Washington State
House of Representatives
Office of Program Research

BILL ANALYSIS

Housing, Human Services & Veterans Committee

ESSB 5268

Brief Description: Transforming services for individuals with intellectual and developmental disabilities by increasing the capabilities of community residential settings and redesigning the long-term nature of intermediate care facilities.

Sponsors: Senate Committee on Health & Long Term Care (originally sponsored by Senators Keiser, Braun and Nguyen).

Brief Summary of Engrossed Substitute Bill

- Requires the Developmental Disabilities Administration (DDA) to develop metrics, recommendations, and policies related to increasing services in community residential settings and redesigning Intermediate Care Facilities.
- Adds caseload forecasting and budgeting criteria for individuals requesting supported living, services through certain DDA waivers, and the number of clients expected to reside in State-Operated Living Alternatives.
- Directs the Joint Legislative Audit and Review Committee to review the DDA's processes for determining eligibility and assessment, delivering services, and managing individuals who are waiting for services, and report recommendations for streamlining those processes.

Hearing Date: 3/16/21

Staff: Dawn Eychaner (786-7135).

Background:

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

Developmental Disabilities Administration.
The Developmental Disabilities Administration (DDA) of the Department of Social and Health Services (DSHS) assists individuals with intellectual and developmental disabilities (I/DD) and their families with obtaining services and support based on individual preference, capabilities, and needs. Clients of the DDA may live in their own home, in the community, in a residential habilitation center (RHC) or another institutional setting. The DDA caseload of community and RHC clients is approximately 48,000 individuals, including clients who are not receiving paid services, with the majority of DDA clients receiving services in their homes or in community settings.

Most but not all DDA services are Medicaid programs. Medicaid programs are administered by the state in compliance with federal laws and regulations and financed jointly by the state and federal government. To be eligible for the DDA Medicaid services, a client must have a qualifying disability, have a functional need, and meet certain income and asset limits. Not all DDA-eligible clients receive paid services. As of March 1, 2021, the DDA paid caseload was 35,079 individuals and the unpaid caseload was 13,708 individuals.

Residential Habilitation Centers and Intermediate Care Facilities.
The DDA operates four RHCs for clients with I/DD that support long- and short-term residencies for clients who require services in an institutional setting. Approximately 516 DDA clients presently reside in an RHC.

Most RHCs contain an Intermediate Care Facility (ICF) that provides individualized habilitative services. An ICF is certified by the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) and must provide active treatment services. "Active treatment" is a continuous, aggressive, and consistently implemented program of specialized and generic treatment.

Certification by CMS enables the state to obtain federal matching funds for the program. In recent years, the RHCs have received multiple federal citations for failing to meet CMS level of care criteria. The DDA continues to work to resolve CMS audit findings for RHCs.

The four RHCs are:
- Fircrest RHC, which includes a state operated nursing facility (SONF) and an ICF;
- Lakeland Village, which includes a SONF and an ICF;
- Rainier School, which includes an ICF; and
- Yakima Valley School, which includes a SONF, planned respite services, and temporary crisis stabilization stays.

Services in the Community.
Many DDA clients who are eligible for Medicaid services choose to receive services in their own homes or in other community settings. Such Medicaid services are provided through the Community First Choice Option (CFCO) of the Medicaid State Plan or through Home and Community Based Services (HCBS) waivers.

The CFCO is an uncapped entitlement that provides personal care and other services to those who qualify for institutional care but who prefer to be served in their home or in the community. Personal care services may be provided through individual or agency providers, adult family homes, or in adult residential care facilities.

The HCBS waivers allow DDA clients who live in community settings to receive optional services at the same level the individual would receive in an institutional setting. The DDA offers services under five Medicaid HCBS waivers to qualifying individuals. Unlike the CFCO, each waiver has a capacity limit on the number of people who can be served. The DDA has adopted priority considerations in rule to address capacity limits.

The five capped HCBS waivers are: CORE, Basic Plus, Community Protection Program, Individual and Family Services (IFS), and Children's Intensive In-Home Behavior Supports. Most of the clients on a HCBS waiver receive services through the Basic Plus or IFS waivers.

Basic Plus Waiver.
The Basic Plus waiver provides services to clients who are functionally eligible for an institutional level of care but who choose to remain in a community setting. Services are provided in four main categories: community services such as supported employment and transportation, professional services such as therapies and behavior support, caregiving services such as respite and skilled nursing, and goods and services such as specialized equipment and supplies. Approximately 9,543 clients are currently approved for the Basic Plus waiver.

