

**REPORT TO THE LEGISLATURE**

**Special Commitment Center Recommendations Regarding  
Conditional Release Less Restrictive Alternatives**

Engrossed Substitute Senate Bill 5187, Section 207(4)

December 1, 2023

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Washington State  
Department of Social  
& Health Services

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# Table of Contents

<b>Overview</b> .....	<b>4</b>
<b>History of Community LRAs</b> .....	<b>4</b>
<b>Section 207 (4)(a)(i) – Regulatory Framework</b> .....	<b>5</b>
<i>Introduction</i> .....	5
<i>Regulatory Framework for LRAs</i> .....	5
<i>Legal Standing in Court</i> .....	7
<i>Designate SCC Authority in all Conditional Release Planning</i> .....	7
<i>Section 207 (4)(a)(i) – Recommendations</i> .....	8
<b>Section 207 (4)(a)(ii) – Communication and Engagement with Impacted Local Governments</b> .....	<b>9</b>
<i>Introduction</i> .....	9
<i>RCWs related to LRA’s</i> .....	9
<i>SCC policy</i> .....	100
<i>Notification of State Elected Leaders</i> .....	<i>Error! Bookmark not defined.</i> 0
<i>Annual Fair Share Report</i> .....	<i>Error! Bookmark not defined.</i> 0
<i>Communications Manager</i> .....	<i>Error! Bookmark not defined.</i> 1
<i>Section 207 (4)(a)(ii) Recommendations</i> .....	11
<b>Section 207 (4)(a)(iii) – Collaboration and Fiscal Support for Government Entities</b> .....	<b>111</b>
<i>Introduction</i> .....	111
<i>County Navigator (Local Investment)</i> .....	111
<i>Section 207 4(a)(iii) Recommendation</i> .....	122
<b>Section 207 (4)(a)(iv) – Improve Cost-effectiveness</b> .....	<b>12</b>
<i>Introduction</i> .....	12
<i>How the SCC Currently Contracts with LRA Providers</i> .....	122
<i>Benefits and Cost Savings of Contracting</i> .....	133
<i>LRA Monthly Cost Analysis and Comparison</i> .....	133
<i>Section 207 (4)(a)(iv) Recommendations</i> .....	15
<b>State Operated Less Restrictive Alternatives</b> .....	<b>15</b>
<b>References</b> .....	<b>157</b>

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## Overview

The 2023 Washington State Legislature enacted Engrossed Substitute Senate Bill 5187, the 2023-2025 Operating Budget. Section 207(4) of the bill directs the Department of Social and Health Services to:

*“(4)(a)(i) Explore regulatory framework options for conditional release less restrictive alternative placements and make recommendations for a possible future framework. This exploration shall include collaboration with the Department of Corrections regarding their community custody programs;*

*(ii) Review and refine agency policies regarding communication and engagement with impacted local governments related to less restrictive alternatives, including exploring options for public facing communications on current county fair share status and any projected future need;*

*(iii) Identify opportunities for greater collaboration and possible fiscal support for local government entities regarding placements of conditional release less restrictive alternatives; and*

*(iv) Provide recommendations to improve cost-effectiveness of all less restrictive alternative placements.*

*(b) The department shall submit a report to the governor and appropriate fiscal and policy committees of the legislature by December 1, 2023, with a summary of the results and provide any additional recommendations to the legislature that the department identifies. The report shall also include a summary of costs to the department for contracted and uncontracted less restrictive alternatives.”*

## History of Community LRAs

In 1990, Washington became the first state to pass a law authorizing indefinite civil commitment for people who meet the definition of “sexually violent predator” (“The Community Protection Act”). The Community Protection Act established the Special Commitment Center program to protect public safety and to provide care, control, and custody for civilly committed residents.

The *Turay v. Seling* lawsuit in 1994 brought forth a claim that a resident was denied access to adequate mental health treatment. As a part of that lawsuit’s settlement, the SCC was required to offer meaningful opportunities for residents to be released from the Total Confinement Facility on McNeil Island to less restrictive alternatives in the community.

