HOUSE BILL REPORT
ESSB 5268

As Passed House - Amended:
March 4, 2022

Title: An act relating to 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.

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 History:

Committee Activity:

Housing, Human Services & Veterans: 3/16/21, 3/23/21 [DPA], 2/17/22, 2/24/22 [DPA];

Appropriations: 2/25/22, 2/28/22 [DPA(APP w/o HHSV)].

Floor Activity:

Passed House: 3/4/22, 96-0.

Brief Summary of Engrossed Substitute Bill
(As Amended by House)

- 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 requirements for individuals requesting supported living, services through certain DDA waivers, and the number of clients expected to reside in a State-Operated Living Alternative (SOLA).

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.

- Adds budgeting requirements for services through the Individual and Family Services and the Basic Plus waivers and for the number of individuals expected to live in a SOLA.
- 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 to report recommendations for streamlining those processes.

HOUSE COMMITTEE ON HOUSING, HUMAN SERVICES & VETERANS

Majority Report: Do pass as amended. Signed by 9 members: Representatives Peterson, Chair; Taylor, Vice Chair; Gilday, Ranking Minority Member; Barkis, Assistant Ranking Minority Member; Bateman, Chopp, Donaghy, Jacobsen and Leavitt.

Staff: Serena Dolly (786-7150).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass as amended by Committee on Appropriations and without amendment by Committee on Housing, Human Services & Veterans. Signed by 33 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Boehnke, Caldier, Chandler, Chopp, Cody, Dolan, Dye, Fitzgibbon, Frame, Hansen, Harris, Hoff, Jacobsen, Johnson, J., Lekanoff, Pollet, Rude, Ryu, Schmick, Senn, Springer, Steele, Stonier, Sullivan and Tharinger.

Staff: Mary Mulholland (786-7391).

Background:

Developmental Disabilities Administration.
The Developmental Disabilities Administration (DDA) is a division of the Department of Social and Health Services (DSHS) that 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 in 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 DDA services are Medicaid programs, which 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 September 30, 2021, the DDA paid caseload was 36,141, and the unpaid caseload was 12,040.

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 receive services in an institutional setting. Approximately 500 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 the 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 the 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 an 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 10,000 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 3 by providing an annual allocation between $1,200 and $3,600 based on assessed need. The 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 6,200 clients are currently approved for the IFS waiver.

Community Residential Services.
Community residential services are businesses certified by and contracted with the DDA to serve DDA clients 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 one to four 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. The 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. The CFC forecasts the caseload of DDA clients receiving Medicaid personal care services through the CFCO. It does not forecast the caseload of DDA clients receiving Medicaid waiver services or the RHC caseload. 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, with a final plan completed 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; and

4. continue advancing the Ruckelshaus report recommendations.

Summary of Amended 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 stabilization services are available in the community, the individual is given the option to receive community services before being offered services in a state-operated ICF; and
- when an individual has not achieved crisis stabilization after 60 consecutive days in the state-operated ICF, the DSHS must convene the team of care providers to review and make any needed changes to the individual's care plan.

Subject to funding appropriated for the purpose, 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 residential services while the person is receiving stabilization services, including:

- working with community residential service providers to secure a 90-day vacancy payment for individuals transferred from a community residential service provider to a state-operated ICF for stabilization services; and
- using client or other resources to pay rent for individuals who are facing eviction due to failure to pay rent caused by a transfer to an ICF for stabilization services.

By November 1, 2022, 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 2023 legislative session.

Community Respite and Crisis Stabilization.
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 through 2025, recommends geographic locations, provides options for contracting with community providers, provides options for using existing state-operated ICFs to meet these needs, includes the average length of stay for clients residing in state-operated ICFs, and recommends whether to increase respite hours. A progress report is due October 1, 2023, and a final report is due by October 1, 2024.

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 December 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.
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 or a service through the CORE waiver, the IFS waiver, or the Basic Plus waiver; and
- the number of individuals expected to reside in a SOLA.

The Governor and the Legislature must consider expenditures for the IFS and the Basic Plus waivers 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, 2024.

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;
- coordinate efforts to 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 December 1, 2022.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on March 4, 2022.

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

bill is passed. However, the bill is null and void unless funded in the budget.

Staff Summary of Public Testimony (Housing, Human Services & Veterans):

(In support) The state has a historic opportunity to invest in the developmental disability community. This bill is the result of three years of collaborative work. It is a bipartisan and negotiated agreement and should not be changed. Many elements in the bill were funded in the budget last year but are not permanently in state law. Caseload forecasting is the state's opportunity to look ahead at what services are and will be needed. People with developmental disabilities are one of the only vulnerable communities that are not prioritized in the state budget. An amendment is needed to reflect that the caseload forecast is not just a courtesy forecast because it is funded in the Governor's budget.

People with complex needs can be served in the community where they can be supported by friends and family. Fourteen states have closed all institutions, and California is closing its last one. The RHCs can be unsafe for clients. Too many people are stuck in state institutions. More crisis stabilization services are needed in the community. There is no real community respite care. The state is fortieth in the nation in providing community services, and some people have been on the waiting list for services for years. Supported living is a critical component and providers offer a wide range of services to support people in their homes.

The RHCs provide quality care for some individuals that is not available in the community. RHCs are staffed by experienced professionals and offer skilled nursing care. Clients receive social and recreational opportunities in a real community. Community advocates do not understand what the residents of RHCs need.

(Opposed) None.

(Other) All people with developmental disabilities should be able to live in the community, not institutions. The state should not make additional investments in ICFs. Even though ICFs are supposed to be temporary, they are being used as permanent placements and are or have been out of compliance with federal standards. The ICFs should be closed.

Staff Summary of Public Testimony (Appropriations):

(In support) Advocates are supportive of removing the word "courtesy" from the description of the new caseload forecasts in the bill. The bill provides for the staff resources necessary to create the new caseload forecasts, but it will remain up to the Legislature to commit to funding services.

(Opposed) None.

Persons Testifying (Housing, Human Services & Veterans): (In support) Senator Karen

Keiser, prime sponsor; Terri Anderson, Action Developmental Disabilities; Mark von Walter, Friends of Rainier Residential Habilitation Center; Gwendine Norton, Friends of Fircrest Residential Habilitation Center; Kari Cunningham-Rosvik; Matt Zuvich, Washington Federation of State Employees; Eric Matthes; Maria Laura Escude; Jessica Renner, Self Advocates in Leadership; Shawn Latham, Allies in Advocacy; Noah Seidel, Washington State Developmental Disabilities Ombuds; Margaret Lee Thompson; Adrienne Stuart, Washington State Developmental Disabilities Council; Diana Stadden, The Arc of Washington State; and Melissa Johnson.

(Other) Beth Leonard, Disability Rights Washington.

Persons Testifying (Appropriations): Adrienne Stuart, Washington State Developmental Disabilities Council.

Persons Signed In To Testify But Not Testifying (Housing, Human Services & Veterans): None.

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