
SENATE BILL 5652

State of Washington

57th Legislature

2001 Regular Session

By Senators Costa, Winsley, Thibaudeau, Deccio, B. Sheldon, Prentice, Fraser, Kohl-Welles and Fairley

Read first time 01/30/2001. Referred to Committee on Health & Long-Term Care.

1 AN ACT Relating to improving the quality of in-home long-term
2 care services provided by state funded individual providers;
3 amending RCW 74.39A.005, 74.39A.030, 74.39A.095, 70.127.040,
4 70.127.040, 70.127.060, and 70.127.070; adding new sections to
5 chapter 74.39A RCW; creating a new section; providing an effective
6 date; and providing an expiration date.

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

8 **Sec. 1.** RCW 74.39A.005 and 2000 c 121 s 9 are each amended to read
9 as follows:

10 The legislature finds that the aging of the population and
11 advanced medical technology have resulted in a growing number of
12 persons who require assistance. The primary resource for long-term
13 care continues to be family and friends. However, these traditional
14 caregivers are increasingly employed outside the home. There is a
15 growing demand for improvement and expansion of home and community-
16 based long-term care services to support and complement the
17 services provided by these informal caregivers.

18 The legislature further finds that the public interest would

1 best be served by a broad array of long-term care services that
2 support persons who need such services at home or in the community
3 whenever practicable and that promote individual autonomy,
4 dignity, and choice.

5 The legislature finds that as other long-term care options
6 become more available, the relative need for nursing home beds is
7 likely to decline. The legislature recognizes, however, that
8 nursing home care will continue to be a critical part of the
9 state's long-term care options, and that such services should
10 promote individual dignity, autonomy, and a homelike environment.

11 The legislature finds that many recipients of in-home services
12 are vulnerable and their health and well-being are dependent on
13 their caregivers. The quality, skills, and knowledge of their
14 caregivers are often the key to good care. The legislature finds
15 that the need for well-trained caregivers is growing as the
16 state's population ages and clients' needs increase. The
17 legislature intends that current training standards be enhanced
18 and that an entity be established that has the authority to
19 recruit, train, stabilize, and improve the individual provider
20 work force.

21 NEW SECTION. **Sec. 2.** AUTHORIZATION OF HOME CARE QUALITY

22 AUTHORITY. (1) The governor shall establish a home care quality
23 authority to recruit, train, stabilize, and improve the individual
24 provider work force as provided in this act. The authority shall
25 constitute a political subdivision of the state established as an
26 instrumentality exercising essential governmental functions. The
27 authority shall be established within six months of the enactment
28 of this act.

29 (2) The home care quality authority shall consist of nine
30 members appointed by the governor. The governing board of the
31 authority shall be as follows: Five members of the governing board
32 shall be current or former consumers of home care services for the
33 elderly or people with disabilities, at least one of whom shall be
34 a person with a developmental disability; one member of the
35 governing board shall be a representative of the developmental
36 disabilities planning council; one member shall be a
37 representative of the governor's commission on disability and

1 employment; one member shall be a representative of the state
2 council on aging; and one member shall be a representative of the
3 Washington state association of area agencies on aging. The term of
4 office of each member will be three years. If there is a vacancy
5 for any cause, the governor shall make an appointment to become
6 immediately effective for the unexpired term. A member is eligible
7 for reappointment and may serve no more than two consecutive
8 terms. In making appointments to the authority, the governor shall
9 take into consideration any nominations or recommendations made by
10 the representative groups or agencies.

11 NEW SECTION. **Sec. 3.** DUTIES. The department shall contract with
12 the home care quality authority to carry out the following duties
13 and functions:

14 (1) Ensure that in-home long-term care services are provided to
15 functionally disabled people who are authorized to receive
16 services in their home under the medicaid personal care, community
17 options programs entry system, or chore services program through
18 an individual provider chosen and supervised by the functionally
19 disabled person;

20 (2)(a) Establish and investigate the qualifications and
21 background of potential individual providers. Any qualifications
22 established shall include: (i) Compliance with the minimum
23 requirements for training and criminal background checks as
24 provided in RCW 74.39A.050; and (ii) confirmation that the
25 potential individual provider is not currently listed on any long-
26 term care abuse and neglect registry currently in use, or
27 established at some future date.

