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**SUBSTITUTE SENATE BILL 5506**

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**State of Washington 68th Legislature 2023 Regular Session**

**By** Senate Human Services (originally sponsored by Senators Kauffman, Dhingra, Hasegawa, Keiser, Lovelett, Randall, Rivers, Saldaña, Shewmake, Wagoner, and C. Wilson)

AN ACT Relating to enhanced behavior support homes; amending RCW 74.39A.009; adding new sections to chapter 74.39A RCW; and creating a new section.

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

NEW SECTION. **Sec.**  The legislature finds that there is a growing crisis for individuals with intellectual and developmental disabilities reaching adulthood that cannot access safe and appropriate community living options. The current supported living housing model has not met the needs of those with intellectual and developmental disabilities who have significant behavioral challenges. These vulnerable individuals then often bounce between their family home, if they have one; temporary respite placements; hospital boarding; jail; or homelessness at great expense to our state, medical, and mental health systems. By this act, the legislature intends to establish an enhanced behavior support homes model in Washington state for purposes of providing intensive behavioral services and support to adults and children with intellectual and developmental disabilities who require enhanced services and support due to challenging behaviors that cannot be safely and holistically managed in an exclusively community setting, and who are at risk of institutionalization or out-of-state placement, or are transitioning to the community from an intermediate care facility, hospital, or other state-operated residential facility.

**Sec.**  RCW 74.39A.009 and 2022 c 255 s 5 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Administration" means the department of social and health services developmental disabilities administration.

(2) "Adult family home" means a home licensed under chapter 70.128 RCW.

((~~(2)~~)) (3) "Adult residential care" means services provided by an assisted living facility that is licensed under chapter 18.20 RCW and that has a contract with the department under RCW 74.39A.020 to provide personal care services.

((~~(3)~~)) (4) "Assisted living facility" means a facility licensed under chapter 18.20 RCW.

((~~(4)~~)) (5) "Assisted living services" means services provided by an assisted living facility that has a contract with the department under RCW 74.39A.010 to provide personal care services, intermittent nursing services, and medication administration services; and the facility provides these services to residents who are living in private apartment-like units.

((~~(5)~~)) (6) "Community residential service business" means a business that:

(a) Is certified by the department of social and health services to provide to individuals who have a developmental disability as defined in RCW 71A.10.020((~~(5)~~)):

(i) Group home services;

(ii) Group training home services;

(iii) Supported living services; or

(iv) Voluntary placement services provided in a licensed staff residential facility for children;

(b) Has a contract with the developmental disabilities administration to provide the services identified in (a) of this subsection; and

(c) All of the business's long-term care workers are subject to statutory or regulatory training requirements that are required to provide the services identified in (a) of this subsection.

((~~(6)~~)) (7) "Consumer" or "client" means a person who is receiving or has applied for services under this chapter, including a person who is receiving services from an individual provider.

((~~(7)~~)) (8) "Consumer directed employer" is a private entity that contracts with the department to be the legal employer of individual providers for purposes of performing administrative functions. The consumer directed employer is patterned after the agency with choice model, recognized by the federal centers for medicare and medicaid services for financial management in consumer directed programs. The entity's responsibilities are described in RCW 74.39A.515 and throughout this chapter and include: (a) Coordination with the consumer, who is the individual provider's managing employer; (b) withholding, filing, and paying income and employment taxes, including workers' compensation premiums and unemployment taxes, for individual providers; (c) verifying an individual provider's qualifications; and (d) providing other administrative and employment-related supports. The consumer directed employer is a social service agency and its employees are mandated reporters as defined in RCW 74.34.020.

((~~(8)~~)) (9) "Core competencies" means basic training topics, including but not limited to, communication skills, worker self‑care, problem solving, maintaining dignity, consumer directed care, cultural sensitivity, body mechanics, fall prevention, skin and body care, long-term care worker roles and boundaries, supporting activities of daily living, and food preparation and handling.

((~~(9)~~)) (10) "Cost-effective care" means care provided in a setting of an individual's choice that is necessary to promote the most appropriate level of physical, mental, and psychosocial well-being consistent with client choice, in an environment that is appropriate to the care and safety needs of the individual, and such care cannot be provided at a lower cost in any other setting. But this in no way precludes an individual from choosing a different residential setting to achieve his or her desired quality of life.

((~~(10)~~)) (11) "Department" means the department of social and health services.

((~~(11)~~)) (12) "Developmental disability" has the same meaning as defined in RCW 71A.10.020.

((~~(12)~~)) (13) "Direct care worker" means a paid caregiver who provides direct, hands‑on personal care services to persons with disabilities or the elderly requiring long‑term care.

((~~(13)~~)) (14) "Enhanced adult residential care" means services provided by an assisted living facility that is licensed under chapter 18.20 RCW and that has a contract with the department under RCW 74.39A.010 to provide personal care services, intermittent nursing services, and medication administration services.

((~~(14)~~)) (15) "Enhanced behavior support home" means a community residential placement such as supported living, state-operated living alternative, or a group home that provides 24-hour nonmedical care in a homelike long-term supportive setting to individuals with developmental disabilities who require enhanced behavior support, staffing, and supervision. An enhanced behavior support home has a maximum capacity of four clients. The enhanced behavior support home must be eligible for federal medicaid home and community-based services funding.

