

ENGROSSED SUBSTITUTE SENATE BILL 5268

AS AMENDED BY THE HOUSE

Passed Legislature - 2022 Regular Session

State of Washington 67th Legislature 2021 Regular Session

67th Legislature 2021 Regular Session

2021 Regular Session

By Senate Health & Long Term Care (originally sponsored by Senators Keiser, Braun, and Nguyen)

READ FIRST TIME 02/08/21.

1 AN ACT Relating to transforming services for individuals with
2 intellectual and developmental disabilities by increasing the
3 capabilities of community residential settings and redesigning the
4 long-term nature of intermediate care facilities; amending RCW
5 43.88C.010; adding a new section to chapter 71A.18 RCW; creating new
6 sections; and providing expiration dates.

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

**Part 1: Increase the Capabilities of Community Residential Settings
and Services**

10 NEW SECTION. **Sec. 1.** (1) The legislature finds that the
11 recommendations in the December 2019 report, "Rethinking Intellectual
12 and Developmental Disability Policy to Empower Clients, Develop
13 Providers, and Improve Services" and recommendations in the 2021
14 preliminary report of the joint executive and legislative task force
15 established in chapter 317, Laws of 2020 are the product of
16 deliberations among a diverse and dedicated group of stakeholders and
17 are critical to advancing the continuum of care for individuals with
18 developmental disabilities.

19 (2) The legislature intends to continue efforts to expand
20 community residential settings and supports with the goals of

1 reducing the risk of federal divestment from Washington's
2 intermediate care facilities and delivering appropriate care to
3 clients of the developmental disabilities administration. To that
4 end, the legislature finds that a reliable network of community
5 providers is critical to meeting these goals and that community
6 residential rates must be established at appropriate levels to ensure
7 that individuals with intellectual and developmental disabilities
8 have community residential options that appropriately address their
9 needs and ensure stable, permanent outcomes.

10 (3) The legislature also finds that it is imperative that
11 internal processes within the department of social and health
12 services, including those that guide eligibility determinations,
13 assess hours of service delivery, and measure quality of providers,
14 be examined to ensure that these systems function in the most
15 streamlined and efficient manner with the goal of achieving a system
16 that has greater consistency with regard to expectations and
17 requirements of providers and that is structured to be more person-
18 centered and user-friendly at interface.

19 **Sec. 2.** RCW 43.88C.010 and 2021 c 334 s 975 are each amended to
20 read as follows:

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

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

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

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

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

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

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

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

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

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

32 (d) The number of children who are eligible, as defined in RCW
33 43.216.505, to participate in, and the number of children actually
34 served by, the early childhood education and assistance program.

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

38 (9) ~~((The))~~ By January 1, 2023, the caseload forecast council
39 shall present the number of individuals who are assessed as eligible
40 for and have requested a service through the individual and family

1 services waiver and the basic plus waiver administered by the
2 developmental disabilities administration as a courtesy. The caseload
3 forecast council shall be presented with the service request list as
4 defined in RCW 71A.10.020 to aid in development of this information.

5 (10) Beginning with the official forecast submitted in November
6 2022 and subject to the availability of amounts appropriated for this
7 specific purpose, the caseload forecast council shall forecast the
8 number of individuals who are assessed as eligible for and have
9 requested supported living services, a service through the core
10 waiver, an individual and family services waiver, and the basic plus
11 waiver administered by the developmental disabilities administration
12 as a courtesy. The caseload forecast council shall be presented with
13 the service request list as defined in RCW 71A.10.020 to aid in
14 development of this information.

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

20 (12) The caseload forecast council shall forecast youth
21 participating in the extended foster care program pursuant to RCW
22 74.13.031 separately from other children who are residing in foster
23 care and who are under eighteen years of age.

24 ((~~(11)~~)) (13) The caseload forecast council shall forecast the
25 number of youth expected to receive behavioral rehabilitation
26 services while involved in the foster care system and the number of
27 screened in reports of child abuse or neglect.

28 ((~~(12)~~)) (14) Unless the context clearly requires otherwise, the
29 definitions provided in RCW 43.88.020 apply to this chapter.

30 ((~~(13)~~)) (15) During the 2021-2023 fiscal biennium, and beginning
31 with the November 2021 forecast, the caseload forecast council shall
32 produce an unofficial forecast of the long-term caseload for juvenile
33 rehabilitation as a courtesy.

34 NEW SECTION. Sec. 3. A new section is added to chapter 71A.18
35 RCW to read as follows:

36 (1) Expenditures for the individual and family services waiver
37 and the basic plus waiver administered under Title 71A RCW must be
38 considered by the governor and the legislature for inclusion in
39 maintenance level budgets beginning with the governor's budget

proposal submitted in December 2022 and funding for these expenditures are subject to amounts appropriated for this specific purpose. The department of social and health services must annually submit a budget request for these expenditures.