SCC released its first resident to a community Less Restrictive Alternative (LRA) in 2001. Releases to community LRAs remained infrequent until 2017. Since 2017, on average 31 SCC residents were released each year to community LRAs. Several national changes may have contributed to the increase in residents transferred to community LRAs in the past six years. Across the nation, sex offender civil commitment programs have been adopting a more

rehabilitative model and new risk management strategies, which include an increase in focus on treatment and offering residents a pathway to less restrictive alternatives. In addition, advancements related to these changes included an improvement to the nationally used risk assessment tool (Static-99R), which provided programs with more accurate insights into the likelihood of risk to sexually reoffend.

SCC residents are subject to the same registration requirements as other sex offenders in Washington State. Based on data from the Washington State Registered Sex and Kidnapping Offender Address and Residency Verification Grant Program, in 2022, the state of Washington averaged more than 20,000 registered sex offenders at any given time. (Washington Association of Sheriffs and Police Chiefs, 2022). Of those, approximately 7-8% were registered as Level 3. Within that Level 3 population, in 2022, 30 individuals were released from the Special Commitment Center to community LRA's and the average community LRA census was 82.6 (LRAs residing in the community in contracted and non-contracted community housing and at the Secure Community Transition Facilities located in Pierce and King County). More often than not, SCC residents are identified as level 3 sex offenders.

Prior to 2021, all LRA community housing placement plans were developed by residents' defense attorneys. In 2021, Senate Bill 5163 shifted the responsibility of discharge planning and developing placements from the defense attorneys to the SCC. Senate Bill 5163 also requires, in certain circumstances, courts to order SCC to create a clinically appropriate release plan. As of this report, courts are not ordering the SCC to complete release plans every time the statute dictates; therefore, in those cases, defense attorneys are still being relied upon to submit release plans to the court.

## **Section 207 (4)(a)(i) – Regulatory Framework**

### **Introduction**

This section addresses Proviso Section 207(4)(a)(i), the request to explore regulatory frameworks for LRA housing funded by the Department of Social and Health Services (DSHS).

### **Regulatory Framework for LRAs**

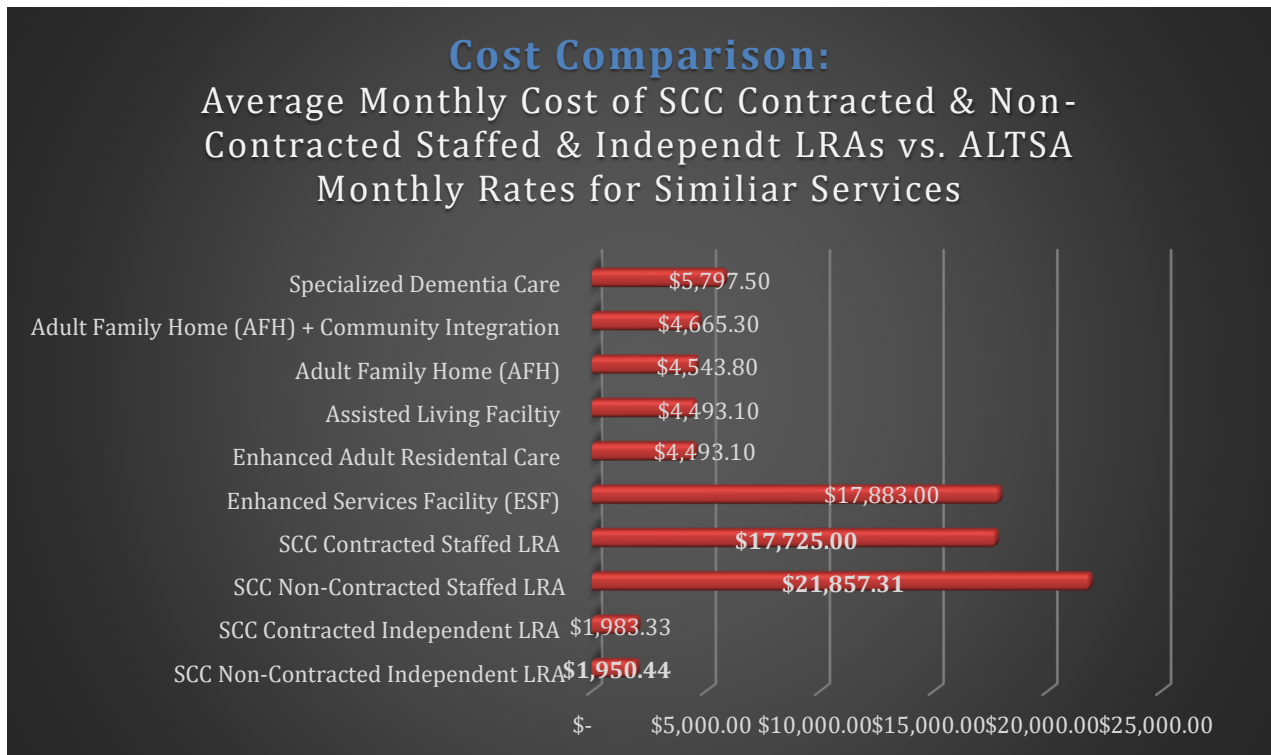
If LRA's are not required to contract with the SCC, we recommend that a regulatory body is established to develop requirements and to provide regulatory oversight to non-contracted LRAs. Currently there are no structured regulatory guidelines applicable to all LRAs that inform how a home is to be secured or monitored. For uncontracted LRA housing providers, DSHS has no authority to regulate or require corrective action if the housing provider is out of compliance with court ordered conditions or RCW 71.09. The only current recourse for non-contracted LRA housing providers is for SCC to ask the court to act or remove the resident from the home. Court is not always an option, and the housing provider would still not be a party to the case, making it hard to hold them accountable through the case. Moreover, removing the resident from the home can be detrimental to a resident's success and punishes the resident when the problems concern

