
SENATE BILL 5917

State of Washington

52nd Legislature

1991 Regular Session

By Senator Wojahn.

Read first time March 4, 1991. Referred to Committee on Health & Long-Term Care.

1 AN ACT Relating to establishment and financing of a community-based
2 long-term care and support services system for functionally disabled
3 persons; adding a new chapter to Title 70 RCW; prescribing penalties;
4 making an appropriation; providing an effective date; and declaring an
5 emergency.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** SHORT TITLE. This chapter may be known and
8 cited as the omnibus community-based long-term care secured benefit
9 act.

10 NEW SECTION. **Sec. 2.** PURPOSE AND INTENT. It is the purpose and
11 intent of the legislature, through this chapter, to organize and
12 encourage the development of community-based long-term care and support
13 services through an integrated, comprehensive system that promotes
14 human dignity and recognizes the individuality of all functionally

1 disabled persons. This system shall be available, accessible, and
2 responsive to all citizens based upon an assessment of their functional
3 disabilities, and shall include adequate local flexibility to assure
4 that eligible people in need of care, based on their functional
5 disabilities, receive the least restrictive services. The legislature
6 recognizes that families, volunteers, and community organizations are
7 absolutely essential for delivery of effective and efficient community-
8 based long-term care and support services and it is a purpose of this
9 chapter to support and strengthen that private and public service
10 infrastructure.

11 It is further the intent of the legislature to provide continuity
12 of care and integration of services.

13 NEW SECTION. **Sec. 3.** DEFINITIONS. Unless the context clearly
14 requires otherwise, the definitions in this section apply throughout
15 this chapter.

16 (1) "Administrative entity" means an agency of state or local
17 government or a private nonprofit organization that has entered into an
18 agreement with the department to administer any part of the program.

19 (2) "Committee" means the community-based long-term care policy
20 advisory committee established pursuant to section 6 of this act.

21 (3) "Community-based long-term care and support services" means
22 services and support provided to program beneficiaries in accordance
23 with section 9 of this act.

24 (4) "Department" means the department of community development.

25 (5) "Federal poverty level" means the annual poverty guidelines
26 determined annually by the United States department of health and human
27 services, or its successor agency.

28 (6) "Functionally disabled person" means a person who, because of
29 a recognized chronic physical or mental condition or disease: (a)

1 Needs care, including medical care, support, supervision, or monitoring
2 to perform activities of daily living or instrumental activities of
3 daily living; or (b) needs support to ameliorate or compensate for the
4 effect of the chronic physical or mental condition or disease.

5 (7) "Habilitation service" means services to assist persons in
6 acquiring and maintaining life skills and to raise, maintain, or
7 support their levels of physical, mental, social, and vocational
8 functioning. "Habilitation services" shall not include major
9 rehabilitative services to assist persons in regaining previously
10 existing bodily functions and life skills.

11 (8) "Program" means the community-based long-term care program
12 established by this chapter.

13 (9) "Program beneficiary" means a person who has been determined to
14 be functionally disabled and eligible to receive services through the
15 program.

16 PART I

17 ADMINISTRATION OF THE COMMUNITY-BASED
18 LONG-TERM CARE SECURED BENEFIT PROGRAM

19 NEW SECTION. **Sec. 4.** INTENT REGARDING PROGRAM ADMINISTRATION. It
20 is the intent of the legislature that administration of the program
21 include active participation by program beneficiaries, their families,
22 and communities in public discussions, service planning, decision
23 making, and service delivery. Administrative entities shall encourage
24 creativity and innovation in the development and implementation of
25 services. Information systems shall be developed to assess program
26 outcomes and to assure state-wide adherence to baseline levels of
27 service availability and quality. A simplified, independent

1 inspection, monitoring and correction function shall be established
2 within the system.

