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SENATE BILL 5370

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State of Washington                      63rd Legislature                      2013 Regular Session

By Senators Kline, Keiser, and Shin

Read first time 01/28/13. Referred to Committee on Health Care .

1            AN ACT Relating to implementing the recommendation of the  
2 developmental disabilities service system task force relating to  
3 community living safeguards; amending RCW 71A.12.080 and 71A.12.270;  
4 adding new sections to chapter 71A.12 RCW; adding a new section to  
5 chapter 71A.20 RCW; creating a new section; and prescribing penalties.

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

7            NEW SECTION. **Sec. 1.** The legislature intends to certify community  
8 residential programs by providing requirements and oversight equivalent  
9 to that of adult family homes, assisted living facilities, and nursing  
10 homes by: (1) Establishing supported living certification requirements  
11 and fees; and (2) authorizing civil fines, stop placements, conditions  
12 on certifications, and specific plans of correction for supported  
13 living providers.

14            NEW SECTION. **Sec. 2.** A new section is added to chapter 71A.12 RCW  
15 to read as follows:

16            (1) The department must certify a community residential program if  
17 the department finds that the program is in compliance with this  
18 chapter and the rules adopted under this chapter. The department may

1 not certify a program if: (a) The applicant or a person affiliated  
2 with the applicant has prior violations of this chapter relating to the  
3 community residential program, or of any other law regulating  
4 residential care facilities or programs within the past ten years that  
5 resulted in revocation, suspension, or nonrenewal of a certification,  
6 license, or contract with the department; or (b) the applicant or a  
7 person affiliated with the applicant has a history of significant  
8 noncompliance with federal, state, or local laws, rules, or regulations  
9 relating to the provision of care or services to vulnerable adults or  
10 to children. A person is considered affiliated with an applicant if  
11 the person is listed on the certification applications as a partner,  
12 officer, director, resident manager, or majority owner of the applying  
13 entity, or is the spouse of the applicant.

14 (2) An applicant for community residential program certification  
15 must be made on forms provided by the department.

16 (3) The department must adopt rules establishing community  
17 residential program application fees, renewal fees, and certification  
18 renewal dates. The rules must set the fees at a rate sufficient to  
19 cover the costs of regulating community residential programs under this  
20 chapter. Fees must be paid by the supported living provider.

21 (4) Applicants must provide proof of financial solvency as  
22 requested by the department.

23 (5) The department must grant or deny applications for community  
24 residential programs. A copy of the department's decision must be  
25 provided to the applicant who has the right to contest denial or his or  
26 her application for certification as provided in chapter 34.05 RCW by  
27 requesting a hearing in writing within twenty-eight days after receipt  
28 of the notice of denial.

29 (6) The department must adopt rules establishing procedures for the  
30 transfer of certifications. Certification transfers may be permitted  
31 if the community residential program: Has a change in ownership or  
32 control of the program; has a change in the program's form of legal  
33 organization; or enters into a dissolution or merger of the program  
34 with another legal organization. A community residential program  
35 seeking transfer of certification must be in compliance with the other  
36 requirements of this chapter.

37 (7) A community residential program that has had its certification  
38 denied, suspended, revoked, or not renewed may, in lieu of appealing

1 the department's action, surrender the certification. The department  
2 may not issue a new certification to or contract with the provider, for  
3 the purposes of providing care to vulnerable adults or children, for a  
4 period of twenty years following the surrender of the certification.  
5 The department's records must indicate that the provider surrendered  
6 the community residential program certification without admitting the  
7 violations after receiving notice of the department's denial,  
8 suspension, revocation, or nonrenewal of the certification.

9 **Sec. 3.** RCW 71A.12.080 and 1988 c 176 s 208 are each amended to  
10 read as follows:

11 (1) The secretary shall adopt rules concerning the eligibility of  
12 residents of residential habilitation centers for placement in  
13 community residential programs under this title, subject to section 2  
14 of this act; determination of ability of such persons or their estates  
15 to pay all or a portion of the cost of care, support, and training; the  
16 manner and method of licensing or certification and inspection and  
17 approval of such community residential programs for placement under  
18 this title; and procedures for the payment of costs of care,  
19 maintenance, and training in community residential programs. The rules  
20 shall include standards for care, maintenance, and training to be met  
21 by such community residential programs, including standards providing  
22 that clients be free from abuse or neglect by program employees.

23 (2) The secretary shall coordinate state activities and resources  
24 relating to placement in community residential programs to help  
25 efficiently expend state and local resources and, to the extent  
26 designated funds are available, create an effective community  
27 residential program.