the provider. The ability to regulate is further hindered by the lack of guidelines and regulations in this work.

**Identification of an entity to determine cost of care standards.** It is recommended that an entity is identified to establish cost of care standards based on the current market for contracted and non-contracted LRAs housing. This would place all LRAs that are not state owned and operated into closer alignment with federal programs that provide medical and/or personal care. Standardizing cost of care is an important practice to ensure that both the consumer and the service provider know what the expected delivery of care is and at what cost.

Currently, there is no standardized cost of care among LRA providers. The final decision of cost of care resides solely with the court. Judges have expressed discomfort when asked to rule on cost of care issues because the records often lack sufficient evidence for the court to reach an informed decision. Courts do not have standardized costs of care guidelines to reference in this matter.

Establishment of a standardized fee schedule would help guide courts in determining how much money to order for specific services. Taxpayers would benefit from having a regulatory agency to establish standardized costs of care to help ensure money is spent in a fiscally responsible manner. Moreover, all stakeholders would benefit from the creation of a cost of care model because the cost of care is a highly litigated issue that requires much consideration and resources from all parties involved. The chart below provides a cost comparison between ALTSA and SCC housing programs.



## Legal Standing in Court

DSHS does not have legal standing to argue or determine cost of care unless DSHS is made party to the legal proceedings. The resident's public defense attorney and the prosecutor are the only parties with legal standing in 71.09 cases, and those parties can enter into agreements regarding release planning without communicating with the SCC. This allows for entities outside of DSHS to negotiate conditions that obligate the SCC. The SCC can make arguments for the court to consider at the time of the conditions hearing, but when it comes to certain conditions like cost of care, the housing provider has already negotiated the cost of care with an entity outside of DSHS and has an expectation of being compensated as such.

Without legal standing it is challenging to represent DSHS' interests to the court. Historically, parties have allowed SCC attorneys to appear at condition hearings and argue for or against specific conditions. However, this practice is flawed for a number of reasons:

- SCC cannot conduct discovery to seek financial information from housing providers.
- SCC cannot appeal a judge's decision or represent its interests if the case is appealed.
- SCC must rely on legal parties to notify them of hearing dates.
- SCC must rely on legal parties to serve them with documents as a courtesy.
- Courts have not allowed SCC attorneys to advocate even when SCC attends a hearing.

