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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)

READ FIRST TIME 02/08/23.

1 AN ACT Relating to enhanced behavior support homes; amending RCW  
2 74.39A.009; adding new sections to chapter 74.39A RCW; and creating a  
3 new section.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that there is a  
6 growing crisis for individuals with intellectual and developmental  
7 disabilities reaching adulthood that cannot access safe and  
8 appropriate community living options. The current supported living  
9 housing model has not met the needs of those with intellectual and  
10 developmental disabilities who have significant behavioral  
11 challenges. These vulnerable individuals then often bounce between  
12 their family home, if they have one; temporary respite placements;  
13 hospital boarding; jail; or homelessness at great expense to our  
14 state, medical, and mental health systems. By this act, the  
15 legislature intends to establish an enhanced behavior support homes  
16 model in Washington state for purposes of providing intensive  
17 behavioral services and support to adults and children with  
18 intellectual and developmental disabilities who require enhanced  
19 services and support due to challenging behaviors that cannot be  
20 safely and holistically managed in an exclusively community setting,  
21 and who are at risk of institutionalization or out-of-state

1 placement, or are transitioning to the community from an intermediate  
2 care facility, hospital, or other state-operated residential  
3 facility.

4 **Sec. 2.** RCW 74.39A.009 and 2022 c 255 s 5 are each amended to  
5 read as follows:

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

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

10 (2) "Adult family home" means a home licensed under chapter  
11 70.128 RCW.

12 ~~((2))~~ (3) "Adult residential care" means services provided by  
13 an assisted living facility that is licensed under chapter 18.20 RCW  
14 and that has a contract with the department under RCW 74.39A.020 to  
15 provide personal care services.

16 ~~((3))~~ (4) "Assisted living facility" means a facility licensed  
17 under chapter 18.20 RCW.

18 ~~((4))~~ (5) "Assisted living services" means services provided by  
19 an assisted living facility that has a contract with the department  
20 under RCW 74.39A.010 to provide personal care services, intermittent  
21 nursing services, and medication administration services; and the  
22 facility provides these services to residents who are living in  
23 private apartment-like units.

24 ~~((5))~~ (6) "Community residential service business" means a  
25 business that:

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

29 (i) Group home services;

30 (ii) Group training home services;

31 (iii) Supported living services; or

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

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

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

1           ~~((6))~~ (7) "Consumer" or "client" means a person who is  
2 receiving or has applied for services under this chapter, including a  
3 person who is receiving services from an individual provider.

4           ~~((7))~~ (8) "Consumer directed employer" is a private entity that  
5 contracts with the department to be the legal employer of individual  
6 providers for purposes of performing administrative functions. The  
7 consumer directed employer is patterned after the agency with choice  
8 model, recognized by the federal centers for medicare and medicaid  
9 services for financial management in consumer directed programs. The  
10 entity's responsibilities are described in RCW 74.39A.515 and  
11 throughout this chapter and include: (a) Coordination with the  
12 consumer, who is the individual provider's managing employer; (b)  
13 withholding, filing, and paying income and employment taxes,  
14 including workers' compensation premiums and unemployment taxes, for  
15 individual providers; (c) verifying an individual provider's  
16 qualifications; and (d) providing other administrative and  
17 employment-related supports. The consumer directed employer is a  
18 social service agency and its employees are mandated reporters as  
19 defined in RCW 74.34.020.

20           ~~((8))~~ (9) "Core competencies" means basic training topics,  
21 including but not limited to, communication skills, worker self-care,  
22 problem solving, maintaining dignity, consumer directed care,  
23 cultural sensitivity, body mechanics, fall prevention, skin and body  
24 care, long-term care worker roles and boundaries, supporting  
25 activities of daily living, and food preparation and handling.

