

SENATE BILL REPORT

E2SHB 1188

As Reported by Senate Committee On:
Human Services, March 14, 2023
Ways & Means, April 3, 2023

Title: An act relating to individuals with developmental disabilities that have also received child welfare services.

Brief Description: Concerning individuals with developmental disabilities that have also received child welfare services.

Sponsors: House Committee on 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).

Brief History: Passed House: 2/28/23, 97-0.

Committee Activity: Human Services: 3/09/23, 3/14/23 [DP-WM].
Ways & Means: 3/21/23, 4/03/23 [DPA].

Brief Summary of Amended Bill

- Requires the Caseload Forecast Council to forecast the number of individuals who are functionally and financially eligible for waiver services who have also received specified child welfare services and are expected to utilize a Medicaid waiver service.
- Expands the Children's Intensive In-Home Behavior Support Services waiver.
- Requires the Department of Social and Health Services (DSHS) to seek federal approval to expand the existing Medicaid waivers to meet the needs of dependent children and youth with developmental disabilities.
- Requires that Medicaid waiver services administered by the DSHS Developmental Disabilities Administration are provided to eligible individuals who have received certain specified child welfare services,

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and that these waiver slots are forecasted and budgeted as maintenance level costs.

SENATE COMMITTEE ON HUMAN SERVICES

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

Signed by Senators Wilson, C., Chair; Kauffman, Vice Chair; Boehnke, Ranking Member; Frame, Nguyen, Warnick and Wilson, J..

Staff: Delika Steele (786-7486)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass as amended.

Signed by Senators Rolfes, Chair; Robinson, Vice Chair, Operating & Revenue; Mullet, Vice Chair, Capital; Wilson, L., Ranking Member, Operating; Gildon, Assistant Ranking Member, Operating; Schoesler, Ranking Member, Capital; Rivers, Assistant Ranking Member, Capital; Warnick, Assistant Ranking Member, Capital; Billig, Boehnke, Braun, Conway, Dhingra, Hasegawa, Hunt, Keiser, Muzzall, Nguyen, Pedersen, Saldaña, Torres, Van De Wege, Wagoner and Wellman.

Staff: Maria Hovde (786-7474)

Background: Caseload Forecasting and Budgeting. A biennial operating budget appropriates funding for the operation of state government, and is adopted every two years. Supplemental budgets may also be enacted in the years following adoption of the biennial operating budget. Budget decisions may be categorized as either a maintenance level, or policy level decision. Maintenance level refers to the estimated appropriations necessary to continually maintain program and service levels that were funded in the prior biennium or otherwise mandated by law. Maintenance level items may include adjustments for forecasted changes in entitlement caseloads or other mandatory expenses. All other budget decisions are generally categorized as policy level and may include decisions such as creating or eliminating programs, changing vendor or employee payment rates, or changing program eligibility.

The Caseload Forecast Council (CFC) prepares official state forecasts for entitlement programs and provides courtesy forecasts for other types of services. For instance, the CFC provides courtesy forecasts of the number of eligible individuals who have requested supported living and a service through certain Developmental Disabilities Administration (DDA) waivers.

Developmental Disability Services. The DDA of the Department of Social and Health

Services (DSHS) assists individuals with developmental disabilities and their families to obtain services and support based on individual preferences, capabilities, and needs. While some DDA clients live in residential habilitation centers or institutional settings, most clients live in the community.

Home and Community Based Services Medicaid waivers (waiver services) are designed to allow clients who live in community settings to receive optional services at the same level as they would receive in an institutional setting. DDA offers services under five waivers: Core, Basic Plus, Community Protection Program, Individual and Family Services, and Children's Intensive In-Home Behavior Supports (CIIBS). The waiver services provided to DDA clients are designed to promote everyday activities, routines, and relationships, and may include services targeted at community integration, support services provided by contracted professionals, caregiving, and equipment, supplies, and other specialized services. To be eligible for waiver services, the individual must meet certain criteria, including:

- having a qualifying disability;
- meeting the intermediate care facility requirements for individuals with an intellectual disability level of care;
- meeting financial eligibility criteria;
- choosing to receive services in the community rather than in an intermediate care facility; and
- meeting other waiver-specific criteria.

