

# HOUSE BILL REPORT

## E2SHB 1188

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### As Amended by the Senate

**Title:** An act relating to individuals with developmental disabilities that have also received child welfare services.

**Brief Description:** Concerning individuals with developmental disabilities that have also received child welfare services.

**Sponsors:** House Committee on Appropriations (originally sponsored by Representatives Senn, Taylor, Reed, Leavitt, Callan, Macri, Simmons, Timmons, Chopp, Lekanoff, Couture, Gregerson, Thai, Wylie, Stonier, Schmick, Santos, Pollet, Kloba, Eslick and Ormsby).

### Brief History:

#### Committee Activity:

Human Services, Youth, & Early Learning: 1/17/23, 1/27/23 [DPS];  
Appropriations: 2/8/23, 2/13/23 [DP2S(w/o sub HSEL)].

#### Floor Activity:

Passed House: 2/28/23, 97-0.  
Senate Amended.  
Passed Senate: 4/10/23, 49-0.

### Brief Summary of Engrossed Second Substitute Bill

- Requires that Medicaid waiver services administered by the Department of Social and Health Services Developmental Disabilities Administration (waiver services) are provided to eligible individuals who have received certain specified child welfare services, and that these waiver slots are forecasted and budgeted as maintenance level costs.
- Makes modifications to expand the Children's Intensive In-Home Behavior Support Services waiver.
- Requires the Department of Social and Health Services to seek federal approval to establish a new Medicaid waiver to meet the needs of dependent children and youth with developmental disabilities.

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*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.*

- Requires the Caseload Forecast Council to forecast the number of individuals who are functionally and financially eligible for waiver services who have also received specified child welfare services.

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## HOUSE COMMITTEE ON HUMAN SERVICES, YOUTH, & EARLY LEARNING

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Senn, Chair; Cortes, Vice Chair; Taylor, Vice Chair; Eslick, Ranking Minority Member; Couture, Assistant Ranking Minority Member; Callan, Dent, Goodman, Ortiz-Self, Rule and Walsh.

**Staff:** Omeara Harrington (786-7136).

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Human Services, Youth, & Early Learning. Signed by 29 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; Berg, Chopp, Connors, Couture, Davis, Dye, Fitzgibbon, Hansen, Harris, Lekanoff, Pollet, Rude, Ryu, Sandlin, Schmick, Senn, Simmons, Slatter, Springer, Steele, Stonier and Tharinger.

**Staff:** Bryan Way (786-7311).

### **Background:**

#### Child Welfare Services.

If an individual suspects that a child has been abused or neglected, that abuse or neglect can be reported to the Department of Children, Youth, and Families (DCYF) Child Protective Services (CPS) office or to law enforcement. If the CPS determines that the report is credible and meets screening criteria, it will assign either a 24-hour investigation response or 72-hour family assessment response, depending on the severity of the allegation.

Anyone, including the Department of Children, Youth, and Families (DCYF), may file a petition in court alleging that a child should be a dependent of the state due to abuse, neglect, or because there is no parent, guardian, or custodian capable of adequately caring for the child. A court will hold a shelter care hearing following removal of a child from his or her home within 72 hours. At this hearing, the court will determine if the child can return home safely. If a court determines that a child is dependent, the court will conduct periodic reviews and make determinations regarding the child's placement, provision of services by

the DCYF, compliance of the parents, and whether progress has been made by the parents.

*Out-of-Home Care.* When children are removed from the home of a parent or guardian due to allegations of abuse or neglect, those children may be placed with relatives or in foster care. Relatives care for almost half of the children placed in out-of-home care. Foster parents are licensed by either the DCYF or private child-placing agencies and provide temporary care to children with the goal of reunifying the child with his or her parent or guardian.

*Extended Foster Care Program.* The extended foster care program is a program that allows youth who are dependents of the state at age 18 to voluntarily agree to continue receiving foster care services until age 21, provided that they are enrolled in an educational or vocational program, participating in a program or activity to reduce barriers to employment, working 80 hours or more a month, or have certain medical conditions.

