

Chapter 71A.10 RCW
GENERAL PROVISIONS

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RCW 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 s 1.]

RCW 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 s 1.]

RCW 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 s 101.]

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

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

(2) "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.

(3) "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.

(4) "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.

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

(6) "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 June 30, 2025, the administration shall promulgate rules to further define developmental disability without the use of intelligence quotient scores.

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

(8) "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.

(9) "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.

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

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

(12) "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.

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

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

(15) "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.

(16) "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.

(17) "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.

(18) "Vacancy" means an opening at a residential habilitation center, which when filled, would not require the center to exceed its biennially budgeted capacity. [2022 c 277 s 2. Prior: 2014 c 139 s 2; 2011 1st sp.s. c 30 s 3; 2010 c 94 s 21; 1998 c 216 s 2; 1988 c 176 s 102.]

Findings—2022 c 277: "The legislature finds that requiring intelligence quotient testing to determine if a person has an intellectual or developmental disability is expensive, inaccessible to marginalized communities, complicated to receive, and time consuming for families already struggling to care for their child with an intellectual or developmental disability. Further, the legislature finds that intelligence quotient testing does not accurately indicate whether a person needs support to be personally and socially productive, which is the goal of the developmental disabilities administration outlined in RCW 71A.10.015. Therefore, the legislature finds that requiring intelligence quotient testing in assessing whether a person has an intellectual or developmental disability is not an appropriate diagnostic tool and eliminating the use of intelligence quotient scores has been a goal of the legislature for more than 40 years." [2022 c 277 s 1.]

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.

Effective date—1998 c 216: "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 immediately [March 30, 1998]." [1998 c 216 s 10.]

RCW 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 s 103.]

RCW 71A.10.040 Protection from discrimination. Persons are protected from discrimination because of a developmental disability as well as other mental or physical disabilities 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 have a qualifying disability under those statutes, rules, regulations, and ordinances. [2020 c 274 s 51; 1988 c 176 s 104.]

RCW 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 s 138; 1988 c 176 s 105.]

Effective date—1989 c 175: See note following RCW 34.05.010.

RCW 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.

(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 s 139; 1988 c 176 s 106.]

Effective date—1989 c 175: See note following RCW 34.05.010.

RCW 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 s 140; 1988 c 176 s 107.]

Effective date—1989 c 175: See note following RCW 34.05.010.

RCW 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 s 1.]

RCW 71A.10.090 Prioritization and transition to minimum wage employment or other services.

(1) To the extent consistent with federal law and federal funding requirements, the department must prioritize individuals, utilizing the expiration dates of the special certificates, for the provision of individual technical assistance to an individual, prior to the expiration date of the individual's special certificate, and may utilize the individual technical assistance to allow for an effective transition into at least minimum wage employment or other services.

(2) Subject to the availability of amounts appropriated for this specific purpose, the department must work with contracted providers to expand employment and day services to individuals leaving special certificate employment, including but not limited to providing

individual technical assistance and individual supported employment services to individuals leaving special certificate employment.

(3) Prior to the expiration date of the individual's special certificate, the department must provide written and verbal notification to the individual and their legal representatives informing them of all available waiver services and the processes for the individual to identify, transition to, and request any of the available waiver services. [2021 c 97 s 4.]

RCW 71A.10.100 No-paid services caseload—Case resource management services. (1) The department shall hire two permanent, full-time employees to regularly review and maintain the no-paid services caseload. This includes, but is not limited to, updating the no-paid services caseload to accurately reflect a current head count of eligible individuals and identifying the number of individuals contacted who are currently interested in receiving a paid service from the developmental disabilities administration and if the individual would like services now or within the next year. Beginning December 1, 2022, the department shall annually report this information to the governor and the appropriate committees of the legislature.

(2) A client on the no-paid services caseload shall receive case resource management services. The case resource manager's duties include: (a) Contacting and responding to the client to discuss the client's service needs, and (b) explaining to the client the service options available through the department or other community resources. [2022 c 247 s 1.]

RCW 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 s 1008.]

RCW 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 s 1004.]

RCW 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 s 1001.]