(2) Beginning with the governor's budget proposal submitted in December 2022 and within the department's existing appropriations, the department of social and health services must annually submit a budget request for expenditures for the number of individuals who are expected to reside in state-operated living alternatives administered by the developmental disabilities administration under Title 71A RCW.

NEW SECTION. **Sec. 4.** (1) With consideration to legislative intent to expand community residential settings, and within the department's existing appropriations, the department of social and health services shall examine the need for community respite beds to serve eligible individuals and stabilization, assessment, and intervention beds to provide crisis stabilization services for individuals with complex behavioral needs. No later than October 1, 2022, the department of social and health services must submit a preliminary report to the governor and the legislature that estimates the number of beds needed in fiscal years 2023 through 2025, recommends geographic locations of these beds, provides options for contracting with community providers for these beds, provides options for utilizing existing intermediate care facilities to meet these needs, includes the average length of stay for clients residing in state-operated intermediate care facilities, and recommends whether or not an increase to respite hours is needed. A progress report is due on October 1, 2023, and a final report of this information shall be submitted no later than October 1, 2024.

(2) This section expires January 1, 2025.

NEW SECTION. **Sec. 5.** (1) The department of social and health services must contract with a private vendor for a study of medicaid rates for contracted community residential service providers. The study must be submitted to the governor and the appropriate committees of the legislature no later than December 1, 2023, and must include:

(a) A recommendation of rates needed for facilities to cover their costs and adequately recruit, train, and retain direct care professionals;

(b) Recommendations for an enhanced rate structure, including when and for whom this rate structure would be appropriate; and

(c) An assessment of options for an alternative, opt-in rate structure for contracted supported living providers who voluntarily serve individuals with complex behaviors, complete additional training, and submit to additional monitoring.

(2) This section expires January 31, 2024.

NEW SECTION. **Sec. 6.** (1) With consideration to legislative intent to expand community residential settings and within the department's existing appropriations, the department of social and health services shall submit by October 1, 2022, a five-year plan to phase-in the appropriate level of funding and staffing to achieve case management ratios of one case manager to no more than 35 clients. The five-year plan must include:

(a) An analysis of current procedures to hire and train new staff within the developmental disabilities administration of the department of social and health services;

(b) Identification of any necessary changes to these procedures to ensure a more efficient and timely process for hiring and training staff; and

(c) Identification of the number of new hires needed on an annual basis to achieve the phased implementation included in the five-year plan.

(2) This section expires January 31, 2024.

NEW SECTION. **Sec. 7.** (1) Within the department's existing appropriations, and no later than June 30, 2023, the department of social and health services in collaboration with appropriate stakeholders shall develop uniform quality assurance metrics that are applied across community residential settings, intermediate care facilities, and state-operated nursing facilities. The department of social and health services must submit a report of these activities to the governor and the legislature no later than June 30, 2023.

(2) This section expires July 31, 2023.

NEW SECTION. **Sec. 8.** (1) The joint legislative audit and review committee shall:

(a) Review the developmental disabilities administration's existing processes and staffing methodology used for determining

1 eligibility, assessing for eligibility, delivering services, and
2 managing individuals who are waiting for services;

3 (b) Review best practices from other states regarding eligibility
4 determination, eligibility assessment, service delivery, management
5 of individuals who are waiting for services, and staffing models; and

6 (c) Identify options for streamlining the eligibility,
7 assessment, service delivery, and management of individuals who are
8 waiting for services processes and the potential staffing impacts.

9 (2) The joint legislative audit and review committee shall report
10 its findings and recommendations to the governor and the appropriate
11 committees of the legislature by December 1, 2024.

12 (3) This section expires January 31, 2025.

13 **Part 2: Improve Cross-System Coordination**

14 NEW SECTION. **Sec. 9.** An individual's disability will often
15 overshadow other medical or functional needs which can result in
16 missed connections and poor outcomes. It is the intent of the
17 legislature that cross-system coordination involving individuals with
18 intellectual and developmental disabilities be improved to ensure
19 that these individuals receive the appropriate types of services and
20 supports when they are needed to adequately address mental health
21 conditions, medical conditions, individual preferences, and the
22 natural aging process.

