

Title 71A

DEVELOPMENTAL DISABILITIES

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Chapter 71A.10 RCW GENERAL PROVISIONS

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71A.10.010 Legislative finding—Intent—1988 c 176.

The legislature finds that the statutory authority for the programs, policies, and services of the department of social and health services for persons with developmental disabilities often lack[s] clarity and contain[s] internal inconsistencies. In addition, existing authority is in several chapters of the code and frequently contains obsolete language not reflecting current use. The legislature declares that it is in the public interest to unify and update statutes for programs, policies, and services provided to persons with developmental disabilities.

The legislature intends to recodify the authority for the programs, policies, and services for persons with developmental disabilities. This recodification is not intended to affect existing programs, policies, and services, nor to establish any new program, policies, or services not otherwise authorized before June 9, 1988. The legislature intends to provide only those services authorized under state law before June 9, 1988, and only to the extent funds are provided by the legislature. [1988 c 176 § 1.]

71A.10.011 Intent—1995 c 383. The legislature recognizes that the emphasis of state developmental disability services is shifting from institutional-based care to community services in an effort to increase the personal and social independence and fulfillment of persons with developmental disabilities, consistent with state policy as expressed in RCW

71A.10.015. It is the intent of the legislature that financial savings achieved from program reductions and efficiencies within the developmental disabilities program shall be redirected within the program to provide public or private community-based services for eligible persons who would otherwise be unidentified or unserved. [1995 c 383 § 1.]

71A.10.015 Declaration of policy. The legislature recognizes the capacity of all persons, including those with developmental disabilities, to be personally and socially productive. The legislature further recognizes the state's obligation to provide aid to persons with developmental disabilities through a uniform, coordinated system of services to enable them to achieve a greater measure of independence and fulfillment and to enjoy all rights and privileges under the Constitution and laws of the United States and the state of Washington. [1988 c 176 § 101.]

71A.10.020 Definitions. As used in this title, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Assessment" means an evaluation is provided by the department to determine:

(a) If the individual meets functional and financial criteria for medicaid services; and

(b) The individual's support needs for service determination.

(2) "Community residential support services," or "community support services," and "in-home services" means one or more of the services listed in RCW 71A.12.040.

(3) "Crisis stabilization services" means services provided to persons with developmental disabilities who are experiencing behaviors that jeopardize the safety and stability of their current living situation. Crisis stabilization services include:

(a) Temporary intensive services and supports, typically not to exceed sixty days, to prevent psychiatric hospitalization, institutional placement, or other out-of-home placement; and

(b) Services designed to stabilize the person and strengthen their current living situation so the person may continue to safely reside in the community during and beyond the crisis period.

(4) "Department" means the department of social and health services.

(5) "Developmental disability" means a disability attributable to intellectual disability, cerebral palsy, epilepsy, autism, or another neurological or other condition of an individual found by the secretary to be closely related to an intellectual disability or to require treatment similar to that required for individuals with intellectual disabilities, which disability originates before the individual attains age eighteen, which has continued or can be expected to continue

indefinitely, and which constitutes a substantial limitation to the individual. By January 1, 1989, the department shall promulgate rules which define neurological or other conditions in a way that is not limited to intelligence quotient scores as the sole determinant of these conditions, and notify the legislature of this action.

(6) "Eligible person" means a person who has been found by the secretary under RCW 71A.16.040 to be eligible for services.

(7) "Habilitative services" means those services provided by program personnel to assist persons in acquiring and maintaining life skills and to raise their levels of physical, mental, social, and vocational functioning. Habilitative services include education, training for employment, and therapy.

(8) "Legal representative" means a parent of a person who is under eighteen years of age, a person's legal guardian, a person's limited guardian when the subject matter is within the scope of the limited guardianship, a person's attorney-at-law, a person's attorney-in-fact, or any other person who is authorized by law to act for another person.

(9) "Notice" or "notification" of an action of the secretary means notice in compliance with RCW 71A.10.060.

(10) "Residential habilitation center" means a state-operated facility for persons with developmental disabilities governed by chapter 71A.20 RCW.

(11) "Respite services" means relief for families and other caregivers of people with disabilities, typically not to exceed ninety days, to include both in-home and out-of-home respite care on an hourly and daily basis, including twenty-four hour care for several consecutive days. Respite care workers provide supervision, companionship, and personal care services temporarily replacing those provided by the primary caregiver of the person with disabilities. Respite care may include other services needed by the client, including medical care which must be provided by a licensed health care practitioner.

(12) "Secretary" means the secretary of social and health services or the secretary's designee.

(13) "Service" or "services" means services provided by state or local government to carry out this title.

(14) "Service request list" means a list of eligible persons who have received an assessment for service determination and their assessment shows that they meet the eligibility requirements for the requested service but were denied access due to funding limits.

(15) "State-operated living alternative" means programs for community residential services which may include assistance with activities of daily living, behavioral, habilitative, interpersonal, protective, medical, nursing, and mobility supports to individuals who have been assessed by the department as meeting state and federal requirements for eligibility in home and community-based waiver programs for individuals with developmental disabilities. State-operated living alternatives are operated and staffed with state employees.

(16) "Supported living" means community residential services and housing which may include assistance with activities of daily living, behavioral, habilitative, interpersonal, protective, medical, nursing, and mobility supports provided to individuals with disabilities who have been assessed by the department as meeting state and federal

requirements for eligibility in home and community-based waiver programs for individuals with developmental disabilities. Supported living services are provided under contracts with private agencies or with individuals who are not state employees.

(17) "Vacancy" means an opening at a residential habilitation center, which when filled, would not require the center to exceed its biennially budgeted capacity. [2014 c 139 § 2; 2011 1st sp.s. c 30 § 3; 2010 c 94 § 21; 1998 c 216 § 2; 1988 c 176 § 102.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Finding—Intent—Program development—Implementation—Program funding—2014 c 139: See notes following RCW 71A.16.050.

Findings—Intent—Conflict with federal requirements—2011 1st sp.s. c 30: See notes following RCW 71A.20.010.

Purpose—2010 c 94: See note following RCW 44.04.280.

Additional notes found at www.leg.wa.gov

71A.10.030 Civil and parental rights not affected. (1)

The existence of developmental disabilities does not affect the civil rights of the person with the developmental disability except as otherwise provided by law.

(2) The secretary's determination under RCW 71A.16.040 that a person is eligible for services under this title shall not deprive the person of any civil rights or privileges. The secretary's determination alone shall not constitute cause to declare the person to be legally incompetent.

(3) This title shall not be construed to deprive the parent or parents of any parental rights with relation to a child residing in a residential habilitation center, except as provided in this title for the orderly operation of such residential habilitation centers. [1988 c 176 § 103.]

71A.10.040 Protection from discrimination. Persons are protected from discrimination because of a developmental disability as well as other mental or physical handicaps by the law against discrimination, chapter 49.60 RCW, by other state and federal statutes, rules, and regulations, and by local ordinances, when the persons qualify as handicapped under those statutes, rules, regulations, and ordinances. [1988 c 176 § 104.]

71A.10.050 Appeal of department actions—Right to.

(1) An applicant or recipient or former recipient of a developmental disabilities service under this title from the department of social and health services has the right to appeal the following department actions:

(a) A denial of an application for eligibility under RCW 71A.16.040;

(b) An unreasonable delay in acting on an application for eligibility, for a service, or for an alternative service under RCW 71A.18.040;

(c) A denial, reduction, or termination of a service;

(d) A claim that the person owes a debt to the state for an overpayment;

(e) A disagreement with an action of the secretary under RCW 71A.10.060 or 71A.10.070;

(f) A decision to return a resident of an [a] habilitation center to the community; and

(g) A decision to change a person's placement from one category of residential services to a different category of residential services.

The adjudicative proceeding is governed by the Administrative Procedure Act, chapter 34.05 RCW.

(2) This subsection applies only to an adjudicative proceeding in which the department action appealed is a decision to return a resident of a habilitation center to the community. The resident or his or her representative may appeal on the basis of whether the specific placement decision is in the best interests of the resident. When the resident or his or her representative files an application for an adjudicative proceeding under this section the department has the burden of proving that the specific placement decision is in the best interests of the resident.

(3) When the department takes any action described in subsection (1) of this section it shall give notice as provided by RCW 71A.10.060. The notice must include a statement advising the recipient of the right to an adjudicative proceeding and the time limits for filing an application for an adjudicative proceeding. Notice of a decision to return a resident of a habilitation center to the community under RCW 71A.20.080 must also include a statement advising the recipient of the right to file a petition for judicial review of an adverse adjudicative order as provided in chapter 34.05 RCW. [1989 c 175 § 138; 1988 c 176 § 105.]

Additional notes found at www.leg.wa.gov

71A.10.060 Notice by secretary. (1) Whenever this title requires the secretary to give notice, the secretary shall give notice to the person with a developmental disability and, except as provided in subsection (3) of this section, to at least one other person. The other person shall be the first person known to the secretary in the following order of priority:

(a) A legal representative of the person with a developmental disability;

(b) A parent of a person with a developmental disability who is eighteen years of age or older;

(c) Other kin of the person with a developmental disability, with preference to persons with the closest kinship;

(d) The Washington protection and advocacy system for the rights of persons with developmental disabilities, appointed in compliance with 42 U.S.C. Sec. 6042; or

(e) A person who is not an employee of the department or of a person who contracts with the department under this title who, in the opinion of the secretary, will be concerned with the welfare of the person.

(2) Notice to a person with a developmental disability shall be given in a way that the person is best able to understand. This can include reading or explaining the materials to the person.

(3) A person with a developmental disability may in writing request the secretary to give notice only to that person. The secretary shall comply with that direction unless the secretary denies the request because the person may be at risk of losing rights if the secretary complies with the request. The secretary shall give notice as provided in subsections (1) and (2) of this section. On filing an application with the secretary within thirty days of receipt of the notice, the person who made the request has the right to an adjudicative proceeding under RCW 71A.10.050 on the secretary's decision.

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(4) The giving of notice to a person under this title does not empower the person who is given notice to take any action or give any consent. [1989 c 175 § 139; 1988 c 176 § 106.]

Additional notes found at www.leg.wa.gov

71A.10.070 Secretary's duty to consult. (1) Whenever this title places on the secretary the duty to consult, the secretary shall carry out that duty by consulting with the person with a developmental disability and, except as provided in subsection (2) of this section, with at least one other person. The other person shall be in order of priority:

(a) A legal representative of the person with a developmental disability;

(b) A parent of a person with a developmental disability who is eighteen years of age or older;

(c) Other kin of the person with a developmental disability, with preference to persons with the closest kinship;

(d) The Washington protection and advocacy system for the rights of persons with developmental disabilities, appointed in compliance with 42 U.S.C. Sec. 6042; or

(e) Any other person who is not an employee of the department or of a person who contracts with the department under this title who, in the opinion of the secretary, will be concerned with the welfare of the person.

(2) A person with a developmental disability may in writing request the secretary to consult only with that person. The secretary shall comply with that direction unless the secretary denies the request because the person may be at risk of losing rights if the secretary complies with the request. The secretary shall give notice as provided in RCW 71A.10.060 when a request is denied. On filing an application with the secretary within thirty days of receipt of the notice, the person who made the request has the right to an adjudicative proceeding under RCW 71A.10.050 on the secretary's decision.

(3) Consultation with a person under this section does not authorize the person who is consulted to take any action or give any consent. [1989 c 175 § 140; 1988 c 176 § 107.]

