
SUBSTITUTE SENATE BILL 6662

State of Washington 64th Legislature 2016 Regular Session

By Senate Ways & Means (originally sponsored by Senator Braun)

READ FIRST TIME 03/04/16.

1 AN ACT Relating to creating a flexible voluntary program to allow
2 family members to provide personal care services to persons with
3 developmental disabilities or long-term care needs under a consumer-
4 directed medicaid service program; amending RCW 74.39A.074,
5 74.39A.076, 74.39A.240, 74.39A.341, and 18.88B.041; adding new
6 sections to chapter 74.39A RCW; and creating a new section.

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

8 NEW SECTION. **Sec. 1.** The legislature finds that the most common
9 form of long-term care provided to persons who are elderly, disabled,
10 or have a developmental disability is provided by a family member in
11 a personal residence. The legislature also finds that care provided
12 by a family member who is chosen by the recipient is often the most
13 appropriate form of care, allowing vulnerable individuals to remain
14 independent while maintaining a sense of dignity and choice. The
15 current system of medicaid services has complexities that may create
16 obstacles for consumers who wish to be cared for by a family member
17 and for family members who enter the system solely to provide care
18 for their loved ones.

19 Therefore, the legislature intends to create an optional
20 consumer-directed program for providing personal care services for
21 individuals with long-term care needs or developmental disabilities

1 receiving care from a family member. This program is intended to
2 provide individuals with more flexibility in accessing their benefits
3 and to reduce obstacles for consumers who wish to hire family members
4 to provide their care.

5 NEW SECTION. **Sec. 2.** A new section is added to chapter 74.39A
6 RCW to read as follows:

7 The department is directed to develop and implement a consumer-
8 directed medicaid program as provided in chapter . . ., Laws of 2016
9 (this act). This program is intended to be a voluntary alternative
10 option for individuals with long-term care needs or developmental
11 disabilities who choose to receive personal care services from a
12 family member. The department shall review existing medicaid programs
13 and determine the appropriate waiver to seek from the centers for
14 medicare and medicaid services. The department shall seek stakeholder
15 input on the new consumer-directed program's design to inform its
16 submission of a waiver proposal to the centers for medicare and
17 medicaid services. The department's waiver proposal must be submitted
18 to the centers for medicare and medicaid services by March 1, 2017.
19 By January 1, 2017, and September 1, 2017, the department must submit
20 status reports to the legislature that provide information about the
21 department's activities, program design, necessary statutory changes,
22 barriers to implementation, and estimated implementation date,
23 caseload, and costs. The consumer-directed medicaid program as
24 provided in chapter . . ., Laws of 2016 (this act) must be available
25 to consumers by January 1, 2018.

26 NEW SECTION. **Sec. 3.** A new section is added to chapter 74.39A
27 RCW to read as follows:

28 (1) The consumer-directed medicaid program is a voluntary
29 alternative option for consumers who seek to receive personal care
30 services from a family member. The consumer-directed medicaid program
31 must also reduce barriers that prevent consumers from being able to
32 select a family member as their paid personal care or respite
33 provider. The consumer, or his or her representatives, if applicable,
34 must have decision-making authority to recruit, hire and fire,
35 determine wages, train, supervise, and determine other conditions of
36 employment for his or her family member providing personal care and
37 respite services. The consumer, or his or her representatives, or

1 both, must also have decision-making authority over how the medicaid
2 funds in his or her individual budgets are spent.

3 (2) The consumer-directed medicaid program must include the
4 following characteristics:

5 (a) A consumer-centered planning process that is directed by the
6 consumer with assistance as needed or desired by a representative of
7 the consumer's choosing. The process must include an assessment and
8 service plan that establishes eligibility, the available budget
9 amount, and the preferences, abilities, needs, and desired measurable
10 outcomes of the consumer. The process may include other persons,
11 freely chosen by the consumer, who are able to serve as important
12 contributors to the process. The planning process must include
13 planning for contingencies such as when a needed service is not
14 provided due to the family member being unavailable. As part of the
15 contingency planning process, an assessment of the risks to the
16 consumer must be completed, and a discussion about how risks will be
17 addressed must be held;

