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SENATE BILL 5886

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State of Washington

59th Legislature

2005 Regular Session

By Senators Keiser, Deccio and Rasmussen; by request of Department of Social and Health Services

Read first time 02/11/2005. Referred to Committee on Health & Long-Term Care.

1 AN ACT Relating to home and community services' case management  
2 responsibilities; and amending RCW 74.09.520, 74.39A.009, 74.39A.030,  
3 74.39A.090, 74.39A.095, and 74.39A.240.

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

5 **Sec. 1.** RCW 74.09.520 and 2004 c 141 s 2 are each amended to read  
6 as follows:

7 (1) The term "medical assistance" may include the following care  
8 and services: (a) Inpatient hospital services; (b) outpatient hospital  
9 services; (c) other laboratory and x-ray services; (d) nursing facility  
10 services; (e) physicians' services, which shall include prescribed  
11 medication and instruction on birth control devices; (f) medical care,  
12 or any other type of remedial care as may be established by the  
13 secretary; (g) home health care services; (h) private duty nursing  
14 services; (i) dental services; (j) physical and occupational therapy  
15 and related services; (k) prescribed drugs, dentures, and prosthetic  
16 devices; and eyeglasses prescribed by a physician skilled in diseases  
17 of the eye or by an optometrist, whichever the individual may select;  
18 (l) personal care services, as provided in this section; (m) hospice  
19 services; (n) other diagnostic, screening, preventive, and

1 rehabilitative services; and (o) like services when furnished to a  
2 child by a school district in a manner consistent with the requirements  
3 of this chapter. For the purposes of this section, the department may  
4 not cut off any prescription medications, oxygen supplies, respiratory  
5 services, or other life-sustaining medical services or supplies.

6 "Medical assistance," notwithstanding any other provision of law,  
7 shall not include routine foot care, or dental services delivered by  
8 any health care provider, that are not mandated by Title XIX of the  
9 social security act unless there is a specific appropriation for these  
10 services.

11 (2) The department shall amend the state plan for medical  
12 assistance under Title XIX of the federal social security act to  
13 include personal care services, as defined in 42 C.F.R. 440.170(f), in  
14 the categorically needy program.

15 (3) The department shall adopt, amend, or rescind such  
16 administrative rules as are necessary to ensure that Title XIX personal  
17 care services are provided to eligible persons in conformance with  
18 federal regulations.

19 (a) These administrative rules shall include financial eligibility  
20 indexed according to the requirements of the social security act  
21 providing for medicaid eligibility.

22 (b) The rules shall require clients be assessed as having a medical  
23 condition requiring assistance with personal care tasks. Plans of care  
24 for clients requiring health-related consultation for assessment and  
25 service planning may be reviewed by a nurse.

26 (c) The department shall determine by rule which clients have a  
27 health-related assessment or service planning need requiring registered  
28 nurse consultation or review. This definition may include clients that  
29 meet indicators or protocols for review, consultation, or visit.

30 (4) The department shall design and implement a means to assess the  
31 level of functional disability of persons eligible for personal care  
32 services under this section. The personal care services benefit shall  
33 be provided to the extent funding is available according to the  
34 assessed level of functional disability. Any reductions in services  
35 made necessary for funding reasons should be accomplished in a manner  
36 that assures that priority for maintaining services is given to persons  
37 with the greatest need as determined by the assessment of functional  
38 disability.

1 (5) Effective July 1, 1989, the department shall offer hospice  
2 services in accordance with available funds.

3 (6) For Title XIX personal care services administered by aging and  
4 disability services administration of the department, the department  
5 shall contract with area agencies on aging:

6 (a) To provide case management services to individuals receiving  
7 Title XIX personal care services in their own home; and

8 (b) To reassess and reauthorize Title XIX personal care services or  
9 other home and community services as defined in RCW 74.39A.009 in home  
10 or in other settings for individuals consistent with the intent of this  
11 section:

12 (i) Who have been initially authorized by the department to receive  
13 Title XIX personal care services or other home and community services  
14 as defined in RCW 74.39A.009; and

15 (ii) Who, at the time of reassessment and reauthorization, are  
16 receiving such services in their own home.