3 NEW SECTION. **Sec. 5.** POWERS OF DEPARTMENT. (1) The department
4 shall have the following powers and duties:

5 (a) To oversee, encourage, and support the development of a
6 community-based long-term care and support system that provides
7 coordinated care and support for functionally disabled persons,
8 strengthening existing community, family, and volunteer resources to
9 the greatest extent possible, in which functionally disabled persons
10 and resources are directed toward the least restrictive and least
11 costly service appropriate for each such person;

12 (b) To manage the current expense account and reserve account of
13 the secured benefit fund established by section 19 of this act;

14 (c) To develop and adopt rules establishing minimum standards to
15 ensure the health, safety, and protection of beneficiaries, and to
16 develop uniform standards for assessments of the functionally disabled,
17 for the delivery of program services, administer program activities,
18 and to determine the scope of community-based long-term care and
19 support services covered by the program in accordance with section 9 of
20 this act.

21 (i) In determining the scope of services, the department shall
22 maintain the financial integrity of the secured benefit fund;

23 (ii) The department shall define the scope of transportation
24 services that can be funded by the program in accordance with section
25 9 of this act;

26 (d) To administer and adjust the sliding fee scale as necessary, in
27 accordance with section 10 of this act;

1 (e) To develop payment and cost control mechanisms for community-
2 based long-term care and support services ensuring compliance with
3 federal requirements;

4 (f) To design and administer a long-term care information system in
5 accordance with section 15 of this act;

6 (g) To encourage community development of mechanisms to assure
7 coordination with the acute health care services system, the vocational
8 rehabilitation services system, and the long-term care worker education
9 and training system; and

10 (h) To delegate its authority, when deemed appropriate by the
11 department, to other public or private entities.

12 (2) The department may contract with third parties for services
13 necessary to carry out its responsibilities and duties to the extent
14 not prohibited by RCW 41.06.380.

15 NEW SECTION. **Sec. 6.** ESTABLISHMENT OF POLICY ADVISORY COMMITTEE.

16 (1) The community-based long-term care policy advisory committee is
17 hereby established. The committee shall be composed of thirteen
18 members appointed by the department. At least seven of the members
19 shall be functionally disabled persons or their advocates, who shall
20 not be paid long-term care services providers. The remaining members
21 of the committee shall consist of two members representing the public,
22 two members representing the nursing facility operators, and two
23 members representing other long-term care providers.

24 (2) The committee shall:

25 (a) Advise the department regarding planning and administration of
26 the program; and

27 (b) Review and comment upon department programs, state policies,
28 programs, and actions that affect program beneficiaries, with the
29 intent of assuring maximum coordination with health care services,

1 long-term care and support services, and local long-term care
2 organizations that provide community-based services focusing on program
3 beneficiaries' needs.

4 (3) The committee shall meet at least quarterly. Committee members
5 shall be reimbursed for travel expenses pursuant to RCW 43.03.050 and
6 43.03.060.

7 NEW SECTION. **Sec. 7.** QUALITY ASSURANCE. (1) The department is
8 responsible for quality assurance activities relating to licensing,
9 monitoring, and enforcement of performance standards applicable to
10 administrative entities and community-based long-term care and support
11 service providers. In its quality assurance activities, the department
12 shall emphasize review of service outcomes, rather than the manner in
13 which services are administered.

14 (2) Quality assurance activities shall include but not be limited
15 to:

16 (a) Establishment of licensure and certification requirements for
17 administrative entities, community-based long-term care and support
18 service providers, and their employees, to the extent such requirements
19 are not otherwise required by law;

20 (b) Enforcement of all licensure and certification requirements for
21 administrative entities, community-based long-term care and support
22 service providers, and their employees, including license and
23 certification issuance, renewal, denial, or revocation;

24 (c) Monitoring and investigation of performance by administrative
25 entities and community-based long-term care and support service
26 providers, and their employees, including the establishment of
27 mechanisms to receive and respond to reports of abuse, neglect,
28 malpractice, misfeasance, and contractual violations by such entities
29 and providers;

1 (d) Imposition of sanctions against administrative entities,
2 community-based long-term care and support service providers, and their
3 employees, for abuse, neglect, malpractice, misfeasance, and
4 contractual violations, which shall include withholding or requiring
5 the withholding of payment, terminating or requiring the termination of
6 contracts, injunctive remedies, civil penalties, receivership, and
7 referral for prosecution; and

8 (e) Retrospective monitoring of data gathered through the
9 information system established by section 15 of this act.