CIIBS waiver supports youth with challenging behaviors. In addition to other waiver eligibility criteria, to be eligible for CIIBS services, a child must:

- be under age 21;
- have an assessed acuity score that indicates that the child's behavior puts the child or family at risk, or is very likely to require an out-of-home placement; and
- reside in the family home, or be temporarily in an out-of-home placement with a plan to return home.

The child's family must also agree to participate in the CIIBS program. CIIBS services are not available when the child's family is subject to an unresolved Child Protective Services (CPS) referral.

Under agency rules, children subject to dependency proceedings are not eligible for the DDA's waiver services; however, there is a statutory requirement that DDA must give priority for waiver services to eligible individuals who exited a dependency proceeding within the last two years when there is funded capacity for those waivers.

Child Welfare Services. If an individual suspects that a child has been abused or neglected, that abuse or neglect can be reported to the Department of Children, Youth, and Families (DCYF) CPS office or to law enforcement. If CPS determines the report is credible and meets screening criteria, it will assign either a 24-hour investigation response or 72-hour

family assessment response, depending on the severity of the allegation.

Anyone, including DCYF, may file a petition in court alleging that a child should be a dependent of the state due to abuse, neglect, or because there is no parent, guardian, or custodian capable of adequately caring for the child. A court will hold a shelter care hearing following removal of a child from the home within 72 hours. At this hearing, the court will determine if the child can return home safely. If a court determines that a child is dependent, the court will conduct periodic reviews and make determinations regarding the child's placement, provision of services by DCYF, compliance of the parents, and whether progress has been made by the parents.

Out-of-Home Care. When children are removed from the home of a parent or guardian due to allegations of abuse or neglect, those children may be placed with relatives or in foster care. Relatives care for almost half of the children placed in out-of-home care. Foster parents are licensed by either DCYF or private child-placing agencies and provide temporary care to children with the goal of reunifying the child with the parent or guardian.

Extended Foster Care Program. The extended foster care program is a program that allows youth who are dependents of the state at age 18 to voluntarily agree to continue receiving foster care services until age 21, provided they are enrolled in an educational or vocational program, participating in a program or activity to reduce barriers to employment, working 80 hours or more a month, or have certain medical conditions.

Summary of Amended Bill: CFC must forecast the number of individuals who are or were involved in the child welfare system who are also functionally and financially eligible for DDA waiver services, as well as those who are eligible for Medicaid waiver services and are expected to utilize a Medicaid waiver service. Waiver slots for this population must be forecasted and budgeted as maintenance level costs.

CIIBS waiver services may supplement the child welfare services a child may be receiving from DCYF, and the prohibition against access to CIIBS services while the family is subject to an unresolved CPS referral is removed. CIIBS services may be provided to children in out-of-home placements, without requiring that placement is temporary with a plan to return home.

By January 1, 2024, DSHS must apply for federal approval to modify eligibility requirements for the services provided through existing Medicaid waivers to include certain eligible individuals who are or were involved in the child welfare system and, to the extent consistent with federal law and federal funding requirements, DSHS shall provide Medicaid waiver services to eligible individuals no later than December 1, 2024.

By December 1, 2025, DSHS must 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 are in a dependency or extended foster care, or have exited a dependency or discontinued extended foster care, and cannot be adequately served through one of the existing Medicaid waivers. The report must include:

- a comprehensive list and description of the services anticipated to be included in the new waiver and the associated costs by each age group;
- information on approaches taken by other states to serve children and youth in dependencies with developmental disabilities; and
- information on the outcome of services being provided under the amended waivers.

When designing the new waiver, DSHS must collaborate with DCYF 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. DCYF must provide DSHS with all information and data necessary for DSHS to determine eligibility, provide appropriate and timely services and supports, and maintain compliance with federal funding requirements.

DDA waiver services must be provided to certain eligible individuals who are or were involved in the child welfare system. Specifically, services must be provided to eligible individuals who:

- on or after the effective date of the act, are subject to a dependency, are receiving extended foster care services, or exited a dependency or discontinued extended foster care services; and
- will begin receiving DDA services before their 25th birthday.

