

Chapter 71A.12 RCW
STATE SERVICES

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RCW 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 disability, and at each stage of the person's development. [2020 c 274 § 52; 1988 c 176 § 201.]

RCW 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 persons without disabilities and persons with less acute disabilities 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. [2020 c 274 § 53; 1988 c 176 § 202.]

RCW 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.

RCW 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.]

RCW 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.]

RCW 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.]

RCW 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.]

RCW 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.]

RCW 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.]

RCW 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.]

RCW 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.]

RCW 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.]

RCW 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.]

RCW 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.]

RCW 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.]

RCW 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.]

RCW 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.]

Short title—2007 c 283: "This act may be known and cited as the Lance Morehouse, Jr. memorial individual and family services act." [2007 c 283 § 3.]

Construction—2007 c 283: "Nothing in this act shall be construed to create an entitlement to services or to create judicial authority to order the provision of services to any person or family if the services are unavailable or unsuitable, the child or family is not eligible for such services, or sufficient funding has not been appropriated for this program." [2007 c 283 § 4.]

RCW 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 protection 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.]

RCW 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). RCW 71A.10.020 was subsequently amended by 2022 c 277 § 2, changing subsection (5) to subsection (6).

RCW 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). RCW 71A.10.020 was subsequently amended by 2022 c 277 § 2, changing subsection (5) to subsection (6).

RCW 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.]

RCW 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.]

RCW 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.]

RCW 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 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.]

RCW 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.]

RCW 71A.12.290 Transition from employment services to community access program.

(1) Clients age 21 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.

(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. [2022 c 142 § 2; 2012 c 49 § 1.]

Finding—Intent—2022 c 142: "The legislature finds that individuals with intellectual and developmental disabilities have the right to choose how they engage in their community, while having the necessary supports to do so. The dual services prohibition between individual supported employment and community inclusion has prevented individuals with intellectual and developmental disabilities from engaging in the supported activities, volunteerism, and social and practical skill-building offered by community inclusion while employed or waiting for job placement. This lack of dual services has left many individuals with intellectual and developmental disabilities unengaged, isolated, and without the freedom to choose between services. By removing this prohibition, the legislature intends to enhance and supplement individual supported employment and give back an individual's right to participate in multiple services that best meet their needs for community growth and engagement." [2022 c 142 § 1.]

RCW 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.]

RCW 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.

RCW 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 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.

RCW 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 compliant investigations—No federal matching funds—2019 c 458: See note following RCW 71A.12.340.

RCW 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 medicaid 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.

RCW 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.

RCW 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.

RCW 71A.12.370 Medicaid waiver—Priority. When there is funded capacity for services provided through a medicaid waiver administered by the department, and to the extent consistent with federal law and federal funding requirements, priority for that waiver shall be provided to eligible individuals who exited a dependency proceeding under chapter 13.34 RCW within the last two years. [2021 c 56 § 4.]

Intent—2021 c 56: See note following RCW 74.13.805.