#### Developmental Disability Services.

The Developmental Disabilities Administration (DDA) of the Department of Social and Health Services (DSHS) assists individuals with developmental disabilities and their families to obtain services and support based on individual preferences, capabilities, and needs. While some DDA clients live in residential habilitation centers, an institutional setting, most clients live in the community.

Home and Community Based Services Medicaid waivers (waiver services) are designed to allow clients who live in community settings to receive optional services at the same level as they would receive in an institutional setting. The DDA offers services under five waivers: Core, Basic Plus, Community Protection Program, Individual and Family Services, and Children's Intensive In-Home Behavior Supports (CIIBS). The waiver services provided to DDA clients are designed to promote everyday activities, routines, and relationships, and may include services targeted at community integration, support services provided by contracted professionals, caregiving, and equipment, supplies, and other specialized services. To be eligible for waiver services, the individual must meet certain criteria, including:

- having a qualifying disability;
- meeting the intermediate care facility requirements for individuals with an intellectual disability level of care;
- meeting financial eligibility criteria;
- choosing to receive services in the community rather than in an intermediate care facility; and
- meeting other waiver-specific criteria.

The CIIBS waiver supports youth with challenging behaviors. In addition to other waiver eligibility criteria, to be eligible for CIIBS services, a child must:

- be under age 21;
- have an assessed acuity score that indicates that the child's behavior puts the child or

- family at risk or is very likely to require an out-of-home placement; and
- reside in his or her family home, or be temporarily in an out-of-home placement with a plan to return home.

The child's family must also agree to participate in the CIIBS program. The CIIBS services are not available when the child's family is subject to an unresolved CPS referral.

Under agency rules, children subject to dependency proceedings are not eligible for the DDA's waiver services; however, there is a statutory requirement that the DDA must give priority for waiver services to eligible individuals who exited a dependency proceeding within the last two years when there is funded capacity for those waivers.

#### 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 operating budget. Budget decisions may be categorized as either a "maintenance level" or "policy level" decision. "Maintenance level" refers to the estimated appropriations necessary to continually maintain 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. For instance, the CFC provides courtesy forecasts of the number of eligible individuals who have requested supported living and a service through certain DDA waivers.

#### **Summary of Engrossed Second Substitute Bill:**

The DDA waiver services must be provided to certain eligible individuals who are or were involved in the child welfare system. Specifically, services must be provided to eligible individuals who:

- on or after the effective date of the act, are subject to a dependency, are receiving extended foster care services, or exited a dependency or discontinued extended foster care services; and
- will begin receiving DDA services before their twenty-fifth birthday.

The CIIBS waiver services may supplement the child welfare services a child may be receiving from the DCYF, and the prohibition against access to CIIBS services while the family is subject to an unresolved CPS referral is removed. Additionally, CIIBS services may be provided to children in out-of-home placements, without requiring that placement is temporary with a plan to return home.

By December 1, 2024, the DSHS must apply for federal approval to establish a new Medicaid waiver tailored to meet the needs of dependent children and youth with developmental disabilities. The new waiver will serve DDA eligible children who are age 20 or younger and are in a dependency or extended foster care, or have exited a dependency or discontinued extended foster care . Services under the new waiver are intended to supplement, and not supplant, the child welfare services, and ensures a child or youth is entitled to or receives from the DCYF or other sources. In establishing the waiver, the DSHS must collaborate with the DCYF and other relevant stakeholders to identify the services and supports currently provided to dependent children and youth and identify services and supports that will supplement supports already provided. The DCYF must provide to the DSHS all information and data that is necessary for the DSHS to determine eligibility, provide appropriate and timely services and supports, and maintain compliance with federal funding requirements.

The CFC must forecast the number of individuals who are or were involved in the child welfare system who are also functionally and financially eligible for DDA waiver services, as well as those who are eligible for the new DDA waiver for dependent children and youth. Waiver slots for this population must be forecasted and budgeted as maintenance level costs.