Additional notes found at www.leg.wa.gov

71A.10.080 Governor to designate an agency to implement a program for protection and advocacy of the rights of persons with developmental disabilities and mentally ill persons—Authority of designated agency—Liaison with state agencies. (1) The governor shall designate an agency to implement a program for the protection and advocacy of the rights of persons with developmental disabilities pursuant to the developmentally disabled assistance and bill of rights act, 89 Stat. 486; 42 U.S.C. Secs. 6000-6083 (1975), (as amended). The designated agency shall have the authority to pursue legal, administrative, and other appropriate remedies to protect the rights of the developmentally disabled and to investigate allegations of abuse and neglect. The designated agency shall be independent of any state agency that provides treatment or services other than advocacy services to persons with developmental disabilities.

(2) The agency designated under subsection (1) of this section shall implement a program for the protection and advocacy of the rights of mentally ill persons pursuant to the protection and advocacy for mentally ill individuals act of 1986, 100 Stat. 478; 42 U.S.C. Secs. 10801-10851 (1986), (as

amended). The designated agency shall have the authority to pursue legal, administrative, and other appropriate remedies to protect the rights of mentally ill persons and to investigate allegations of abuse or neglect of mentally ill persons. The designated agency shall be independent of any state agency that provides treatment or services other than advocacy services to mentally ill persons.

(3) The governor shall designate an appropriate state official to serve as liaison between the agency designated to implement the protection and advocacy programs and the state departments and agencies that provide services to persons with developmental disabilities and mentally ill persons. [1991 c 333 § 1.]

71A.10.800 Application of Title 71A RCW to matters pending as of June 9, 1988. Except as provided in RCW 71A.10.901, this title shall govern:

(1) The continued provision of services to persons with developmental disabilities who are receiving services on June 9, 1988.

(2) The disposition of hearings, lawsuits, or appeals that are pending on June 9, 1988.

(3) All other questions or matters covered by this title, from June 9, 1988. [1988 c 176 § 1008.]

71A.10.901 Saving—1988 c 176. The repeals made by sections 1005 through 1007, chapter 176, Laws of 1988, shall not be construed as affecting any existing right, status, or eligibility for services acquired under the provisions of the statutes repealed, nor as affecting the validity of any rule or order promulgated under the prior statutes, nor as affecting the status of any person appointed or employed under the prior statutes. [1988 c 176 § 1004.]

71A.10.902 Continuation of existing law—1988 c 176. Insofar as provisions of this title are substantially the same as provisions of the statutes repealed by sections 1005, 1006, and 1007, chapter 176, Laws of 1988, the provisions of this title shall be construed as restatements and continuations of the prior law, and not as new enactments. [1988 c 176 § 1001.]

Chapter 71A.12 RCW STATE SERVICES

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71A.12.010 State and local program—Coordination—Continuum. It is declared to be the policy of the state to authorize the secretary to develop and coordinate state services for persons with developmental disabilities; to encourage research and staff training for state and local personnel working with persons with developmental disabilities; and to cooperate with communities to encourage the establishment and development of services to persons with developmental disabilities through locally administered and locally controlled programs.

The complexities of developmental disabilities require the services of many state departments as well as those of the community. Services should be planned and provided as a part of a continuum. A pattern of facilities and services should be established, within appropriations designated for this purpose, which is sufficiently complete to meet the needs of each person with a developmental disability regardless of age or degree of handicap, and at each stage of the person's development. [1988 c 176 § 201.]

71A.12.020 Objectives of program. (1) To the extent that state, federal, or other funds designated for services to persons with developmental disabilities are available, the secretary shall provide every eligible person with habilitative services suited to the person's needs, regardless of age or degree of developmental disability.

(2) The secretary shall provide persons who receive services with the opportunity for integration with nonhandicapped and less handicapped persons to the greatest extent possible.

(3) The secretary shall establish minimum standards for habilitative services. Consumers, advocates, service providers, appropriate professionals, and local government agencies shall be involved in the development of the standards. [1988 c 176 § 202.]

71A.12.025 Persons with developmental disabilities who commit crimes—Findings. The legislature finds that among those persons who endanger the safety of others by

committing crimes are a small number of persons with developmental disabilities. While their conduct is not typical of the vast majority of persons with developmental disabilities who are responsible citizens, for their own welfare and for the safety of others the state may need to exercise control over those few dangerous individuals who are developmentally disabled, have been charged with crimes that involve a threat to public safety or security, and have been found either incompetent to stand trial or not guilty by reason of insanity.

The legislature finds, however, that the use of civil commitment procedures under chapter 71.05 RCW to effect state control over dangerous developmentally disabled persons has resulted in their commitment to institutions for the mentally ill. The legislature finds that existing programs in mental institutions may be inappropriate for persons who are developmentally disabled because the services provided in mental institutions are oriented to persons with mental illness, a condition not necessarily associated with developmental disabilities.

Therefore, the legislature believes that, where appropriate, and subject to available funds, persons with developmental disabilities who have been charged with crimes that involve a threat to public safety or security and have been found incompetent to stand trial or not guilty by reason of insanity should receive state services addressing their needs, that such services must be provided in conformance with an individual habilitation plan, and that their initial treatment should be separate and discrete from treatment for persons involved in any other treatment or habilitation program in a manner consistent with the needs of public safety. [1998 c 297 § 5; 1989 c 420 § 2. Formerly RCW 71.05.035.]

Effective dates—Severability—Intent—1998 c 297: See notes following RCW 71.05.010.

71A.12.030 General authority of secretary—Rule adoption. The secretary is authorized to provide, or arrange with others to provide, all services and facilities that are necessary or appropriate to accomplish the purposes of this title, and to take all actions that are necessary or appropriate to accomplish the purposes of this title. The secretary shall adopt rules under the administrative procedure act, chapter 34.05 RCW, as are appropriate to carry out this title. [1988 c 176 § 203.]

71A.12.040 Authorized services. Services that the secretary may provide or arrange with others to provide under this title include, but are not limited to:

- (1) Architectural services;
- (2) Case management services;
- (3) Early childhood intervention;
- (4) Employment services;
- (5) Family counseling;
- (6) Family support;
- (7) Information and referral;
- (8) Health services and equipment;
- (9) Legal services;
- (10) Residential services and support;
- (11) Respite care;
- (12) Therapy services and equipment;
- (13) Transportation services; and
- (14) Vocational services. [1988 c 176 § 204.]

71A.12.050 Payments for nonresidential services.

The secretary may make payments for nonresidential services which exceed the cost of caring for an average individual at home, and which are reasonably necessary for the care, treatment, maintenance, support, and training of persons with developmental disabilities, upon application pursuant to RCW 71A.18.050. The secretary shall adopt rules determining the extent and type of care and training for which the department will pay all or a portion of the costs. [1988 c 176 § 205.]

71A.12.060 Payment authorized for residents in community residential programs. The secretary is authorized to pay for all or a portion of the costs of care, support, and training of residents of a residential habilitation center who are placed in community residential programs under this section and RCW 71A.12.070 and 71A.12.080. [1988 c 176 § 206.]

71A.12.070 Payments under RCW 71A.12.060 supplemental to payments from other resources—Direct payments. All payments made by the secretary under RCW 71A.12.060 shall, insofar as reasonably possible, be supplementary to payments to be made for the costs of care, support, and training in a community residential program by the estate of such resident of the residential habilitation center, or from any resource which such resident may have, or become entitled to, from any public, federal, or state agency. Payments by the secretary under this title may, in the secretary's discretion, be paid directly to community residential programs, or to counties having created developmental disability boards under chapter 71A.14 RCW. [1988 c 176 § 207.]

71A.12.080 Rules. (1) The secretary shall adopt rules concerning the eligibility of residents of residential habilitation centers for placement in community residential programs under this title; determination of ability of such persons or their estates to pay all or a portion of the cost of care, support, and training; the manner and method of licensing or certification and inspection and approval of such community residential programs for placement under this title; and procedures for the payment of costs of care, maintenance, and training in community residential programs. The rules shall include standards for care, maintenance, and training to be met by such community residential programs.

(2) The secretary shall coordinate state activities and resources relating to placement in community residential programs to help efficiently expend state and local resources and, to the extent designated funds are available, create an effective community residential program. [1988 c 176 § 208.]

71A.12.090 Eligibility of parent for services. If a person with developmental disabilities is the parent of a child who is about to be placed for adoption or foster care by the secretary, the parent shall be eligible to receive services in order to promote the integrity of the family unit. [1988 c 176 § 209.]

71A.12.100 Other services. Consistent with the general powers of the secretary and whether or not a particular person with a developmental disability is involved, the secretary may:

- (1) Provide information to the public on developmental disabilities and available services;
- (2) Engage in research concerning developmental disabilities and the habilitation of persons with developmental disabilities, and cooperate with others who do such research;
- (3) Provide consultant services to public and private agencies to promote and coordinate services to persons with developmental disabilities;
- (4) Provide training for persons in state or local governmental agencies or with private entities who come in contact with persons with developmental disabilities or who have a role in the care or habilitation of persons with developmental disabilities. [1988 c 176 § 210.]

71A.12.110 Authority to contract for services. (1) The secretary may enter into agreements with any person, corporation, or governmental entity to pay the contracting party to perform services that the secretary is authorized to provide under this title, except for operation of residential habilitation centers under chapter 71A.20 RCW.

- (2) The secretary by contract or by rule may impose standards for services contracted for by the secretary. [1988 c 176 § 211.]

71A.12.120 Authority to participate in federal programs. (1) The governor may take whatever action is necessary to enable the state to participate in the manner set forth in this title in any programs provided by any federal law and to designate state agencies authorized to administer within this state the several federal acts providing federal moneys to assist in providing services and training at the state or local level for persons with developmental disabilities and for persons who work with persons with developmental disabilities.

- (2) Designated state agencies may apply for and accept and disburse federal grants, matching funds, or other funds or gifts or donations from any source available for use by the state or by local government to provide more adequate services for and habilitation of persons with developmental disabilities. [1988 c 176 § 212.]

71A.12.130 Gifts—Acceptance, use, record. The secretary may receive and accept from any person, organization, or estate gifts of money or personal property on behalf of a residential habilitation center, or the residents therein, or on behalf of the entire program for persons with developmental disabilities, or any part of the program, and to use the gifts for the purposes specified by the donor where such use is consistent with law. In the absence of a specified purpose, the secretary shall use such money or personal property for the general benefit of persons with developmental disabilities. The secretary shall keep an accurate record of the amount or kind of gift, the date received, manner expended, and the name and address of the donor. Any increase resulting from such gift may be used for the same purpose as the original gift. [1988 c 176 § 213.]

71A.12.140 Duties of state agencies generally. Each state agency that administers federal or state funds for services to persons with developmental disabilities, or for research or staff training in the field of developmental disabilities, shall:

- (1) Investigate and determine the nature and extent of services within its legal authority that are presently available to persons with developmental disabilities in this state;
- (2) Develop and prepare any state plan or application which may be necessary to establish the eligibility of the state or any community to participate in any program established by the federal government relating to persons with developmental disabilities;
- (3) Cooperate with other state agencies providing services to persons with developmental disabilities to determine the availability of services and facilities within the state, and to coordinate state and local services in order to maximize services to persons with developmental disabilities and their families;
- (4) Review and approve any proposed plans that local governments are required to submit for the expenditure of funds by local governments for services to persons with developmental disabilities; and
- (5) Provide consultant and staff training for state and local personnel working in the field of developmental disability. [1988 c 176 § 214.]

71A.12.150 Contracts with United States and other states for developmental disability services. The secretary shall have the authority, in the name of the state, to enter into contracts with any duly authorized representative of the United States of America, or its territories, or other states for the provision of services under this title at the expense of the United States, its territories, or other states. The contracts may provide for the separate or joint maintenance, care, treatment, training, or education of persons. The contracts shall provide that all payments due to the state of Washington from the United States, its territories, or other states for services rendered under the contracts shall be paid to the department and transmitted to the state treasurer for deposit in the general fund. [1988 c 176 § 215.]