28 NEW SECTION. **Sec. 4.** A new section is added to chapter 71A.12 RCW  
29 to read as follows:

30 A certified community residential program must have readily  
31 available for review by the department, residents, and the public:

- 32 (1) A copy of its community residential program certification; and  
33 (2) A copy of each inspection report received by the community  
34 residential program from the department for the past six years.

1       **Sec. 5.** RCW 71A.12.270 and 2006 c 303 s 8 are each amended to read  
2 as follows:

3       (1) The department is authorized to take one or more of the  
4 enforcement actions listed in subsection (2) of this section when the  
5 department finds that a provider of residential services and support  
6 with whom the department entered into an agreement under this chapter  
7 has:

8       (a) Failed or refused to comply with the requirements of this  
9 chapter or the rules adopted under it;

10       (b) Failed or refused to cooperate with the certification process;

11       (c) Prevented or interfered with a certification, inspection, or  
12 investigation by the department;

13       (d) Failed to comply with any applicable requirements regarding  
14 vulnerable adults under chapter 74.34 RCW; ~~((or))~~

15       (e) Knowingly, or with reason to know, made a false statement of  
16 material fact related to certification or contracting with the  
17 department, or in any matter under investigation by the department; or

18       (f) Operated a community residential program without a  
19 certification or under a suspended or revoked certification.

20       (2) The department may:

21       (a) ~~((Decertify))~~ Suspend, revoke, or refuse to renew the  
22 certification of a provider if the department has made a finding of  
23 fraud, abuse, or neglect or that the community residential program is  
24 otherwise not in compliance with this chapter;

25       (b) Impose conditions on a provider's certification status such as  
26 correction within a specified time, training, and limits on the type of  
27 clients the provider may admit or serve;

28       (c) Suspend department referrals to the provider by imposing stop  
29 placement; or

30       (d) Require a provider to implement a plan of correction developed  
31 by the department and to cooperate with subsequent monitoring of the  
32 provider's progress ~~((— In the event a provider fails to implement the~~  
33 ~~plan of correction or fails to cooperate with subsequent monitoring,~~  
34 ~~the department may impose civil penalties of not more than one hundred~~  
35 ~~fifty dollars per day per violation. Each day during which the same or~~  
36 ~~similar action or inaction occurs constitutes a separate violation));~~

37       (e) Impose civil penalties of at least one hundred dollars per day  
38 per violation;

1 (f) Impose civil penalties of up to three thousand dollars for each  
2 incident that violates community residential program laws or rules.  
3 Each day upon which the same or substantially similar action occurs is  
4 a separate violation subject to the assessment or a separate penalty;  
5 or

6 (g) Impose civil penalties of up to ten thousand dollars for a  
7 current or former licensed provider who is operating an uncertified  
8 program.

9 (3) When the department orders stop placement, the community  
10 residential program may not begin providing services to any person  
11 until the stop placement order is terminated. The department may  
12 approve readmission of a client to the program from a hospital, nursing  
13 home, correctional facility, or residential habilitation center during  
14 the stop placement. The department must terminate the stop placement  
15 when: (a) The violations necessitating the stop placement have been  
16 corrected; and (b) the program exhibits the capacity to maintain the  
17 correction of the violations previously found deficient. If upon a  
18 revisit the department finds new violations that the department  
19 reasonably believes will result in a new stop placement, the previous  
20 stop placement remains in effect until the new stop placement is  
21 imposed.

22 (4) After a department finding of a violation for which a stop  
23 placement has been imposed, the department must make an on-site revisit  
24 within fifteen working days from the request for revisit, to ensure  
25 correction of the violation. For violations that are serious or  
26 recurring or uncorrected following a previous citation, and create  
27 actual or threatened harm to one or more residents' well-being,  
28 including violations of clients' rights, the department must make an  
29 on-site revisit as soon as appropriate to ensure correction of the  
30 violation. Verification of correction of all other violations may be  
31 made by either a department on-site revisit or by written or  
32 photographic documentation found by the department to be credible.  
33 This subsection does not prevent the department from enforcing license  
34 suspensions or revocations. Nothing in this subsection interferes with  
35 or diminishes the department's authority and duty to ensure that the  
36 provider adequately cares for residents, including to make departmental  
37 on-site revisits as needed to ensure that the provider protects  
38 clients, and to enforce compliance with this chapter.

