

CERTIFICATION OF ENROLLMENT
SECOND SUBSTITUTE HOUSE BILL 1651

66th Legislature
2020 Regular Session

Passed by the House February 17, 2020
Yeas 98 Nays 0

**Speaker of the House of
Representatives**

Passed by the Senate March 4, 2020
Yeas 47 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SECOND SUBSTITUTE HOUSE BILL 1651** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

SECOND SUBSTITUTE HOUSE BILL 1651

Passed Legislature - 2020 Regular Session

State of Washington

66th Legislature

2020 Regular Session

By House Human Services & Early Learning (originally sponsored by Representatives Kilduff, Dent, Lovick, Eslick, Senn, Leavitt, Macri, Callan, Cody, Tarleton, Ortiz-Self, Goodman, Jinkins, Frame, Bergquist, and Santos)

READ FIRST TIME 01/31/20.

1 AN ACT Relating to the rights of clients of the developmental
2 disabilities administration of the department of social and health
3 services; and adding a new chapter to Title 71A RCW.

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

5 NEW SECTION. **Sec. 1.** The rights set forth in this chapter are
6 the minimal rights guaranteed to all clients of the administration,
7 and are not intended to diminish rights set forth in other state or
8 federal laws that may contain additional rights.

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

12 (1) "Administration" means the division of the department
13 responsible for providing services to eligible persons, but does not
14 include the division of the department responsible for the licensing
15 and certification of services and facilities for eligible persons.

16 (2) "Assessment" has the same meaning as defined in RCW
17 71A.10.020.

18 (3) "Client" means a person who has a developmental disability as
19 defined in RCW 71A.10.020 and has been determined to be eligible to
20 receive services under chapter 71A.16 RCW.

1 (4) "Department" means the department of social and health
2 services.

3 (5) "Developmental disabilities ombuds" means the office created
4 under chapter 43.382 RCW.

5 (6) "Eligible person" has the same meaning as defined in RCW
6 71A.10.020.

7 (7) "Legal representative" means a parent of a client under age
8 eighteen, a court-appointed guardian or limited guardian under Title
9 11 RCW if the subject matter is within the scope of the guardianship
10 order, or any other person authorized by law to act for the client.

11 (8) "Necessary supplemental accommodation representative" means
12 an individual who receives copies of administration correspondence in
13 order to help a client or eligible person understand the documents
14 and exercise the client or eligible person's rights. The necessary
15 supplemental accommodation representative is identified by the client
16 or eligible person when the client or eligible person does not have a
17 legal guardian and is requesting or receiving services from the
18 administration.

19 (9) "Provider" means an individual, a facility, or an agency that
20 is one or more of the following: Licensed, certified, contracted by
21 the department, or state operated to provide services to
22 administration clients.

23 (10) "Restraint" includes:

24 (a) Physical restraint, which is a manual method, obstacle, or
25 physical or mechanical device, material, or equipment attached or
26 adjacent to the client's body that restricts freedom of movement or
27 access to the client's body, is used for discipline or convenience,
28 and is not required to treat the client's medical symptoms; and

29 (b) Chemical restraint, which is a psychopharmacologic drug that
30 is used for discipline or convenience and is not required to treat
31 the client's medical symptoms.

32 (11) "Restriction" means a limitation on the client's use or
33 enjoyment of property, social activities, or engagement in the
34 community.

35 (12) "Service plan" means any plan required by the department to
36 deliver the services authorized by the administration to the client.

37 NEW SECTION. **Sec. 3.** (1) The administration must notify the
38 individual and the individual's legal representative or necessary
39 supplemental accommodation representative of the rights set forth in

1 this chapter upon determining the individual is an eligible person.
2 The notification the administration provides must be in written form.
3 The administration must document the date that the notification
4 required in this subsection was provided.

5 (2) The administration must notify a client and a client's legal
6 representative or necessary supplemental accommodation representative
7 of the rights set forth in this chapter upon conducting a client's
8 assessment. The notification the administration provides must be in
9 written form. The administration must document the date that the
10 notification required in this subsection was provided.