71A.12.161 Individual and family services program—Rules. (1) The individual and family services program for individuals eligible to receive services under this title is established. This program replaces family support opportunities, traditional family support, and the flexible family support pilot program. The department shall transfer funding associated with these existing family support programs to the individual and family services program and shall operate the program within available funding. The services provided under the individual and family services program shall be funded by state funding without benefit of federal match.

- (2) The department shall adopt rules to implement this section. The rules shall provide:
 - (a) That eligibility to receive services in the individual and family services program be determined solely by an assessment of individual need;
 - (b) For service priority levels to be developed that specify a maximum amount of dollars for each person per level per year;

(c) That the dollar caps for each service priority level be adjusted by the vendor rate increases authorized by the legislature; and

(d) That the following services be available under the program:

- (i) Respite care;
- (ii) Therapies;
- (iii) Architectural and vehicular modifications;
- (iv) Equipment and supplies;
- (v) Specialized nutrition and clothing;
- (vi) Excess medical costs not covered by another source;
- (vii) Copays for medical and therapeutic services;
- (viii) Transportation;
- (ix) Training;
- (x) Counseling;
- (xi) Behavior management;
- (xii) Parent/sibling education;
- (xiii) Recreational opportunities; and
- (xiv) Community services grants.

(3) In addition to services provided for the service priority levels under subsections (1) and (2) of this section, the department shall provide for:

(a) One-time exceptional needs and emergency needs for individuals and families not receiving individual and family services annual grants to assist individuals and families who experience a short-term crisis; and

(b) Respite services based on the department's assessment for:

(i) A parent who provides personal care in the home to his or her adult son or daughter with developmental disabilities; or

(ii) A family member who replaces the parent as the primary caregiver, resides with, and provides personal care in the home for the adult with developmental disabilities.

(4) If a person has more complex needs, a family is experiencing a more prolonged crisis, or it is determined a person needs additional services, the department shall assess the individual to determine if placement in a waiver program would be appropriate. [2009 c 312 § 1; 2007 c 283 § 2.]

Findings—Intent—2007 c 283: "(1) The legislature finds that:

(a) A developmental disability is a natural part of human life, and the presence of a developmental disability in the life of a person does not diminish the person's rights or opportunity to participate fully in the life of the local community;

(b) Investing in family members who have children and adults living in the family home preserves a valuable natural support system for the individual with a developmental disability and is also cost-effective for the state of Washington;

(c) Providing support services to families can help maintain the well-being of the family and stabilize the family unit.

(2) It is the intent of the legislature:

(a) To partner with families as care providers for children with developmental disabilities and adults who choose to live in the family home;

(b) That individual and family services be centered on the needs of the person with a developmental disability and the family;

(c) That, to the maximum extent possible, individuals and families must be given choice of services and exercise control over the resources available to them." [2007 c 283 § 1.]

Additional notes found at www.leg.wa.gov

71A.12.200 Community protection program—Legislative approval. The department of social and health services is providing a structured, therapeutic environment for persons who are eligible for placement in the community pro-

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tection program in order for them to live safely and successfully in the community while minimizing the risk to public safety.

The legislature approves of steps already taken by the department to create a community protection program within the division of developmental disabilities. [2006 c 303 § 1.]

71A.12.210 Community protection program—Application. RCW 71A.12.220 through 71A.12.280 apply to a person:

(1)(a) Who has been charged with or convicted of a crime and meets the following criteria:

(i) Has been convicted of one of the following:

(A) A crime of sexual violence as defined in chapter 9A.44 or 71.09 RCW including, but not limited to, rape, rape of a child, and child molestation;

(B) Sexual acts directed toward strangers, individuals with whom a relationship has been established or promoted for the primary purpose of victimization, or persons of casual acquaintance with whom no substantial personal relationship exists; or

(C) One or more violent offenses, as defined by RCW 9.94A.030; and

(ii) Constitutes a current risk to others as determined by a qualified professional. Charges or crimes that resulted in acquittal must be excluded; or

(b) Who has not been charged with and/or convicted of a crime, but meets the following criteria:

(i) Has a history of stalking, violent, sexually violent, predatory, and/or opportunistic behavior which demonstrates a likelihood to commit a violent, sexually violent, and/or predatory act; and

(ii) Constitutes a current risk to others as determined by a qualified professional; and

(2) Who has been determined to have a developmental disability as defined by *RCW 71A.10.020(3). [2006 c 303 § 2.]

***Reviser's note:** RCW 71A.10.020 was amended by 2011 1st sp.s. c 30 § 3, changing subsection (3) to subsection (4). RCW 71A.10.020 was subsequently amended by 2014 c 139 § 2, changing subsection (4) to subsection (5).

71A.12.220 Community protection program—Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Assessment" means the written opinion of a qualified professional stating, at a minimum:

(a) Whether a person meets the criteria established in RCW 71A.12.210;

(b) What restrictions are necessary.

(2) "Certified community protection program intensive supported living services" means access to twenty-four-hour supervision, instruction, and support services as identified in the person's plan of care.

(3) "Community protection program" means services specifically designed to support persons who meet the criteria of RCW 71A.12.210.

(4) "Constitutes a risk to others" means a determination of a person's risk and/or dangerousness based upon a thorough assessment by a qualified professional.

(5) "Department" means the department of social and health services.

(6) "Developmental disability" means that condition defined in *RCW 71A.10.020(3).

(7) "Disclosure" means providing copies of professional assessments, incident reports, legal documents, and other information pertaining to community protection issues to ensure the provider has all relevant information. Polygraph and plethysmograph reports are excluded from disclosure.

(8) "Division" means the division of developmental disabilities.

(9) "Managed successfully" means that a person supported by a community protection program does not engage in the behavior identified in RCW 71A.12.210.

(10) "Opportunistic behavior" means an act committed on impulse, which is not premeditated.

(11) "Predatory" means acts directed toward strangers, individuals with whom a relationship has been established or promoted for the primary purpose of victimization, or casual acquaintances with whom no substantial personal relationship exists. Predatory behavior may be characterized by planning and/or rehearsing the act, stalking, and/or grooming the victim.

(12) "Qualified professional" means a person with at least three years' prior experience working with individuals with developmental disabilities, and: (a) If the person being assessed has demonstrated sexually aggressive or sexually violent behavior, that person must be assessed by a qualified professional who is a certified sex offender treatment provider, or affiliate sex offender treatment provider working under the supervision of a certified sex offender treatment provider; or (b) if the person being assessed has demonstrated violent, dangerous, or aggressive behavior, that person must be assessed by a licensed psychologist or psychiatrist who has received specialized training in the treatment of or has at least three years' prior experience treating violent or aggressive behavior.

(13) "Treatment team" means the program participant and the group of people responsible for the development, implementation, and monitoring of the person's individualized supports and services. This group may include, but is not limited to, the case resource manager, therapist, residential provider, employment/day program provider, and the person's legal representative and/or family, provided the person consents to the family member's involvement.

(14) "Violent offense" means any felony defined as a violent offense in RCW 9.94A.030.

(15) "Waiver" means the community-based funding under section 1915 of Title XIX of the federal social security act. [2006 c 303 § 3.]

*Reviser's note: RCW 71A.10.020 was amended by 2011 1st sp.s. c 30 § 3, changing subsection (3) to subsection (4). RCW 71A.10.020 was subsequently amended by 2014 c 139 § 2, changing subsection (4) to subsection (5).

71A.12.230 Community protection program—Risk assessment—Written notification—Written determination. (1) Prior to receiving services through the community protection program, a person must first receive an assessment of risk and/or dangerousness by a qualified professional. The assessment must be consistent with the guidelines for risk

assessments and psychosexual evaluations developed by the department. The person requesting services and the person's legal representative have the right to choose the qualified professional who will perform the assessment from a list of state contracted qualified professionals. The assessment must contain, at a minimum, a determination by the qualified professional whether the person can be managed successfully in the community with reasonably available safeguards and that lesser restrictive residential placement alternatives have been considered and would not be reasonable for the person seeking services. The department may request an additional evaluation by a qualified professional evaluator who is contracted with the state.

(2) Any person being considered for placement in the community protection program and his or her legal representative must be informed in writing of the following: (a) Limitations regarding the services that will be available due to the person's community protection issues; (b) disclosure requirements as a condition of receiving services other than case management; (c) the requirement to engage in therapeutic treatment may be a condition of receiving certain services; (d) anticipated restrictions that may be provided including, but not limited to intensive supervision, limited access to television viewing, reading material, videos; (e) the right to accept or decline services; (f) the anticipated consequences of declining services such as the loss of existing services and removal from waiver services; (g) the right to an administrative fair hearing in accordance with department and division policy; (h) the requirement to sign a preplacement agreement as a condition of receiving community protection intensive supported living services; (i) the right to retain current services during the pendency of any challenge to the department's decision; (j) the right to refuse to participate in the program.

(3)(a) If the department determines that a person is appropriate for placement in the community protection program, the individual and his or her legal representative shall receive in writing a determination by the department that the person meets the criteria for placement within the community protection program.

(b) If the department determines that a person cannot be managed successfully in the community protection program with reasonably available safeguards, the department must notify the person and his or her legal representative in writing. [2006 c 303 § 4.]

71A.12.240 Community protection program—Appeals—Rules—Notice. (1) Individuals receiving services through the department's community protection waiver retain all appeal rights provided for in RCW 71A.10.050. In addition, such individuals have a right to an administrative hearing pursuant to chapter 34.05 RCW to appeal the following decisions by the department:

(a) Termination of community protection waiver eligibility;

(b) Assignment of the applicant to the community protection waiver;

(c) Denial of a request for less restrictive community residential placement.

(2) Final administrative decisions may be appealed pursuant to the provisions of RCW 34.05.510.

(3) The secretary shall adopt rules concerning the procedure applicable to requests for hearings under this section and governing the conduct thereof.

(4) When the department takes any action described in subsection (1) of this section it shall give notice as provided by RCW 71A.10.060. The notice must include a statement advising the person enrolled on the community protection waiver of the right to an adjudicative proceeding and the time limits for filing an application for an adjudicative proceeding. Notice must also include a statement advising the recipient of the right to file a petition for judicial review of a final administrative decision as provided in chapter 34.05 RCW.

(5) Nothing in this section creates an entitlement to placement on the community protection waiver nor does it create a right to an administrative hearing on department decisions denying placement on the community protection waiver. [2006 c 303 § 5.]

71A.12.250 Community protection program—Services—Reviews—Rules. (1) Community protection program participants shall have appropriate opportunities to receive services in the least restrictive manner and in the least restrictive environments possible.

(2) There must be a review by the treatment team every ninety days to assess each participant's progress, evaluate use of less restrictive measures, and make changes in the participant's program as necessary. The team must review all restrictions and recommend reductions if appropriate. The therapist must write a report annually evaluating the participant's risk of offense and/or risk of behaviors that are dangerous to self or others. The department shall have rules in place describing this process. If a treatment team member has reason to be concerned that circumstances have changed significantly, the team member may request that a complete reassessment be conducted at any time. [2006 c 303 § 6.]

71A.12.260 Community protection program—Less restrictive residential placement. A participant who demonstrates success in complying with reduced restrictions and remains free of offenses that may indicate a relapse for at least twelve months, may be considered for placement in a less restrictive community residential setting.

