

HOUSE BILL REPORT

HB 1307

As Passed House:
March 9, 2015

Title: An act relating to enforcement standards for residential services and support providers.

Brief Description: Concerning enforcement standards for residential services and support providers.

Sponsors: Representatives Harris, Tharinger, Walkinshaw and Kagi; by request of Department of Social and Health Services.

Brief History:

Committee Activity:

Early Learning & Human Services: 1/27/15, 1/30/15 [DP];
Appropriations: 2/18/15, 2/25/15 [DP].

Floor Activity:

Passed House: 3/9/15, 98-0.

Brief Summary of Bill

- Authorizes the Developmental Disability Administration (DDA) to use additional enforcement mechanisms for Certified Residential Service and Support Providers (CRSSP) including stop placement orders to ensure that providers comply with their obligations.
- Provides that the DDA may impose a maximum penalty of \$3,000 on a CRSSP.
- Designates that any penalties be deposited into a residential services and support account that may only be used by the DDA to promote the quality of life and care of clients.

HOUSE COMMITTEE ON EARLY LEARNING & HUMAN SERVICES

Majority Report: Do pass. Signed by 10 members: Representatives Kagi, Chair; Walkinshaw, Vice Chair; Walsh, Ranking Minority Member; Scott, Assistant Ranking Minority Member; Dent, Hawkins, McCaslin, Ortiz-Self, Sawyer and Senn.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Staff: Luke Wickham (786-7146).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass. Signed by 33 members: Representatives Hunter, Chair; Ormsby, Vice Chair; Chandler, Ranking Minority Member; Parker, Assistant Ranking Minority Member; Wilcox, Assistant Ranking Minority Member; Buys, Carlyle, Cody, Condotta, Dent, Dunshee, Fagan, Haler, Hansen, Hudgins, G. Hunt, S. Hunt, Jinkins, Kagi, Lytton, MacEwen, Magendanz, Pettigrew, Sawyer, Schmick, Senn, Springer, Stokesbary, Sullivan, Taylor, Tharinger, Van Werven and Walkinshaw.

Staff: James Kettel (786-7123).

Background:

Certified Residential Services and Support Providers.

Certified Residential Service and Support Providers (CRSSPs) are certified by the Department of Social and Health Services (DSHS) and contracted by the DSHS to deliver client instruction and support services. These providers include group homes, supported living services, community protection programs, crisis diversion bed services, and group training homes. Service providers must provide each client instruction or support as identified in a client's individual support plan. The areas of support to the client may include:

- home living activities;
- community living activities;
- life-long learning activities
- social activities;
- employment;
- protection and advocacy activities;
- exceptional medical support needs; and
- exceptional behavioral support needs.

Enforcement Mechanisms for Certified Residential Services and Support Providers.

The current enforcement mechanisms are applied by the Developmental Disability Administration (DDA) to community protection programs. These mechanisms include decertifying the provider, refusing to renew the certification, imposing conditions on certification, suspending referrals, or requiring the provider to implement a plan of correction. If community protection program providers fail to make the adjustments required by a plan of correction, the DDA may impose civil penalties up to \$150 per day.

The Administrative Procedures Act applies to these enforcement actions.

Summary of Bill:

The enforcement mechanisms that the DDA may impose on the CRSSPs are specified to apply to all the CRSSPs and not just community protection programs.

The conditions that the DDA may impose on a CRSSP are specified to include making corrections within a specific time, requiring training, and limits on the type of client the

provider may serve. The DDA is also authorized to suspend the provider from accepting clients with specified needs by imposing a limited stop placement.

If the DDA orders a stop placement, the provider may not accept new clients, or clients with specific needs until that stop placement order is terminated. The DDA will terminate the stop placement order when the violations have been corrected and the provider exhibits the capacity to maintain correction of the violations.

After ordering a stop placement, the DDA shall make an on-site visit to the provider within 15 working days of the provider notifying the DDA that a correction was made. For serious violations, the DDA shall visit the provider as soon as appropriate to ensure correction. Verification of all other violations may be made either by a DDA on-site visit or by credible written or photographic documentation.

The fines that the DDA may impose on providers are reduced to a maximum of \$100 per day per violation. The DDA may impose a maximum total violation amount of \$3,000.

Providers have the right to an informal dispute resolution process to dispute any violation found or enforcement remedy imposed by the DDA. Except for imposition of civil penalties, the effective date of enforcement actions may not be delayed or suspended pending hearings or an informal dispute resolution process.