10 (3) The department shall provide for an independent office of the
11 inspector general to assist in carrying out the quality assurance
12 powers and duties established in this section, which office shall
13 report directly to the department and which shall annually report to
14 the legislature on the quality of community-based long-term care and
15 support services provided to functionally disabled persons.

16 (4) By petition to the department, a program beneficiary may
17 initiate, or intervene in, any proceeding in which the department is
18 taking an enforcement action against an administrative entity or
19 community-based long-term care provider serving the program
20 beneficiary.

21 PART II

22 COMMUNITY-BASED LONG TERM CARE SERVICES

23 NEW SECTION. **Sec. 8.** INTENT REGARDING SERVICES. It is the intent
24 of sections 9 through 11 of this act relating to community-based long-
25 term care and support services that such services be defined by local
26 communities as those noninstitutional services that are primarily
27 habilitative which would allow program beneficiaries to live and
28 otherwise function in their community as independently as practicable.

1 Although these services do not include nursing homes, state
2 institutions, or health care facilities, it is necessary that these
3 functions be coordinated with the community-based long-term care
4 system. It is recognized that uniform systems of assessment and case
5 management are essential for monitoring equity and quality in service
6 delivery, measuring outcomes, and assuring the most effective use of
7 public and private expenditures. It is recognized that availability of
8 services does not guarantee their use, and that aggressive targeting
9 and outreach by local communities, and culturally and linguistically
10 accessible and appropriate services, are necessary to assure that
11 services are available to the most dispossessed in our communities.

12 NEW SECTION. **Sec. 9.** COMMUNITY-BASED LONG-TERM CARE AND SUPPORT
13 SERVICES. (1) Community-based long-term care and support services
14 shall include at least the following services:

15 (a) Public education;

16 (b) Telephone information and assistance, including screening and
17 possible referral for case management assessment;

18 (c) Gatekeeper, or other outreach component;

19 (d) Case management, which shall include:

20 (i) A multidimensional assessment of the functionally disabled
21 person's health and long-term care needs. No cost-sharing shall be
22 imposed for this modality;

23 (ii) Development of a comprehensive care plan negotiated by the
24 program beneficiary, the beneficiary's family or guardian, and the
25 local long-term care organization providing community-based services;
26 and

27 (iii) Reassessment and service termination;

1 (e) Personal and household assistance services to assist
2 individuals with activities of daily living and instrumental activities
3 of daily living;

4 (f) Respite care and family support services necessary to maintain
5 the program beneficiary in his or her family home;

6 (g) Nursing services;

7 (h) Day care and day health care for functionally disabled persons;

8 (i) Mental health day treatment and other mental health counseling;

9 (j) Habilitation services; and

10 (k) Transportation services, to the extent that the administrative
11 entity can demonstrate positive planning by the community through the
12 use of a local option tax or other method to provide paratransit or
13 specialized transportation services to program beneficiaries.

14 (2) Each functionally disabled person's participation in a
15 functional assessment performed by an entity designated by the
16 department pursuant to section 5 of this act shall be a precondition to
17 receipt of all community-based long-term care services.

18 (3) Services performed by the following institutions shall not be
19 considered to be community-based services subject to the requirements
20 of this chapter:

21 (a) Nursing homes licensed pursuant to chapter 18.51 RCW;

22 (b) State institutions for developmentally disabled persons,
23 defined as residential habilitation centers in chapter 71A.20 RCW; and

24 (c) State institutions for mentally ill persons, including but not
25 limited to Eastern State Hospital and Western State Hospital.

26 (4) In determining whether services not explicitly included
27 pursuant to subsection (1) of this section or excluded pursuant to
28 subsection (3) of this section can be offered through the program, the
29 department shall consider the following criteria:

1 (a) Protection of the financial integrity of the community-based
2 services program;

3 (b) The extent to which the service is consistent with the intent
4 and purposes of this chapter;

5 (c) The extent to which the service supports individual dignity and
6 independence;

7 (d) The needs of individual local communities;

8 (e) The effectiveness and efficiency of the service; and

9 (f) The extent of local community and volunteer participation in
10 providing the service.

