

# FINAL BILL REPORT

## ESSB 5268

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Synopsis as Enacted

**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).

**Senate Committee on Health & Long Term Care**

**Senate Committee on Ways & Means**

**House Committee on Housing, Human Services & Veterans**

**House Committee on Appropriations**

**Background:** Developmental Disabilities Administration. The Developmental Disabilities Administration (DDA) is a division of the Department of Social and Health Services (DSHS) which assists persons with developmental disabilities and their families to obtain services and support based on individual preferences, capabilities, and needs. DDA clients live in a variety of settings, including private residences, state-funded community settings, and residential habilitation centers (RHCs).

There are two avenues for which functionally and financially eligible individuals may obtain Medicaid paid services in community settings through DDA: the Community First Choice Option (CFCO) of the Medicaid State Plan, and Home and Community Based Services (HCBS) waivers. The CFCO is an uncapped entitlement and is provided to those who qualify for institutional care, but would rather be served in their home or community. There are five capped HCBS waivers that provide an array of services tailored to the specific populations they serve. Approximately 70 percent of the HCBS waiver caseload receives services through either the Basic Plus or individual family services (IFS) waivers. Basic Plus provides services to clients who are functionally eligible for an institutional level of care, but who choose to remain in a community setting. The IFS waiver serves families caring for an eligible person three years of age or older by providing an annual allocation based on assessed need.

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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.*

According to information provided by DDA in January 2020, there are 14,128 individuals with a disability that makes them eligible to receive DDA services, but are not receiving paid DDA services. This group of individuals is often referred to as the no-paid services (NPS) caseload. There are 378 individuals, or 3 percent, of the NPS caseload who have requested a paid DDA service, but were denied due to lack of capacity. Of those, 299 individuals requested a service through either the Basic Plus or IFS waivers. By December 1, 2021, DSHS must review the NPS caseload and update it to accurately reflect a current count of eligible persons and the number of individuals who are currently interested in receiving a paid service.

Caseload Forecast Council. The Caseload Forecast Council (CFC) is a state agency charged with preparing official state forecasts of the number of persons expected to meet entitlement requirements and to require the services of certain public assistance programs, including foster care, adoption support, the prison population, K-12 students, Medicaid, and other specified programs. The CFC itself consists of two individuals appointed by the Governor, and four individuals, one of whom is appointed by the chairperson of each of the two largest political caucuses in the Senate and the House of Representatives. The CFC must present the number of individuals who are assessed as eligible for, and have requested a service through, the Basic Plus and IFS waivers.

Operating Budget. A two-year biennial operating budget appropriates funding for the operation of state government and is adopted every odd-numbered year. Supplemental budgets frequently are enacted in each of the following two years after adoption of the biennial budget.

Budget decisions are often categorized as being either a maintenance level or a policy level decision. For the purpose of the four-year outlook, maintenance level has been defined to mean the estimated appropriations necessary to maintain the continuing costs of program and service levels either funded in the prior biennium or otherwise mandated by other state or federal law. Maintenance level items typically include adjustments for the forecasted changes in entitlement caseloads or enrollments and other mandatory expenses.

All other budget decisions are typically categorized as policy items. Examples include creating a new program; eliminating a current program; increasing or decreasing vendor or employee payment rates; expanding or contracting program eligibility; and expanding or contracting the value of services provided by a program.

Funding for DDA personal care and respite care services are adjusted annually in maintenance level of the budget on the basis of actual and forecasted caseloads and per capita costs.

Residential Habilitation Centers. DSHS operates the following four residential habilitation centers (RHCs) which provide residential services for persons with developmental

disabilities in an institutional setting:

- the Fircrest RHC in Shoreline supports about 180 long-term residents and includes both a nursing facility and an intermediate care facility (ICF);
- the Lakeland Village in Medical Lake RHC supports about 160 long-term residents and includes both a nursing facility and an ICF;
- the Rainier School RHC in Buckley supports about 140 long-term residents and includes an ICF; and
- the Yakima Valley School RHC supports about 50 long-term residents in a nursing facility and provides planned respite services and crisis stabilization stays.

ICF facilities are offered as an option to Medicaid recipients that meet ICF level of care criteria. To be eligible, a person's need for active treatment in an ICF must arise from an intellectual disability. Federal law requires ICF services to be provided to persons needing and receiving active treatment services, meaning a continuous, aggressive, and consistently implemented program of specialized and generic treatment. An ICF facility at Rainier School was closed in September 2019, after loss of federal funding based on insufficient active treatment services being provided. Another ICF at Lakeland Village was closed to new patients by agreement with the federal government. RHC facilities continue to struggle to meet high federal standards for treatment in ICF settings and the inability to meet these standards could put their certification at risk. Nursing facilities provide 24-hour nursing care to aging individuals and individuals with developmental disabilities.