28 (b) The department shall: (i) Continue to perform the criminal
29 background check for individual providers; and (ii) ensure that
30 the authority has ready access to any long-term care abuse and
31 neglect registry currently in use, or established at some future
32 date.

33 (c) The authority must give preference to the training and
34 employment of recipients of public assistance or other low-income
35 persons who would qualify for public assistance in the absence of
36 such employment;

1 (3) Provide training opportunities, either directly or through
2 contract, for individual providers and functionally disabled
3 persons as consumers of personal care services;

4 (4) Provide assistance to functionally disabled persons in
5 finding individual providers through the establishment of a
6 referral list of qualified individual providers;

7 (5) Provide routine, emergency, and respite referrals of
8 qualified individual providers to functionally disabled people who
9 are authorized to receive services in their home under the
10 medicaid personal care, community options programs entry system,
11 or chore services program through an individual provider hired
12 directly by the functionally disabled person; and

13 (6) Cooperate with area agencies on aging, the department, and
14 other state and local agencies to provide the services described
15 and set forth in this section. If, in the course of its duties, the
16 home care quality authority identifies concerns regarding the care
17 being provided by an individual provider, the authority shall
18 notify the relevant area agency on aging or department case
19 manager regarding its concerns.

20 NEW SECTION. **Sec. 4.** EMPLOYMENT RELATIONSHIP AND CONSUMER
21 RIGHTS. (1) The home care quality authority authorized by this act
22 shall be deemed to be the employer of individual providers who
23 provide services to functionally disabled persons authorized to
24 receive such services in their home under the medicaid personal
25 care, community options programs entry system, or chore services
26 program for the purpose of the application of chapter 41.56
27 RCW. The authority shall be deemed to be a public employer as that
28 term is defined in RCW 41.56.030(1) and the individual providers
29 shall be deemed to be public employees as that term is defined in
30 RCW 41.56.030(2). The provisions of chapter 41.56 RCW shall govern
31 the relations between the authority and the individual providers
32 except: (a) The only unit appropriate for the purpose of collective
33 bargaining under RCW 41.56.060 shall be a statewide unit of all
34 individual providers; (b) the showing of interest needed to
35 request an election under RCW 41.56.060 shall be ten percent of
36 the unit and any intervener seeking to appear on the ballot shall
37 make the same showing of interest; (c) the mediation and interest

1 arbitration provisions of RCW 41.56.430 through 41.56.470 and
2 41.56.480 shall apply; (d) individual providers shall not have a
3 right to strike; and (e) as otherwise expressly provided in this
4 act.

5 (2) The individual providers shall not be considered employees
6 of the state of Washington for any purpose.

7 (3) Functionally disabled persons who are authorized to receive
8 services in their home under the medicaid personal care, community
9 options programs entry system, or chore services program through
10 an individual provider retain the right to select, supervise, and
11 terminate the work of any individual provider providing services
12 to them. Functionally disabled persons who are authorized to
13 receive services in their home under the medicaid personal care,
14 community options programs entry system, or chore services program
15 through an individual provider may elect to receive services from
16 individual providers who are not referred to them by the home care
17 quality authority. Those providers shall be referred to the
18 authority for the purposes of wages, benefits, and other terms and
19 conditions of employment.

20 (4) In implementing and administering this act, no home care
21 quality authority, contractor, or a combination thereof, shall
22 reduce the hours of service for any functionally disabled person
23 below the amount determined to be necessary under any assessment
24 prepared by the department.

25 (5) The home care quality authority authorized under this act
26 may enter into contracts as are necessary or proper to carry out
27 this chapter.

28 (6) To the extent permitted by federal law, federal matching
29 funds under Title XIX of the federal social security act may be
30 used to establish and operate the home care quality authority
31 authorized by this act.

32 (7)(a) The home care quality authority authorized under this
33 act shall be deemed not to be the employer of individual providers
34 referred to functionally disabled persons under this act for
35 purposes of vicarious liability due to the negligence or
36 intentional torts of the individual provider.

37 (b) In no case shall the home care quality authority authorized
38 under this act be held liable for actions or omissions of any

1 individual provider whom the authority did not include on its
2 referral list or otherwise refer to a functionally disabled person
3 receiving services in their home under the medicaid personal care,
4 community options program entry system, or chore services program.