11 NEW SECTION. **Sec. 10.** PROGRAM BENEFICIARY COST-SHARING. (1) The
12 department shall establish a sliding fee scale to determine a program
13 beneficiary's contribution to the cost of community-based long-term
14 care and support services provided to him or her through the program.
15 The sliding fee scale shall be designed to generate a minimum of twenty
16 percent of operating costs of the new system.

17 (2) The sliding fee scale shall:

18 (a) Base the level of a program beneficiary's contribution on that
19 individual's gross household income, giving appropriate consideration
20 to family size. In determining gross household income, the income of
21 an applicant's spouse shall be considered available to the applicant,
22 and the income of a minor applicant's parents shall be considered
23 available to that minor. The department shall define "income" and
24 other relevant criteria by rule;

25 (b) Provide that for program beneficiaries with gross household
26 income below one hundred fifty percent of the federal poverty level,
27 cost-sharing shall not have the effect of discouraging appropriate use
28 of necessary community-based long-term care and support services;

1 (c) Provide for limits on annual cost-sharing obligation for each
2 program beneficiary's household.

3 (3) To affect community-based long-term care and support service
4 utilization, the department may establish copayments or deductibles
5 which:

6 (a) May be imposed in lieu of the sliding fee scale for program
7 beneficiaries requiring small amounts of community-based long-term care
8 and support services; and

9 (b) Shall not have the effect of discouraging appropriate use of
10 necessary community-based long-term care and support services for
11 program beneficiaries with gross household incomes below one hundred
12 fifty percent of the federal poverty level.

13 NEW SECTION. **Sec. 11.** RIGHT TO REFUSE SERVICES. Nothing
14 contained in this chapter shall be construed to require a program
15 beneficiary to accept services, except to the extent provided otherwise
16 by chapters 71.05, 11.88, and 11.92 RCW.

17 PART III

18 IMPLEMENTING THE NEW COMMUNITY-BASED

19 LONG-TERM CARE SYSTEM

20 NEW SECTION. **Sec. 12.** INTENT RELATING TO IMPLEMENTATION. It is
21 the intent of the legislature that state-wide community-based long-term
22 care and support services be modeled through locally developed and
23 administered projects that will test various administrative structures.
24 The director may enter into agreements with local governments, private
25 agencies, or other public groups to develop additional community-based
26 long-term care and support services to be provided through medicaid and

1 other expansions using revenue from the secured benefit fund to serve
2 unmet needs.

3 NEW SECTION. **Sec. 13.** ADMINISTRATIVE MODEL PROJECTS. (1) The
4 director shall provide resources to those entities referenced in
5 section 12 of this act for community-based long-term care pilot
6 projects.

7 (2) Agreements to operate pilot projects shall be competitively bid
8 and shall satisfy the following criteria:

9 (a) Build upon support available to each program beneficiary from
10 the individual's family, community, local business, and local
11 community-based long-term care providers;

12 (b) Existing local advisory councils, such as councils on aging,
13 developmental disabilities, and mental health established under state
14 or federal law, and multicultural and multi-ethnic groups will be
15 involved in the proposed long-term care delivery project;

16 (c) Services to minimize the effects of degenerative and
17 debilitating conditions that result in a loss of independence will be
18 offered. Such a plan might include a mechanism to support people who
19 are at risk of rapid deterioration without support;

20 (d) Encourage local community development of mechanisms that will
21 be used to coordinate services with the acute health care and
22 vocational rehabilitation systems;

23 (e) Transportation needs will be assessed and addressed;

24 (f) Identify mechanisms that will be used to control nursing costs;

25 (g) Provide case management services that include:

26 (i) A multidimensional assessment of the functionally disabled
27 person's health and long-term care needs. No cost-sharing shall be
28 imposed for this modality;

1 (ii) Development of a comprehensive care plan negotiated by the
2 program beneficiary, the beneficiary's family or guardian, and the
3 local long-term care organization providing community-based services,
4 which meets minimum standards established by the department, and which
5 is subject to an appeal mechanism that provides an opportunity for
6 informal review prior to a fair hearing;

7 (iii) Initiation, coordination, and monitoring of all long-term
8 care services needed by a program beneficiary, including those services
9 not funded by the program;

10 (iv) Involvement of each program beneficiary's family and other
11 support systems; and

12 (v) Reassessment and service termination;

13 (h) Include mechanisms to ensure access to culturally and
14 linguistically appropriate services by minority and limited English
15 speaking populations.