The SCC is only involved in legal proceedings regarding release planning when ordered by the court to develop a release plan, but is still not a legal party to the case. It is in the public's interest that SCC become a legal party to any proceeding where DSHS could be ordered by the court to pay for housing or residential services for any resident being conditionally released to an LRA under RCW 71.09.

## Designate SCC Authority in all Conditional Release Planning

In state psychiatric hospitals and local psychiatric facilities, the entity responsible for the care of the resident has primary authority in the development of the release plan from that entity. Other SVP programs in the country are responsible for residents' release plans. With the passage of ESSB 5163 in 2021, DSHS was designated to have "primary" responsibility developing LRA locations upon resident release.<sup>1</sup> ESSB 5163 also requires the SCC to provide clinical discharge planning services for all SCC residents committed under RCW 71.09 from admission until granted unconditional release, which has increased the SCC's familiarity with residents' needs.<sup>2</sup> SCC's program has been regarded as a national standard and is ready to take on added responsibility: "SCC has created a national LRA model for other SVP programs." (Caiola, Johnson, & McGrath, 2023).

However, SCC only has legal authority to submit a conditional release plan when ordered by the court.<sup>3</sup> SCC is not a legal party to any resident's court proceedings and cannot remind the court

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<sup>1</sup> RCW 71.09.097(1).

<sup>2</sup> RCW 71.09.080(3).

<sup>3</sup> RCW 71.09.090(1)(b) and (2)(c)(ii).



when it is required by law to order the SCC to author an LRA plan. As a result, courts are not always ordering the SCC to create a plan when required. Additionally, residents are able to propose plans when the secretary does not support release, but the resident proves in court that they are eligible for release.<sup>4</sup> This circumvents the statute and the SCC's ability to file LRA plans. It also fails to utilize the familiarity the SCC has regarding residents' needs. The SCC is proposing that the Legislature examine granting the SCC authority to create all release plans for conditional releases under RCW 71.09. The statute requires all SCC plans to be clinically appropriate and satisfy RCW 71.09.092(1)-(4). If the SCC is not able to identify a clinically appropriate release plan when ordered by the court, then the resident and their defense attorney would have to the ability to create their own release plan for the court to consider.

The SCC wants to preserve the resident's right to work with their defense counsel to petition for the right to be granted a LRA or Unconditional Release (UCR), as that is a constitutional right, and the SCC has no interest in eliminating the resident's right to petition. However, the SCC believes that the spirit of ESSB 5163 intended for the SCC to be directly involved in the development of clinically appropriate release plans in addition to providing on-going discharge planning services.

As of October 17, 2023 there are 30 LRA plans in process. Of the 30 LRA plans, 24 have been developed by the defense and only 6 have been ordered by the court for SCC to develop.

**Benefits Planning.** ESSB 5163 also gave DSHS the authority to aid in applying for benefits. However, this is only assured when ordered by the court.<sup>5</sup> Resident's refusal to engage in benefit planning also inhibits DSHS's ability to apply for public assistance benefits, which denies residents necessary resources and services for a successful transition to the community, while also being fiscally responsible for state funds. Public benefit and financial planning can be a complicated system to navigate and can have negative outcomes for the resident if not approached properly. DSHS now has a Patient Financial Services staff member to assist residents with applying for public benefits and financial supports. The Patient Financial Services staff is a subject matter expert in this area allowing residents more direct access to benefit planning. DSHS has memorandums of understanding, partner accounts, and direct working relationships with Department of Licensing, Washington Connection, Provider One, Home & Community Services, and other state or federal administered programs allowing residents better access to these resources which allow for a more stable transition upon release to the community. The SCC recommends that the statute is updated to require residents to fully engage with SCC as the sole source for benefits planning. This ensures that taxpayers are not forced to pay unnecessary expenses when benefits are not established upon conditional release.

## Section 207 (4)(a)(i) – Recommendations Summary

- 1) Over the next fiscal year, create a standardized cost of care model that is updated

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<sup>4</sup> RCW 71.09.090(2)(c)(iii).

