

# SENATE BILL REPORT

## SHB 1529

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As Reported by Senate Committee On:  
Behavioral Health Subcommittee to Health & Long Term Care, March 29, 2019

**Title:** An act relating to removing barriers for agency affiliated counselors practicing as peer counselors.

**Brief Description:** Removing barriers for agency affiliated counselors practicing as peer counselors.

**Sponsors:** House Committee on Health Care & Wellness (originally sponsored by Representatives Davis, Corry, Frame, Kloba, Doglio and Ormsby).

**Brief History:** Passed House: 3/01/19, 94-0.

**Committee Activity:** Behavioral Health Subcommittee to Health & Long Term Care: 3/15/19, 3/29/19 [DPA].

### Brief Summary of Amended Bill

- Prohibits the Department of Health (DOH) from requiring an applicant for registration as an agency-affiliated counselor (AAC) for the purpose of work as a peer counselor to participate in a voluntary substance abuse monitoring program as a condition of registration if the person has at least one year of recovery from a substance use disorder.
- Prohibits DOH and certain employers from automatically denying applications for registration as an AAC or employment as a peer counselor based on a history of certain criminal offenses if the offense was the result of a substance use disorder or untreated mental illness and the person has at least one year of recovery.
- Directs the Health Care Authority to certify substance use disorder peer counselors and to include reimbursement for substance use disorder peer services in the Medicaid state plan.
- Directs DOH to conduct a sunrise reviews to evaluate transfer of the current peer support counselor certification program to DOH and to evaluate the need for creation of an advanced peer support specialist credential.
- Removes a 60-day time limit for an applicant for registration as an AAC to work while their application is pending with DOH.

*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.*

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## SENATE COMMITTEE ON BEHAVIORAL HEALTH SUBCOMMITTEE TO HEALTH & LONG TERM CARE

**Majority Report:** Do pass as amended.

Signed by Senators Dhingra, Chair; Wagoner, Ranking Member; Darneille, Frockt and O'Ban.

**Staff:** Kevin Black (786-7747)

**Background:** Agency-Affiliated Counselors. An AAC is a person employed by an agency to engage in counseling who has registered or submitted an application for registration with the state of Washington. An AAC must pass a background check and have at least a bachelor's degree in a counseling-related field and pass an examination in risk assessment, ethics, and appropriate screening and referral. An AAC may work for up to 60 days while registration is pending, provided that an application is submitted within seven days of employment. A person who is employed by an agency and has attained an associate's degree in a counseling field may apply to register as a certified advisor. For the purposes of this section, "agency" includes Indian tribes, counties, state agencies, and juvenile courts.

Peer Counselors. The Health Care Authority administers a program established in 2005 to certify mental health peer counselors. Peer counselors are persons who share life experiences with persons in recovery and who successfully complete a 40-hour training course and pass the state exam. Peer counselors are employed by behavioral health agencies that obtain approval to employ them and must register as AACs. Once employed and registered, peer counselors work under the supervision of mental health professionals in a variety of settings to assist persons in recovery within their scope of practice.

Expansion of Peer Counselor Program. The 2018 supplemental budget included a proviso that directs HCA to incorporate persons with substance use disorders in its peer support certification program. The proviso also directed HCA to submit a state plan amendment which allows for substance use disorder peer services to be included in behavioral health capitation rates beginning July 1, 2019, and to be federally matched.

Sunrise Reviews. The Department of Health makes recommendations to the Legislature on health profession credentialing proposals through a process called a sunrise review.

Substance Abuse Monitoring Programs. A disciplining authority may refer a licensee to a substance abuse monitoring program in lieu of formal discipline if the disciplining authority determines that unprofessional conduct is the product of substance abuse. The licensee must consent to the referral and the referral may include probationary conditions. If the licensee does not consent to the referral or fails to meet the requirements of the program, the disciplining authority may take formal disciplinary action against the licensee.

There are four substance abuse monitoring programs in Washington for credentialed health care providers. Each program serves specific professions or groups of professions. Although the programs do not provide substance use disorder treatment, they contract with and monitor health care providers for compliance with treatment and recovery goals. The contract includes random drug testing and worksite monitoring to ensure a safe return to practice.

Some professions pay a fee to cover program expenses, while other professions require the individual to bear the expenses of the program.

Washington Recovery and Monitoring Program. The Washington Recovery and Monitoring Program (WRAMP) is the substance use monitoring program for AACs, among other health care professions, and is operated by the Department of Health (DOH). WRAMP applies to licensed or certified professionals who are referred following a complaint or investigation, professionals who self-refer to the program, and applicants for a license or certification who disclose a history of substance use disorder during the application process. The WRAMP requires participants to obtain a chemical dependency evaluation at their expense, the cost of which may in some cases be covered by insurance. If the evaluation determines that the person has a mild substance use disorder, WRAMP requires three years of participation, with credit applied for any time spent in continuous recovery before the evaluation. If the evaluation determines that the person has a moderate or severe substance use disorder, the WRAMP requires five years of participation, with credit applied for any time spent in continuous recovery before the evaluation. During participation in WRAMP, the person must check in daily with the program during workdays and be subject to random urinalysis, follow any other treatment recommendations, abide by certain restrictions, and participate in a weekly approved peer support group. The cost of urinalysis, the weekly support group, and any other costs must be borne by the participant.

Disqualifying Crimes. Agencies, facilities, and individuals who provide care to vulnerable adults may not employ a person to work in a position that may involve unsupervised access to vulnerable adults if the person has been convicted of certain disqualifying crimes. In some cases a person will not be automatically disqualified from employment if a designated number of years have passed since the date of conviction for the disqualifying crime. A person who has a prior conviction for assault 4, prostitution, or theft 3 may be considered for such employment after three years have passed since the last date of conviction. A person who has a prior conviction for theft 2 or forgery may be considered for such employment after five years have passed from the last date of conviction.