The process to move a participant to a less restrictive residential placement shall include, at a minimum:

(1) Written verification of the person's treatment progress, compliance with reduced restrictions, an assessment of low risk of reoffense, and a recommendation as to suitable placement by the treatment team;

(2) Development of a gradual phase-out plan by the treatment team, projected over a reasonable period of time and includes specific criteria for evaluating reductions in restrictions, especially supervision;

(3) The absence of any incidents that may indicate relapse for a minimum of twelve months;

(4) A written plan that details what supports and services, including the level of supervision the person will receive from the division upon exiting the community protection program;

(5) An assessment consistent with the guidelines for risk assessments and psychosexual evaluations developed by the

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division, conducted by a qualified professional. At a minimum, the assessment shall include:

(a) An evaluation of the participant's risk of reoffense and/or dangerousness; and

(b) An opinion as to whether or not the person can be managed successfully in a less restrictive community residential setting;

(6) Recommendation by the treatment team that the participant is ready to move to a less restrictive community residential placement. [2006 c 303 § 7.]

71A.12.280 Community protection program—Rules, guidelines, and policy manuals. The department shall develop and maintain rules, guidelines, or policy manuals, as appropriate, for implementing and maintaining the community protection program under this chapter. [2006 c 303 § 9.]

71A.12.290 Transition from employment services to community access program. (1) Clients age twenty-one and older who are receiving employment services must be offered the choice to transition to a community access program after nine months of enrollment in an employment program, and the option to transition from a community access program to an employment program at any time. Enrollment in an employment program begins at the time the client is authorized to receive employment.

(2) Prior approval by the department shall not be required to effectuate the client's choice to transition from an employment program to community access services after verifying nine months of participation in employment-related services.

(3) The department shall inform clients and their legal representatives of all available options for employment and day services, including the opportunity to request an exception from enrollment in an employment program. Information provided to the client and the client's legal representative must include the types of activities each service option provides, and the amount, scope, and duration of service for which the client would be eligible under each service option. An individual client may be authorized for only one service option, either employment services or community access services. Clients may not participate in more than one of these services at any given time.

(4) The department shall work with counties and stakeholders to strengthen and expand the existing community access program, including the consideration of options that allow for alternative service settings outside of the client's residence. The program should emphasize support for the clients so that they are able to participate in activities that integrate them into their community and support independent living and skills.

(5) The department shall develop rules to allow for an exception to the requirement that a client participate in an employment program for nine months prior to transitioning to a community access program. [2012 c 49 § 1.]

71A.12.300 Enforcement standards—Certified residential services and support providers—Department authority—Dispute resolution process—Account. (1) The enforcement standards in this section apply to all certified residential services and support providers.

(2) The department is authorized to take one or more of the enforcement actions listed in subsection (3) of this section when the department finds that a provider of residential services and support with whom the department entered into an agreement under this chapter has:

(a) Failed or refused to comply with the health and safety related requirements of this chapter, chapter 74.34 RCW, or the rules adopted under these chapters;

(b) Failed or refused to cooperate with the certification process;

(c) Prevented or interfered with a certification, inspection, or investigation by the department;

(d) Failed to comply with any applicable requirements regarding vulnerable adults under chapter 74.34 RCW; or

(e) Knowingly, or with reason to know, made a false statement of material fact related to certification or contracting with the department, or in any matter under investigation by the department.

(3) The department may:

(a) Refuse to certify the provider;

(b) Decertify or refuse to renew the certification of a provider;

(c) Impose reasonable conditions on a provider's certification status such as correction within a time specified in the statement of deficiency, training, and limits on the type of client the provider may serve;

(d) Suspend department referrals to the provider;

(e) Suspend the provider from accepting clients with specified needs by imposing a limited stop placement; or

(f) Require a provider to implement a plan of correction approved by the department and to cooperate with subsequent monitoring of the provider's progress.

(4) In the event a provider fails to implement the plan or plans of correction or fails to make a correction imposed under subsection (3)(c) of this section or fails to cooperate with subsequent monitoring, the department may impose civil penalties of up to one hundred dollars per day per violation and up to three thousand dollars per violation from the compliance date identified in the approved plan of correction or the statement of deficiencies. If a provider fails to submit a plan of correction for approval by the department, the department may impose civil penalties as described in this subsection starting ten days after the provider received the statement of deficiency.

(5) When determining the appropriate enforcement action or actions under subsection (3) of this section, the department must select actions commensurate with the seriousness of the harm or threat of harm to the persons being served by the provider. Further, the department may take enforcement actions that are more severe for violations that are uncorrected, repeated, pervasive, or which present a serious threat of harm to the health, safety, or welfare of persons served by the provider. By January 1, 2016, the department shall by rule develop criteria for the selection and implementation of enforcement actions authorized in subsection (3) of this section.

(6) If the department orders a stop placement, the provider may not accept any new clients until the stop placement order is terminated. If the department orders a limited stop placement, the provider may not accept clients with specific needs or at a specific site until the limited stop placement

order is terminated. The department shall terminate the stop placement or limited stop placement when:

(a) The violations necessitating the stop placement or limited stop placement have been corrected; and

(b) The provider exhibits the capacity to maintain correction of the violations previously found. However, if upon revisiting the provider, the department finds new violations that the department reasonably believes will result in a new stop placement or new limited stop placement, the previous stop placement or limited stop placement remains in effect until the new stop placement or new limited stop placement is imposed.

(7) After a department finding of a violation for which a stop placement or limited stop placement has been imposed, the department shall make an on-site revisit of the provider within fifteen working days from the date the provider notifies the department of the correction to ensure correction of the violation. For violations that are serious, recurring, or uncorrected following a previous citation and that create actual or threatened harm to one or more clients' well-being, including violations of clients' rights, the department shall make an on-site revisit as soon as appropriate to ensure correction of the violation. Verification of correction of all other violations may be made by either a department on-site revisit or by written or photographic documentation found by the department to be credible. This subsection does not prevent the department from enforcing certification suspensions or revocations. Nothing in this subsection interferes with or diminishes the department's authority and duty to ensure that a provider adequately cares for clients, including making departmental on-site revisits as needed to ensure that the provider protects clients and enforcing compliance with this chapter.

(8) The provisions of chapter 34.05 RCW apply to enforcement actions under this section. The certified provider or its designee has the right to an informal dispute resolution process to dispute any violation found or enforcement remedy imposed by the department during a certification inspection or complaint investigation. The purpose of the informal dispute resolution process is to provide an opportunity for an exchange of information that may lead to the modification, deletion, or removal of a violation, parts of a violation, or an enforcement remedy imposed by the department. Except for the imposition of civil penalties, the effective date of enforcement actions may not be delayed or suspended pending any hearing or informal dispute resolution process.

(9) The enforcement actions and penalties authorized in this section are not exclusive or exhaustive and nothing in this section prohibits the department from taking any other action authorized in statute, rule, or under the terms of a contract with the provider.

(10) A separate residential services and support account is created in the custody of the state treasurer. All receipts from civil penalties imposed under this section must be deposited into the account. Only the director or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. The department shall use the special account only for promoting the quality of life and care of clients receiving care

and services from the certified providers. [2015 c 39 § 2; 2006 c 303 § 8. Formerly RCW 71A.12.270.]

Intent—2015 c 39: "(1) The legislature recognizes that certified residential services and support providers delivering services to individuals who live in their own homes have a distinct role that differs in some respects from the role of providers delivering services in facilities.

(2) The legislature intends for the department of social and health services to undertake enforcement actions in a manner consistent with the individual rights and choices of residential services and support clients and the principles identified in the residential care standards. These standards, codified in regulation, include the following core principles:

- (a) Health and safety;
 - (b) Personal power and choice;
 - (c) Personal value and positive recognition by self and others;
 - (d) A range of experiences which help people participate in the physical and social life of their communities;
 - (e) Good relationships with friends and relatives; and
 - (f) Competence to manage daily activities and pursue personal goals."
- [2015 c 39 § 1.]

71A.12.310 Annual assessment—Case manager duties. At every developmental disabilities administration annual assessment, the case manager is required to meet with the client in an in-person setting. If the client is receiving personal care services or supported living services, the case manager must ask permission to view the client's living quarters and note his or her observations in the service episode record. If the case manager is unable to view the client's living quarters for any reason, the case manager must note this in his or her report along with the reason given for why this is not practicable at the current time. [2016 c 172 § 2.]

Finding—2016 c 172: See note following RCW 43.382.005.

71A.12.320 Risk of abuse and neglect—Process—Home visits. (1) Within funds appropriated for this purpose, the developmental disabilities administration shall increase home visits for clients identified as having the highest risk of abuse and neglect.

(2)(a) The developmental disabilities administration must develop a process to determine which of its clients who receive an annual developmental disabilities assessment are at highest risk of abuse or neglect. The administration may consider factors such as:

(i) Whether the client lives with the client's caregiver and receives no other developmental disabilities administration services, or whether the client is largely or entirely dependent on a sole caregiver for assistance, and the caregiver is largely or entirely dependent on the client for his or her income;

(ii) Whether the client has limited ability to supervise the caregiver, to express himself or herself verbally, has few community contacts, or no independent person outside the home is identified to assist the client;

(iii) Whether the client has experienced a destabilizing event such as hospitalization, arrest, or victimization;

(iv) Whether the client has been the subject of an adult protective services or child protective services referral in the past year; or

(v) Whether the client lives in an environment that jeopardizes personal safety.

(b) The developmental disabilities administration must visit those clients identified as having the highest risk of abuse or neglect at least once every four months, including unannounced visits as needed. This unannounced visit may replace a scheduled visit; however if the case manager is

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unable to meet with the client, a follow-up visit must be scheduled. A client may refuse to allow an unannounced visit to take place, but this fact must be noted.

(3) The developmental disabilities administration may develop rules to implement this section. [2016 c 172 § 3.]

Finding—2016 c 172: See note following RCW 43.382.005.

71A.12.330 Residential services and supports program—Certification fee for complaint investigations—

Intent. The legislature finds that the residential services and supports program administered by the department of social and health services under RCW 71A.12.040 and chapter 388-101 WAC has experienced significant growth and that additional funds are needed to enable the department to aggressively investigate and resolve complaints of abuse, neglect, abandonment, and financial exploitation of the vulnerable populations served by the program. The legislature intends to address current funding levels that limit the department of social and health services' ability to promote vulnerable adult protections in the program. The legislature further intends that the cost of complaint investigation should be supported by an appropriate certification fee paid by the regulated businesses. [2019 c 458 § 1.]

Effective date—2019 c 458: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2019." [2019 c 458 § 6.]

Requirement to cease collection of certification fee for complaint investigations—No federal matching funds—2019 c 458: See note following RCW 71A.12.340.

71A.12.340 Residential services and supports program—Certification fee for complaint investigations—

Requirements. (1) After initial certification, the certified provider must pay an annual certification fee in accordance with procedures adopted by the department. The annual certification fee must be established in the omnibus appropriations act and any amendment or additions made to that act. The certification fee established by the omnibus appropriations act or any amendment or additions to the act may not exceed the department's costs of conducting complaint investigations as described in RCW 71A.12.350. The certification fee must include all of the department's cost of paying providers for the amount of the certification fee attributed to medicare clients.

(2) No fee may be required of government-operated programs or court-appointed receivers. [2019 c 458 § 2.]

Requirement to cease collection of certification fee for complaint investigations—No federal matching funds—2019 c 458: "If the centers for medicare and medicaid services determines that federal funds cannot be appropriated to match state expenditures under this act, the department of social and health services must cease collecting the fee in section 2 of this act, and this act is of no force and effect. If the centers for medicare and medicaid services makes such a determination, the department must notify the office of financial management and the appropriate committees of the legislature. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [2019 c 458 § 5.]

Effective date—2019 c 458: See note following RCW 71A.12.330.

