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SENATE BILL 5732

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State of Washington

58th Legislature

2003 Regular Session

By Senators Deccio, Rasmussen, Brandland and Winsley

Read first time 02/10/2003. Referred to Committee on Health & Long-Term Care.

1 AN ACT Relating to in-home long-term care services liability; and  
2 amending RCW 4.22.070, 74.39A.095, and 74.39A.270.

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

4 **Sec. 1.** RCW 4.22.070 and 1993 c 496 s 1 are each amended to read  
5 as follows:

6 (1) In all actions involving fault of more than one entity, the  
7 trier of fact shall determine the percentage of the total fault which  
8 is attributable to every entity which caused the claimant's damages  
9 except entities immune from liability to the claimant under Title 51  
10 RCW. The sum of the percentages of the total fault attributed to at-  
11 fault entities shall equal one hundred percent. The entities whose  
12 fault shall be determined include the claimant or person suffering  
13 personal injury or incurring property damage, defendants, third-party  
14 defendants, entities released by the claimant, entities with any other  
15 individual defense against the claimant, and entities immune from  
16 liability to the claimant, but shall not include those entities immune  
17 from liability to the claimant under Title 51 RCW. Judgment shall be  
18 entered against each defendant except those who have been released by  
19 the claimant or are immune from liability to the claimant or have

1 prevailed on any other individual defense against the claimant in an  
2 amount which represents that party's proportionate share of the  
3 claimant's total damages. The liability of each defendant shall be  
4 several only and shall not be joint except:

5 (a) A party shall be responsible for the fault of another person or  
6 for payment of the proportionate share of another party where both were  
7 acting in concert or when a person was acting as an agent or servant of  
8 the party.

9 (b) If the trier of fact determines that the claimant or party  
10 suffering bodily injury or incurring property damages was not at fault,  
11 the defendants against whom judgment is entered shall be jointly and  
12 severally liable for the sum of their proportionate shares of the  
13 ~~((claimants [claimant's]))~~ claimant's total damages. The exception set  
14 forth in this subsection does not apply to entities providing in-home  
15 case management services under chapter 74.39A RCW, including the home  
16 care quality authority, the department of social and health services,  
17 and the area agencies on aging, or their contractors.

18 (2) If a defendant is jointly and severally liable under one of the  
19 exceptions listed in subsections (1)(a) or (1)(b) of this section, such  
20 defendant's rights to contribution against another jointly and  
21 severally liable defendant, and the effect of settlement by either such  
22 defendant, shall be determined under RCW 4.22.040, 4.22.050, and  
23 4.22.060.

24 (3)(a) Nothing in this section affects any cause of action relating  
25 to hazardous wastes or substances or solid waste disposal sites.

26 (b) Nothing in this section shall affect a cause of action arising  
27 from the tortious interference with contracts or business relations.

28 (c) Nothing in this section shall affect any cause of action  
29 arising from the manufacture or marketing of a fungible product in a  
30 generic form which contains no clearly identifiable shape, color, or  
31 marking.

32 **Sec. 2.** RCW 74.39A.095 and 2002 c 3 s 11 (Initiative Measure No.  
33 775) are each amended to read as follows:

34 (1) In carrying out case management responsibilities established  
35 under RCW 74.39A.090 for consumers who are receiving services under the  
36 medicaid personal care, community options programs entry system or  
37 chore services program through an individual provider, each area agency

1 on aging shall provide oversight of the care being provided to  
2 consumers receiving services under this section to the extent of  
3 available funding. Case management responsibilities incorporate this  
4 oversight, and include, but are not limited to:

5 (a) Verification that any individual provider who has not been  
6 referred to a consumer by the authority established under chapter 3,  
7 Laws of 2002 has met any training requirements established by the  
8 department;

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

10 (c) Monitoring the consumer's plan of care to (~~ensure~~) verify  
11 that it adequately meets the needs of the consumer, through activities  
12 such as home visits, telephone contacts, and responses to information  
13 received by the area agency on aging indicating that a consumer may be  
14 experiencing problems relating to his or her home care;

15 (d) Reassessment and reauthorization of services;

16 (e) Monitoring of individual provider performance. If, in the  
17 course of its case management activities, the area agency on aging  
18 identifies concerns regarding the care being provided by an individual  
19 provider who was referred by the authority, the area agency on aging  
20 must notify the authority regarding its concerns; and

21 (f) Conducting criminal background checks or verifying that  
22 criminal background checks have been conducted for any individual  
23 provider who has not been referred to a consumer by the authority.