1       (5) When determining the appropriate enforcement action or actions  
2 under subsection (2) of this section, the department must select  
3 actions commensurate with the seriousness of the harm or threat of harm  
4 to the persons being served by the provider. Further, the department  
5 may take enforcement actions that are more severe for violations that  
6 are uncorrected, repeated, pervasive, or which present a serious threat  
7 of harm to the health, safety, or welfare of persons served by the  
8 provider. The department shall by rule develop criteria for the  
9 selection and implementation of enforcement actions authorized in  
10 subsection (2) of this section. Rules adopted under this section shall  
11 include a process for an informal review upon request by a provider.

12       (~~(4)~~) (6) The provisions of chapter 34.05 RCW apply to  
13 enforcement actions under this section(~~(. Except for the imposition of~~  
14 ~~civil penalties)~~), except that: Orders of the department imposing  
15 certification suspension, stop placement, or conditions for  
16 continuation of a certification are effective immediately upon notice  
17 and continue in effect pending a hearing; and the effective date of  
18 enforcement actions shall not be delayed or suspended pending any  
19 hearing or informal review for orders of the department imposing civil  
20 penalties.

21       (~~(5)~~) (7) The enforcement actions and penalties authorized in  
22 this section are not exclusive or exhaustive and nothing in this  
23 section prohibits the department from taking any other action  
24 authorized in statute or rule or under the terms of a contract with the  
25 provider. Whenever possible, the department must assign a higher  
26 priority to investigations of abuse and neglect stemming from alleged  
27 employee misconduct.

28       NEW SECTION. Sec. 6. A new section is added to chapter 71A.12 RCW  
29 to read as follows:

30       A community residential program account is created in the custody  
31 of the state treasurer. All receipts from fees and civil penalties  
32 imposed under this chapter must be deposited into the account. Only  
33 the director or the director's designee may authorize expenditures from  
34 the account. The account is subject to allotment procedures under  
35 chapter 43.88 RCW, but an appropriation is not required for  
36 expenditures. The department shall use the community residential

1 program account to administer this chapter and to promote the quality  
2 of life and care of clients receiving community residential services.

3 NEW SECTION. **Sec. 7.** A new section is added to chapter 71A.20 RCW  
4 to read as follows:

5 (1) When a person is admitted to a residential habilitation center,  
6 the department shall, within sixty days of that resident's admission,  
7 develop an individual habilitation plan that includes a plan for  
8 discharge of that resident back to the community.

9 (2) The department must use a person-centered approach in  
10 developing a resident's discharge plan to assess the resident's needs  
11 and identify services the resident requires to successfully transition  
12 to the community. This approach must provide an opportunity for:

13 (a) Family-to-family mentoring provided by people who themselves  
14 experienced moving a family member with developmental disabilities from  
15 a residential habilitation center to the community;

16 (b) Participation by employees of the residential habilitation  
17 centers. To strengthen continuity of care for residents leaving  
18 residential habilitation centers, the department shall provide  
19 opportunities for residential habilitation center employees to obtain  
20 employment in state-operated living alternatives when appropriate for  
21 a specific resident or residents and pursuant to appropriate collective  
22 bargaining agreement;

23 (c) A choice of community living options and providers, consistent  
24 with federal requirements, including offering to place, with the  
25 consent of the resident or the resident's guardian, the resident on the  
26 appropriate home and community-based waiver, as authorized under 42  
27 U.S.C. Sec. 1396n, and provide continued access to services that meet  
28 his or her assessed needs as authorized on the person's waiver;

29 (d) Residents and their families or guardians to visit state-  
30 operated living alternatives and supported living options in the  
31 community;

32 (e) A right of return to a residential habilitation center for  
33 residents leaving residential habilitation centers. This right must be  
34 exercised within one year of the resident's move from the residential  
35 habilitation center; and

36 (f) A plan for the provision of services that are in addition to

1 those that are provided by residential services providers and that are  
2 necessary to meet the resident's assessed needs. These additional  
3 services include:

- 4 (i) Medical services;
- 5 (ii) Nursing services;
- 6 (iii) Dental care;
- 7 (iv) Behavioral and mental health supports;
- 8 (v) Habilitation services; and
- 9 (vi) Employment or other day support.

10 (3) After discharge from a residential habilitation center,  
11 residents continue to be eligible for services for which they have an  
12 assessed need.

13 (4) The department must maximize federal funding for transitioning  
14 residents using any federal grants available for this purpose.

15 (5) The department shall limit the ability of a state-operated  
16 living alternative to reject clients.

17 (6) Savings achieved through efficiencies must be used to extend  
18 services, including state-staffed crisis stabilization services and  
19 respite services, to people with developmental disabilities living in  
20 the community.

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