11 (3) The client has the right to exercise autonomy and choice free
12 from provider interference. This includes the client's rights to:

13 (a) Be free from sexual, physical, and mental abuse, corporal
14 punishment, and involuntary seclusion;

15 (b) Be free from discrimination based on race, color, creed,
16 national origin, religion, sex, age, disability, marital and family
17 status, gender identity, or sexual orientation;

18 (c) Make choices regarding the type of food available within the
19 client's resources and service plan;

20 (d) Have visitors at the client's home and associate with persons
21 of the client's choosing and subject to limitations as negotiated
22 with the client's housemates;

23 (e) Control the client's schedule and choose activities,
24 schedules, and health care that meet the client's needs;

25 (f) Information about the treatment ordered by the client's
26 health care provider and help plan how the treatment will be
27 implemented;

28 (g) Be free from unnecessary medication, restraints, and
29 restrictions;

30 (h) Vote, participate in the democratic process, and help people
31 with getting elected to office;

32 (i) Manage the client's money or choose a person to assist;

33 (j) Be part of the community;

34 (k) Make choices about the client's life;

35 (l) Choose the clothes and hairstyle the client wears;

36 (m) Furnish and decorate the client's bedroom to the client's
37 preferences or furnish and decorate the client's home to the client's
38 preferences subject to agreement with the client's housemates;

39 (n) Seek paid employment;

40 (o) Receive the services that the client agrees to receive;

1 (p) Decide whether or not to participate in research after the
2 research has been explained to the client, and after the client or
3 the client's legal representative gives written consent for the
4 client to participate in the research; and

5 (q) Be free from financial exploitation.

6 (4) The client has the right to participate in the
7 administration's service planning. This includes the client's right
8 to:

9 (a) Be present and provide input on the client's service plans
10 written by the administration and providers;

11 (b) Have meaningful opportunities to lead planning processes;

12 (c) Have the client's visions for a meaningful life and the
13 client's goals for education, employment, housing, relationships, and
14 recreation included in the planning process;

15 (d) Choose an advocate to attend the planning processes with the
16 client; and

17 (e) Have access to current and accurate information about
18 recreation, education, and employment opportunities available in the
19 client's community.

20 (5) The client has the right to access information about services
21 and health care. This includes the client's right to:

22 (a) View a copy of all of the client's service plans;

23 (b) Possess full copies of the client's current service plans;

24 (c) Review copies of the policies and procedures for any service
25 the client receives, at any time. This includes policies and
26 procedures about how the client may file a complaint to providers and
27 the department;

28 (d) Examine the results of the department's most recent survey or
29 inspection conducted by state surveyors or inspectors, statements of
30 deficiency, and plans of correction in effect with respect to the
31 client's provider and the client's residence. The client's service
32 provider must assist the client with locating and accessing this
33 information upon the client's request; and

34 (e) Receive written notification of enforcement actions taken by
35 the department against the client's provider. The administration's
36 case manager or designee must provide notification to the client and
37 the client's legal representative or necessary supplemental
38 accommodation representative within twenty days, excluding weekends
39 and holidays, of the date of enforcement. For purposes of this
40 subsection, a "provider" means an entity that provides residential

1 services received by a client that is operated by or contracted
2 through the administration. An enforcement action that requires this
3 notification includes:

- 4 (i) Conditions placed on the provider certification or license;
- 5 (ii) Suspension or limited suspension of referrals or admissions;
- 6 (iii) Imposition of provisional certification or decertification;

7 or

8 (iv) Denial, suspension, or revocation of a license or
9 certification.

10 (6) The client has the right to file complaints and grievances,
11 and to request appeals. This includes the client's right to:

12 (a) Appeal any decision by the department that denies, reduces,
13 or terminates the client's eligibility, services, or choice of
14 provider as defined in federal medicaid law and state public
15 assistance laws;

16 (b) Submit grievances to the client's provider about the client's
17 services or other concerns. This includes, but is not limited to,
18 concerns about the behavior of other people where the client lives.
19 The provider must maintain a written policy on the grievance process
20 that includes timelines and possible remedies. If a grievance is
21 unresolved, the provider must provide the client with information on
22 how to submit the grievance to the department;

23 (c) File complaints and grievances, and request appeals without
24 penalty or retaliation by the department or providers; and

25 (d) Receive information about how to obtain accommodation for
26 disability in the appeal process.