Persons who meet the above criteria and are receiving the CIIBS waiver, must be immediately transferred to a different waiver without a break in waiver coverage when they no longer qualify for the waiver under which they have been receiving services, based on their age.

EFFECT OF WAYS & MEANS COMMITTEE AMENDMENT(S):

- The CFC must forecast the number of individuals who are or were involved in the child welfare system who are also functionally and financially eligible for DDA waiver services, as well as those who are eligible for Medicaid waiver services and are expected to utilize a Medicaid waiver service. Waiver slots for this population must be forecasted and budgeted as maintenance level costs.
- By December January 1, 2024, DSHS must apply for federal approval to modify eligibility requirements for the services provided through existing Medicaid waivers to include certain eligible individuals who are or were involved in the child welfare system and, to the extent consistent with federal law and federal funding requirements, DSHS shall provide Medicaid waiver services to eligible individuals no later than December 1, 2024.
- By December 1, 2025, DSHS must 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. The new waiver will serve DDA eligible children who are age 20 or younger and are in a dependency or extended foster care, or have exited a dependency or discontinued extended foster care, and cannot be adequately served through one of the existing Medicaid waivers. The report must include:

1. a comprehensive list and description of the services anticipated to be included in the new waiver and the associated costs by each age group;
 2. information on approaches taken by other states to serve children and youth in dependencies with developmental disabilities; and
 3. information on the outcome of services being provided under the amended waivers.
- Eligible persons who are receiving the CIIBS waiver, must be immediately be transferred to a different waiver without a break in waiver coverage when they no longer qualify for the CIIBS waiver based on their age.

Appropriation: The bill contains a null and void clause requiring specific funding be provided in an omnibus appropriation act.

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 on Engrossed Second Substitute House Bill (Human Services): PRO: This is the fundamentally right thing to do. Through conversations over the interim, it was discovered that state rather than federal law was preventing foster youth from accessing developmental disability services. This bill will develop a new waiver for foster youth that will compliment not supplant current foster care services. Many children and youths are forced to pick between necessary programs and this barrier prevents kids from getting the help they need. These youth deserve our support and this bill will open a pathway to services which will create better outcomes for their health and development. This bill also aligns with recommendations made by the Office of Developmental Disabilities Ombuds in their report.

OTHER: This bill will have a very positive impact for the children and youth under the care and custody of DCYF. There are barriers to accessing necessary and appropriate services due to the limitations of state law and and the lack of guidance at the federal level. A new waiver will allow for the mitigation of these limitations and provide the clarity necessary for service delivery. It will allow children to be in less restrictive settings, support reunification when possible, and when reunification is not possible it will support more stability in the home of a child's permanent placement. At any given time, there are about 800-900 children in out-of-home care who are eligible for DDA services but are unable to receive those services.

Persons Testifying (Human Services): PRO: Representative Tana Senn, Prime Sponsor; Noah Seidel, Office of Developmental Disabilities Ombuds; Marissa Ingalls, Coordinated Care; Sydney Doherty, Coordinated Care; Daniel Lugo, Treehouse; Diana Stadden, The Arc of WA State; Janet Hedgepath, League of Women Voters Washington; Andrea Davis, Coordinated Care.

OTHER: Allison Krutsinger, Dept of Children, Youth, and Families.

Persons Signed In To Testify But Not Testifying (Human Services): No one.

Staff Summary of Public Testimony on Engrossed Second Substitute House Bill (Ways & Means): *The committee recommended a different version of the bill than what was heard.* PRO: Children and youth involved in the foster care system often fall through the cracks. This bill will extend DDA services to these individuals. Access to the CIIBS waivers will provide necessary wraparound services to help children and youth who are in crisis. This will help avoid hospitalizations and to help move individuals out of hospitals into more appropriate settings. When these children and youth do not get care, it can cause their situation to deteriorate. Approximately half of cases have a known need for DDA services and over 60 percent of those needs go unmet currently.

Persons Testifying (Ways & Means): PRO: Diana Stadden, The Arc of WA State; Marissa Ingalls, Coordinated Care.

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