Community Residential Services. Some DDA clients receive supported living services in their own home. DDA clients residing in group homes receive supported living services in a facility licensed as an assisted living facility or adult family home. DDA operates state-operated living alternatives (SOLAs) and contracts with supported living providers for these supportive services which may include engagement in community activities, self-advocacy, building relationships, finances, shopping, menu planning and cooking, medication management, medical appointments, personal hygiene, and daily living activities.

2019 Ruckelshaus Report. The 2019-21 operating budget required DSHS to contract with the William D. Ruckelshaus Center to facilitate meetings and discussions about appropriate levels of care for RHC clients. In November 2019, it published a report titled *Rethinking Intellectual and Developmental Disability Policy to Empower Clients, Develop Providers, and Improve Services* (Ruckelshaus report).

The Ruckelshaus report includes the following recommendations regarding community residential services:

- improve case management ratios;
- assess options to expand forecast-based maintenance-level funding adjustments for DDA waiver services;
- expand state-operated community residential options;
- expand quality assurance efforts;
- conduct rate study for contracted community residential service providers;

- assess options for an alternative, opt-in rate structure for contracted supported living; and
- increase funding for community-based overnight planned respite.

The Ruckelshaus report includes the following recommendations regarding cross-system coordination:

- ask the Developmental Disabilities Council to coordinate collaboration efforts;
- expand apprenticeship opportunities;
- continue reforming guardianship;
- prioritize funding housing for people with intellectual and developmental disabilities; and
- expand access to facility professionals.

The Ruckelshaus report includes the following recommendations regarding state-operated nursing facilities:

- continue to invest in state-operated nursing facilities; and
- rebuild the nursing facility at Fircrest.

The Ruckelshaus report includes the following recommendations regarding redesigning ICFs to function as short-term crisis stabilization and intervention facilities:

- complete DDA assessments for ICF clients at least annually;
- clearly explain to ICF clients and their families the temporary nature of ICFs;
- expand the Family Mentor Project;
- begin transition planning immediately;
- establish transition teams; and
- leverage the resulting ICF capacity to meet crisis stabilization needs.

In 2020, the Legislature passed ESSB 6419 which required DDA to develop a plan to implement the recommendations of the Ruckelshaus report and created a joint executive and legislative task force to oversee the development of the plan. A final plan is due September 1, 2021, but a preliminary plan was submitted to the Legislature in January 2021, which identified four areas needing prompt attention:

- replace the buildings that house the Fircrest Nursing Facility;
- add peer mentors to the Family Mentor Program;
- authorize ICF-based professional staff to serve community clients; and
- continue advancing the Ruckelshaus report recommendations.

**Summary:** Caseload Forecasting and Budgeting. The requirement for the CFC to present the number of eligible individuals who have requested a service through the Basic Plus and IFS waivers expires on January 1, 2023. Beginning with the official forecast submitted in November 2022, two new forecasting requirements are established for DDA services. Subject to appropriations, the CFC must courtesy- forecast the number of eligible individuals who have requested supported living and a service through the CORE, IFS, and Basic Plus waivers. DDA is required to provide the CFC with the service request list to

assist with developing this forecast. Additionally, the CFC must provide a courtesy-forecast of the number of individuals who are expected to reside in SOLAs.

Expenditures for the Basic Plus and IFS waivers must be considered by the Governor and the Legislature for inclusion in maintenance level budgets. Funding for these expenditures must be appropriated and DSHS must annually submit a budget for these expenditures. Within existing appropriations, DSHS must annually submit a budget request for expenditures for the number of individuals who are expected to live in SOLAs. The budget requirements must begin with the Governor's budget proposal submitted in December 2022.

Community Respite and Crisis Stabilization Services. Within existing appropriations, DSHS must examine the need for community respite beds to serve eligible individuals and stabilization, assessment, and intervention beds to provide crisis stabilization services for individuals with complex behavioral needs. By October 1, 2022, DSHS must submit a preliminary report to the Governor and the Legislature that estimates the number of beds needed in fiscal years 2023 through 2025, recommends geographic locations of these beds, provides options for contracting with community providers and using existing intermediate care facilities to meet these needs, includes the average length of stay for clients residing in state-operated intermediate care facilities, and recommends whether an increase to respite hours is needed. A final report is due by October 1, 2024.

