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HOUSE BILL 3108

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State of Washington                      61st Legislature                      2010 Regular Session

By Representatives O'Brien, Warnick, Pettigrew, Wallace, and Santos

Read first time 01/25/10. 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 a new section; repealing RCW  
3 74.39A.325; and repealing 2009 c 571 s 3 (uncodified).

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

5            NEW SECTION.    **Sec. 1.** (1) The intent of this act is to specify the  
6 manner and circumstances under which family members are paid by the  
7 department when they are employed by an agency licensed under chapter  
8 70.127 RCW for in-home personal care services provided under the  
9 medicaid in-home personal care program.

10            (2) The legislature recognizes that:

11            (a) Some clients receiving in-home care are best served by having  
12 their own caregivers receive the oversight, monitoring, and support  
13 provided by a home care agency;

14            (b) A recent financial analysis conducted by an independent analyst  
15 found that payments by the state for agency employed family member  
16 caregivers are much less than the previously calculated five dollars  
17 per hour differential and could be a net amount less for family member  
18 caregivers employed by agencies than for family member independent  
19 providers;

1 (c) Clients for whom English is not a native language often require  
2 extensive translation services which is better and more cost-effective  
3 when provided by a family member supervised by an agency rather than by  
4 a translator paid for by the state;

5 (d) Clients for whom English is not a native language and Native  
6 American tribal members often have cultural needs that are best served  
7 by family members who have the oversight, monitoring, and support of a  
8 home care agency; and

9 (e) Clients of in-home services should have the ability to choose  
10 whether their family member caregivers are employed by home care  
11 agencies under certain circumstances.

12 (3) The legislature finds that:

13 (a) In-home care can be provided by family members employed by a  
14 licensed agency in a cost-efficient manner, as compared to in-home care  
15 provided by family member independent providers;

16 (b) The resources of the state are best and most cost-effectively  
17 spent by allowing family members to be paid as employees of home care  
18 agencies when the client has identifiable language or cultural needs or  
19 when the client is unable to supervise his or her paid provider, has  
20 poor decision-making skills with no understanding of consequences, or  
21 is unable to make decisions;

22 (c) In those circumstances, in-home care provided by family member  
23 agency employees can be the best option for the health care needs of  
24 the clients; and

25 (d) Clients should have the ability to choose to have their family  
26 member caregivers employed by a home care agency.

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

29 (1)(a) The department shall not pay a home care agency licensed  
30 under chapter 70.127 RCW for in-home personal care or respite services  
31 provided under this chapter, Title 71A RCW, or chapter 74.39 RCW if the  
32 care is provided to a client by a family member of the client. To the  
33 extent permitted under federal law, the provisions of this subsection  
34 shall not apply if the family member providing care is older than the  
35 client.

36 (b) The department may, on a case-by-case basis based on the

1 client's health and safety, make exceptions to (a) of this subsection  
2 to authorize payment or to provide for payment during a transition  
3 period of up to three months.

4 (2) The department shall pay for a home care agency licensed under  
5 chapter 70.127 RCW for in-home personal care services provided under  
6 the medicaid in-home personal care program if the care is provided to  
7 a client by a family member of the client if:

8 (a) The client chooses care from a family member caregiver employed  
9 by a licensed home care agency; and

10 (b)(i) The client's native language is a language other than  
11 English;

12 (ii) The client is a registered member of a Native American tribe;  
13 or

14 (iii) The client has been determined based on his or her annual  
15 state assessment to have a cognitive performance scale score of two or  
16 more or had decision making coded as poor decision making or unaware of  
17 consequences of his or her decisions.

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

25 ~~((+3))~~ (4) For purposes of this section:

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

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

32 ~~((+4))~~ (5) The department shall adopt rules to implement this  
33 section. The rules shall not result in affecting the amount, duration,  
34 or scope of the personal care or respite services benefit to which a  
35 client may be entitled pursuant to RCW 74.09.520 or Title XIX of the  
36 federal social security act.

1        NEW SECTION.   **Sec. 3.**   The following acts or parts of acts are each  
2 repealed:

3        (1) RCW 74.39A.325 (In-home personal care or respite services--  
4 Electronic timekeeping) and 2009 c 571 s 2; and

5        (2) 2009 c 571 s 3 (uncodified).

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