27 (7) The client has the right to privacy and confidentiality. This
28 includes the client's right to:

29 (a) Personal privacy and confidentiality of the client's personal
30 records;

31 (b) Communicate privately, including the right to send and
32 receive mail and email, and the right to use a telephone in an area
33 where calls can be made without being overheard; and

34 (c) Meet with and talk privately with the client's friends and
35 family.

36 (8) The client has rights during discharge, transfer, and
37 termination of services as set forth in this subsection.

38 (a) Clients that are residents of a long-term care facility that
39 is licensed under chapter 18.20, 72.36, or 70.128 RCW have the rights
40 set forth in RCW 70.129.110.

1 (b) Clients that receive certified community residential services
2 have the right to:

3 (i) Remain with the client's provider. Services must not be
4 terminated unless the provider determines and documents that:

5 (A) The provider cannot meet the needs of the client;

6 (B) The client's safety or the safety of other individuals in the
7 facility or residence is endangered;

8 (C) The client's health or the health of other individuals in the
9 facility or residence would otherwise be endangered; or

10 (D) The provider ceases to operate.

11 (ii) Receive written notice from the provider of any potential
12 termination of services at least thirty days before such termination,
13 except when there is a health and safety emergency that requires
14 termination of service, in which case notice shall be provided at
15 least seventy-two hours before the date of termination. The notice
16 must be provided to the client and the client's legal representative
17 or necessary supplemental accommodation representative. The notice
18 must include:

19 (A) The reason for termination of services; and

20 (B) The effective date of termination of services.

21 (iii) Receive a transition plan at least two days before the
22 effective date of the termination of services, or if the termination
23 was based on a health and safety emergency receive a transition plan
24 within two days of the administration's receipt of notice for
25 emergency termination. The administration must provide the client and
26 the client's legal representative or necessary supplemental
27 accommodation representative with the plan. The plan must include:

28 (A) The location where the client will be transferred;

29 (B) The mode of transportation to the new location; and

30 (C) The name, address, and telephone number of the developmental
31 disabilities ombuds.

32 (c) A provider that provides services to clients in a residence
33 owned by the provider must exhaust the procedures for termination of
34 services prior to the commencement of any unlawful detainer action
35 under RCW 59.12.030.

36 (9) The client has the right to access advocates. The client has
37 the right to receive information from agencies acting as client
38 advocates, and be afforded the opportunity to contact these agencies.
39 The provider must not interfere with the client's access to any of
40 the following:

- 1 (a) Any representative of the state;
- 2 (b) The resident's individual physician;
- 3 (c) The developmental disabilities ombuds; or
- 4 (d) Any representative of the organization designated to
- 5 implement the protection and advocacy program pursuant to RCW
- 6 71A.10.080.

7 (10) If a client is subject to a guardianship order pursuant to
8 chapter 11.88 RCW, the rights of the client under this chapter are
9 exercised by the client's guardian if the subject matter is within
10 the scope of the guardianship order.

11 NEW SECTION. **Sec. 4.** The department shall adopt rules as
12 necessary to inform clients and providers of the client rights set
13 forth in this chapter. The department shall adopt rules as necessary
14 to provide oversight and enforcement of provider practices relating
15 to these rights for providers licensed or certified by the
16 department.

17 NEW SECTION. **Sec. 5.** Nothing in this chapter limits an existing
18 private right of action against the department, the administration,
19 or the state of Washington. Nothing in this chapter creates a private
20 right of action against the department, the administration, or the
21 state of Washington.

22 NEW SECTION. **Sec. 6.** Sections 1 through 5 of this act
23 constitute a new chapter in Title 71A RCW.

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