16 (3) The department shall, to the greatest extent possible, contract
17 for a diversity of case management models. At least one of the models
18 shall utilize a case management model in which the case manager
19 authorizes and manages services within budgeted funds.

20 (4) Contracts with administrative model project entities shall
21 include remedies for failure to comply with the terms of the contract,
22 including intermediate remedies in addition to termination of a
23 contract.

24 (5) There shall be four pilot administrative model projects,
25 located as follows:

26 (a) Two projects in eastern Washington, one to be located in an
27 urban setting and one to be located in a rural setting;

28 (b) Two projects in Western Washington, one to be located in an
29 urban setting and one to be located in a rural setting.

1 NEW SECTION. **Sec. 14.** EVALUATION OF ADMINISTRATIVE MODEL
2 PROJECTS. The department shall develop criteria to evaluate the
3 success and failure of the administrative model projects established
4 pursuant to section 13 of this act in meeting the intent and purposes
5 of this chapter. The department shall contract with an independent
6 entity to evaluate:

7 (1) The administrative model projects using the criteria developed
8 pursuant to this section; and

9 (2) The actions taken by the department to implement this chapter
10 giving consideration to this chapter's intent and purposes.

11 A report detailing the results of the evaluation shall be submitted
12 to the governor and appropriate committees of the legislature no later
13 than three years following initiation of the administrative model
14 projects.

15 NEW SECTION. **Sec. 15.** INFORMATION SYSTEM. The department shall
16 design and administer a long-term care information system. In
17 designing the information system, the department shall pursue the
18 following objectives:

19 (1) Use of a single common identifier for each functionally
20 disabled person using long-term care services;

21 (2) Ability to track each functionally disabled person's use of
22 long-term care services;

23 (3) Protection of confidentiality for functionally disabled persons
24 using long-term care services; and

25 (4) Access to nonconfidential information relating to available
26 long-term care services, training information for caregivers, and
27 service utilization and cost data for planners and policymakers.

1 NEW SECTION. **Sec. 18.** FEDERAL/STATE RELATIONSHIP. The department
2 shall identify federal requirements and ensure that those requirements
3 are met so as to allow federal funds currently used for community-based
4 long-term care and support services to be deposited into the secured
5 benefit fund and expended as provided in this chapter. If, during
6 implementation of services pursuant to section 13 of this act, federal
7 medicaid waivers are necessary, the department shall seek such waivers.

8 NEW SECTION. **Sec. 19.** FINANCING. (1) The secured benefit fund is
9 created in the state treasury. All receipts from sources specified in
10 this section shall be deposited in the fund. Moneys in the fund may be
11 spent only after appropriation and may be used only for carrying out
12 the purposes of this chapter.

13 (2) The secured benefit fund shall consist of:

14 (a) The insurance contributions specified in this section for any
15 calendar year that begins on or after January 1, 1992, and payable by
16 each employer as defined in RCW 50.04.080, and each individual
17 registered with the department of revenue under Title 82 RCW;

18 (b) Legislative appropriations for general fund-state spending for
19 community-based long-term care and support services;

20 (c) Federal funds received by the state as payment for community-
21 based long-term care and support services, including but not limited to
22 the medicare program, Title XVIII of the federal social security act,
23 and the medicaid program, Title XIX of the federal social security act;
24 and

25 (d) Program beneficiary cost-sharing as provided in section 10 of
26 this act.

27 (3) Moneys in the secured benefit fund shall constitute the entire
28 budget for program services. The state investment board shall invest
29 the funds pursuant to chapter 43.33A RCW.