The DDA shall develop rules to implement these enforcement actions by January 1, 2016.

A separate residential services and support account is created and all receipts from civil penalties against a CRSSP must be deposited in this account. Expenditures from the account are authorized only for promoting the quality of life and care of a CRSSP client.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony (Early Learning & Human Services):

(In support) This is a reasonable bill that provides the DDA more enforcement mechanisms. This bill was initially proposed as House Bill 2634 in 2014 and passed the house with a 98 to zero vote. This bill is aligned with the mission of the DDA. The DDA currently has limited enforcement actions. The only current enforcement mechanisms are decertification or delayed certification. This bill provides graduated enforcement mechanisms. This bill provides an array of enforcement actions including stop placement orders, civil penalties, and the creation of an account for penalty deposit. The bill will encourage the CRSSPs to comply with requirements, and services will be less likely to be disrupted. The enforcement actions included in the bill align with the enforcement actions in similar programs, and allow a broader array of responses. There was a finding in a disability rights report that the DDA was not able to respond appropriately to violations. This bill addresses those concerns. In

implementing the enforcement mechanisms, the DDA will comply with the residential service standards. This is in a context of a real crisis for CRSSP funding. There is some concern regarding the fines, but we think that these are appropriate. If fines are too onerous for a provider and there is another mechanism for ensuring compliance, the DDA will likely use the alternate response. Currently, there is basically only one remedy, which is decertification. By providing more enforcement options, there may be greater chances for the CRSSPs to remain open. There need to be a variety of enforcement mechanisms. This bill highlights accountability and transparency in services that are supported by public dollars. In the world of supported living, there is only the nuclear option if you have a bad actor. Many of the providers are doing a great job, but there may be a few bad actors, which the bill would address. This bill brings supported living in line with the enforcement mechanisms available for adult family homes and nursing homes. There is currently an informal dispute resolution process in place for CRSSPs.

(Neutral) The safety of the CRSSP clients is the most important goal. The fine component of the bill is concerning. CRSSPs have a high turnover rate and are dealing with reduced funding. The fines included in this bill may make it more difficult for these providers and lead to a reduction in providers. The stop placements are also a concern that could jeopardize a field that is already under-resourced.

(Opposed) None.

Staff Summary of Public Testimony (Appropriations):

(In support) This bill provides certainty to providers. Providers will know that someone from the Department of Social and Health Services will visit within 15 days and issues will be resolved. This bill was initially proposed as Substitute House Bill 2634, which passed the House of Representatives with a 98 to zero vote during the 2014 session. The mission of the Aging and Long-Term Support Administration (AL TSA) is to transform lives. The mission of the Residential Care Services (RCS) division within the AL TSA is to promote and protect the safety of individuals living in residential settings. The RCS division has worked with stakeholders to draft the language in this bill. The RCS division currently has limited provider enforcement actions. A graduated range of enforcement actions will help providers more quickly maintain compliance with certification requirements, and will also prevent a disruption of services to clients. Enforcement actions will more likely be commensurate with the severity of the violation. The RCS division has not had authority for intermediate sanctions for supported living. Intermediate sanctions are more effective for providers and clients.

(Opposed) None.

(Other) The underlying reason driving the need for this bill is low staff wages in supported living. It is very difficult for supported living providers to maintain a stable workforce under the current rate structure. The turnover rate for supported living is roughly 43 percent, which is higher than the 36 percent turnover rate one year ago. It is becoming more and more difficult to hire quality staff to stay and work with our clients. The Legislature should consider measures like this, but should also consider the underlying problem of low staff wages.

Persons Testifying (Early Learning & Human Services): (In support) Representative Walkinshaw; Carl Walters, Department of Social and Health Services/Residential Care Services; David Lord, Disability Rights Washington; and Matt Zuvich, Washington Initiative for Supported Employment.

(Neutral) Melissa Johnson, Community Residential Services Association.

Persons Testifying (Appropriations): (In support) Representative Harris, prime sponsor; Carl Walters III and Scott Bird, Aging and Long-Term Support Administration, Residential Care Services, Department of Social and Health Services; and David Lord, Disability Rights Washington.

(Other) Melissa Johnson, Community Residential Services Association.

Persons Signed In To Testify But Not Testifying (Early Learning & Human Services): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.