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

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

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

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

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

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

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

10 (g) A statement (~~that~~) by the individual provider that he or she  
11 has the ability and willingness to carry out his or her  
12 responsibilities relative to the plan of care; and

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

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

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

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

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

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

36 (7) If the department or area agency on aging case manager finds  
37 that an individual provider's inadequate performance or inability to  
38 deliver quality care is jeopardizing the health, safety, or well-being

1 of a consumer receiving service under this section, the department or  
2 the area agency on aging may take action to terminate the contract  
3 between the department and the individual provider. If the department  
4 or the area agency on aging has a reasonable, good faith belief that  
5 the health, safety, or well-being of a consumer is in imminent  
6 jeopardy, the department or area agency on aging may summarily suspend  
7 the contract pending a fair hearing. The consumer may request a fair  
8 hearing to contest the planned action of the case manager, as provided  
9 in chapter 34.05 RCW. When the department or area agency on aging  
10 terminates or summarily suspends a contract under this subsection, it  
11 must provide oral and written notice of the action taken to the  
12 authority. The department may by rule adopt guidelines for  
13 implementing this subsection.

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

23 **Sec. 3.** RCW 74.39A.270 and 2002 c 3 s 6 (Initiative Measure No.  
24 775) are each amended to read as follows:

25 (1) Solely for the purposes of collective bargaining, the authority  
26 is the public employer, as defined in chapter 41.56 RCW, of individual  
27 providers, who are public employees, as defined in chapter 41.56 RCW,  
28 of the authority.

29 (2) Chapter 41.56 RCW governs the employment relationship between  
30 the authority and individual providers, except as otherwise expressly  
31 provided in chapter 3, Laws of 2002 and except as follows:

32 (a) The only unit appropriate for the purpose of collective  
33 bargaining under RCW 41.56.060 is a statewide unit of all individual  
34 providers;

35 (b) The showing of interest required to request an election under  
36 RCW 41.56.060 is ten percent of the unit, and any intervener seeking to  
37 appear on the ballot must make the same showing of interest;

1 (c) The mediation and interest arbitration provisions of RCW  
2 41.56.430 through 41.56.470 and 41.56.480 apply;

3 (d) Individual providers do not have the right to strike; and

4 (e) Individual providers who are related to, or family members of,  
5 consumers or prospective consumers are not, for that reason, exempt  
6 from chapter 3, Laws of 2002 or chapter 41.56 RCW.

7 (3) Individual providers who are employees of the authority under  
8 subsection (1) of this section are not, for that reason, employees of  
9 the state for any purpose.

10 (4) Consumers and prospective consumers retain the right to select,  
11 hire, supervise the work of, and terminate any individual provider  
12 providing services to them. Consumers may elect to receive long-term  
13 in-home care services from individual providers who are not referred to  
14 them by the authority.

15 (5) In implementing and administering chapter 3, Laws of 2002,  
16 neither the authority nor any of its contractors may reduce or increase  
17 the hours of service for any consumer below or above the amount  
18 determined to be necessary under any assessment prepared by the  
19 department or an area agency on aging.

20 (6)(a) The authority, the department, the area agencies on aging,  
21 or their contractors under chapter 3, Laws of 2002 may not be held  
22 vicariously or jointly liable for the action or inaction of any  
23 individual provider or prospective individual provider, whether or not  
24 that individual provider or prospective individual provider was  
25 included on the authority's referral registry or referred to a consumer  
26 or prospective consumer.

27 (b) The members of the board are immune from any liability  
28 resulting from implementation of chapter 3, Laws of 2002.

29 (7) Nothing in this section affects the state's responsibility with  
30 respect to the state payroll system or unemployment insurance for  
31 individual providers.

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