1 (4)(a) Insurance contributions under subsection (2)(a) of this
2 section shall become due and be paid under rules adopted by the
3 commissioner of the employment security department. Contributions
4 shall be collected on a semi-annual basis, with the first period
5 consisting of the six calendar months ending June 30, and the second
6 period consisting of the six calendar months ending December 31, of
7 each calendar year. Up to one-half of the contribution may be deducted
8 from the remuneration of individuals in the employ of the employer.
9 Any deduction greater than one-half from individuals is in violation of
10 this section and is unlawful, and is subject to penalty under Title 50
11 RCW for an unlawful deduction.

12 (b) For employers described in RCW 50.44.010 and 50.44.030 who have
13 properly elected to make payments in lieu of contributions, employers
14 who are required to make payments in lieu of contributions, and
15 employers paying contributions under RCW 50.44.035, the contributions
16 shall be paid according to rules adopted by the commissioner.

17 (c) The insurance contribution of individuals only registered with
18 the department of revenue under Title 82 RCW shall be determined
19 according to rules adopted by the commissioner of the employment
20 security department. The rules shall include provisions that: (i)
21 Require contributions on remuneration that is comparable to the wages
22 subject to contributions under subsection (5) of this section; and (ii)
23 if the individual's remuneration is subject to contribution under more
24 than one subsection of this section, the total remuneration subject to
25 contribution shall not exceed forty thousand dollars annually, as
26 specified in subsection (5) of this section.

27 (5)(a) The amount of wages subject to insurance contributions under
28 subsection (2)(a) of this section shall be forty thousand dollars
29 annually, except that no contribution shall be paid on wages of any
30 individual earning wages of less than one thousand five hundred dollars

1 per calendar quarter. The contribution rate applicable to wages paid
2 shall be 0.55 percent.

3 (b) "Wages" under this subsection shall include all remuneration
4 for contribution purposes as defined under RCW 50.04.320.

5 (6) In the payment of any insurance contribution under this
6 section, a fractional part of a cent shall be disregarded unless it
7 amounts to one-half cent or more, in which case it shall be increased
8 to one cent.

9 (7) Late reports or contributions, and penalties and interest shall
10 be determined and administered as provided under Title 50 RCW. In
11 administering this section, the commissioner of the employment security
12 department shall have the same authority as is provided for
13 administering and enforcing the collection of contributions under Title
14 50 RCW.

15 NEW SECTION. **Sec. 20.** PRIVATE LONG-TERM CARE INSURANCE. The
16 private long-term care insurance commission is hereby established. The
17 commission shall be composed of seven members who shall be appointed by
18 the insurance commissioner. Commission members shall be reimbursed for
19 travel expenses pursuant to RCW 43.03.050 and 43.03.060.

20 (2) The commission shall review and make recommendations regarding
21 the role of long-term care insurance in the new system. The commission
22 shall report its recommendations to the department, the insurance
23 commissioner, and appropriate committees of the legislature on or
24 before December 1, 1992.

25 NEW SECTION. **Sec. 21.** SEVERABILITY. If any provision of this act
26 or its application to any person or circumstance is held invalid, the
27 remainder of the act or the application of the provision to other
28 persons or circumstances is not affected.

1 NEW SECTION. **Sec. 22.** EFFECTIVE DATE. This act is necessary for
2 the immediate preservation of the public peace, health, or safety, or
3 support of the state government and its existing public institutions,
4 and shall take effect July 1, 1991.

5 NEW SECTION. **Sec. 23.** CAPTIONS NOT LAW. Part and section
6 headings as used in this chapter do not constitute any part of the law.

7 NEW SECTION. **Sec. 24.** Sections 1 through 23 of this act shall
8 constitute a new chapter in Title 70 RCW.

9 NEW SECTION. **Sec. 25.** The sum of one million dollars, or as
10 much thereof as may be necessary, is appropriated for the biennium
11 ending June 30, 1993, from the general fund to the department of
12 community development for the purposes of section 13 of this act.