71A.12.350 Residential services and supports program—Certification fee for complaint investigations—

Department duties. (1) The department shall use the funds

made available under RCW 71A.12.340 to conduct complaint investigations in certified residential services and supports programs.

(2) For the purposes of this section, "complaint investigations" include investigations of (a) complaints about provider practice, and (b) allegations that clients receiving services from the residential services and supports program have been abused, neglected, abandoned, or financially exploited, as those terms are defined in chapter 74.34 RCW. [2019 c 458 § 3.]

Effective date—2019 c 458: See note following RCW 71A.12.330.

Requirement to cease collection of certification fee for complaint investigations—No federal matching funds—2019 c 458: See note following RCW 71A.12.340.

71A.12.360 Duty to track, monitor, and make available certain deidentified information about clients taken or admitted to a hospital—Notification by provider required. (1) Subject to the availability of amounts appropriated for this specific purpose, the developmental disabilities administration of the department of social and health services shall track and monitor the following items and make the deidentified information available to the office of the developmental disabilities ombuds created in RCW 43.382.005, the legislature, the Washington state hospital association, and the public upon request:

(a) Information about clients receiving services from a provider who are taken or admitted to a hospital. This includes:

(i) The number of clients who are taken or admitted to a hospital for services without a medical need;

(ii) The number of clients who are taken or admitted to a hospital with a medical need, but are unable to discharge once the medical need is met;

(iii) Each client's length of hospital stay for nonmedical purposes;

(iv) The reason each client was unable to be discharged from a hospital once the client's medical need was met;

(v) The location, including the type of provider, where each client was before being taken or admitted to a hospital; and

(vi) The location where each client is discharged.

(b) Information about clients who are taken or admitted to a hospital once the client's provider terminates services. This includes:

(i) The number of clients who are taken or admitted to a hospital for services without a medical need;

(ii) The number of clients who are taken or admitted to a hospital with a medical need, but are unable to discharge once the medical need is met;

(iii) Each client's length of hospital stay for nonmedical purposes;

(iv) The reason each client was unable to be discharged from a hospital once the client's medical need was met;

(v) For each client, the reason the provider terminated services;

(vi) The location, including the type of provider, where each client was before being taken or admitted to a hospital; and

(vii) The location where each client is discharged.

(2) A provider must notify the department when a client is taken or admitted to a hospital for services without a medical need and when a client is taken or admitted to a hospital with a medical need but is unable to discharge back to the provider, so that the department may track and collect data as required under subsection (1) of this section.

(3) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Hospital" means a facility licensed under chapter 70.41 or 71.12 RCW.

(b) "Provider" means a certified residential services and support program that contracts with the developmental disabilities administration of the department of social and health services to provide services to administration clients. "Provider" also includes the state-operated living alternatives program operated by the administration. [2019 c 324 § 13.]

Findings—Intent—2019 c 324: See note following RCW 71.24.648.

Mental health drop-in center services pilot program—2019 c 324: See note following RCW 71.24.649.

Report—2019 c 324: See note following RCW 70.38.111.

Recommendations—Residential intensive behavioral health and developmental disability services—2019 c 324: See note following RCW 74.39A.030.

Chapter 71A.14 RCW LOCAL SERVICES

Sections

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- 71A.14.020 County developmental disability boards—Composition—Expenses.
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- 71A.14.110 Contracts by boundary counties or cities in boundary counties.
- 71A.14.120 Parent to parent program—Goals.
- 71A.14.130 Parent to parent program—Activities.
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71A.14.010 Coordinated and comprehensive state and local program. The legislative policy to provide a coordinated and comprehensive state and local program of services for persons with developmental disability is expressed in RCW 71A.12.010. [1988 c 176 § 301.]

71A.14.020 County developmental disability boards—Composition—Expenses. (1) The county governing authority of any county may appoint a developmental disability board to plan services for persons with developmental disabilities, to provide directly or indirectly a continuum of care and services to persons with developmental disabilities within the county or counties served by the community board. The governing authorities of more than one county by joint action may appoint a single developmental disability board. Nothing in this section shall prohibit a county or counties from combining the developmental disability board with another county board, such as a mental health board.

(2) Members appointed to the board shall include but not be limited to representatives of public, private, or voluntary agencies, representatives of local governmental units, and citizens knowledgeable about developmental disabilities or interested in services to persons with developmental disabilities in the community.

(3) The board shall consist of not less than nine nor more than fifteen members.

(4) Members shall be appointed for terms of three years and until their successors are appointed and qualified.

(5) The members of the developmental disability board shall not be compensated for the performance of their duties as members of the board, but may be paid subsistence rates and mileage in the amounts prescribed by RCW 42.24.090. [1988 c 176 § 302.]

71A.14.030 County authorities—State fund eligibility—Rules—Application. Pursuant to RCW 71A.14.040 the secretary shall work with the county governing authorities and developmental disability boards who apply for state funds to coordinate and provide local services for persons with developmental disabilities and their families. The secretary is authorized to promulgate rules establishing the eligibility of each county and the developmental disability board for state funds to be used for the work of the board in coordinating and providing services to persons with developmental disabilities and their families. An application for state funds shall be made by the board with the approval of the county governing authority, or by the county governing authority on behalf of the board. [1988 c 176 § 303.]

71A.14.040 Applications for state funds—Review—Approval—Rules. The secretary shall review the applications from the county governing authority made under RCW 71A.14.030. The secretary may approve an application if it meets the requirements of this chapter and the rules promulgated by the secretary. The secretary shall promulgate rules to assist in determining the amount of the grant. In promulgating the rules, the secretary shall consider the population of the area served, the needs of the area, and the ability of the community to provide funds for the developmental disability program provided in this title. [1988 c 176 § 304.]

71A.14.050 Services to community may be required. The department may require by rule that in order to be eligible for state funds, the county and the developmental disability board shall provide the following indirect services to the community:

(1) Serve as an informational and referral agency within the community for persons with developmental disabilities and their families;

(2) Coordinate all local services for persons with developmental disabilities and their families to insure the maximum utilization of all available services;

(3) Prepare comprehensive plans for present and future development of services and for reasonable progress toward the coordination of all local services to persons with developmental disabilities. [1988 c 176 § 305.]

71A.14.060 Local authority to provide services. The secretary by rule may authorize the county and the develop-

mental disability board to provide any service for persons with developmental disabilities that the department is authorized to provide, except for operating residential habilitation centers under chapter 71A.20 RCW. [1988 c 176 § 306.]

71A.14.070 Confidentiality of information—Oath. In order for the developmental disability board to plan, coordinate, and provide required services for persons with developmental disabilities, the county governing authority and the board shall be eligible to obtain such confidential information from public or private schools and the department as is necessary to accomplish the purposes of this chapter. Such information shall be kept in accordance with state law and rules promulgated by the secretary under chapter 34.05 RCW to permit the use of the information to coordinate and plan services. All persons permitted to have access to or to use such information shall sign an oath of confidentiality, substantially as follows:

"As a condition of obtaining information from (fill in facility, agency, or person) I, , agree not to divulge, publish, or otherwise make known to unauthorized persons or the public any information obtained in the course of using such confidential information, where release of such information may possibly make the person who received such services identifiable. I recognize that unauthorized release of confidential information may subject me to civil liability under state law."

[1988 c 176 § 307.]

71A.14.080 Local authority to receive and spend funds. The county governing authority and the developmental disability board created under RCW 71A.14.020 are authorized to receive and spend funds received from the state under this chapter, or any federal funds received through any state agency, or any gifts or donations received by it for the benefit of persons with developmental disabilities. [1988 c 176 § 308.]

71A.14.090 Local authority to participate in federal programs. RCW 71A.12.120 authorizes local governments to participate in federal programs for persons with developmental disabilities. [1988 c 176 § 309.]

71A.14.100 Funds from tax levy under RCW 71.20.110. Counties are authorized by RCW 71.20.110 to fund county activities under this chapter. Expenditures of county funds under this chapter shall be subject to the provisions of chapter 36.40 RCW and other statutes relating to expenditures by counties. [1988 c 176 § 310.]

71A.14.110 Contracts by boundary counties or cities in boundary counties. Any county or city within a county either of which is situated on the state boundaries is authorized to contract for developmental disability services with a county situated in either the states of Oregon or Idaho, which county is located on boundaries with the state of Washington. [1988 c 176 § 311.]

71A.14.120 Parent to parent program—Goals. The goals of the parent to parent program are to:

(1) Provide early outreach, support, and education to parents who have a child with special health care needs;

(2) Match a trained volunteer support parent with a new parent who has a child with similar needs to the child of the support parent; and

(3) Provide parents with tools and resources to be successful as they learn to understand the support and advocacy needs of their children. [2016 c 92 § 2.]

Goal—2016 c 92: "For over thirty years, parent to parent programs for individuals with either developmental disabilities, or special health care needs, or both, have been providing emotional and informational support by matching parents seeking support with an experienced and trained support parent.

The parent to parent program currently exists in thirty-one counties: Adams, Asotin, Benton, Chelan, Clallam, Clark, Columbia, Cowlitz, Douglas, Franklin, Garfield, Grant, Grays Harbor, Island, Jefferson, King, Kitsap, Kittitas, Lewis, Lincoln, Mason, Pacific, Pierce, Skagit, Snohomish, Spokane, Thurston, Walla Walla, Whatcom, Whitman, and Yakima. It is the legislature's goal to continue, support, and enhance the programs in these counties and expand these programs statewide by 2021." [2016 c 92 § 1.]

71A.14.130 Parent to parent program—Activities.

Subject to the availability of funds appropriated for this specific purpose, activities of the parent to parent program may include:

(1) Outreach and support to newly identified parents of children with special health care needs;

(2) Trainings that educate parents in ways to support their child and navigate the complex health, educational, and social systems;

(3) Ongoing peer support from a trained volunteer support parent; and

(4) Regular communication with other local programs to ensure consistent practices. [2016 c 92 § 3.]

Goal—2016 c 92: See note following RCW 71A.14.120.

71A.14.140 Parent to parent program—Funding—Administration—Training. (1) Subject to the availability of funds appropriated for this specific purpose, the parent to parent program must be funded through the department and centrally administered through a pass-through to a Washington state lead organization that has extensive experience supporting and training support parents.

(2) Through the contract with the lead organization, each local program must be locally administered by an organization that shall serve as the host organization.

(3) Parents shall serve as advisors to the host organizations.

(4) A parent or grandparent of a child with developmental disabilities or special health care needs shall provide program coordination and local program information.

(5) The lead organization shall provide ongoing training to the host organizations and statewide program oversight and maintain statewide program information.

(6) For the purpose of chapter 92, Laws of 2016, "special health care needs" means disabilities, chronic illnesses or conditions, health-related educational or behavioral problems, or the risk of developing such disabilities, conditions, illnesses[,], or problems. [2016 c 92 § 4.]

Goal—2016 c 92: See note following RCW 71A.14.120.

Chapter 71A.16 RCW ELIGIBILITY FOR SERVICES

Sections

- 71A.16.010 Referral for services—Admittance to residential habilitation centers—Expiration of subsections.
71A.16.020 Eligibility for services—Rules.
71A.16.030 Outreach program—Determination of eligibility for services—Application.
71A.16.040 Determination of eligibility—Notice—Rules for redetermination.
71A.16.050 Determination of eligibility—Assessment—Determination of appropriate services—Availability of services.

71A.16.010 Referral for services—Admittance to residential habilitation centers—Expiration of subsections. (1) It is the intention of the legislature in this chapter to establish a single point of referral for persons with developmental disabilities and their families so that they may have a place of entry and continuing contact for services authorized under this title to persons with developmental disabilities. Eligible persons with developmental disabilities, whether they live in the community or residential habilitation centers, should have the opportunity to choose where they live.

