
HOUSE BILL 3017

State of Washington

61st Legislature

2010 Regular Session

By Representatives O'Brien, Goodman, Pettigrew, Hunt, Seaquist, Walsh, Condotta, Appleton, and Santos

Read first time 01/20/10. Referred to Committee on Health & Human Services Appropriations.

1 AN ACT Relating to modifying state payments for in-home care;
2 amending RCW 74.39A.326; creating new sections; and declaring an
3 emergency.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that:

6 (1) In a situation in which a person receiving in-home care
7 services does not have the capacity to act as the employer of his or
8 her own care provider and cannot supervise the provision of his or her
9 own care, the care provider is essentially supervising himself or
10 herself;

11 (2) The lack of independent supervision raises concerns because the
12 person receiving services is not capable of providing the supervision
13 himself or herself;

14 (3) If no other qualified person is willing to accept, in writing,
15 the responsibilities and obligations to supervise the individual
16 provider, it would be in the best interests of the person receiving
17 services to allow the individual provider to be employed and supervised
18 by a licensed home care agency; and

1 (4) Persons receiving services might be best served by an exemption
2 to the prohibition against payment for family member care providers
3 employed by home care agencies.

4 **Sec. 2.** RCW 74.39A.326 and 2009 c 571 s 1 are each amended to read
5 as follows:

6 (1)(a) The department shall not pay a home care agency licensed
7 under chapter 70.127 RCW for in-home personal care or respite services
8 provided under this chapter, Title 71A RCW, or chapter 74.39 RCW if the
9 care is provided to a client by a family member of the client. (~~To~~
10 ~~the extent permitted under federal law,~~) The provisions of this
11 subsection shall not apply if ((the family member providing care is
12 older than)) the client is unable to supervise his or her paid care
13 provider and has no qualified person willing to accept in writing the
14 responsibilities and obligations of providing such supervision.

15 (b) The department may, on a case-by-case basis based on the
16 client's health and safety, make exceptions to (a) of this subsection
17 to authorize payment or to provide for payment during a transition
18 period of up to three months.

19 (2) The department shall take appropriate enforcement action
20 against a home care agency found to have charged the state for hours of
21 service for which the department is not authorized to pay under this
22 section, including requiring recoupment of any payment made for those
23 hours and, under criteria adopted by the department by rule,
24 terminating the contract of an agency that violates a recoupment
25 requirement.

26 (3) For purposes of this section:

27 (a) "Client" means a person who has been deemed eligible by the
28 department to receive in-home personal care or respite services.

29 (b) "Family member" shall be liberally construed to include, but
30 not be limited to, a parent, child, sibling, aunt, uncle, cousin,
31 grandparent, grandchild, grandniece, or grandnephew, or such relatives
32 when related by marriage.

33 (~~(4)~~) (c) "Qualified person" means any individual over the age of
34 twenty-one selected by the client or his or her legal representative,
35 who meets the department's background check requirements, and who does
36 not receive payment from the department for providing services to the
37 client.

1 (4) For purposes of this section, a client is unable to supervise
2 his or her paid care provider if so determined by the department's
3 comprehensive assessment reporting evaluation or any successor
4 evaluation tool adopted by the department or if the inability to
5 supervise the paid care provider results from the client's level of
6 cognitive performance, clinical complexity, or mood or behavior
7 symptoms as certified by the client's treating physician.

8 (5) The department shall adopt rules to implement this section.
9 The rules shall not result in affecting the amount, duration, or scope
10 of the personal care or respite services benefit to which a client may
11 be entitled pursuant to RCW 74.09.520 or Title XIX of the federal
12 social security act.

13 NEW SECTION. Sec. 3. If any part of this act is found to be in
14 conflict with federal requirements that are a prescribed condition to
15 the allocation of federal funds to the state, the conflicting part of
16 this act is inoperative solely to the extent of the conflict and with
17 respect to the agencies directly affected, and this finding does not
18 affect the operation of the remainder of this act in its application to
19 the agencies concerned. Rules adopted under this act must meet federal
20 requirements that are a necessary condition to the receipt of federal
21 funds by the state.

22 NEW SECTION. Sec. 4. This act is necessary for the immediate
23 preservation of the public peace, health, or safety, or support of the
24 state government and its existing public institutions, and takes effect
25 immediately.

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