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SENATE BILL 5481

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State of Washington                      63rd Legislature                      2013 Regular Session

By Senators Keiser, Kline, Rolfes, Roach, and Chase

Read first time 01/31/13. Referred to Committee on Health Care .

1            AN ACT Relating to the department of social and health services'  
2 supported living program; adding a new chapter to Title 71A RCW; and  
3 prescribing penalties.

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

5            NEW SECTION.    **Sec. 1.**    (1) The legislature finds that many  
6 residents in supported living facilities are vulnerable and their  
7 health and well-being are dependent on their caregivers.

8            (2) The legislature finds that the state of Washington has a  
9 compelling interest in developing and enforcing standards that promote  
10 the health, welfare, and safety of persons with developmental  
11 disabilities who reside in supported living facilities. The health,  
12 safety, and well-being of these people must be the paramount concern in  
13 determining whether to contract with a supported living provider or to  
14 suspend or debar a supported living contractor.

15            NEW SECTION.    **Sec. 2.**    The definitions in this section apply  
16 throughout this chapter unless the context clearly requires otherwise.

17            (1) "Employee" means any person employed by a supported living  
18 provider or contractor.

1 (2) "Whistleblower" means an employee who:

2 (a) In good faith reports practices that may violate the provisions  
3 of this chapter or the rules adopted under this chapter;

4 (b) Is believed to have reported practices that may violate the  
5 provisions of this chapter or the rules adopted under this chapter but  
6 who, in fact, has not reported such practices; or

7 (c) Has assisted in the reporting of practices that may violate the  
8 provisions of this chapter or the rules adopted under this chapter or  
9 has provided testimony or information in connection with the reporting  
10 of such practices.

11 (3) "Workplace reprisal or retaliatory action" includes actions  
12 such as discharge or in any manner discrimination against any employee  
13 who has reported or filed any complaint or instituted or caused to be  
14 instituted any proceeding under or related to this chapter, or has  
15 testified or is about to testify in any such proceeding or because of  
16 the exercise by such employee on behalf of himself or herself or others  
17 of any right or responsibility afforded by this chapter.

18 NEW SECTION. **Sec. 3.** (1) The department must collect information  
19 on the salaries of administrators and owners of supported living  
20 contractors. This information must include the percentage of these  
21 salaries paid with client care funds and the percentage paid with  
22 administrative funds.

23 (2) The department must collect information on each business  
24 vehicle owned by supported living contractors, including make, model,  
25 year, and total mileage used to transport clients.

26 (3) The department must collect names, training, and criminal  
27 background check history of all employees working for supported living  
28 contractors. Contractors must update this information with the  
29 department as new employees are hired.

30 (4) The department must make available online a list of the safety  
31 history of supported living contractors. The safety history must  
32 include inspection results and citation history.

33 NEW SECTION. **Sec. 4.** Supported living contractors may not use  
34 client care funds to pay for legal fees.

1           NEW SECTION.   **Sec. 5.**   (1) The department must use performance-  
2 based contracting standards when contracting with supported living  
3 contractors.

4           (2) The department must adopt a process to debar supported living  
5 contractors. The debarment process must include the following:

6           (a) Notice to the contractor of the intent to debar, including the  
7 specific reason for debarment. After reasonable notice to the  
8 contractor and reasonable opportunity for that contractor to be heard,  
9 the director has the authority to debar a contractor for cause from  
10 consideration for award of contracts. The debarment must be for a  
11 period of not more than three years.

12           (b) The reasons for debarment based on a finding of one or more of  
13 the following:

14           (i) Conviction for commission of a criminal offense as an incident  
15 to obtaining or attempting to obtain a public or private contract or  
16 subcontract, or in the performance of such contract or subcontract;

17           (ii) Conviction under state or federal statutes of embezzlement,  
18 theft, forgery, bribery, falsification or destruction of records,  
19 receiving stolen property, or any other offense indicating a lack of  
20 business integrity or business honesty that currently, seriously, and  
21 directly affect responsibility as a contractor;

22           (iii) Conviction under state or federal antitrust statutes arising  
23 out of the submission of bids or proposals;

24           (iv) Two or more violations within the previous five years of the  
25 federal labor relations act or the national labor relations act as  
26 determined by the national labor relations board or court of competent  
27 jurisdiction;

28           (v) Violations of contract provisions, of a character that is  
29 regarded by the department to be so serious as to justify debarment  
30 action, including:

31           (A) Deliberate failure to perform support living services as  
32 detailed in the contract;

33           (B) A recent record of failure to perform or of unsatisfactory  
34 performance in accordance with the terms of one or more contracts,  
35 however the failure to perform or unsatisfactory performance caused by  
36 acts beyond the control of the contractor may not be considered to be  
37 a basis for debarment;

38           (vi) Violation of ethical standards as adopted by the department;

1 (vii) A finding of abandonment, abuse, or neglect of a client;

2 (viii) Any other cause the department determines to be so serious  
3 and compelling as to affect responsibility as a contractor, including  
4 debarment by another governmental entity;

5 (c) The department must issue a written decision to debar. The  
6 decision must:

7 (i) State the reason for the action taken; and

8 (ii) Inform the debarred contractor of the contractor's rights to  
9 judicial or administrative review.

10 (3) For the purposes of this section, "debar" or "debarment" means  
11 to prohibit a contractor from submitting a bid, having a bid  
12 considered, or entering into a contract with the department during a  
13 specified period of time as set forth in a debarment order.