**Summary of Amended Bill:** DOH is prohibited from requiring an applicant for registration as an AAC who intends to practice as a peer counselor for a facility, federally recognized Indian tribe, or county to participate in WRAMP if the applicant has at least one year in recovery from a substance use disorder. If the applicant has less than one year in recovery, DOH may require the applicant to participate in WRAMP for only the amount of time necessary to achieve one year in recovery.

DOH is prohibited from automatically denying an application for registration as an AAC, and an agency or facility that provides care and treatment to vulnerable adults is prohibited from automatically denying an application for employment, for a person who intends to practice as a peer counselor based upon the applicant's conviction history for assault 4, prostitution, theft 2 or 3, or forgery if:

- at least one year has passed since the applicant's most recent conviction;
- the offense was committed as a result of the applicant's substance use or untreated mental health symptoms; and

- the applicant is at least one year in recovery from a substance use disorder, whether through abstinence, or stability on medication-assisted therapy, or in recovery from mental health challenges.

HCA must incorporate education and training for substance use disorder peers into its peer counselor certification program, and include reimbursement in the Medicaid state plan for substance use disorder peer support services, by July 1, 2019. HCA must approve qualified third parties to conduct the peer counselor certification training using the state's curriculum.

DOH must conduct a sunrise review to evaluate transfer of the peer support counselor certification program to DOH with modifications to bring the program under DOH oversight, with structure, discipline, and continuing education requirements similar to other behavioral health licensure or certification programs. The plan for program modification must allow for grandfathering of current individuals who hold a peer support counselor certification. This review must include evaluation the implications of such a transfer on professionalism, portability, scope of practice, approved practice locations, workforce, bidirectional integration, and appropriate deployment of peer counselors throughout the health system.

DOH must conduct a sunrise review to evaluate the need for the creation of an advanced peer support specialist credential for peer support services provided in the areas of mental health, substance use disorders, and forensic behavioral health. The requirements for the credential must:

- be accessible to individuals in recovery;
- integrate with HCA's peer counselor certification program;
- provide requirements that are more stringent than HCA's peer counselor certification program, but are less stringent than DOH's existing behavioral health credentials;
- provide oversight, structure, discipline and continuing education requirements typical for other professional licenses and certifications;
- allow advanced peer support specialists to maximize the scope of practice suitable to their skills, lived experience, education and training;
- allow advanced peer support specialists to practice and receive reimbursement in behavioral health capitation rates in the full range of settings in which clients receive behavioral health services;
- provide a path for career progression to more advanced credentials; and
- incorporate consideration related to criminal history and recovery from behavioral health disorders.

The time limit is eliminated for an AAC who applies for registration to work as an AAC while the application is being processed, provided that the applicant must provide required documentation to DOH within reasonable time limits. The time limit to submit the application to DOH following the start of employment is increased from 7 days to 30 days.

**EFFECT OF BEHAVIORAL HEALTH SUBCOMMITTEE TO HEALTH & LONG TERM CARE COMMITTEE AMENDMENT(S):**

- Requires DOH to not automatically deny an application for registration as an AAC based on specified criminal convictions if the individual has at least one year of recovery from a substance use disorder or untreated mental health disorder.

- Directs HCA to incorporate training for substance use disorder peers in its peer certification program and incorporate reimbursement for substance use disorder peers services in the Medicaid state plan.
- Directs DOH to conduct sunrise reviews to transfer the current peer support certification to DOH and to evaluate the need for creation of an advanced peer support specialist credential.
- Removes a time limitation on an applicant's ability to work as an AAC while their application for registration is pending with DOH.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

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

**Staff Summary of Public Testimony on Substitute House Bill:** *The committee recommended a different version of the bill than what was heard.* PRO: The best weapon we have to fight the opioid epidemic is the people who have survived it. They are compassionate, loving, and brave people with impeccable integrity. We have a massive workforce crisis in the behavioral health field. This bill addresses two barriers identified for peers: length of recovery and involvement in the justice system. The life history that qualifies you for the job disqualifies you from doing the job. The expenses of WRAMP are high and not covered by insurance. They are too much to bear for what is often a minimum-wage job. Recovery happens and these are the individuals who lead the way. I have trained over 600 people to become peer counselors or recovery counselors. Over 200 peers are employed at least part-time in Pierce County. Community is one of four domains that support recovery; it requires connections with people. This bill reduces barriers. Exceptions on a case-by-case basis do not work in practice. When I was addicted to opiates in my thirties, I was convicted of a theft-related felony. I was hired for a peer-bridger job but DOH refused to certify me as an AAC despite four years elapsing since my last conviction and the start of my recovery. These disqualifications eliminate candidates who are hungry to make a difference, who are freshly familiar with what peers need, and who have fought hard to overcome their past challenges. I yearn to make a difference and have a heart for service. I am a commercial plumber and a trained recovery coach. The current standards prevent me from obtaining paid employment without paying for WRAMP although I have over three years of recovery. Delays in registration by DOH as an AAC forced me to temporarily stop working. Then I was required to join the WRAMP program, which requires me to attend four meetings a month, restricts me from taking over-the-counter medications, and prohibits me from travel without restrictions. I must call daily to find out if I have to take a random urinalysis at my expense. I am forced to consider leaving the job I love, which pays \$16/hour, because of this burden.

**Persons Testifying:** PRO: Representative Lauren Davis, Prime Sponsor; Jennifer Lasky, citizen; Katie Person, citizen; Nik Muir, citizen; Michael Hardie, POWERsource.

**Persons Signed In To Testify But Not Testifying:** No one.