5 (c) The state shall be immune from any liability resulting from
6 implementation of this act. Any obligation of the home care quality
7 authority pursuant to this act, whether statutory, contractual, or
8 otherwise, shall be the obligation solely of the home care quality
9 authority, and shall not be the obligation of the state.

10 (8) Nothing in this section shall be construed to affect the
11 state's responsibility with respect to the state payroll system or
12 unemployment insurance for individual providers.

13 (9) The home care quality authority may offer its recruitment,
14 training, and referral services to long-term care providers other
15 than individual providers for a membership fee fixed by the
16 authority.

17 NEW SECTION. **Sec. 5.** PERFORMANCE REVIEW. (1) Two years after the
18 establishment of the home care quality authority, and biennially
19 thereafter, the joint legislative audit and review committee shall
20 perform a performance review of the authority. The first such
21 review shall be submitted to the legislature and the governor by
22 December 1st of the year following the initiation of the
23 performance review under this section.

24 (2) The performance review will give special attention to the
25 health, welfare, and satisfaction with services of the
26 functionally disabled persons receiving services from individual
27 providers under this act, including the degree to which all
28 required services have been delivered, the degree to which
29 functionally disabled persons receiving services from individual
30 providers have ultimately been placed in other residential
31 settings or nursing homes, prompt response to consumer complaints,
32 and any other issue the committee deems relevant.

33 (3) The performance review shall make recommendations to the
34 legislature and the governor for any changes to this act that will
35 further ensure the well-being of functionally disabled persons
36 receiving services from individual providers, and the most
37 efficient delivery of required services. In addition, the first

1 performance review must include findings and recommendations
2 regarding the appropriateness of the home care quality authority
3 assuming responsibility for verification of hours worked by
4 individual providers, payment of individual providers, or other
5 functions.

6 NEW SECTION. **Sec. 6.** APPROVAL OF WAGES AND BENEFITS. (1) When
7 any increase in provider wages or benefits is negotiated or agreed
8 to by the home care quality authority authorized under this act,
9 no increase in wages or benefits negotiated or agreed to pursuant
10 to this act shall take effect unless and until, prior to its
11 implementation, the department has determined that the increase is
12 consistent with federal law and to ensure federal financial
13 participation for the services under Title XIX of the federal
14 social security act.

15 (2) Any rate approved pursuant to (a) of this subsection shall
16 take effect commencing on the first day of the month subsequent to
17 the month in which final approval is received from the
18 department. The department may grant approval on a conditional
19 basis, subject to the availability of funding.

20 **Sec. 7.** RCW 74.39A.030 and 1995 1st sp.s. c 18 s 2 are each
21 amended to read as follows:

22 (1) To the extent of available funding, the department shall
23 expand cost-effective options for home and community services for
24 consumers for whom the state participates in the cost of their
25 care.

26 (2) In expanding home and community services, the department
27 shall: (a) Take full advantage of federal funding available under
28 Title XVIII and Title XIX of the federal social security act,
29 including home health, adult day care, waiver options, and state
30 plan services; and (b) be authorized to use funds available under
31 its community options program entry system waiver granted under
32 section 1915(c) of the federal social security act to expand the
33 availability of in-home, adult residential care, adult family
34 homes, enhanced adult residential care, and assisted living
35 services. By June 30, 1997, the department shall undertake to
36 reduce the nursing home medicaid census by at least one thousand

1 six hundred by assisting individuals who would otherwise require
2 nursing facility services to obtain services of their choice,
3 including assisted living services, enhanced adult residential
4 care, and other home and community services. If a resident, or his
5 or her legal representative, objects to a discharge decision
6 initiated by the department, the resident shall not be discharged
7 if the resident has been assessed and determined to require
8 nursing facility services. In contracting with nursing homes and
9 boarding homes for enhanced adult residential care placements, the
10 department shall not require, by contract or through other means,
11 structural modifications to existing building construction.

12 (3)(a) Except to the extent provided otherwise in section 6 of
13 this act, the department shall by rule establish payment rates for
14 home and community services that support the provision of cost-
15 effective care.