Community Residential Medicaid Rates. 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 recommend rates needed for facilities to cover their costs and adequately recruit, train, and retain direct care professionals, recommendations for an enhanced rate structure, and options for an alternative, opt-in rate structure for contracted supported living providers who voluntarily serve individuals with complex behaviors, complete additional training, and submit to additional monitoring.

Quality Metrics. Within existing appropriations, DSHS must collaborate with stakeholders to develop uniform quality assurance metrics that are applied across community residential settings, intermediate care facilities, and state-operated nursing facilities. DSHS must submit a report to the Governor and Legislature by June 30, 2023.

DDA Staffing and Eligibility Processes. Within existing appropriations, DSHS must submit a five-year plan to phase-in the appropriate level of funding and staffing to achieve 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, necessary changes to the procedures to ensure a more efficient and timely process for hiring and training staff, and the number of new hires needed on an annual basis to achieve the phased implementation included in the five-year plan. The plan must be submitted by October 1, 2022.

The Joint Legislative Audit and Review Committee (JLARC) must review DDA's existing

processes and staffing methodology used for determining eligibility, assessing for eligibility, delivering services and managing individuals who are waiting for services, and best practices from other states regarding eligibility determination, eligibility assessment, service delivery, management of individuals who are waiting for services, and staffing models. JLARC must identify options for streamlining the eligibility, assessment, service delivery, and management of individuals who are waiting for services, and the potential staffing impacts, and report its findings and recommendations to the Governor and the Legislature by December 1, 2024.

Cross-System Coordination. Within existing appropriations, DDA must work with the Developmental Disabilities Council to:

- collaborate with stakeholders to develop and disseminate best practices related to serving individuals with co-occurring intellectual and developmental disabilities and mental health conditions;
- work with Washington State's Apprenticeship and Training Council, colleges, and universities to establish medical, dental, nursing, and direct care apprenticeship programs that would address gaps in provider training and overall competence;
- devise options for consideration by the Governor and the Legislature to prioritize funding for housing for individuals with intellectual and developmental disabilities when a lack of affordable housing is the barrier preventing an individual from moving to a least restrictive community setting; and
- collaborate with stakeholders to examine existing guardianship and protective proceedings laws and recommend necessary changes to ensure that guardianship or other protective proceedings are designed to provide individuals with intellectual and developmental disabilities with the decision-making support they require to live as independently as possible in the least restrictive environment.

Within existing appropriations, DSHS must work with the Health Care Authority and managed care organizations to establish the necessary agreements for intellectual and developmental disabilities clients who live in the community to access intermediate care facility-based professionals to receive care covered under the state plan. DSHS must consider methods to deliver these services at mobile or brick-and-mortar clinical settings in the community.

By December 1, 2022, DSHS must report on the cross-system coordination efforts and include any recommendations for policy or fiscal changes to the Governor and the Legislature for consideration in the 2023 legislative session.

Residential Habilitation Centers. Within existing appropriations, DDA must develop procedures to:

- provide clear information to individuals and families that placement in an ICF is temporary, describe what constitutes continuous aggressive active treatment and all placement options and their requirements;
- ensure discharge planning begins immediately upon placement of an individual

within and ICF;

- present the individual with the option to receive any available crisis stabilization services in the community prior to placement in an intermediate care facility; and
- convene the individual's care team to review and make changes to the individual's care plan when the individual has not achieved crisis stabilization after 60 consecutive days in a state-operated intermediate care facility.

Subject to appropriations, DSHS must expand the number of family mentors and establish peer mentors to connect each client in an ICF with a mentor to assist in their transition planning, work with community residential service providers to provide a 90-day vacancy payment for individuals who are transferred from the provider to a state-operated intermediate care facility for stabilization services, and use client resources to pay rent for individuals who face eviction due to failure to pay caused by the transfer to a state-operated intermediate care facility for stabilization services. By November 1, 2022, DSHS must submit a report on this work and provide any necessary recommendations for policy or fiscal changes to the Governor and Legislature for consideration in the 2022 legislative session.

The bill is null and void if funding is not provided in the 2022 supplemental operating budget.

**Votes on Final Passage:**

2021 Regular Session

Senate 48 0

2022 Regular Session

Senate 48 0

House 96 0 (House amended)

Senate 49 0 (Senate concurred)

**Effective:** June 9, 2022