(2) Until June 30, 2003, and subject to subsection (3) of this section, if there is a vacancy in a residential habilitation center, the department shall offer admittance to the center to any eligible adult, or eligible adolescent on an exceptional case-by-case basis, with developmental disabilities if his or her assessed needs require the funded level of resources that are provided by the center.

(3) The department shall not offer a person admittance to a residential habilitation center under subsection (2) of this section unless the department also offers the person appropriate community support services listed in RCW 71A.12.040.

(4) Community support services offered under subsection (3) of this section may only be offered using funds specifically designated for this purpose in the state operating budget. When these funds are exhausted, the department may not offer admittance to a residential habilitation center, or community support services under this section.

(5) Nothing in this section shall be construed to create an entitlement to state services for persons with developmental disabilities.

(6) Subsections (2) through (6) of this section expire June 30, 2003. [1998 c 216 § 3; 1988 c 176 § 401.]

Additional notes found at www.leg.wa.gov

71A.16.020 Eligibility for services—Rules. (1) A person is eligible for services under this title if the secretary finds that the person has a developmental disability as defined in *RCW 71A.10.020(2).

(2) The secretary may adopt rules further defining and implementing the criteria in the definition of "developmental disability" under *RCW 71A.10.020(2). [1988 c 176 § 402.]

***Reviser's note:** RCW 71A.10.020 was amended by 1998 c 216 § 2, changing subsection (2) to subsection (3). RCW 71A.10.020 was subsequently amended by 2011 1st sp.s. c 30 § 3, changing subsection (3) to subsection (4). RCW 71A.10.020 was subsequently amended by 2014 c 139 § 2, changing subsection (4) to subsection (5).

71A.16.030 Outreach program—Determination of eligibility for services—Application. (1) The department

will develop an outreach program to ensure that any eligible person with developmental disabilities services in homes, the community, and residential habilitation centers will be made aware of these services. This subsection (1) expires June 30, 2003.

(2) The secretary shall establish a single procedure for persons to apply for a determination of eligibility for services provided to persons with developmental disabilities.

(3) Until June 30, 2003, the procedure set out under subsection (1) of this section must require that all applicants and all persons with developmental disabilities currently receiving services from the division of developmental disabilities within the department be given notice of the existence and availability of residential habilitation center and community support services. For genuine choice to exist, people must know what the options are. Available options must be clearly explained, with services customized to fit the unique needs and circumstances of developmentally disabled clients and their families. Choice of providers and design of services and supports will be determined by the individual in conjunction with the department. When the person cannot make these choices, the person's legal guardian may make them, consistent with *chapter 11.88 or 11.92 RCW. This subsection expires June 30, 2003.

(4) An application may be submitted by a person with a developmental disability, by the legal representative of a person with a developmental disability, or by any other person who is authorized by rule of the secretary to submit an application. [1998 c 216 § 4; 1988 c 176 § 403.]

***Reviser's note:** Chapters 11.88 and 11.92 RCW were repealed in their entirety by 2019 c 437 § 801, effective January 1, 2021.

Additional notes found at www.leg.wa.gov

71A.16.040 Determination of eligibility—Notice—Rules for redetermination. (1) On receipt of an application for services submitted under RCW 71A.16.030, the secretary in a timely manner shall make a written determination as to whether the applicant is eligible for services provided under this title for persons with developmental disabilities.

(2) The secretary shall give notice of the secretary's determination on eligibility to the person who submitted the application and to the applicant, if the applicant is a person other than the person who submitted the application for services. The notice shall also include a statement advising the recipient of the right to an adjudicative proceeding under RCW 71A.10.050 and the right to judicial review of the secretary's final decision.

(3) The secretary may establish rules for redetermination of eligibility for services under this title. [1989 c 175 § 141; 1988 c 176 § 404.]

Additional notes found at www.leg.wa.gov

71A.16.050 Determination of eligibility—Assessment—Determination of appropriate services—Availability of services. The determination made under this chapter is only as to whether a person is eligible for services. After the secretary has determined under this chapter that a person is eligible for services, the individual may request an assessment for eligibility for medicaid programs and specific services administered by the developmental disabilities administration. The secretary shall make a determination as to what

services are appropriate for the person. The secretary shall prioritize services to medicaid eligible clients. Services may be made available to nonmedicaid eligible clients based on available funding. Services available through the state medicaid plan must be provided to those individuals who meet the eligibility criteria. The department shall establish and maintain a service request list database for individuals who are found to be eligible and have an assessed and unmet need for programs and services offered under a home and community-based services waiver, but the provision of a specific service would exceed the biennially budgeted capacity. [2014 c 139 § 3; 1988 c 176 § 405.]

Finding—Intent—2014 c 139: "In conjunction with recent findings from the Washington state auditor's office, the legislature finds that there are thousands of state citizens who have been determined eligible for services through the department of social and health services' developmental disability administration. For those who have asked for help but are waiting for services, families may experience financial or emotional hardships. The legislature intends to clarify and make transparent the process for accessing publicly funded services for individuals with developmental disabilities and their families. The legislature intends to significantly reduce the number of eligible individuals who are waiting for services by funding additional slots and by implementing new programs that better utilize federal funding partnerships." [2014 c 139 § 1.]

Program development—Implementation—2014 c 139: "The department of social and health services shall develop and implement a medicaid program to replace the individual and family services program for medicaid-eligible clients no later than May 1, 2015. The new medicaid program must offer services that closely resemble the services offered in fiscal year 2014 through the individual and family services program. To the extent possible, the department shall expand the client caseload on the medicaid program replacing the individual and family services program. The department is authorized in fiscal year 2015 to use general fund—state dollars previously provided for the individual and family services program to cover the cost of increasing the number of clients served in the new medicaid program." [2014 c 139 § 4.]

Program funding—2014 c 139: "By June 30, 2017, if additional federal funds through the community first choice option are attained, then the department of social and health services shall increase the number served on the medicaid program replacing the individual and family services program by at least four thousand, and increase by at least one thousand clients receiving services on the home and community-based services basic plus waiver. For both of these programs, the department of social and health services shall expand [expand] the client caseload beginning June 30, 2015." [2014 c 139 § 5.]

Chapter 71A.18 RCW SERVICE DELIVERY

Sections

- 71A.18.010 Individual service plans.
- 71A.18.020 Services provided if funds available.
- 71A.18.030 Rejection of service.
- 71A.18.040 Alternative service—Application—Determination—Reauthorization—Notice.
- 71A.18.050 Discontinuance of a service.

71A.18.010 Individual service plans. The secretary may produce and maintain an individual service plan for each eligible person. An individual service plan is a plan that identifies the needs of a person for services and determines what services will be in the best interests of the person and will meet the person's needs. [1988 c 176 § 501.]

71A.18.020 Services provided if funds available. The secretary may provide a service to a person eligible under this title if funds are available. If there is an individual service

plan, the secretary shall consider the need for services as provided in that plan. [1988 c 176 § 601.]

71A.18.030 Rejection of service. An eligible person or the person's legal representative may reject an authorized service. Rejection of an authorized service shall not affect the person's eligibility for services and shall not eliminate the person from consideration for other services or for the same service at a different time or under different circumstances. [1988 c 176 § 602.]

71A.18.040 Alternative service—Application—Determination—Reauthorization—Notice. (1) A person who is receiving a service under this title or the person's legal representative may request the secretary to authorize a service that is available under this title in place of a service that the person is presently receiving.

(2) The secretary upon receiving a request for change of service shall consult in the manner provided in RCW 71A.10.070 and within ninety days shall determine whether the following criteria are met:

(a) The alternative plan proposes a less dependent program than the person is participating in under current service;

(b) The alternative service is appropriate under the goals and objectives of the person's individual service plan;

(c) The alternative service is not in violation of applicable state and federal law; and

(d) The service can reasonably be made available.

(3) If the requested alternative service meets all of the criteria of subsection (2) of this section, the service shall be authorized as soon as reasonable, but not later than one hundred twenty days after completion of the determination process, unless the secretary determines that:

(a) The alternative plan is more costly than the current plan;

(b) Current appropriations are not sufficient to implement the alternative service without reducing services to existing clients; or

(c) Providing alternative service would take precedence over other priorities for delivery of service.

(4) The secretary shall give notice as provided in RCW 71A.10.060 of the grant of a request for a change of service. The secretary shall give notice as provided in RCW 71A.10.060 of denial of a request for change of service and of the right to an adjudicative proceeding.

(5)(a) When the secretary has changed service from a residential habilitation center to a setting other than a residential habilitation center, the secretary shall reauthorize service at the residential habilitation center if the secretary in reevaluating the needs of the person finds that the person needs service in a residential habilitation center.

(b) A person who has moved from a residential habilitation center that has closed to a community-based setting shall be offered a right to return to a residential habilitation center during the first year following their move to the community.

(6) If the secretary determines that current appropriations are sufficient to deliver additional services without reducing services to persons who are presently receiving services, the secretary is authorized to give persons notice under RCW 71A.10.060 that they may request the services as new

services or as changes of services under this section. [2011 1st sp.s. c 30 § 9; 1989 c 175 § 142; 1988 c 176 § 603.]

Findings—Intent—Conflict with federal requirements—2011 1st sp.s. c 30: See notes following RCW 71A.20.010.

Additional notes found at www.leg.wa.gov

71A.18.050 Discontinuance of a service. (1) When considering the discontinuance of a service that is being provided to a person, the secretary shall consult as required in RCW 71A.10.070.

(2) The discontinuance of a service under this section does not affect the person's eligibility for services. Other services may be provided or the same service may be restored when it is again available or when it is again needed.

(3) Except when the service is discontinued at the request of the person receiving the service or that person's legal representative, the secretary shall give notice as required in RCW 71A.10.060. [1988 c 176 § 604.]

Chapter 71A.20 RCW

RESIDENTIAL HABILITATION CENTERS

Sections

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| 71A.20.010 | Scope of chapter. |
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| 71A.20.130 | Death of resident, payment of funeral expenses—Limitation. |
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| 71A.20.170 | Developmental disabilities community trust account—Creation—Required deposits—Permitted withdrawals. |
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| 71A.20.800 | Chapter to be liberally construed. |
| 71A.20.900 | Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. |

71A.20.010 Scope of chapter. (1) This chapter covers the operation of residential habilitation centers. The selection of persons to be served at the centers is governed by chapters 71A.16 and 71A.18 RCW. The purposes of this chapter are: To provide for those persons who are exceptional in their needs for care, treatment, and education by reason of developmental disabilities, residential care designed to develop their individual capacities to their optimum; to provide for admittance, withdrawal and discharge from state residential habilitation centers upon application; and to insure a comprehensive program for the education, guidance, care, treatment, and rehabilitation of all persons admitted to residential habilitation centers.

(2) Effective no later than July 1, 2012, no person under the age of sixteen years may be admitted to receive services at a residential habilitation center. Effective no later than July 1, 2012, no person under the age of twenty-one years may be admitted to receive services at a residential center, unless

there are no service options available in the community to appropriately meet the needs of the individual. Such admission is limited to the provision of short-term respite or crisis stabilization services. [2011 1st sp.s. c 30 § 4; 1988 c 176 § 701.]