26           ~~((9))~~ (10) "Cost-effective care" means care provided in a  
27 setting of an individual's choice that is necessary to promote the  
28 most appropriate level of physical, mental, and psychosocial well-  
29 being consistent with client choice, in an environment that is  
30 appropriate to the care and safety needs of the individual, and such  
31 care cannot be provided at a lower cost in any other setting. But  
32 this in no way precludes an individual from choosing a different  
33 residential setting to achieve his or her desired quality of life.

34           ~~((10))~~ (11) "Department" means the department of social and  
35 health services.

36           ~~((11))~~ (12) "Developmental disability" has the same meaning as  
37 defined in RCW 71A.10.020.

38           ~~((12))~~ (13) "Direct care worker" means a paid caregiver who  
39 provides direct, hands-on personal care services to persons with  
40 disabilities or the elderly requiring long-term care.

1        ~~((13))~~ (14) "Enhanced adult residential care" means services  
2 provided by an assisted living facility that is licensed under  
3 chapter 18.20 RCW and that has a contract with the department under  
4 RCW 74.39A.010 to provide personal care services, intermittent  
5 nursing services, and medication administration services.

6        ~~((14))~~ (15) "Enhanced behavior support home" means a community  
7 residential placement such as supported living, state-operated living  
8 alternative, or a group home that provides 24-hour nonmedical care in  
9 a homelike long-term supportive setting to individuals with  
10 developmental disabilities who require enhanced behavior support,  
11 staffing, and supervision. An enhanced behavior support home has a  
12 maximum capacity of four clients. The enhanced behavior support home  
13 must be eligible for federal medicaid home and community-based  
14 services funding.

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

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

28        ~~((15))~~ (18) "Home and community-based services" means services  
29 provided in adult family homes, in-home services, and other services  
30 administered or provided by contract by the department directly or  
31 through contract with area agencies on aging or federally recognized  
32 Indian tribes, or similar services provided by facilities and  
33 agencies licensed or certified by the department.

34        ~~((16))~~ (19) "Home care aide" means a long-term care worker who  
35 is certified as a home care aide by the department of health under  
36 chapter 18.88B RCW.

37        ~~((17))~~ (20) "Individual behavior support plan" means a person-  
38 centered plan that identifies and documents the behavior of the  
39 client being served. The plan must include intensive supports,  
40 specialized habilitative services, and appropriate specialized

1 equipment to meet client needs and must detail the strategies and  
2 interventions to be employed. The plan shall also include the type  
3 and amount of services to be provided to address those needs, the  
4 entity responsible for providing those services, and timelines for  
5 when each identified individual behavior support will commence.

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

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

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

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

19 (d) Enhanced behavior support home administrator;

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

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

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

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

29 (22) "Individual provider" is defined according to RCW  
30 74.39A.240.

31 ~~((18))~~ (23) "Legal employer" means the consumer directed  
32 employer, which along with the consumer, coemploys individual  
33 providers. The legal employer is responsible for setting wages and  
34 benefits for individual providers and must comply with applicable  
35 laws including, but not limited to, workers compensation and  
36 unemployment insurance laws.

37 ~~((19))~~ (24) "Long-term care" means care and supports delivered  
38 indefinitely, intermittently, or over a sustained time to persons of  
39 any age who are functionally disabled due to chronic mental or  
40 physical illness, disease, chemical dependency, or a medical

1 condition that is permanent, not curable, or is long-lasting and  
2 severely limits their mental or physical capacity for self-care. The  
3 use of this definition is not intended to expand the scope of  
4 services, care, or assistance provided by any individuals, groups,  
5 residential care settings, or professions unless otherwise required  
6 by law.

7 ~~((20))~~ (25) (a) "Long-term care workers" include all persons who  
8 provide paid, hands-on personal care services for the elderly or  
9 persons with disabilities, including but not limited to individual  
10 providers of home care services, direct care workers employed by home  
11 care agencies or a consumer directed employer, providers of home care  
12 services to persons with developmental disabilities under Title 71A  
13 RCW, all direct care workers in state-licensed assisted living  
14 facilities, enhanced services facilities, and adult family homes,  
15 respite care providers, direct care workers employed by community  
16 residential service businesses, and any other direct care worker  
17 providing home or community-based services to the elderly or persons  
18 with functional disabilities or developmental disabilities.