<sup>5</sup> Rcw 71.09.096(6)(a)(viii).



annually.

- 2) Designate SCC as a legal party when ordered to create an LRA plan for residents who are granted conditional release by the courts.
- 3) Give the SCC authority in the development of all conditional release plans under RCW 71.09.090. If the SCC cannot identify a clinically appropriate release plan when ordered by the court, then the resident and their defense team have the right to present a release plan to the court.
- 4) All benefit planning for conditional releases be coordinated through the SCC's social work and patient financial services staff for every case, not just when the court orders it.

## **Section 207 (4)(a)(ii) – Communication and Engagement with Impacted Local Governments**

### **Introduction**

This section will explore recommendations for implementation of Proviso Section 207(4)(a)(ii), in which the Legislature required the SCC to review and refine agency policies regarding engagement with impacted local governments related to LRAs. This will include SCC proposals for exploring options for public facing communications on current county “fair share” status and any projected future requirements.

### **RCWs related to LRA's**

RCW 71.09.355. WAC 388-880-059 provides the direction that it must be 30 days prior to the release. RCW 4.24.550 directs the county sheriff to then notify the community (see below extracts).

- **RCW 71.09.335**

### **Conditional release from total confinement—Community notification.**

A conditional release from a total confinement facility to a less restrictive alternative is a release that subjects the conditionally released person to the registration requirements specified in RCW 9A.44.130 and to community notification under RCW 4.24.550.

- **WAC 388-880-059**

### **Communicating and coordinating resident discharge and conditional release related matters.**

- (4) Manage the release process, including community notification to the appropriate law enforcement agency at least 30 days prior to the resident's release to the court-approved LRA.

- **RCW 4.24.550**

### **Sex offenders and kidnapping offenders—Release of information to public—Website.**

(4) The county sheriff with whom an offender classified as risk level III is registered shall release a sex offender community notification that conforms to the guidelines established under RCW 4.24.5501.

In addition, RCW 71.09.020(2), which was enacted in 2021, requires that residents are released to counties based on “fair share principles.” These principles require each county in Washington state to have adequate options for conditional release housing so that people granted conditional release are not placed disproportionately in any county. The SCC must also follow RCW 71.09.097 requirements when developing new LRAs.

### **SCC policy**

Per statute and SCC policy, SCC must provide notification 30 days prior to the release of a resident to the chief of police of the city, or the sheriff of the county, in which the resident will reside. Additionally, SCC must begin the notification process when the SCC receives notice from the Attorney General’s Office that a judge has ordered release or when the SCC Legal Department receives the court order, whichever is sooner. This notice from the AG’s Office may be earlier than the official order from the county. The bulletins from SCC include a lengthy discussion of a resident’s criminal and mental health history, recommended risk levels for each resident, and the sheriffs and police chiefs then make the final determination of each resident’s assigned risk level.<sup>6</sup> In addition, if a release is cancelled or altered, SCC will send an updated notification to all parties listed above.

### **Notification of State Elected Leaders**

SCC has initiated a pilot notification process to further communicate with elected leaders. The current pilot requires SCC to send the base LRA court order to the state Senator and Representatives of the district where the resident is being conditionally released. The court order identifies the release location, the LRA housing provider, and the court order conditions that the resident must follow.

### **Annual fair share reports**

To further support counties that are affected by fair share requirements, it is recommended that the SCC provide an annual written fair share report that details each counties number of civil committees, how many residents are conditionally released in each county, how many placements are available in each county, and which county conditionally released residents are from. Additionally, it is recommended that SCC annually presents its fair share report to the

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<sup>6</sup> RCW 4.24.550(6)(b).

Washington Association of Counties to ensure that county elected leaders can ask questions and engage in a dialogue with SCC leadership.

As of this writing, only six counties have LRAs, although SCC residents come from 32 of the 39 counties. Pierce County stands as an outlier, as 16% of the SCC residents are from Pierce County, yet 53% of all SCC residents currently live in Pierce County community LRAs and the Pierce County Secure Community Transition Facility.