Individual and Family Services Waiver.
The IFS waiver serves families caring for an eligible person over the age of three by providing an annual allocation between $1,200 and $3,600 based on assessed need. IFS waivers may be used for various services including respite care, behavior support, assistive technology, therapies, equipment and supplies, transportation, skilled nursing, and others. Approximately 6,325 clients are currently approved for the IFS waiver.

Community Residential Services.
Community residential services are businesses certified by and contracted with DDA to serve DDA individuals in community settings. Supported living serves approximately 90 percent of community residential clients. Supported living is a waivered service that provides assistance with activities of daily living and habilitative supports to 1-4 clients per home. The clients or their legal representatives pay the cost of renting, leasing, or owning the home. Supported living providers are not collectively bargained.

State-Operated Living Alternatives.
State-Operated Living Alternatives (SOLAs) are equivalent to supported living but are staffed by state employees rather than contracted providers. SOLA homes are frequently an option for individuals with high-level service needs who do not wish to be served in an RHC.

Caseload Forecasting and Budgeting.
A biennial operating budget appropriates funding for the operation of state government and is adopted every two years. Supplemental budgets may also be enacted in the years following adoption of the biennial budget.

Budget decisions may be categorized as either a "maintenance level" or "policy level" decision. “Maintenance level” means the estimated appropriations necessary to maintain continuing program and service levels that were funded in the prior biennium or otherwise mandated by law. Maintenance level items may include adjustments for forecasted changes in entitlement caseloads or other mandatory expenses. All other budget decisions are generally categorized as “policy level” and may include decisions such as creating or eliminating programs, changing vendor or employee payment rates, or changing program eligibility.

The Caseload Forecast Council (CFC) prepares official state forecasts for entitlement programs and provides courtesy forecasts for other types of services. It forecasts the caseload of DDA clients receiving Medicaid personal care services through CFCO. It does not forecast the caseload of DDA clients receiving Medicaid waiver services or the RHC caseload. Pursuant to legislation enacted in the 2020 session, the CFC presents the number of individuals who are assessed as eligible for, and have requested a service through, the Basic Plus and IFS waivers as a courtesy.

Funding for DDA Medicaid personal care services is adjusted annually in the maintenance level of the budget based on the CFC caseload forecast and projected per-capita costs.

Joint Legislative Audit and Review Committee.
The Joint Legislative Audit and Review Committee (JLARC) consists of 16 legislative members and employs the legislative auditor. The JLARC conducts performance audits, program evaluations, special studies, and sunset reviews.

Developmental Disabilities Council.
The Developmental Disabilities Council (DDC) was established through Executive Order 16-10 in accordance with federal requirements for funding under the Developmental Disabilities Assistance and Bill of Rights Act (P.L. 94-103). The DDC is composed of 27 members who are appointed by the Governor to plan comprehensive services for Washington residents with developmental disabilities.

Task Force Recommendations.
As directed by the 2019-21 operating budget, the DSHS contracted with the William D. Ruckelshaus Center (Center) to facilitate discussions about appropriate services for RHC residents. In November 2019, the Center published a report (Ruckelshaus report) containing recommendations by a workgroup that included legislators, members of the executive branch, and stakeholders.

In January 2021, the DSHS provided a preliminary implementation plan for the Ruckelshaus

report recommendations. A final plan is required by September 1, 2021. The preliminary implementation plan recommends four items from the Ruckelshaus report for "prompt attention" by the legislature:

1. Replace the buildings that house the Fircrest Nursing Facility.
2. Add peer mentors to the Family Mentor Program.
3. Authorize ICF-based staff to serve clients in the community.
4. Continue advancing the Ruckelshaus report recommendations.

Summary of Engrossed Substitute Bill:

Developmental Disabilities Administration.

Intermediate Care Facilities and Short-Term Crisis Stabilization.

The DDA must develop procedures to ensure that:

- clear information is provided to individuals and family members that explains that ICF placement is temporary and what constitutes continuous aggressive active treatment and its eligibility implications;
- discharge planning begins immediately upon placement in an ICF;
- when crisis stabilizations services are available in the community, the individual is given the option to receive community services before ICF placement; and
- when an individual has not achieved crisis stabilization within 60 days of initial ICF placement, the DSHS must convene the team of care providers to review and make any needed changes to the individual's crisis stabilization care plan.

Subject to available funds, the DSHS must expand the number of family mentors and establish peer mentors to connect ICF clients with a mentor to assist with transition planning. The DSHS must also make every effort to ensure an individual does not lose community placement while the person is receiving crisis stabilization services, including:

- working with community residential service providers to secure a 90-day bed hold for individuals transferred from the community residential service provider to an ICF for crisis stabilization; and
- using client participation or other resources to pay rent for individuals who are facing eviction due to failure to pay the rent caused by a transfer from subsidized housing to an ICF for crisis stabilization.