(16) "Enhanced behavioral services" means staffing supervision to address a client's challenging behaviors, which are beyond what is typically available in other community facilities or group homes to serve individuals in a community setting rather than in an institution. Enhanced behavioral services are delivered by enhanced behavioral support specialists that have current certification pursuant to section 4 of this act.

(17) "Facility" means an adult family home, an assisted living facility, a nursing home, an enhanced services facility licensed under chapter 70.97 RCW, or a facility certified to provide medicare or medicaid services in nursing facilities or intermediate care facilities for individuals with intellectual disabilities under 42 C.F.R. Part 483.

((~~(15)~~)) (18) "Home and community-based services" means services provided in adult family homes, in-home services, and other services administered or provided by contract by the department directly or through contract with area agencies on aging or federally recognized Indian tribes, or similar services provided by facilities and agencies licensed or certified by the department.

((~~(16)~~)) (19) "Home care aide" means a long-term care worker who is certified as a home care aide by the department of health under chapter 18.88B RCW.

((~~(17)~~)) (20) "Individual behavior support plan" means a person-centered plan that identifies and documents the behavior of the client being served. The plan must include intensive supports, specialized habilitative services, and appropriate specialized equipment to meet client needs and must detail the strategies and interventions to be employed. The plan shall also include the type and amount of services to be provided to address those needs, the entity responsible for providing those services, and timelines for when each identified individual behavior support will commence.

(21) "Individual behavior support team" means those individuals who develop, monitor, and revise the individual behavior support plan for clients residing in an enhanced behavior support home in collaboration with experts in autism and intellectual and developmental disabilities at Seattle children's hospital and the University of Washington. The team shall, at a minimum, be composed of the following individuals:

(a) Administration service coordinator and other administration representatives, as necessary;

(b) Client and, where appropriate, his or her guardian or authorized representative;

(c) Service provider's board-certified behavior analyst or qualified behavior modification professional;

(d) Enhanced behavior support home administrator;

(e) Clients' rights advocate, unless the client objects on his or her own behalf to participation by the clients' rights advocate;

(f) An interdisciplinary team of specialists led by a behavior analyst and other trained staff;

(g) Health care providers with access to ongoing training regarding evidence-based and best practices approaches; and

(h) Others deemed necessary by the client, or his or her guardian or authorized representative, for developing a comprehensive and effective individual behavior support plan.

(22) "Individual provider" is defined according to RCW 74.39A.240.

((~~(18)~~)) (23) "Legal employer" means the consumer directed employer, which along with the consumer, coemploys individual providers. The legal employer is responsible for setting wages and benefits for individual providers and must comply with applicable laws including, but not limited to, workers compensation and unemployment insurance laws.

((~~(19)~~)) (24) "Long-term care" means care and supports delivered indefinitely, intermittently, or over a sustained time to persons of any age who are functionally disabled due to chronic mental or physical illness, disease, chemical dependency, or a medical condition that is permanent, not curable, or is long-lasting and severely limits their mental or physical capacity for self-care. The use of this definition is not intended to expand the scope of services, care, or assistance provided by any individuals, groups, residential care settings, or professions unless otherwise required by law.

((~~(20)~~)) (25)(a) "Long-term care workers" include all persons who provide paid, hands-on personal care services for the elderly or persons with disabilities, including but not limited to individual providers of home care services, direct care workers employed by home care agencies or a consumer directed employer, providers of home care services to persons with developmental disabilities under Title 71A RCW, all direct care workers in state‑licensed assisted living facilities, enhanced services facilities, and adult family homes, respite care providers, direct care workers employed by community residential service businesses, and any other direct care worker providing home or community-based services to the elderly or persons with functional disabilities or developmental disabilities.

(b) "Long-term care workers" do not include: (i) Persons employed by the following facilities or agencies: Nursing homes licensed under chapter 18.51 RCW, hospitals or other acute care settings, residential habilitation centers under chapter 71A.20 RCW, facilities certified under 42 C.F.R., Part 483, hospice agencies subject to chapter 70.127 RCW, adult day care centers, and adult day health care centers; or (ii) persons who are not paid by the state or by a private agency or facility licensed or certified by the state to provide personal care services.

((~~(21)~~)) (26) "Managing employer" means a consumer who coemploys one or more individual providers and whose responsibilities include (a) choosing potential individual providers and referring them to the consumer directed employer; (b) overseeing the day-to-day management and scheduling of the individual provider's tasks consistent with the plan of care; and (c) dismissing the individual provider when desired.

((~~(22)~~)) (27) "Nursing home" or "nursing facility" means a facility licensed under chapter 18.51 RCW or certified as a medicaid nursing facility under 42 C.F.R. Part 483, or both.