## Communications Manager

SCC recommends the creation and funding of a full time Communications Manager. This position would be available to answer constituent questions, respond to county and state elected leaders, come to districts when invited to provide information to local leaders and the community, and would serve as a subject matter expert for community safety meetings. Finally, this position could maintain a public facing website to keep the community informed on Fair Share standards, frequently asked questions, information on community LRAs, plain talk on statutory requirements, etc.

## Section 207 (4)(a)(ii) Recommendations Summary

- 1) Development of Fair Share Report
- 2) Court order dissemination to State elected leaders.
- 3) The creation and funding of a full time Communications Manager.

## Section 207 (4)(a)(iii) – Collaboration and Fiscal Support for Government Entities

### Introduction

This section explores Proviso Section 207(4)(a)(iii), which asks the SCC to identify opportunities for greater collaboration and possible fiscal support for local government entities regarding placements of conditional release less restrictive alternatives.

### County Navigator (Local Investment)

When the SCC is considering a potential LRA contract, one of the most important things to ensure is that the LRA is allowed to be owned and operated in a residential setting within that city and county. Ensuring that the LRA is compliant with local zoning regulations and building code requirements is a key part of making sure that the LRA is allowed in that geographical area. It is important that this work be done prior to the contract being executed.

A County Navigator position could be established in counties where LRA contracts or SOLA model homes, if supported and funded by the legislature, are located. This position would report to the county and would work directly with the SCC to assist contractors or the SCC with meeting zoning and permitting requirements when LRA homes are identified. This further ensures that a county has a voice in the process and is fully aware of the LRA. Finally, it ensures that each county can meet its Fair Share obligation under the statute.

In addition to a county navigator, DSHS would also benefit from working with local tribal leaders and officials to ensure compliance with all tribal laws when contracting for new LRA locations. Partnering with tribal officials when locating new LRA placements would allow DSHS to better connect tribal affiliated residents with tribal related resources in the community.

### Section 207 4(a)(iii) Recommendation

- 1) SCC recommends that a county navigator be established within the Washington State Association of Counties to provide potential LRA housing providers guidance when they are navigating local zoning and licensing requirements for establishing new LRA housing locations.

## Section 207 (4)(a)(iv) – Improve Cost-effectiveness

### Introduction

This section explores Proviso Section 207(4)(a)(iv) and will specifically address the request for recommendations to improve cost effectiveness of LRAs. To that end, this section will discuss how the SCC currently contracts with LRA housing providers, the benefits of contracting, and provide an analysis of cost savings of contracting.

### How the SCC Currently Contracts with LRA Providers

Senate Bill 5163 expanded the responsibilities of the SCC to engage in discharge and release planning for SCC residents. This includes identifying and contracting with individuals and organizations to manage and operate less restrictive alternative housing and related services. The SCC does not currently have the authority to establish LRAs other than the siting of an SCTF in Snohomish County. Contracted LRAs are established as a client services contract and are privately owned and operated. The only state owned and operated LRAs are the Secure Community Transition Facilities in Pierce and King County. The SCC issued a Request for Proposal (RFP) to identify, both on an initial and on an ongoing basis, potential contractors to provide LRA services within the state of Washington.

Per RCW 71.09.097(2), SCC must use a housing matrix as a guide when contracting with housing providers. The SCC has developed a housing matrix that is currently used when determining statute compliance for potential contractor LRA homes. This matrix is used in both the RFP process and the direct contracting process.

This RFP seeks proposals for client service contracts to provide LRA services that will serve conditionally released SCC residents who have social and behavioral health needs. These LRA residents require room, board, guidance, supervision and supported transitional living services, which include positive behavioral support.

Additionally, per RCW 39.26.125, the SCC can directly contract with LRA providers that already house SCC residents through court order – adhering to the same standards within the RFP for contracting.

## Benefits and Cost Savings of Contracting

The benefits of SCC LRA contracts are accountability and risk reduction, cost control and savings, and oversight.