By November 1, 2021, the DSHS must report on efforts related to ICFs and crisis stabilization to the Governor and the Legislature. The report must include any necessary recommendations for fiscal or policy changes for consideration in the 2022 legislative session.

Community Respite and Crisis Stabilization.

Within the context of a stated legislative intent to expand community respite settings, the DSHS must examine the need for community respite beds and stabilization, assessment, and intervention beds for individuals with complex behavioral needs. By October 1, 2022, the DSHS must submit a preliminary report to the Governor and Legislature that estimates the number of beds needed in fiscal years 2023-25, recommend geographic locations, provide options for

contracting with community providers, provide options for using existing ICFs to meet these needs, and recommend whether to increase respite hours. A final report is due by October 1, 2023.

Service Delivery by ICF-Based Professionals.
The DSHS must work with the Health Care Authority and managed care organizations to establish agreements for I/DD clients who live in the community to receive access to ICF-based professionals for care covered under the state plan. The DSHS must consider methods to deliver these services at clinical settings in the community. The DSHS must report on these efforts and make any necessary recommendations for policy or fiscal changes to the Governor and the Legislature by October 1, 2022.

Community Residential Medicaid Rates.
The DSHS must contract with a private vendor to study Medicaid rates for contracted community residential service providers. The study must be submitted to the Governor and the Legislature by December 1, 2023, and must include:

- recommendations for rates needed for facilities to cover their costs and adequately recruit, train, and retain direct care professionals;
- recommendations for an enhanced rate structure, including when and for whom this rate structure would be appropriate; and
- an assessment of options for an alternative, opt-in rate structure for contracted supported living providers who voluntarily serve individuals with complex behaviors, complete additional training, and agree to additional monitoring.

Uniform Quality Assurance Metrics.
The DSHS must collaborate with stakeholders to develop uniform quality assurance metrics that are applied across community residential settings, ICFs, and state-operated nursing facilities. The DSHS must develop the metrics and submit a report of these activities to the Governor and the Legislature by June 30, 2023.

Five-Year Plan.
With consideration of a stated legislative intent to expand community residential settings, the DSHS must develop a five-year plan to phase in the appropriate level of funding and staffing to achieve maximum case management ratios of one case manager to 35 clients. The five-year plan must include:

- an analysis of current procedures to hire and train new staff within the DDA;
- identification of any necessary changes to these procedures to ensure a more efficient and timely process for hiring and training staff; and
- identification of the number of new hires needed on an annual basis to achieve the phased implementation included in the five-year plan.

<u>Caseload Forecasting and Budgeting</u>.
Beginning with the November 2022 official forecast and subject to available funds, the CFC must:

- forecast the number of eligible individuals who have requested supported living services, a service through the CORE waiver, the IFS waiver, and the Basic Plus waiver; and
- provide a courtesy forecast, for planning purposes only, of the number of individuals expected to reside in a SOLA.

Expenditures for the IFS and the Basic Plus waivers must be considered by the Governor and the Legislature for inclusion in maintenance level budgets beginning with the Governor's December 2022 budget proposal. The DSHS must submit an annual budget request for these expenditures. Also beginning with the Governor's December 2022 budget proposal, the DSHS must annually submit a budget request for expenditures based on the number of individuals expected to reside in a SOLA.

Joint Legislative Audit and Review Committee.
The JLARC must:
- review the DDA's existing processes and staffing methodology used for determining eligibility and assessment, delivering services, and managing individuals who are waiting for services;
- review best practices from other states regarding eligibility determination and assessment, service delivery, managing individuals who are waiting for services, and staffing models;
- identify options for streamlining these activities and potential staffing impacts; and
- report findings and recommendations to the Governor and the Legislature by December 1, 2022.

Developmental Disabilities Council.
The DSHS must work with the DDC to:
- coordinate collaboration efforts among stakeholders to:
  - develop and disseminate best practices related to serving individuals with co-occurring I/DD and mental health conditions; and
  - examine existing laws related to guardianship and protective proceedings and make recommendations for necessary changes to ensure individuals with I/DD receive decision-making support in order to live as independently as possible;
- work with the state Apprenticeship and Training Council, colleges, and universities to establish medical, dental, nursing, and direct care apprenticeship programs to address gaps in provider training and competencies; and
- devise options for consideration by the Governor and the Legislature to prioritize funding for housing for individuals with I/DD when a lack of affordable housing is the barrier preventing the individual from moving to a least restrictive community setting.

The DSHS must report on these efforts and make any necessary recommendations for policy or fiscal changes to the Governor and the Legislature by October 1, 2022.

Appropriation: None.

Fiscal Note: Available.

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