17 (7)(a) In the event that an area agency on aging is unwilling to  
18 enter into or satisfactorily fulfill a contract or an individual  
19 consumer's need for case management services will be met through an  
20 alternative delivery system, the department is authorized to:

21 ~~((a))~~ (i) Obtain the services through competitive bid; and

22 ~~((b))~~ (ii) Provide the services directly until a qualified  
23 contractor can be found.

24 (b) In the event that the department elects to contract with an  
25 alternative delivery system to provide case management services in a  
26 region, the department may by contract limit the role of the area  
27 agency on aging to reassessing and reauthorizing services. An area  
28 agency on aging whose role is limited to reassessing and reauthorizing  
29 services shall not be jointly or severally liable for the acts or  
30 omissions of any other organization with respect to the provision of  
31 services through the alternative delivery system.

32 **Sec. 2.** RCW 74.39A.009 and 2004 c 142 s 14 are each amended to  
33 read as follows:

34 Unless the context clearly requires otherwise, the definitions in  
35 this section apply throughout this chapter.

36 (1) "Adult family home" means a home licensed under chapter 70.128  
37 RCW.

1 (2) "Adult residential care" means services provided by a boarding  
2 home that is licensed under chapter 18.20 RCW and that has a contract  
3 with the department under RCW 74.39A.020 to provide personal care  
4 services.

5 (3) "Assisted living services" means services provided by a  
6 boarding home that has a contract with the department under RCW  
7 74.39A.010 to provide personal care services, intermittent nursing  
8 services, and medication administration services, and the resident is  
9 housed in a private apartment-like unit.

10 (4) "Boarding home" means a facility licensed under chapter 18.20  
11 RCW.

12 (5) "Cost-effective care" means care provided in a setting of an  
13 individual's choice that is necessary to promote the most appropriate  
14 level of physical, mental, and psychosocial well-being consistent with  
15 client choice, in an environment that is appropriate to the care and  
16 safety needs of the individual, and such care cannot be provided at a  
17 lower cost in any other setting. But this in no way precludes an  
18 individual from choosing a different residential setting to achieve his  
19 or her desired quality of life.

20 (6) "Department" means the department of social and health  
21 services.

22 (7) "Enhanced adult residential care" means services provided by a  
23 boarding home that is licensed under chapter 18.20 RCW and that has a  
24 contract with the department under RCW 74.39A.010 to provide personal  
25 care services, intermittent nursing services, and medication  
26 administration services.

27 (8) "Functionally disabled person" is synonymous with chronic  
28 functionally disabled and means a person who because of a recognized  
29 chronic physical or mental condition or disease, including chemical  
30 dependency, is impaired to the extent of being dependent upon others  
31 for direct care, support, supervision, or monitoring to perform  
32 activities of daily living. "Activities of daily living", in this  
33 context, means self-care abilities related to personal care such as  
34 bathing, eating, using the toilet, dressing, and transfer.  
35 Instrumental activities of daily living may also be used to assess a  
36 person's functional abilities as they are related to the mental  
37 capacity to perform activities in the home and the community such as

1 cooking, shopping, house cleaning, doing laundry, working, and managing  
2 personal finances.

3 (9) "Home and community services" means (~~adult family homes, in-~~  
4 ~~home services, and other services administered or provided by contract~~  
5 ~~by the department directly or through contract with area agencies on~~  
6 ~~aging or similar services provided by facilities and agencies licensed~~  
7 ~~by the department~~) care and services provided in the home, in licensed  
8 residential facilities such as adult family homes and boarding homes,  
9 and in other community settings, and that are administered or provided  
10 by the department directly or through contract with area agencies on  
11 aging, managed care organizations, residential facilities, or other  
12 community agencies or organizations.

