Title IV-E of the social security act from the department of children, youth, and families, and may not duplicate services or supports available through other funding sources. The report must include:

(i) A comprehensive list and description of the services anticipated to be included in the new waiver and the associated costs by each age group;

(ii) Information on approaches taken by other states to serve children and youth in dependencies with developmental disabilities; and

(iii) Information on the outcome of services being provided under the amended waivers referenced in subsection (1) of this section.

(3) The department shall be the lead administrative agency for the waiver design for dependent children and youth and shall collaborate with the department of children, youth, and families and other relevant stakeholders to identify the services and supports currently provided to dependent children and youth and identify services and supports that will supplement supports already provided. The department of children, youth, and families shall provide to the department all information and data that is necessary for the department to determine eligibility for services, to provide appropriate and timely services and supports to qualifying children and youth, to implement and maintain compliance with federal funding requirements, and to complete design of the new waiver.

**Sec.**  RCW 71A.12.370 and 2021 c 56 s 4 are each amended to read as follows:

((~~When there is funded capacity for services~~)) (1) Services provided through a medicaid waiver administered by the department, ((~~and~~)) to the extent consistent with federal law and federal funding requirements, ((~~priority for that waiver~~)) shall be provided to eligible individuals who ((~~exited~~)) meet the following criteria on or after the effective date of this section:

(a)(i) Are subject to a dependency;

(ii) Are receiving extended foster care services as defined in RCW 74.13.020; or

(iii) Exited a dependency ((~~proceeding under chapter 13.34 RCW within the last two years~~)) or discontinued extended foster care services as defined in RCW 74.13.020; and

(b) Will begin receiving waiver services prior to the individual's 25th birthday.

(2) Persons meeting the criteria in subsection (1) of this section who are receiving services under the children's intensive behavioral support services waiver under RCW 71A.24.010 must be immediately transferred to a different waiver without a break in waiver coverage when, based on their age, they no longer qualify for the waiver under which they have been receiving services.

(3) For purposes of this section, a "dependency" includes both a dependency under chapter 13.34 RCW and circumstances in which an Indian child is in the custody of a federally recognized Indian tribe as defined in RCW 43.376.010 or the tribe's placing agency.

NEW SECTION. **Sec.**  If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2023, in the omnibus appropriations act, this act is null and void.

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Passed by the House April 17, 2023.

Passed by the Senate April 10, 2023.

Approved by the Governor May 9, 2023.

Filed in Office of Secretary of State May 10, 2023.