16 (b) The department may authorize an enhanced adult residential
17 care rate for nursing homes that temporarily or permanently
18 convert their bed use for the purpose of providing enhanced adult
19 residential care under chapter 70.38 RCW, when the department
20 determines that payment of an enhanced rate is cost-effective and
21 necessary to foster expansion of contracted enhanced adult
22 residential care services. As an incentive for nursing homes to
23 permanently convert a portion of its nursing home bed capacity for
24 the purpose of providing enhanced adult residential care, the
25 department may authorize a supplemental add-on to the enhanced
26 adult residential care rate.

27 (c) The department may authorize a supplemental assisted living
28 services rate for up to four years for facilities that convert
29 from nursing home use and do not retain rights to the converted
30 nursing home beds under chapter 70.38 RCW, if the department
31 determines that payment of a supplemental rate is cost-effective
32 and necessary to foster expansion of contracted assisted living
33 services.

34 **Sec. 8.** RCW 74.39A.095 and 2000 c 87 s 5 are each amended to read
35 as follows:

36 (1) In carrying out case management responsibilities
37 established under RCW 74.39A.090 for consumers who are receiving

1 services under the medicaid personal care, community options
2 programs entry system or chore services program through an
3 individual provider, each area agency on aging shall provide
4 adequate oversight of the care being provided to consumers
5 receiving services under this section. Such oversight shall
6 include, but is not limited to:

7 (a) Verification that ((the)) any individual provider who has
8 not been referred to a consumer by the home care quality authority
9 established under this act has met any training requirements
10 established by the department;

11 (b) Verification of a sample of worker time sheets;

12 (c) Home visits or telephone contacts sufficient to ensure that
13 the plan of care is being appropriately implemented;

14 (d) Reassessment and reauthorization of services;

15 (e) Monitoring of individual provider performance. If, in the
16 course of its monitoring, the area agency on aging identifies
17 concerns regarding the care being provided by an individual
18 provider who was referred to a consumer by the home care quality
19 authority authorized under this act, the area agency on aging
20 shall notify the home care quality authority regarding its
21 concerns; and

22 (f) Conducting criminal background checks or verifying that
23 criminal background checks have been conducted for any individual
24 provider who has not been referred to a functionally disabled
25 person by the home care quality authority authorized under this
26 act.

27 (2) The area agency on aging case manager shall work with each
28 consumer to develop a plan of care under this section that
29 identifies and ensures coordination of health and long-term care
30 services that meet the consumer's needs. In developing the plan,
31 they shall utilize, and modify as needed, any comprehensive
32 community service plan developed by the department as provided in
33 RCW 74.39A.040. The plan of care shall include, at a minimum:

34 (a) The name and telephone number of the consumer's area agency
35 on aging case manager, and a statement as to how the case manager
36 can be contacted about any concerns related to the consumer's well-
37 being or the adequacy of care provided;

1 (b) The name and telephone numbers of the consumer's primary
2 health care provider, and other health or long-term care providers
3 with whom the consumer has frequent contacts;

4 (c) A clear description of the roles and responsibilities of
5 the area agency on aging case manager and the consumer receiving
6 services under this section;

7 (d) The duties and tasks to be performed by the area agency on
8 aging case manager and the consumer receiving services under this
9 section;

10 (e) The type of in-home services authorized, and the number of
11 hours of services to be provided;

12 (f) The terms of compensation of the individual provider;

13 (g) A statement that the individual provider has the ability
14 and willingness to carry out his or her responsibilities relative
15 to the plan of care; and

16 (h)(i) Except as provided in (h)(ii) of this subsection, a
17 clear statement indicating that a consumer receiving services
18 under this section has the right to waive any of the case
19 management services offered by the area agency on aging under this
20 section, and a clear indication of whether the consumer has, in
21 fact, waived any of these services.

22 (ii) The consumer's right to waive case management services
23 does not include the right to waive reassessment or
24 reauthorization of services, or verification that services are
25 being provided in accordance with the plan of care.

26 (3) Each area agency on aging shall retain a record of each
27 waiver of services included in a plan of care under this section.

28 (4) Each consumer has the right to direct and participate in
29 the development of their plan of care to the maximum practicable
30 extent of their abilities and desires, and to be provided with the
31 time and support necessary to facilitate that participation.