13 (10) "Long-term care" is synonymous with chronic care and means  
14 care and supports delivered indefinitely, intermittently, or over a  
15 sustained time to persons of any age disabled by chronic mental or  
16 physical illness, disease, chemical dependency, or a medical condition  
17 that is permanent, not reversible or curable, or is long-lasting and  
18 severely limits their mental or physical capacity for self-care. The  
19 use of this definition is not intended to expand the scope of services,  
20 care, or assistance by any individuals, groups, residential care  
21 settings, or professions unless otherwise expressed by law.

22 (11) "Nursing home" means a facility licensed under chapter 18.51  
23 RCW.

24 (12) "Secretary" means the secretary of social and health services.

25 (13) "Tribally licensed boarding home" means a boarding home  
26 licensed by a federally recognized Indian tribe which home provides  
27 services similar to boarding homes licensed under chapter 18.20 RCW.

28 **Sec. 3.** RCW 74.39A.030 and 2002 c 3 s 10 are each amended to read  
29 as follows:

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

33 (2) In expanding home and community services, the department shall:  
34 (a) Take full advantage of federal funding available under Title XVIII  
35 and Title XIX of the federal social security act, including home  
36 health, adult day care, waiver options, and state plan services; and  
37 (b) be authorized to use funds available under its community options

1 program entry system waiver or medically needy waivers granted under  
2 section 1915(c) of the federal social security act to expand the  
3 availability of in-home, adult residential care, adult family homes,  
4 enhanced adult residential care, ~~((and))~~ assisted living services, and  
5 other home and community services. By June 30, 1997, the department  
6 shall undertake to reduce the nursing home medicaid census by at least  
7 one thousand six hundred by assisting individuals who would otherwise  
8 require nursing facility services to obtain services of their choice,  
9 including assisted living services, enhanced adult residential care,  
10 and other home and community services. If a resident, or his or her  
11 legal representative, objects to a discharge decision initiated by the  
12 department, the resident shall not be discharged if the resident has  
13 been assessed and determined to require nursing facility services. In  
14 contracting with nursing homes and boarding homes for enhanced adult  
15 residential care placements, the department shall not require, by  
16 contract or through other means, structural modifications to existing  
17 building construction.

18 (3)(a) The department shall by rule establish payment rates for  
19 home and community services that support the provision of cost-  
20 effective care. In the event of any conflict between any such rule and  
21 a collective bargaining agreement entered into under RCW 74.39A.270 and  
22 74.39A.300, the collective bargaining agreement prevails.

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

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

1       **Sec. 4.** RCW 74.39A.090 and 2004 c 141 s 3 are each amended to read  
2 as follows:

3       (1) The legislature intends that any staff reassigned by the  
4 department as a result of shifting of the reauthorization  
5 responsibilities by contract outlined in this section shall be  
6 dedicated for discharge planning and assisting with discharge planning  
7 and information on existing discharge planning cases. Discharge  
8 planning, as directed in this section, is intended for residents and  
9 patients identified for discharge to long-term care pursuant to RCW  
10 70.41.320, 74.39A.040, and 74.42.058. The purpose of discharge  
11 planning is to protect residents and patients from the financial  
12 incentives inherent in keeping residents or patients in a more  
13 expensive higher level of care and shall focus on care options that are  
14 in the best interest of the patient or resident.

15       (2) Except as provided in subsection (3) of this section, the  
16 department shall contract with area agencies on aging:

17       (a) To provide case management services to consumers receiving home  
18 and community services in their own home; and

19       (b) To reassess and reauthorize home and community services in home  
20 or in other settings for consumers consistent with the intent of this  
21 section:

22       (i) Who have been initially authorized by the department to receive  
23 home and community services; and

24       (ii) Who, at the time of reassessment and reauthorization, are  
25 receiving home and community services in their own home.

26       (3)(a) In the event that an area agency on aging is unwilling to  
27 enter into or satisfactorily fulfill a contract or an individual  
28 consumer's need for case management services will be met through an  
29 alternative delivery system, the department is authorized to:

30       (~~(a)~~) (i) Obtain the services through competitive bid; and

31       (~~(b)~~) (ii) Provide the services directly until a qualified  
32 contractor can be found.