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

28 ~~((21))~~ (26) "Managing employer" means a consumer who coemploys  
29 one or more individual providers and whose responsibilities include  
30 (a) choosing potential individual providers and referring them to the  
31 consumer directed employer; (b) overseeing the day-to-day management  
32 and scheduling of the individual provider's tasks consistent with the  
33 plan of care; and (c) dismissing the individual provider when  
34 desired.

35 ~~((22))~~ (27) "Nursing home" or "nursing facility" means a  
36 facility licensed under chapter 18.51 RCW or certified as a medicaid  
37 nursing facility under 42 C.F.R. Part 483, or both.

38 ~~((23))~~ (28) "Person who is functionally disabled" means a  
39 person who because of a recognized chronic physical or mental  
40 condition or disease, including chemical dependency or developmental

1 disability, is dependent upon others for direct care, support,  
2 supervision, or monitoring to perform activities of daily living.  
3 "Activities of daily living," in this context, means self-care  
4 abilities related to personal care such as bathing, eating, using the  
5 toilet, dressing, and transfer. Instrumental activities of daily  
6 living such as cooking, shopping, house cleaning, doing laundry,  
7 working, and managing personal finances may also be considered when  
8 assessing a person's functional ability to perform activities in the  
9 home and the community.

10 ~~((24))~~ (29) "Personal care services" means physical or verbal  
11 assistance with activities of daily living and instrumental  
12 activities of daily living provided because of a person's functional  
13 disability.

14 ~~((25))~~ (30) "Population specific competencies" means basic  
15 training topics unique to the care needs of the population the long-  
16 term care worker is serving, including but not limited to, mental  
17 health, dementia, developmental disabilities, young adults with  
18 physical disabilities, and older adults.

19 ~~((26))~~ (31) "Qualified instructor" means a registered nurse or  
20 other person with specific knowledge, training, and work experience  
21 in the provision of direct, hands-on personal care and other  
22 assistance services to the elderly or persons with disabilities  
23 requiring long-term care.

24 ~~((27))~~ (32) "Secretary" means the secretary of social and  
25 health services.

26 ~~((28))~~ (33) "Service" or "services" means services provided by  
27 the state or local governments to carry out the requirements of Title  
28 71A RCW.

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

34 ~~((29))~~ (35) "Tribally licensed assisted living facility" means  
35 an assisted living facility licensed by a federally recognized Indian  
36 tribe in which a facility provides services similar to services  
37 provided by assisted living facilities licensed under chapter 18.20  
38 RCW.

1        NEW SECTION.    **Sec. 3.**    A new section is added to chapter 74.39A  
2 RCW to read as follows:

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

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

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

13       (a) Require 24-hour supervision of residents;

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

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

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

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

23       NEW SECTION.    **Sec. 4.**    A new section is added to chapter 74.39A  
24 RCW to read as follows:

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

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

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

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

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



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

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

6 NEW SECTION. **Sec. 5.** A new section is added to chapter 74.39A  
7 RCW to read as follows:

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

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

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

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

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

28 NEW SECTION. **Sec. 6.** A new section is added to chapter 74.39A  
29 RCW to read as follows:

30 (1) The enhanced behavior support home provider is responsible  
31 for coordinating the development and updating of each client's  
32 individual behavior support plan with the client's individual  
33 behavior support team. An initial individual behavior support plan  
34 shall be developed within 14 days of the client's move into the  
35 enhanced behavior support home setting. The final individual behavior  
36 support plan shall be developed within 90 days of the client's move  
37 into the enhanced behavior support home setting. The final plan shall

1 align with prescribed interventions outlined in a client's behavioral  
2 health or autism treatment plan.

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

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