Accountability is gained with a contract because the contract requires housing providers to adhere to the BHA intake process prior to executing the contract – a vetting process. The intake process ensures the potential contractor has a master business license, can pass background checks, provide proof of adequate commercial insurance, and ensure the home complies with local zoning and building code regulations. Additionally, once the contract is executed, the contractor has an obligation to provide staffing reports, monthly resident monitoring reports, invoices with breakdowns, and mileage statements for all trips. This level of accountability reduces risk for stakeholders and for the contractor. Ultimately, risk mitigation translates to cost savings.

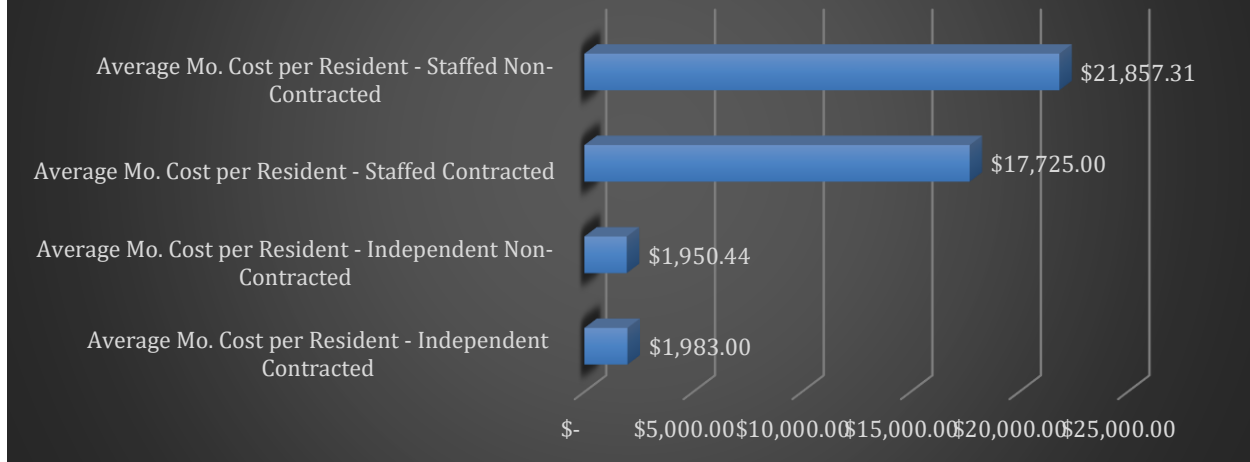
Cost control and cost savings are gained with a contract by the standardized fee schedule the SCC created. This fee schedule is a breakdown of expenses necessary to operate the LRA home. The RFP and direct contracting allow for cost savings and control because the potential contractor and SCC enter contract negotiations directly, which ensures that SCC gets a fair price for services and binds the contractor to provide these services at that price for two years. Additionally, if a standardized cost of care model was created, contract negotiations would be shaped by that model rather than the fee schedule.

Oversight is a staple in cost control and compliance and is gained through contracting by ensuring that LRA housing providers are maintaining an adequate environment of care, contractually agreeing to unannounced access to the home, and that the home has adequate safety and security measures in place to protect the community and the resident. DSHS does not have the ability to verify these aspects of a home without a contract, as non-contracted housing providers can preclude the SCC from entering the home. Being able to work through a formal contracting and negotiation process with potential contractors is paramount to success for the resident and for stakeholders.

## LRA Monthly Cost Analysis and Comparison

The chart below is a cost comparison associated with operating costs of independent and staffed, contracted and non-contracted, SCC LRA homes. These figures are based on the monthly average of the representative category.

## Average Monthly Cost Per Resident: Contracted vs. Non Contracted



There are 9 non-contracted independent homes and 4 non-contracted staffed homes. The SCC has 1 contracted independent home and 2 contracted staffed homes. Some providers own more than one home.

The average monthly cost per resident in a staffed non-contracted LRA home is just under \$22,000 per month. The average monthly cost per resident in a staffed contracted resident home is \$17,700+ per month. The average monthly cost per resident in an independent non-contracted home is just under \$2,000+ per month. The average monthly cost per resident in an independent contracted home is just under \$2,000+ per month.