#### **EFFECT OF SENATE AMENDMENT(S):**

The requirements for forecasting and budgeting for developmental disabilities waiver slots for specified categories of child-welfare involved individuals are narrowed to pertain to slots anticipated to be utilized by eligible individuals.

The requirement that the Department of Social and Health Services (DSHS) apply for federal approval to establish a new Medicaid waiver tailored to meet the needs of dependent children and youth with developmental disabilities is removed. Instead, no later than January 1, 2024, the DSHS must submit to the federal government a request for approval to modify eligibility requirements for the services provided through existing Developmental Disabilities Administration (DDA) waivers to include specified eligible individuals who are or were involved in the child welfare system. To the extent consistent with federal law and federal funding requirements, the DSHS must begin providing services to eligible individuals through a DDA waiver no later than December 1, 2024. By December 1, 2025, the DSHS must submit a report to the Governor and the Legislature regarding the feasibility of establishing a new Medicaid waiver tailored to meet the needs of dependent children and youth with developmental disabilities who are age 20 or younger and cannot be adequately served through an existing waiver.

Applicable child-welfare involved individuals who are served under the Children's Intensive Behavioral Support Services (CIIBS) waiver must be immediately transferred to a different waiver without a break in waiver coverage, rather than without a break in services.

when they no longer qualify for the CIIBS waiver.

**Appropriation:** None.

**Fiscal Note:** Available. New fiscal note requested on April 5, 2023.

**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 (Human Services, Youth, & Early Learning):**

(In support) Foster youth with developmental disabilities are no less in need of DDA services than those who are not in foster care. Giving these youth interventions earlier will reduce the need for deeper end services later. When a person has developmental disabilities, habilitative care is needed. These services can be as essential as housing. There is a trend among foster care youth with complex cases that these youth will have to wait until their status changes and they are no longer in foster care to access services. The original rationale for this policy was to prevent double dipping, but these are complimentary, rather than duplicative, services. A large component of this issue is getting the DCYF to communicate with the DDA. Once a child is in the DCYF system, they are invisible to the DDA and are lost track of, and there is no incentive for the DCYF to connect the child with the DDA. There are also a lack of guardians to assist with decision making. This bill will remove the regulatory barriers currently in place that are preventing appropriate placements and supports for this population. There are numerous examples of youth who would have benefited from developmental disabilities services during foster care, but could not access those services. This leads to impacts on the mental health system, such as emergency room visits that may lead to hospital boarding. This bill would make these services an entitlement, and would require tracking of youth with developmental disabilities. This is a targeted strategy that makes communities inclusive.

(Opposed) None.

**Staff Summary of Public Testimony (Appropriations):**

(In support) The Department of Children, Youth, and Families and Developmental Disabilities Administration should work together to provide foster children with the services they need. This is a smart investment of public funds and will prevent unnecessary hospitalizations and emergency hotel stays. The new waiver provides a long-term solution, but there is also a need for a short-term solution to provide immediate relief for foster children and youth. Currently, it is a state responsibility to provide developmental disability services to foster youth, and many other states are already doing so. It is important to support foster children with disabilities by providing them with the necessary services.

(Opposed) None.

**Persons Testifying (Human Services, Youth, & Early Learning):** Representative Tana Senn, prime sponsor; Marissa Ingalls, Keith McNeal, and Sydney Doherty, Coordinated Care; Diana Stadden, The Arc of Washington State; Ramona Hattendorf, The Arc of King County; and Daniel Lugo, Treehouse.

**Persons Testifying (Appropriations):** Representative Tana Senn, prime sponsor; Diana Stadden, The Arc of Washington State; Daniel Lugo, Treehouse; and Bill Stauffacher, Coordinated Care.

**Persons Signed In To Testify But Not Testifying (Human Services, Youth, & Early Learning):** Katie Biron and Nicole Mazon, Amara; Debbie Roberts, Department of Social and Health Services; and Allison Krutsinger, Department of Children, Youth, and Families.

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