



**Mental Health Project
Disability and Guardianship Project**

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February 4, 2021

Senator Karen Kaiser,
Chair, Labor, Commerce, & Tribal Affairs Committee
219 John A. Cherberg Building
304 15th Avenue SW
Olympia, WA 98501

Dear Senator Kaiser,

Re: Support of SB 5284

I truly appreciated the opportunity to give oral testimony in support of SB 5284 to the Labor, Commerce, & Tribal Affairs Committee at the hearing of February 1. Thank you. Please accept this letter as my written testimony.

As I mentioned in my oral testimony, I am the co-guardian of the estate for my daughter who has a developmental disability. She lives in Washington in the 9th legislative district. I live 8 miles away in Idaho. I am also the project director for Spectrum Institute's Mental Health Project.

My daughter received a subminimum wage between 2014 and 2020. There are many issues surrounding my daughter's situation including the fact that no certificate was signed or filed with the Washington State Department of Labor and Industries until October 19, 2019. What I want to let you know is that for my daughter and many, many others with developmental and intellectual disabilities (IDD) in Washington---issues surrounding a subminimum wage or minimum wage can be related to

- issues of compliance with the Americans with Disabilities Act (ADA), and
- with compliance with Medicare, Medicaid, and state agency policies mandating person-centered plans (PCP).

I hope you will consider writing additional language into SB 5284 to avoid problems with compliance with the ADA in the delivery of mental health services and with compliance

of federal and state policies related to PCP. Both have the potential of resulting in higher wages for those receiving SMW or minimum wages. I will explain this below.

Perhaps many services can be handled at considerable cost savings AND more appropriately with person centered service plans which could result in less restrictive services. I will also add, and this is a biggie, that pre-existing mental health issues and challenging behaviors can be exacerbated by inappropriate service plans. Person-centered planning is essential for the most effective use of dollars for each individual. When service providers request higher and more expensive levels of services because of mental health or behavior challenges and mental health care services are absent then there is the distinct possibility of conflict of interest issues. It is essential that an appropriate mental health professional is involved before more expensive services are approved.

The ADA defines disability as a physical or mental impairment that substantially limits one or more major life activities. People with developmental disabilities have a medical problem, they are entitled to the benefit of a full range of treatment options under the ADA. When people with developmental disabilities have mental health challenges and behavior problems they are also entitled under the ADA to mental health services that address symptoms as well as the causes. Thus, Every person in Idaho with a developmental disability and mental health needs is entitled to mental health services.

Guardians have a legal duty to secure prompt and effective health care treatment for adults under their care. Relatives who has voluntarily assumed a role of care providers also have legal duties. The failure to secure prompt and appropriate health care, including mental health care, would constitute elder or dependent adult abuse or neglect. Thus, under state law, guardians and voluntary care providers could be subjected to civil or criminal liability for such failures. Then there is the federal ADA statutory scheme. This law requires that the states treat people with disabilities equally with those who do not have disabilities. Excluding people with disabilities from the full range of mental health therapies available to people without disabilities would constitute disability discrimination in violation of the ADA. This could subject a state such as Idaho to intervention by the United States Department of Justice.

Not only are tax dollars at issue here but so are civil rights.

In September, 2019, in a case brought by the Department of Justice (DOJ) against the State of Mississippi, a federal judge ruled that Mississippi was violating the ADA and ordered the state to improve overall delivery of mental health services.

Michael Hogan was appointed by the federal judge to oversee Mississippi's effort to bring their mental health system into compliance with the ADA. At the end of April, 2020, Mississippi legislators finalized a new budget and there have been many agency changes. Dr. Hogan's contact info is at the bottom of this email.

I want to offer three recommendations that I think address systemic problems that might be adding unnecessary costs to the system in Washington and keeping wages at the bottom for individuals with developmental disabilities. Correcting these systemic issues might free monies for services to people who need them or are underserved, and potentially help to ensure that Washington state is complying with the Americans with Disabilities Act or ADA.

First recommendation

I want to recommend that a legislative committee request the Division of Financial Management to review records in a random sample of clients who are receiving services from DSHS and DDA and that interviews with clients and family be included. This sample should be small but statistically significant. Areas to investigate should include questions to address issues such as:

- Has there been a diagnosis of mental health or behavior problems?
- Are services to address mental health or behavior issues being provided? Who is providing them? Have treatment plans been developed by mental health or behaviors professionals? Is there ongoing monitoring and evaluation by the professional?
- Have there been requests for employment and/or residential services or for modification to extant services based on the need to address behavior or mental health challenges?
- Who has made the request-- service providers, parents, guardians, psychologists or other mental health professionals?
- If service providers are making the request are they a for profit business or nonprofit?
- Do services plans meet person centered criteria, values and policies of DDA, DSHS, Medicaid, Medicare, and Idaho State and federal law?

Why a survey?

The answer to questions such as these will absolutely help everyone have a realistic picture of necessary and potentially excessive expenditures and to evaluate for person centered planning and compliance with the ADA.

Perhaps many cases can be handled more cheaply AND more appropriately with person centered service plans which could result in less restrictive services. I will also add, and this is a biggie, that pre-existing mental health issues and challenging behaviors can be exacerbated by inappropriate service plans. Person centered planning is essential for the most effective use of dollars for each individual.

When service providers request higher and more expensive levels of services because of mental health or behavior challenges and mental health care services are absent then there is the distinct possibility of conflict of interest issues. It is essential that an appropriate mental health professional is involved before more expensive services are approved.

Second recommendation

As I mentioned above a case was brought by the Department of Justice (DOJ) against the State of Mississippi and a federal judge ruled that Mississippi is violating the ADA and ordered the state to improve overall delivery of mental health services (United States of America v. The State of Mississippi, 2019). This is really about what could happen.

Therefore, my second recommendation is that you and/or other legislators on your committee talk to Michael Hogan, PhD, who was appointed by the federal judge to oversee Mississippi's effort to bring their mental health system into compliance with the ADA. At the end of April, 2020, Mississippi legislators finalized a new budget and there have been many agency changes. Dr. Hogan's contact info is at the bottom of this page.

Third recommendation

I recommend that Tom Coleman, a civil rights attorney, an expert in the ADA, and legal director of Spectrum Institute (spectruminstitute.org) be invited to speak to your committee and other legislators and their committees about compliance with the ADA. He has extensive experience working with legislators and the courts. He is an extraordinary fount of information and a superb with resource for recommendations and solutions.

It is for these reasons that I urge you and other members of the Labor, Commerce, & Tribal Affairs Committee to consider my three recommendations. Please do not hesitate to contact me with questions or comments. I will absolutely help everyone to have a realistic picture of necessary and potentially excessive expenditures and to evaluate for person centered planning and compliance with the ADA.

Sincerely,

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