32 (5) A copy of the plan of care must be distributed to the
33 consumer's primary care provider, individual provider, and other
34 relevant providers with whom the consumer has frequent contact, as
35 authorized by the consumer.

36 (6) The consumer's plan of care shall be an attachment to the
37 contract between the department, or their designee, and the
38 individual provider.

1 (7) If the department or area agency on aging case manager
2 finds that an individual provider's inadequate performance or
3 inability to deliver quality care is jeopardizing the health,
4 safety, or well-being of a consumer receiving service under this
5 section, the department or the area agency on aging may take
6 action to terminate the contract between the department and the
7 individual provider. If the department or the area agency on aging
8 has a reasonable, good faith belief that the health, safety, or
9 well-being of a consumer is in imminent jeopardy, the department
10 or area agency on aging may summarily suspend the contract pending
11 a fair hearing. The consumer may request a fair hearing to contest
12 the planned action of the case manager, as provided in chapter
13 34.05 RCW. When the department or area agency on aging terminates
14 or summarily suspends a contract under this subsection, they shall
15 provide oral and written notice of the action taken to the home
16 care quality authority authorized under this act. The department
17 may by rule adopt guidelines for implementing this subsection.

18 (8) The department or area agency on aging may reject a request
19 by a consumer receiving services under this section to have a
20 family member or other person serve as his or her individual
21 provider if the case manager has a reasonable, good faith belief
22 that the family member or other person will be unable to
23 appropriately meet the care needs of the consumer. The consumer may
24 request a fair hearing to contest the decision of the case
25 manager, as provided in chapter 34.05 RCW. The department may by
26 rule adopt guidelines for implementing this subsection.

27 **Sec. 9.** RCW 70.127.040 and 1993 c 42 s 2 are each amended to read
28 as follows:

29 The following are not subject to regulation for the purposes of
30 this chapter:

31 (1) A family member;

32 (2) An organization that provides only meal services in a
33 person's residence;

34 (3) Entities furnishing durable medical equipment that does not
35 involve the delivery of professional services beyond those
36 necessary to set up and monitor the proper functioning of the
37 equipment and educate the user on its proper use;

1 (4) A person who provides services through a contract with a
2 licensed agency;

3 (5) An employee or volunteer of a licensed agency who provides
4 services only as an employee or volunteer;

5 (6) Facilities and institutions, including but not limited to
6 nursing homes under chapter 18.51 RCW, hospitals under chapter
7 70.41 RCW, boarding homes under chapter 18.20 RCW, developmental
8 disability residential programs under chapter 71.12 RCW, or other
9 facilities and institutions, only when providing services to
10 persons residing within the facility or institution if the
11 delivery of the services is regulated by the state;

12 (7) Persons providing care to disabled persons through a
13 contract with the department of social and health services;

14 (8) The home care quality authority authorized under section 2
15 of this act;

16 (9) Nursing homes, hospitals, or other institutions, agencies,
17 organizations, or persons that contract with licensed home health,
18 hospice, or home care agencies for the delivery of services;

19 ~~((+9))~~ (10) In-home assessments of an ill, disabled, or infirm
20 person's ability to adapt to the home environment that does not
21 result in regular ongoing care at home;

22 ~~((+10))~~ (11) Services conducted by and for the adherents of a
23 church or religious denomination that rely upon spiritual means
24 alone through prayer for healing in accordance with the tenets and
25 practices of such church or religious denomination and the bona
26 fide religious beliefs genuinely held by such adherents;

27 ~~((+11))~~ (12) A medicare-approved dialysis center operating a
28 medicare-approved home dialysis program;

29 ~~((+12))~~ (13) Case management services which do not include the
30 direct delivery of home health, hospice, or home care services;

31 ~~((+13))~~ (14) Pharmacies licensed under RCW 18.64.043 that
32 deliver prescription drugs and durable medical equipment that does
33 not involve the use of professional services beyond those
34 authorized to be performed by licensed pharmacists pursuant to
35 chapter 18.64 RCW and those necessary to set up and monitor the
36 proper functioning of the equipment and educate the person on its
37 proper use.
38

1 **Sec. 10.** RCW 70.127.040 and 2000 c 175 s 4 are each amended to read
2 as follows:

3 The following are not subject to regulation for the purposes of
4 this chapter:

5 (1) A family member providing home health, hospice, or home
6 care services;

7 (2) A person who provides only meal services in an individual's
8 permanent or temporary residence;

9 (3) An individual providing home care through a direct
10 agreement with a recipient of care in an individual's permanent or
11 temporary residence;

12 (4) A person furnishing or delivering home medical supplies or
13 equipment that does not involve the provision of services beyond
14 those necessary to deliver, set up, and monitor the proper
15 functioning of the equipment and educate the user on its proper
16 use;

17 (5) A person who provides services through a contract with a
18 licensed agency;

19 (6) An employee or volunteer of a licensed agency who provides
20 services only as an employee or volunteer;

21 (7) Facilities and institutions, including but not limited to
22 nursing homes under chapter 18.51 RCW, hospitals under chapter
23 70.41 RCW, adult family homes under chapter 70.128 RCW, boarding
24 homes under chapter 18.20 RCW, developmental disability
25 residential programs under chapter 71.12 RCW, other entities
26 licensed under chapter (~~71.12~~) 71A.12 RCW, or other licensed
27 facilities and institutions, only when providing services to
28 persons residing within the facility or institution;

29 (8) Local and combined city-county health departments providing
30 services under chapters 70.05 and 70.08 RCW;

31 (9) An individual providing care to ill, disabled, infirm, or
32 vulnerable individuals through a contract with the department of
33 social and health services;

34 (10) The home care quality authority authorized under section 2
35 of this act;

36 (11) Nursing homes, hospitals, or other institutions, agencies,
37 organizations, or persons that contract with licensed home health,
38 hospice, or home care agencies for the delivery of services;

1 (~~(11)~~) (12) In-home assessments of an ill, disabled,
2 vulnerable, or infirm individual that does not result in regular
3 ongoing care at home;

4 (~~(12)~~) (13) Services conducted by and for the adherents of a
5 church or religious denomination that rely upon spiritual means
6 alone through prayer for healing in accordance with the tenets and
7 practices of such church or religious denomination and the bona
8 fide religious beliefs genuinely held by such adherents;

9 (~~(13)~~) (14) A medicare-approved dialysis center operating a
10 medicare-approved home dialysis program;

11 (~~(14)~~) (15) A person providing case management services. For
12 the purposes of this subsection, "case management" means the
13 assessment, coordination, authorization, planning, training, and
14 monitoring of home health, hospice, and home care, and does not
15 include the direct provision of care to an individual;

16 (~~(15)~~) (16) Pharmacies licensed under RCW 18.64.043 that
17 deliver prescription drugs and durable medical equipment that does
18 not involve the use of professional services beyond those
19 authorized to be performed by licensed pharmacists pursuant to
20 chapter 18.64 RCW and those necessary to set up and monitor the
21 proper functioning of the equipment and educate the person on its
22 proper use;

23 (~~(16)~~) (17) A volunteer hospice complying with the
24 requirements of RCW 70.127.050; and

25 (~~(17)~~) (18) A person who provides home care services without
26 compensation.

27 **Sec. 11.** RCW 70.127.060 and 1988 c 245 s 7 are each amended to read
28 as follows:

29 Except as exempt under RCW 70.127.040 (6) and (~~(8)~~) (9) a
30 nursing home licensed under chapter 18.51 RCW is not exempt from
31 the requirements of this chapter when the nursing home is
32 functioning as a home health, hospice, or home care agency.

33 **Sec. 12.** RCW 70.127.070 and 1988 c 245 s 8 are each amended to read
34 as follows:

35 Except as exempt under RCW 70.127.040 (6) and (~~(8)~~) (9), a

1 hospital licensed under chapter 70.41 RCW is not exempt from the
2 requirements of this chapter when the hospital is functioning as a
3 home health, hospice, or home care agency.

4 NEW SECTION. **Sec. 13.** Sections 2 through 6 of this act are each
5 added to chapter 74.39A RCW.

6 NEW SECTION. **Sec. 14.** Sections 9, 11, and 12 of this act expire
7 January 1, 2002.

8 NEW SECTION. **Sec. 15.** Section 10 of this act takes effect
9 January 1, 2002.

10 NEW SECTION. **Sec. 16.** Captions used in this act are not any part
11 of the law.

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