33       (b) In the event that the department elects to contract with an  
34 alternative delivery system to provide case management services in a  
35 region, the department may by contract limit the role of the area  
36 agency on aging to reassessing and reauthorizing services. An area  
37 agency on aging whose role is limited to reassessing and reauthorizing

1 services shall not be jointly or severally liable for the acts or  
2 omissions of any other organization with respect to the provision of  
3 services through the alternative delivery system.

4 (4) The department shall include, in its oversight and monitoring  
5 of area agency on aging performance, assessment of case management  
6 roles undertaken by area agencies on aging in this section. The scope  
7 of oversight and monitoring includes, but is not limited to, assessing  
8 the degree and quality of the case management performed by area agency  
9 on aging staff for elderly and disabled persons in the community.

10 (5) Area agencies on aging shall assess the quality of the in-home  
11 care services provided to consumers who are receiving services under  
12 the medicaid personal care, community options programs entry system or  
13 chore services program through an individual provider or home care  
14 agency. Quality indicators may include, but are not limited to, home  
15 care consumers satisfaction surveys, how quickly home care consumers  
16 are linked with home care workers, and whether the plan of care under  
17 RCW 74.39A.095 has been honored by the agency or the individual  
18 provider.

19 (6) The department shall develop model language for the plan of  
20 care established in RCW 74.39A.095. The plan of care shall be in clear  
21 language, and written at a reading level that will ensure the ability  
22 of consumers to understand the rights and responsibilities expressed in  
23 the plan of care.

24 **Sec. 5.** RCW 74.39A.095 and 2004 c 141 s 1 are each amended to read  
25 as follows:

26 (1) In carrying out case management responsibilities established  
27 under RCW 74.39A.090 (~~for consumers who are receiving services under~~  
28 ~~the medicaid personal care, community options programs entry system or~~  
29 ~~chore services program through an individual provider)), except when  
30 the role of the area agency on aging has been limited as provided under  
31 RCW 74.39A.090(3), each area agency on aging shall, to the extent of  
32 available funding, provide oversight of the care being provided to  
33 consumers receiving services under (~~this section to the extent of~~  
34 ~~available funding)) the medicaid personal care, community options  
35 program entry system, medically needy in-home waiver, or chore services  
36 program through an individual provider. An area agency on aging whose~~~~



1 role is limited to reassessing and reauthorizing services shall not be  
2 subject to this section. Case management responsibilities

3 (~~incorporate this oversight, and~~) include, but are not limited to:

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

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

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

14 (d) Reassessment and reauthorization of services;

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

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

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

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

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

37 (c) A clear description of the roles and responsibilities of the

1 area agency on aging case manager and the consumer receiving services  
2 under this section;

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

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

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

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

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

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

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

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

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

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

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

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

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

22 **Sec. 6.** RCW 74.39A.240 and 2002 c 3 s 3 are each amended to read  
23 as follows:

24 The definitions in this section apply throughout RCW 74.39A.030 and  
25 74.39A.095 and 74.39A.220 through 74.39A.300, 41.56.026, 70.127.041,  
26 and 74.09.740 unless the context clearly requires otherwise.

27 (1) "Authority" means the home care quality authority.

28 (2) "Board" means the board created under RCW 74.39A.230.

29 (3) "Consumer" means a person to whom an individual provider  
30 provides any such services.

31 (4) "Individual provider" means a person, including a personal  
32 aide, who has contracted with the department to provide personal care  
33 or respite care services to functionally disabled persons under the  
34 medicaid personal care, community options program entry system,  
35 medically needy in-home waiver, chore services program, or respite care  
36 program, or to provide respite care or residential services and support

1 to persons with developmental disabilities under chapter 71A.12 RCW, or  
2 to provide respite care as defined in RCW 74.13.270.

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