23 NEW SECTION. **Sec. 10.** (1) Within the department's existing
24 appropriations, the department of social and health services shall
25 work with the developmental disabilities council to:

26 (a) Coordinate collaboration efforts among relevant stakeholders
27 to develop and disseminate best practices related to serving
28 individuals with co-occurring intellectual and developmental
29 disabilities and mental health conditions;

30 (b) Work with Washington state's apprenticeship and training
31 council, colleges, and universities to establish medical, dental,
32 nursing, and direct care apprenticeship programs that would address
33 gaps in provider training and overall competence;

34 (c) Devise options for consideration by the governor and the
35 legislature to prioritize funding for housing for individuals with
36 intellectual and developmental disabilities when a lack of affordable

1 housing is the barrier preventing an individual from moving to a
2 least restrictive community setting; and

3 (d) Coordinate collaboration efforts among relevant stakeholders
4 to examine existing law with regard to guardianship and protective
5 proceedings and make any necessary recommendations for changes to
6 existing law to ensure that guardianship or other protective
7 proceedings are designed to provide individuals with intellectual and
8 developmental disabilities with the decision-making support they
9 require to live as independently as possible in the least restrictive
10 environment, including consideration of mechanisms that enable
11 regular payment for services rendered by these legal representatives
12 when appropriate.

13 (2) Within the department's existing appropriations, the
14 department of social and health services shall work with the health
15 care authority and Washington state's managed care organizations to
16 establish the necessary agreements for intellectual and developmental
17 disabilities clients who live in the community to access intermediate
18 care facility-based professionals to receive care covered under the
19 state plan. The department of social and health services must
20 consider methods to deliver these services at mobile or brick-and-
21 mortar clinical settings in the community.

22 (3) No later than December 1, 2022, the department of social and
23 health services shall submit a report describing the efforts outlined
24 in subsections (1) and (2) of this section and any recommendations
25 for policy or fiscal changes to the governor and the legislature for
26 consideration in the 2023 legislative session.

27 (4) This section expires January 31, 2023.

28 **Part 3: Redesign State-Operated Intermediate Care Facilities to**
29 **Function as Short-Term Crisis Stabilization and Intervention**

30 NEW SECTION. **Sec. 11.** It is the intent of the legislature that
31 intermediate care facilities be redesigned from long-term care
32 settings to settings that support short-term crisis stabilization and
33 intervention and that, in order to achieve stable, permanent
34 placements in the least restrictive settings possible, an
35 infrastructure of procedures be developed to ensure that individuals
36 placed in intermediate care settings remain in that setting no longer
37 than is absolutely necessary.

1 NEW SECTION. **Sec. 12.** (1) Within the department of social and
2 health services' existing appropriations, the developmental
3 disabilities administration must develop procedures that ensure that:

4 (a) Clear, written, and verbal information is provided to the
5 individual and their family member that explains:

6 (i) That placement in the intermediate care facility is
7 temporary; and

8 (ii) What constitutes continuous aggressive active treatment and
9 its eligibility implications;

10 (b) Discharge planning begins immediately upon placement of an
11 individual within the intermediate care facility and that the
12 individual and their family member is provided clear descriptions of
13 all placement options and their requirements;

14 (c) When stabilization services are available in the community,
15 the individual is presented with the option to receive those services
16 in the community prior to being offered services in a state-operated
17 intermediate care facility; and

18 (d) When the individual has not achieved crisis stabilization
19 after 60 consecutive days in the state-operated intermediate care
20 facility, the department of social and health services must convene
21 the individual's team of care providers including, but not limited
22 to, the individual's case manager, the individual's community-based
23 providers, and, if applicable, the individual's managed care
24 organization to review and make any necessary changes to the
25 individual's care plan.

26 (2) Subject to funding appropriated specifically for this
27 purpose, the department of social and health services must expand the
28 number of family mentors and establish peer mentors to connect each
29 client in an intermediate care facility with a mentor to assist in
30 their transition planning.

31 (3) Subject to funding appropriated specifically for this
32 purpose, the department of social and health services must make every
33 effort to ensure the individual does not lose their community
34 residential services while the individual is receiving stabilization
35 services in a state-operated intermediate care facility. The
36 department of social and health services must:

37 (a) Work with community residential service providers to provide
38 a 90-day vacancy payment for individuals who are transferred from the
39 community residential service provider to a state-operated
40 intermediate care facility for stabilization services; and

1 (b) Utilize client resources or other resources to pay the rent
2 for individuals who are facing eviction due to failure to pay the
3 rent caused by the transfer to a state-operated intermediate care
4 facility for stabilization services.

5 (4) No later than November 1, 2022, the department of social and
6 health services must submit a report describing the efforts outlined
7 in subsections (1) through (3) of this section and make any necessary
8 recommendations for policy or fiscal changes to the governor and the
9 legislature for consideration in the 2023 legislative session.

10 (5) This section expires January 31, 2023.

11 NEW SECTION. **Sec. 13.** If specific funding for the purposes of
12 this act, referencing this act by bill or chapter number, is not
13 provided by June 30, 2022, in the omnibus appropriations act, this
14 act is null and void.

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