Findings—2011 1st sp.s. c 30: "The legislature finds that:

(1) A developmental disability is a natural part of human life and the presence of a developmental disability does not diminish a person's rights or the opportunity to participate in the life of the local community;

(2) The system of services for people with developmental disabilities should provide a balanced range of health, social, and supportive services at home or in other residential settings. The receipt of services should be coordinated so as to minimize administrative cost and service duplication, and eliminate unnecessarily complex system organization;

(3) The public interest would best be served by a broad array of services that would support people with developmental disabilities at home or in the community, whenever practicable, and that promote individual autonomy, dignity, and choice;

(4) In Washington state, people living in residential habilitation centers and their families are satisfied with the services they receive, and deserve to continue receiving services that meet their needs if they choose to receive those services in a community setting;

(5) As other care options for people with developmental disabilities become more available, the relative need for residential habilitation center beds is likely to decline. The legislature recognizes, however, that residential habilitation centers will continue to be a critical part of the state's long-term care options; and that such services should promote individual dignity, autonomy, and a home-like environment; and

(6) In a time of fiscal restraint, the state should consider the needs of all persons with developmental disabilities and spend its limited resources in a manner that serves more people, while not compromising the care people require." [2011 1st sp.s. c 30 § 1.]

Intent—2011 1st sp.s. c 30: "It is the intent of the legislature that:

(1) Community-based residential services supporting people with developmental disabilities should be available in the most integrated setting appropriate to individual needs; and

(2) An extensive transition planning and placement process should be used to ensure that people moving from a residential habilitation center to a community setting have the services and supports needed to meet their assessed health and welfare needs." [2011 1st sp.s. c 30 § 2.]

Conflict with federal requirements—2011 1st sp.s. c 30: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [2011 1st sp.s. c 30 § 14.]

71A.20.020 Residential habilitation centers. (1) Except as provided in subsection (2) of this section, the following residential habilitation centers are permanently established to provide services to persons with developmental disabilities: Lakeland Village, located at Medical Lake, Spokane county; Rainier School, located at Buckley, Pierce county; Yakima Valley School, located at Selah, Yakima county; and Fircrest School, located at Seattle, King county.

(2) The Yakima Valley School, located at Selah, Yakima county, shall cease to operate as a residential habilitation center when the conditions in *RCW 71A.20.180(2)(b) are met. [2011 1st sp.s. c 30 § 5; 1994 c 215 § 1; 1988 c 176 § 702.]

***Reviser's note:** RCW 71A.20.180 was amended by 2017 3rd sp.s. c 19 § 1, changing subsection (2)(b) to subsection (1)(a).

Findings—Intent—Conflict with federal requirements—2011 1st sp.s. c 30: See notes following RCW 71A.20.010.

Additional notes found at www.leg.wa.gov

(2019 Ed.)

71A.20.030 Facilities for Interlake School. (1) The secretary may use surplus physical facilities at eastern state hospital as a residential habilitation center, which shall be known as the "Interlake School."

(2) The secretary may designate and select such buildings and facilities and tracts of land at eastern state hospital that are surplus to the needs of the department for mentally ill persons and that are reasonably necessary and adequate for services for persons with developmental disabilities. The secretary shall also designate those buildings, equipment, and facilities which are to be used jointly and mutually by both eastern state hospital and Interlake School. [1988 c 176 § 703.]

71A.20.040 Use of Harrison Memorial Hospital property. The secretary may under RCW 72.29.010 use the Harrison Memorial Hospital property at Bremerton, Kitsap county, for services to persons with developmental disabilities. [1988 c 176 § 704.]

71A.20.050 Superintendents—Secretary's custody of residents. (1) The secretary shall appoint a superintendent for each residential habilitation center. The superintendent of a residential habilitation center shall have a demonstrated history of knowledge, understanding, and compassion for the needs, treatment, and training of persons with developmental disabilities.

(2) The secretary shall have custody of all residents of the residential habilitation centers and control of the medical, educational, therapeutic, and dietetic treatment of all residents, except that the school district that conducts the program of education provided pursuant to RCW 28A.190.030 through 28A.190.050 shall have control of and joint custody of residents while they are participating in the program. The secretary shall cause surgery to be performed on any resident only upon gaining the consent of a parent, guardian, or limited guardian as authorized, except, if after reasonable effort to locate the parents, guardian, or limited guardian as authorized, and the health of the resident is certified by the attending physician to be jeopardized unless such surgery is performed, the required consent shall not be necessary. [1990 c 33 § 589; 1988 c 176 § 705.]

Purpose—Statutory references—Severability—1990 c 33: See RCW 28A.900.100 through 28A.900.102.

71A.20.060 Work programs for residents. The secretary shall have authority to engage the residents of a residential habilitation center in beneficial work programs, but the secretary shall not engage residents in excessive hours of work or work for disciplinary purposes. [1988 c 176 § 706.]

71A.20.070 Educational programs. (1) An educational program shall be created and maintained for each residential habilitation center pursuant to RCW 28A.190.030 through 28A.190.050. The educational program shall provide a comprehensive program of academic, vocational, recreational, and other educational services best adapted to meet the needs and capabilities of each resident.

(2) The superintendent of public instruction shall assist the secretary in all feasible ways, including financial aid, so that the educational programs maintained within the residen-

tial habilitation centers are comparable to the programs advocated by the superintendent of public instruction for children with similar aptitudes in local school districts.

(3) Within available resources, the secretary shall, upon request from a local school district, provide such clinical, counseling, and evaluating services as may assist the local district lacking such professional resources in determining the needs of its exceptional children. [1990 c 33 § 590; 1988 c 176 § 707.]

Purpose—Statutory references—Severability—1990 c 33: See RCW 28A.900.100 through 28A.900.102.

71A.20.080 Return of resident to community—Notice—Adjudicative proceeding—Judicial review—Effect of appeal. (1) Whenever in the judgment of the secretary, the treatment and training of any resident of a residential habilitation center has progressed to the point that it is deemed advisable to return such resident to the community, the secretary may grant placement on such terms and conditions as the secretary may deem advisable after consultation in the manner provided in RCW 71A.10.070. The secretary shall give written notice of the decision to return a resident to the community as provided in RCW 71A.10.060. The notice must include a statement advising the recipient of the right to an adjudicative proceeding under RCW 71A.10.050 and the time limits for filing an application for an adjudicative proceeding. The notice must also include a statement advising the recipient of the right to judicial review of an adverse adjudicative order as provided in chapter 34.05 RCW.

(2) A placement decision shall not be implemented at any level during any period during which an appeal can be taken or while an appeal is pending and undecided, unless authorized by court order so long as the appeal is being diligently pursued. [2011 1st sp.s. c 30 § 10; 1989 c 175 § 143; 1988 c 176 § 708.]

Findings—Intent—Conflict with federal requirements—2011 1st sp.s. c 30: See notes following RCW 71A.20.010.

Additional notes found at www.leg.wa.gov

71A.20.090 Secretary to determine capacity of residential quarters. The secretary shall determine by the application of proper criteria the maximum number of persons to reside in the residential quarters of each residential habilitation center. The secretary in authorizing service at a residential habilitation center shall not exceed the maximum population for the residential habilitation center unless the secretary makes a written finding of reasons for exceeding the rated capacity. [1988 c 176 § 709.]

71A.20.100 Personal property of resident—Secretary as custodian—Limitations—Judicial proceedings to recover. The secretary shall serve as custodian without compensation of personal property of a resident of a residential habilitation center that is located at the residential habilitation center, including moneys deposited with the secretary for the benefit of the resident. As custodian, the secretary shall have authority to disburse moneys from the resident's fund for the following purposes and subject to the following limitations:

(1) Subject to specific instructions by a donor of money to the secretary for the benefit of a resident, the secretary may disburse any of the funds belonging to a resident for such per-

sonal needs of the resident as the secretary may deem proper and necessary.

(2) The secretary may pay to the department as reimbursement for the costs of care, support, maintenance, treatment, hospitalization, medical care, and habilitation of a resident from the resident's fund when such fund exceeds a sum as established by rule of the department, to the extent of any notice and finding of financial responsibility served upon the secretary after such findings shall have become final. If the resident does not have a guardian, parent, spouse, or other person acting in a representative capacity, upon whom notice and findings of financial responsibility have been served, then the secretary shall not make payments to the department as provided in this subsection, until a guardian has been appointed by the court, and the time for the appeal of findings of financial responsibility as provided in RCW 43.20B.430 shall not commence to run until the appointment of such guardian and the service upon the guardian of notice and findings of financial responsibility.

(3) When services to a person are changed from a residential center to another setting, the secretary shall deliver to the person, or to the parent, guardian, or agency legally responsible for the person, all or such portion of the funds of which the secretary is custodian as defined in this section, or other property belonging to the person, as the secretary may deem necessary to the person's welfare, and the secretary may deliver to the person such additional property or funds belonging to the person as the secretary may from time to time deem proper, so long as the person continues to receive service under this title. When the resident no longer receives any services under this title, the secretary shall deliver to the person, or to the parent, person, or agency legally responsible for the person, all funds or other property belonging to the person remaining in the secretary's possession as custodian.

(4) All funds held by the secretary as custodian may be deposited in a single fund, the receipts and expenditures from the fund to be accurately accounted for by the secretary. All interest accruing from, or as a result of the deposit of such moneys in a single fund shall be credited to the personal accounts of the residents. All expenditures under this section shall be subject to the duty of accounting provided for in this section.

(5) The appointment of a guardian for the estate of a resident shall terminate the secretary's authority as custodian of any funds of the resident which may be subject to the control of the guardianship, upon receipt by the secretary of a certified copy of letters of guardianship. Upon the guardian's request, the secretary shall immediately forward to the guardian any funds subject to the control of the guardianship or other property of the resident remaining in the secretary's possession, together with a full and final accounting of all receipts and expenditures made.

(6) Upon receipt of a written request from the secretary stating that a designated individual is a resident of the residential habilitation center and that such resident has no legally appointed guardian of his or her estate, any person, bank, corporation, or agency having possession of any money, bank accounts, or choses in action owned by such resident, shall, if the amount does not exceed two hundred dollars, deliver the same to the secretary as custodian and mail written notice of the delivery to such resident at the res-

idential habilitation center. The receipt by the secretary shall constitute full and complete acquittance for such payment and the person, bank, corporation, or agency making such payment shall not be liable to the resident or his or her legal representative. All funds so received by the secretary shall be duly deposited by the secretary as custodian in the resident's fund to the personal account of the resident. If any proceeding is brought in any court to recover property so delivered, the attorney general shall defend the lawsuit without cost to the person, bank, corporation, or agency that delivered the property to the secretary, and the state shall indemnify such person, bank, corporation, or agency against any judgment rendered as a result of such proceeding. [1988 c 176 § 710.]

71A.20.110 Clothing for residents—Cost. When clothing for a resident of a residential habilitation center is not otherwise provided, the secretary shall provide a resident with suitable clothing, the actual cost of which shall be a charge against the parents, guardian, or estate of the resident. If such parent or guardian is unable to provide or pay for the clothing, or the estate of the resident is insufficient to provide or pay for the clothing, the clothing shall be provided by the state. [1988 c 176 § 711.]

71A.20.120 Financial responsibility. The subject of financial responsibility for the provision of services to persons in residential habilitation centers is covered by RCW 43.20B.410 through 43.20B.455. [1988 c 176 § 712.]

71A.20.130 Death of resident, payment of funeral expenses—Limitation. Upon the death of a resident of a residential habilitation center, the secretary may supplement such funds as were in the resident's account at the time of the person's death to provide funeral and burial expense for the deceased resident. These expenses shall not exceed funeral and burial expenses allowed under *RCW 74.08.120. [1988 c 176 § 713.]

*Reviser's note: RCW 74.08.120 was repealed by 1997 c 58 § 1002.

71A.20.140 Resident desiring to leave center—Authority to hold resident limited. (1) If a resident of a residential habilitation center desires to leave the center and the secretary believes that departures may be harmful to the resident, the secretary may hold the resident at the residential habilitation center for a period not to exceed forty-eight hours in order to consult with the person's legal representative as provided in RCW 71A.10.070 as to the best interests of the resident.

