

# SENATE BILL REPORT

## SB 5370

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As of February 14, 2013

**Title:** An act relating to implementing the recommendation of the developmental disabilities service system task force relating to community living safeguards.

**Brief Description:** Implementing the recommendation of the developmental disabilities service system task force relating to community living safeguards.

**Sponsors:** Senators Kline, Keiser and Shin.

**Brief History:**

**Committee Activity:** Health Care: 2/12/13.

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### SENATE COMMITTEE ON HEALTH CARE

**Staff:** Kathleen Buchli (786-7488)

**Background:** In 2011, the Legislature passed 2SSB 5459, which established the Developmental Disabilities Service System Task Force (Task Force). As part of its duties, the Task Force was required to make recommendations on: developing a system of services for persons with developmental disabilities; the state's long-term needs for residential habilitation center (RHC) capacity, including the benefits and disadvantages of maintaining one RHC in eastern Washington and one RHC in western Washington; a plan for efficient consolidation of institutional capacity, including whether one or more RHCs should be downsized or closed, and if so, a time frame for closure; mechanisms through which savings that result from the downsizing, consolidation, or closure of RHC capacity can be used to create additional community-based capacity; strategies for the use of surplus property that results from the closure of one or more centers; and strategies for reframing the mission of the Yakima Valley School that consider the opportunity to provide medical services to other clients served by the Department of Social and Health Services (DSHS) and the creation of a treatment team consisting of crisis stabilization and respite services to those individuals with developmental disabilities in the surrounding community.

On January 9, 2013, the Task Force submitted the following recommendations to the Legislature:

- Open all RHCs to receive new clients. Remove the names of the RHCs from statute. Any proposed closure of an RHC must be approved by the Legislature. Cap the

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- number of RHC residents at 900. This cap is not intended to necessarily increase the number of residents at an RHC, but is to reflect respite services at RHCs.
- Continue to provide respite in RHCs. Continue the commitment to provide and further develop respite care in the community and keep flexibility to allow for clients to access services where they choose.
  - Direct DSHS to begin assessing the 14,000 clients on the no paid services caseload. Give DSHS authority to prioritize which clients will be assessed first. Increase Basic Plus waiver capacity incrementally per biennium as funding allows. DSHS must perform assessments within funds made available for this.
  - Modify the Dan Thompson trust to allow the proceeds from the sale of RHC property to go into the trust. Ensure that Francis Haddon Morgan property is included in the trust language.
  - Ensure that persons transitioning to the community are provided the level of care that meets the individuals' assessed need. Establish a right of return.
  - Provide DSHS with authority to investigate all allegations of abuse and neglect in a timely, transparent, and thorough manner so that all persons are held accountable.
  - Request the Legislature to reconvene the Task Force at the end of the legislative session to review and continue to work on developing a system of services.

**Summary of Bill:** The recommendations relating to community living safeguards are addressed by the bill. DSHS must certify a Community Residential Program (Program) if it finds that the Program is in compliance state laws and rules. The Program may not be certified if: the applicant has violated state laws or rules relating to Programs or Residential Care Facilities in the last ten years; or the applicant has a history of significant noncompliance with laws and rules relating to the provision of care or services to vulnerable adults or children. If the certificate is denied or suspended, a new certification may not be issued for 20 years following surrender of the certification.

If a person operates a Program without a certification, under a suspended certification, or there is a finding of fraud, abuse, or neglect, DSHS may suspend, revoke, or refuse to renew the certification. DSHS may also: impose conditions on the certification status such as requiring corrections of the violations, training, and limits on the types of clients the provider may admit or serve; impose stop placement and suspend referrals to the provider; impose civil penalties of at least \$100 per day per violation, up to \$3,000 for each incident that violates Program laws and rules, and up to \$10,000 for a current or former licensed provider who is operating an uncertified program.

If stop placement is ordered, the Program may not offer services to new clients until the stop placement order is terminated. DSHS must terminate the stop placement order when violations have been corrected, and the Program demonstrates that the violations will remain corrected. If requested, DSHS must make an on-site visit within 15 working days to ensure correction of the violation. If the violations create harm to the residents' well being, an on-site revisit must be made as soon as appropriate to ensure correction of the violation.

Rules relating to placement of residents from RHCs to Programs must include standards providing that Program clients must be free from abuse or neglect by Program employees.

Programs must have records available for review by DSHS, residents, and the public. These include a copy of its Program certification and a copy of each inspection report received in the last six years.

When a person is admitted to an RHC, DSHS must develop an individual habilitation plan that includes a plan for discharge of that resident back to the community. DSHS must use a person-centered approach in developing this plan and identify services the resident requires to successfully transition to the community. This must include an opportunity for: family-to-family mentoring provided by people with experience moving a family member from an RHC to the community; participation by employees of the RHCs and opportunities for those employees to find employment in state-operated living alternatives (SOLAs); a choice of community living options and providers; residents and their families to visits SOLAs and supported living options in their communities; a right of return to an RHC if exercised within one year of the move from an RHC; a plan for services to include medical, nursing, dental, behavioral, and mental health supports; and employment and other day supports. Clients who are discharged from an RHC retain their eligibility for services for which they have an assessed need. SOLAs are to be limited in their ability to reject clients.

**Appropriation:** None.

**Fiscal Note:** Available.

[OFM requested ten-year cost projection pursuant to I-960.]

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: We need to be able to investigate and discipline providers when there are allegations of abuse and neglect in the community. We need these safeguards for people in the community and to give families assurances of the safety of their family member in the community. This allows intermediate action and provides DSHS with enforcement tools such as stop placement orders and fines. This takes appropriate steps to address provider problems in community living settings. We need more investigators on the ground performing investigations. The bill provides sanctions similar to those available to investigators of adult family homes.

CON: Community living situations are subject to surprise inspections. Civil fines may hurt smaller providers. Stop placement orders limit the availability of services to others. Supported living providers are mandatory reporters and we support additional funding for investigators to stop the delay between the report and the investigation. We need to remember that these places are not facilities, they are homes. Providers take the health and safety of their clients very seriously.

OTHER: This only applies to community living situations, but people in RHCs also need protections. The bill does not go far enough. We need prevention and a system to incentivize people to prevent events before they happen. Programs that provide community services are not facility based and, instead, provide services in their client's home. This type of enforcement model may not be appropriate for providers who have no control over where

their clients live. We support safety and do extensive training on abuse and neglect laws. We also ensure that our employees know they should report allegations of abuse and neglect directly to DSHS. We are concerned about the implication that these providers are not committed to this idea or that they do not have the tools to ensure safety. We also need to address the low pay and high turnover rates of providers. We support providing DSHS with more enforcement tools but are concerned about the civil fines because DSHS does not have the ability to authorize fines in RHCs. We need to address civil fines and penalties in all locations where the violation occurs. This bill provides the same tools for supported living as are provided for adult family homes.

**Persons Testifying:** PRO: Senator Kline, prime sponsor; David Lord, Disability Rights WA; Amy Crewdson, Columbia Legal Services; Marcy Johnsen, Service Employees International Union 1199NW.

CON: Grant Warren, Community Protection Providers Assn., Community Residential Services Assn.; Ed Holen, Developmental Disabilities Council; Chad Higman, Melissa Johnson, Community Residential Services Association.

OTHER: Saskia Davis, Friends of Fircrest; Sue Elliott, The Arc of WA State; Janet Michaelson, Sunrise Services, Inc.; Bill Moss, DSHS.