((~~(23)~~)) (28) "Person who is functionally disabled" means a person who because of a recognized chronic physical or mental condition or disease, including chemical dependency or developmental disability, is dependent upon others for direct care, support, supervision, or monitoring to perform activities of daily living. "Activities of daily living," in this context, means self-care abilities related to personal care such as bathing, eating, using the toilet, dressing, and transfer. Instrumental activities of daily living such as cooking, shopping, house cleaning, doing laundry, working, and managing personal finances may also be considered when assessing a person's functional ability to perform activities in the home and the community.

((~~(24)~~)) (29) "Personal care services" means physical or verbal assistance with activities of daily living and instrumental activities of daily living provided because of a person's functional disability.

((~~(25)~~)) (30) "Population specific competencies" means basic training topics unique to the care needs of the population the long-term care worker is serving, including but not limited to, mental health, dementia, developmental disabilities, young adults with physical disabilities, and older adults.

((~~(26)~~)) (31) "Qualified instructor" means a registered nurse or other person with specific knowledge, training, and work experience in the provision of direct, hands‑on personal care and other assistance services to the elderly or persons with disabilities requiring long‑term care.

((~~(27)~~)) (32) "Secretary" means the secretary of social and health services.

((~~(28)~~)) (33) "Service" or "services" means services provided by the state or local governments to carry out the requirements of Title 71A RCW.

(34) "Training partnership" means a joint partnership or trust that includes the office of the governor and the exclusive bargaining representative of individual providers under RCW 74.39A.270 with the capacity to provide training, peer mentoring, and workforce development, or other services to individual providers.

((~~(29)~~)) (35) "Tribally licensed assisted living facility" means an assisted living facility licensed by a federally recognized Indian tribe in which a facility provides services similar to services provided by assisted living facilities licensed under chapter 18.20 RCW.

NEW SECTION. **Sec.**  A new section is added to chapter 74.39A RCW to read as follows:

(1) Subject to the availability of amounts appropriated for this specific purpose, the enhanced behavior support homes program is established to provide enhanced behavioral services and support to serve individuals in a community setting rather than in an institution.

(2) The secretary shall license or certify enhanced behavior support homes that meet state minimum standards.

(3) The department shall establish rules working with the administration to create standards for licensure of enhanced behavior support homes. The rules, at a minimum, must:

(a) Require 24-hour supervision of residents;

(b) Establish staffing requirements that provide an appropriate response to the acuity of the residents;

(c) Establish residents' rights that are substantially similar to the rights set forth in RCW 71A.26.030; and

(d) Establish program standards, including program design requirements, staffing structure, and staff qualifications.

(4) The department shall certify enhanced behavior support specialists that meet minimum standards pursuant to section 4 of this act.

NEW SECTION. **Sec.**  A new section is added to chapter 74.39A RCW to read as follows:

The department shall establish an enhanced behavior support specialist certification. In addition to training pursuant to this chapter, the certification shall require:

(1) A minimum of 40 hours of emergency intervention training, including collaborative problem-solving techniques utilizing trauma-informed practices and positive behavior supports. Required components of this training shall include at a minimum:

(a) De-escalation and conflict resolution techniques to prevent injury and maintain safety regarding clients who may pose a danger to themselves or others;

(b) Support and coaching services to be provided by the office of the developmental disabilities ombuds;

(c) Concepts in functional communication, sensory needs, relationship-based intervention, and behavioral interpretation; and

(d) Consultation with occupational and speech therapy specialists who have experience working with populations living with complex behavioral support needs; and

(2) A minimum of 10 hours per year of ongoing training to begin the first year following initial certification.

NEW SECTION. **Sec.**  A new section is added to chapter 74.39A RCW to read as follows:

(1) The secretary and the entities providing state services under chapter 71A.12 RCW and local services under chapter 71A.14 RCW shall:

(a) Work with willing community residential providers, state-operated living alternatives, and group training homes licensed or certified under chapter 71A.22 RCW to assess their capacity to become licensed or certified to meet the requirements of this chapter;

(b) Enter into contracts and payment arrangements with enhanced behavior settings choosing to provide enhanced behavioral services, to the extent that willing licensed or certified facilities are available; and

(c) Enter into contracts and payment arrangements that create network adequacy sufficient to supplement care in all community-based residential settings with experts trained in enhanced behavior support so that state-operated living alternatives, supported living facilities, and other community-based settings can specialize in the needs of individuals with developmental disabilities who are living with high, complex behavioral support needs.

(2) Nothing in this section requires any community residential homes, providers, or group training homes to be licensed or certified to provide enhanced behavioral services.

NEW SECTION. **Sec.**  A new section is added to chapter 74.39A RCW to read as follows:

(1) The enhanced behavior support home provider is responsible for coordinating the development and updating of each client's individual behavior support plan with the client's individual behavior support team. An initial individual behavior support plan shall be developed within 14 days of the client's move into the enhanced behavior support home setting. The final individual behavior support plan shall be developed within 90 days of the client's move into the enhanced behavior support home setting. The final plan shall align with prescribed interventions outlined in a client's behavioral health or autism treatment plan.

(2) The plan shall maximize the opportunities for independence, employment, the resident's participation in service planning decisions, and collaboration with peer-supported services, and provide for care and services in the least restrictive manner appropriate to the individual resident.

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