(2) The secretary shall adopt rules to provide for the application of subsection (1) of this section in a manner that protects the constitutional rights of the resident.

(3) Neither the secretary nor any person taking action under this section shall be civilly or criminally liable for performing duties under this section if such duties were performed in good faith and without gross negligence. [1988 c 176 § 714.]

71A.20.150 Admission to residential habilitation center for observation. Without committing the department to continued provision of service, the secretary may admit a person eligible for services under this chapter to a residential

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habilitation center for a period not to exceed thirty days for observation prior to determination of needed services, where such observation is necessary to determine the extent and necessity of services to be provided. [1988 c 176 § 715.]

71A.20.170 Developmental disabilities community trust account—Creation—Required deposits—Permitted withdrawals. (1) The developmental disabilities community trust account is created in the state treasury. All net proceeds from the use of excess property identified in the 2002 joint legislative audit and review committee capital study or other studies of the division of developmental disabilities residential habilitation centers that would not impact current residential habilitation center operations must be deposited into the account.

(2) Proceeds may come from the lease of the land, conservation easements, sale of timber, or other activities short of sale of the property, except as permitted under *section 7 of this act.

(3) "Excess property" includes that portion of the property at Rainier school previously under the cognizance and control of Washington State University for use as a dairy/forage research facility.

(4) Only investment income from the principal of the proceeds deposited into the trust account may be spent from the account. For purposes of this section, "investment income" includes lease payments, rent payments, or other periodic payments deposited into the trust account. For purposes of this section, "principal" is the actual excess land from which proceeds are assigned to the trust account.

(5) Moneys in the account may be spent only after appropriation. Expenditures from the account shall be used exclusively to provide family support and/or employment/day services to eligible persons with developmental disabilities who can be served by community-based developmental disability services. It is the intent of the legislature that the account should not be used to replace, supplant, or reduce existing appropriations.

(6) The account shall be known as the Dan Thompson memorial developmental disabilities community trust account. [2011 1st sp.s. c 30 § 12; 2008 c 265 § 1; 2005 c 353 § 1.]

*Reviser's note: Section 7 of this act was vetoed by the governor.

Findings—Intent—Conflict with federal requirements—2011 1st sp.s. c 30: See notes following RCW 71A.20.010.

Additional notes found at www.leg.wa.gov

71A.20.180 Closure of Yakima Valley School—Department duties—Continuation of services. (1)(a) The Yakima Valley School shall continue to operate as a residential habilitation center until such time that the census of permanent residents has reached eight persons. Upon such time as the facility closes to full residential care, the facility must thereafter operate crisis stabilization beds and only so many respite service beds as the needs of the department-identified catchment area or as emergency placement needs require, subject to the availability of amounts appropriated for this specific purpose.

(b) As of October 19, 2017, no new long-term admissions are permitted.

(2) The department, within available funds:

(a) Shall establish state-operated living alternatives, within funds specifically provided in the omnibus appropriations act, to provide community residential services to residential habilitation center residents transitioning to the community under chapter 30, Laws of 2011 1st sp. sess. who prefer a state-operated living alternative. The department shall offer residential habilitation center employees opportunities to work in state-operated living alternatives as they are established;

(b) May use existing supported living program capacity in the community for former residential habilitation center residents who prefer and choose a supported living program;

(c) Shall establish up to eight state-staffed crisis stabilization beds and up to eight state-staffed respite beds based upon funding provided in the omnibus appropriations act and the geographic areas with the greatest need for those services;

(d) Shall establish regional or mobile specialty services evenly distributed throughout the state, such as dental care, physical therapy, occupational therapy, and specialized nursing care, which can be made available to former residents of residential habilitation centers and, within available funds, other individuals with developmental disabilities residing in the community; and

(e) Shall continue to provide respite services in residential habilitation centers and continue to develop respite care in the community. [2017 3rd sp.s. c 19 § 1; 2011 1st sp.s. c 30 § 6.]

Findings—Intent—Conflict with federal requirements—2011 1st sp.s. c 30: See notes following RCW 71A.20.010.

71A.20.800 Chapter to be liberally construed. The provisions of this chapter shall be liberally construed to accomplish its purposes. [1988 c 176 § 716.]

71A.20.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 162.]

Chapter 71A.22 RCW TRAINING CENTERS AND HOMES

Sections

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| 71A.22.010 | Contracts for services authorized. |
| 71A.22.020 | Definitions. |
| 71A.22.030 | Payments by secretary under this chapter supplemental—Limitation. |
| 71A.22.040 | Certification of facility as day training center or group training home. |
| 71A.22.050 | Services in day training center or group training home—Application for payment. |

71A.22.060 Facilities to be nonsectarian.

71A.22.010 Contracts for services authorized. The secretary may enter into agreements with any person or with any person, corporation, or association operating a day training center or group training home or a combination day training center and group training home approved by the department, for the payment of all, or a portion, of the cost of the care, treatment, maintenance, support, and training of persons with developmental disabilities. [1988 c 176 § 801.]

71A.22.020 Definitions. As used in this chapter:

(1) "Day training center" means a facility equipped, supervised, managed, and operated at least three days per week by any person, association, or corporation on a non-profit basis for the day-care, treatment, training, and maintenance of persons with developmental disabilities, and approved under this chapter and the standards under rules adopted by the secretary.

(2) "Group training home" means a facility equipped, supervised, managed, and operated on a full-time basis by any person, association, or corporation on a nonprofit basis for the full-time care, treatment, training, and maintenance of persons with developmental disabilities, and approved under this chapter and the standards under the rules adopted by the secretary. [1988 c 176 § 802.]

71A.22.030 Payments by secretary under this chapter supplemental—Limitation. All payments made by the secretary under this chapter, shall be, insofar as possible, supplementary to payments to be made to a day training center or group training home, or a combination of both, by the persons with developmental disabilities resident in the home or center. Payments made by the secretary under this chapter shall not exceed actual costs for the care, treatment, support, maintenance, and training of any person with a developmental disability whether at a day training center or group training home or combination of both. [1988 c 176 § 803.]

71A.22.040 Certification of facility as day training center or group training home. Any person, corporation, or association may apply to the secretary for approval and certification of the applicant's facility as a day training center or a group training home for persons with developmental disabilities, or a combination of both. The secretary may either grant or deny certification or revoke certification previously granted after investigation of the applicant's facilities, to ascertain whether or not such facilities are adequate for the care, treatment, maintenance, training, and support of persons with developmental disabilities, under standards in rules adopted by the secretary. Day training centers and group training homes must meet local health and safety standards as may be required by local health and fire-safety authorities. [1989 c 329 § 2; 1988 c 176 § 804.]

71A.22.050 Services in day training center or group training home—Application for payment. (1) Except as otherwise provided in this section, the provisions of this title govern applications for payment by the state for services in a day training center or group training home approved by the secretary under this chapter.

(2) In determining eligibility and the amount of payment, the secretary shall make special provision for group training homes where parents are actively involved as a member of the administrative board of the group training home and who may provide for some of the services required by a resident therein. The special provisions shall include establishing eligibility requirements for a person placed in such a group training home to have a parent able and willing to attend administrative board meetings and participate insofar as possible in carrying out special activities deemed by the board to contribute to the well being of the residents.

(3) If the secretary determines that a person is eligible for services in a day training center or group training home, the secretary shall determine the extent and type of services to be provided and the amount that the department will pay, based upon the needs of the person and the ability of the parent or the guardian to pay or contribute to the payment of the monthly cost of the services.

(4) The secretary may, upon application of the person who is receiving services or the person's legal representative, after investigation of the ability or inability of such persons to pay, or without application being made, modify the amount of the monthly payments to be paid by the secretary for services at a day training center or group training home or combination of both. [1988 c 176 § 805.]

71A.22.060 Facilities to be nonsectarian. A day training center and a group training home under this chapter shall be a nonsectarian training center and a nonsectarian group training home. [1988 c 176 § 806.]

Chapter 71A.24 RCW

INTENSIVE BEHAVIOR SUPPORT SERVICES

Sections

- 71A.24.005 Intent.
 71A.24.010 Role of department—Eligibility.
 71A.24.020 Intensive behavior support services—Core team.

71A.24.005 Intent. The legislature recognizes that the number of children who have developmental disabilities along with intense behaviors is increasing, and more families are seeking out-of-home placement for their children.

The legislature intends to create services and to develop supports for these children, family members, and others involved in the children's lives to avoid disruption to families and eliminate the need for out-of-home placement.

The legislature directs the department to maintain a federal waiver through which services may be provided to allow children with developmental disabilities and intense behaviors to maintain permanent and stable familial relationships. The legislature intends for these services to be locally based and offered as early as possible to avoid family disruption and out-of-home placement. [2009 c 194 § 1.]

71A.24.010 Role of department—Eligibility. (1) To the extent funding is appropriated for this purpose, intensive behavior support services may be provided by the department, directly or by contract, to children who have developmental disabilities and intense behaviors and to their families.

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(2) The department shall be the lead administrative agency for children's intensive behavior support services and shall:

(a) Collaborate with appropriate parties to develop and implement the intensive in-home support services program within the division of developmental disabilities;

(b) Use best practices and evidence-based practices;

(c) Provide coordination and planning for the implementation and expansion of intensive in-home services;

(d) Contract for the provision of intensive in-home and planned out-of-home services;

(e) Monitor and evaluate services to determine whether the program meets standards identified in the service contracts;

(f) Collect data regarding the number of families served, and costs and outcomes of the program;

(g) Adopt appropriate rules to implement the program;

(h) License out-of-home respite placements on a timely basis; and

(i) Maintain an appropriate staff-to-client ratio.

(3) A child may receive intensive behavior support services when the department has determined that:

(a) The child is under the age of twenty-one;

(b) The child has a developmental disability and has been determined eligible for these services;

(c) The child/family acuity scores are high enough in the assessment conducted by the division of developmental disabilities to indicate the child's behavior puts the child or family at significant risk or is very likely to require an out-of-home placement;

(d) The child meets eligibility for the home and community-based care waiver;

(e) The child resides in his or her family home or is temporarily in an out-of-home placement with a plan to return home;

(f) The family agrees to participate in the program and complete the care and support steps outlined in the completed individual support plan; and

(g) The family is not subject to an unresolved child protective services referral. [2009 c 194 § 2.]

71A.24.020 Intensive behavior support services—Core team. (1) Intensive behavior support services under the program authorized in RCW 71A.24.010 shall be provided through a core team of highly trained individuals, either directly or by contract.

(2) The intensive behavior support services shall be designed to enhance the child's and parent's skills to manage behaviors, increase family and personal self-sufficiency, improve functioning of the family, reduce stress on children and families, and assist the family to locate and use other community services.

(3) The core team shall have the following characteristics and responsibilities:

(a) Expertise in behavior management, therapies, and children's crisis intervention, or the ability to access such specialized expertise;

(b) Ability to coordinate the array of services and supports needed to stabilize the family;

(c) Ability to conduct transition planning as an individual and the individual's family leave the program; and

(d) Ability to authorize and coordinate the services in the family's home and other environments, such as schools and neighborhoods.

(4) The following types of services constitute intensive behavior support services:

- (a) Behavior management and consultation;
- (b) Environmental adaptations;
- (c) Motor vehicle adaptations;
- (d) Therapy equipment and supplies;
- (e) Personal care;
- (f) Specialized diet goods and services;
- (g) In-home respite and planned out-of-home respite;
- (h) Intensive training to intervene effectively with the child for families and other individuals and partners working with the child in all domains, including the school and individualized education plan team; and
- (i) Coordination and planning. [2009 c 194 § 3.]