Non-Contracted staffed LRA homes have a substantial variance in cost per resident, from \$12,000+ to \$30,000+, with no consistency or standards, and little justification for the cost requested by providers. Costs proposed by non-contracted housing providers are not based on clinical recommendations or from subject matter experts that are qualified to determine the needs of the resident. Moreover, non-contracted homes are ordered monthly payments through the court orders. This does not allow the SCC to prorate rent. For example, if a resident were to release to the LRA provider's home at the end of the month the SCC would have to pay full months' worth of services. Therefore, the SCC pays for services that are not being delivered to the resident.

The fee schedule is one of the ways the SCC controls costs and ensures cost savings. The SCC uses the economies of scale methodology in the LRA fee schedule. This is a cost savings mechanism when the LRA is at capacity with Residents; typically, 6 occupants. Essentially, the per-resident fixed cost decreases as the number of Residents increases in the LRA. The SCC's fee schedule outlines fixed monthly operating costs for the LRA that include rent, utilities, administrative fees, in-home staffing fees, chaperone fees, special additional payment allocation, vehicle use fee, mileage fee, as well as food and supplies fees. Contracted staffed LRA homes have a scale of economy built into the fee schedule. That scale is determined through

negotiations in the contracting process. The cost per resident in a staffed non-contracted LRA home is \$4,100+ higher per month, per resident, than in a staffed contracted LRA home. Again, this is because the SCC has developed a fee schedule that allows for fair and consistent negotiations that leads to cost control and savings. This clearly shows that requiring LRA providers to contract with the SCC will have a positive impact on cost control.

Whether the SCC awards a contract through the competitive bidding process or directly contracts with our current providers, having a contract in place ensures accountability, cost control and savings, compliance with statutory requirements, compliance with state and local laws and regulations, as well as gives the SCC oversight ability.

### Section 207 (4)(a)(iv) Recommendations

- 1) Require all LRA providers to contract with SCC for accountability, cost savings, and oversight. As you can see from figures 3-6, contracting with the SCC provides cost savings, accountability, and oversight. Contracting is a benefit for both the SCC and the contractor.
- 2) Allow for any type of competitive solicitation instead of just RFP for LRA providers. RFP is somewhat limiting in nature. A Request for qualifications and quotations would be more applicable from a competitive solicitation standpoint.

## State Operated Less Restrictive Alternatives

In 2020, the Sex Offender Policy Board put forth the report, “Recommendations and Current Practices for Special Commitment Center Releases” which helped shape Senate Bill 5163. The second recommendation in the report was that “DSHS and the SCC should explore how to develop community transition facilities. This may include community-based, state-operated living alternatives such as the current SOLA model.”

Three years into the implementation of Senate Bill 5163, there are still barriers that DSHS is facing with Less Restrictive Alternatives. State operated Less Restrictive Alternatives, similar to the State-Operated Living Alternative (SOLA) model, would be an alternative solution that would address many of these issues.

Currently DSHS is legislatively required to contract with LRA providers in accordance with Fair Share Principles. In the current model, a contractor owns a home in the community and agrees to accept LRA placements. In this model, there is no control over where these homes are located. A SOLA model would provide state oversight, security measures to meet legislative requirements outlined in the statute, flexibility in the location, means to address Fair Share Principles as outlined in the statute, and cost control-measures as it allows the counties to become more involved.



DSHS conducted a housing study to explore the development of conditional release and transition facilities, which may include community-based medically focused state-operated living alternatives (SOLA's) like SOLA programs operated by the Developmental Disabilities Administration (DDA). The housing study was completed by KMB Architects on August 31<sup>st</sup>, 2022. KMB Architects summarize:

“The SOLA program provides an example of a successful step-down model that allows residents to safely transition to a community setting with a better level of care. The comprehensive policies set by DSHS/DDA regarding staffing, training, and oversight can serve as basis for the establishment of a state-run SCC LRA program. In particular, the SOLA model can provide guidance to:

- State-wide operations and expansion
- Staff recruitment and retention
- Moderation of costs
- Emergency policies
- Community protection
- Quality assurance

DSHS has already developed a strong menu of evidence-based policies and is positioned to build upon the progress already achieved.” (KMB architects, 2022)

## References

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