14 NEW SECTION. **Sec. 6.** (1) The department may take one or more of  
15 the actions listed in subsection (2) of this section if the department  
16 finds that a supported living contractor has:

17 (a) Failed or refused to comply with the requirements of this  
18 chapter or the rules adopted under this chapter;

19 (b) Operated a supported living facility without a contract with  
20 the department, after the contract has been suspended, or if the  
21 contractor has been debarred;

22 (c) Knowingly, or with reason to know, made a false statement of  
23 material fact on his or her contract application or any data attached  
24 thereto, or in any matter under investigation by the department; or

25 (d) Willfully prevented or interfered with any inspection or  
26 investigation by the department.

27 (2) When authorized by subsection (1) of this section, the  
28 department may take one or more of the following actions:

29 (a) Impose reasonable conditions in the contract, such as  
30 correction within a specified time, training, and limits on the type of  
31 clients the contractor may admit or serve;

32 (b) Impose civil penalties of at least one hundred dollars per day  
33 per violation;

34 (c) Impose civil penalties of up to ten thousand dollars for a  
35 current or former supported living provider who is providing supported  
36 living services without contracting with the department;

37 (d) Suspend, revoke, or refuse to contract with a provider; or

1 (e) Suspend admissions to the supported living facility by imposing  
2 stop placement. The department must institute a stop placement for new  
3 clients when a supported living contractor has more than five open  
4 complaints being investigated by the department.

5 NEW SECTION. **Sec. 7.** In the event of serious noncompliance in a  
6 home operated by a contractor with multiple supported living  
7 facilities, leading to the imposition of one or more actions listed in  
8 section 6(2) of this act, the department shall inspect the other homes  
9 operated by the contractor to determine whether the same or related  
10 deficiencies are present in those homes. The cost of these additional  
11 inspections may be imposed on the contractor as a civil penalty up to  
12 a maximum of three hundred dollars per additional inspection.

13 NEW SECTION. **Sec. 8.** (1) Supported living facilities must be  
14 inspected at least every eighteen months, with an annual average of  
15 fifteen months. However, a supported living facility may be allowed to  
16 continue without inspection for two years if the facility had no  
17 inspection citations for the past three consecutive inspections and has  
18 received no written notice of violations resulting from complaint  
19 investigations during that same time period.

20 (2) The department may make an unannounced inspection of a  
21 supported living facility at any time to assure that the home and  
22 provider are in compliance with this chapter and the rules adopted  
23 under this chapter.

24 NEW SECTION. **Sec. 9.** (1) Supported living facilities must be  
25 maintained internally and externally in good repair and condition.  
26 Such homes must have safe and functioning systems for heating, cooling,  
27 hot and cold water, electricity, plumbing, garbage disposal, sewage,  
28 cooking, laundry, artificial and natural light, ventilation, and any  
29 other feature of the home.

30 (2) Supported living facilities must develop a fire drill plan for  
31 emergency evacuation of residents, must have working smoke detectors in  
32 each bedroom where a resident is located, must have working fire  
33 extinguishers on each floor of the home, and may not keep nonambulatory  
34 patients above the first floor of the home.

1 (3) Supported living facilities must be financially solvent, and  
2 upon request for good cause, must provide the department with detailed  
3 information about the home's finances. Financial records of the adult  
4 family home may be examined when the department has good cause to  
5 believe that a financial obligation related to resident care or  
6 services will not be met.

7 NEW SECTION. **Sec. 10.** (1) The department may deny, suspend,  
8 modify, revoke, or refuse to contract with a supported living provider  
9 when the department finds that the provider or any partner, officer,  
10 director, managerial employee, or majority owner of the provider:

11 (a) Operated a supported living facility without a contract with  
12 the department or under a revoked or suspended contract;

13 (b) Knowingly or with reason to know made a false statement of a  
14 material fact: (i) In a contract application or any data attached to  
15 the application; or (ii) in any matter under investigation by the  
16 department;

17 (c) Refused to allow representatives or agents of the department to  
18 inspect: (i) The books, records, and files necessary to gather the  
19 data required by section 3 of this act; or (ii) any portion of the  
20 premises of the supported living facility;

21 (d) Willfully prevented, interfered with, or attempted to impede in  
22 any way: (i) The work of any authorized representative of the  
23 department; or (ii) the lawful enforcement of any provision of this  
24 chapter; or

25 (e) Has a history of significant noncompliance with federal or  
26 state regulations in providing care or services to vulnerable adults or  
27 children. In deciding whether to deny, suspend, modify, revoke, or  
28 refuse to contract with a supported living provider under this section,  
29 the factors the department considers must include the gravity and  
30 frequency of the noncompliance.

31 (2) The department must serve upon the applicant a copy of the  
32 decision granting or denying a contract application. An applicant  
33 shall have the right to contest denial of his or her contract  
34 application as provided in chapter 34.05 RCW by requesting a hearing in  
35 writing within twenty-eight days after receipt of the notice of denial.

1        NEW SECTION.    **Sec. 11.**    (1) It is an unfair practice under chapter  
2 49.60 RCW for a supported living provider or contractor to subject an  
3 employee who is a whistleblower to workplace reprisal or retaliatory  
4 action as a result of the employee being a whistleblower.

5        (2) The identity of a whistleblower who reports, in good faith, to  
6 the department practices that may violate the provisions of this  
7 chapter or the rules adopted hereunder must remain confidential. The  
8 provisions of RCW 4.24.500 through 4.24.520, providing certain  
9 protections to persons who communicate to government agencies, apply to  
10 such reports.

11        NEW SECTION.    **Sec. 12.**    The department may adopt rules to implement  
12 this chapter.

13        NEW SECTION.    **Sec. 13.**    Sections 1 through 12 of this act  
14 constitute a new chapter in Title 71A RCW.

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