18 (b) A service plan that specifies the services and supports that
19 are to be furnished to meet the preferences, choices, abilities, and
20 needs of the consumer, and that assists the consumer to direct those
21 services and supports so he or she is able to remain in his or her
22 community; and

23 (c) An individualized budget that is under the control and
24 direction of either the consumer, or his or her representative, or
25 both. The budget plan is developed using a consumer-centered planning
26 process and is individually tailored in accordance with the
27 consumer's needs and preferences as established in the service plan.
28 The department must describe the method for calculating the dollar
29 values of consumer budgets and define a process for making
30 adjustments to the budget amount when there are significant changes
31 in the consumer's support and service needs.

32 (3) The program must also include a system of supports to provide
33 information and assistance to consumers to address assessed needs
34 including, but not limited to:

35 (a) Information regarding how consumer-directed programs work;

36 (b) Information about a consumer's rights and responsibilities
37 when enrolled in a consumer-directed program;

38 (c) A consumer may provide training directly to his or her family
39 members or determine training topics that must be completed. The
40 content of the training must be related to the consumer's

1 preferences, care needs, conditions, health, safety, or topics
2 relevant to his or her consumer-centered plan and spending plan under
3 the program. The department may assist consumers by offering
4 voluntary training on how to select, manage, train, and dismiss
5 employees. This may include referrals to other agencies, educational
6 institutions, and consumer and community advocacy organizations to
7 obtain information and assistance; and

8 (d) A consumer must determine the compensation, hours, and
9 working conditions of his or her family members. The hourly wage paid
10 must be at least the state minimum wage.

11 (4) The department must contract with an independent third party
12 to provide financial management services to assist consumers in
13 exercising their budget authority unless they are able to perform
14 some or all of these functions themselves. Financial management
15 services may include assistance in understanding billing and
16 documentation responsibilities, performance of payroll and employer-
17 related duties, assistance purchasing approved goods and services,
18 tracking and monitoring goods and services purchased and provided,
19 and identifying expenditures that are over or under the budget. The
20 family member providing services must be covered by industrial
21 insurance, and the party providing fiscal management services must
22 ensure that the consumer or family member providing services is
23 paying required premiums to the department of labor and industries.

24 (5) The program must include necessary safeguards to protect the
25 health and welfare of consumers. The program must include a
26 requirement that any family member providing services pass
27 appropriate state and federal criminal background checks to verify
28 that he or she does not have a criminal history that would disqualify
29 him or her from working with vulnerable persons. The family member
30 providing services also must not be listed on any long-term care
31 abuse and neglect registry, child abuse registry, or any other
32 registry or list used by the department to disqualify the person from
33 caring for vulnerable persons.

34 (6) A consumer must be allowed to disenroll from the program at
35 any time and return to a traditional service delivery system.

36 (7) For the purposes of this section and section 2 of this act:

37 (a) "Consumer" means a person who:

38 (i) Is functionally disabled and eligible for personal care or
39 respite care services under medicaid personal care, community first

1 choice option, community options program entry system, chore services
2 program, new freedom system, or respite care program;

3 (ii) Is eligible for respite care or residential service and
4 support as a person with developmental disabilities under Title 71A
5 RCW; or

6 (iii) Is eligible for respite care as defined in RCW 74.13.270.

7 (b) "Family member" means a person who is related by blood,
8 adoption, or marriage as a child, parent, or sibling, including those
9 relations denoted with the prefix "grand" or "great."

10 (8) The department shall adopt rules necessary to implement this
11 section.

12 **Sec. 4.** RCW 74.39A.074 and 2012 c 164 s 401 are each amended to
13 read as follows:

14 (1)(a) Beginning January 7, 2012, except for long-term care
15 workers exempt from certification under RCW 18.88B.041(1) (a) and (f)
16 and, until January 1, 2016, those exempt under RCW 18.88B.041(1)(b),
17 all persons hired as long-term care workers must meet the minimum
18 training requirements in this section within one hundred twenty
19 calendar days after the date of being hired or within one hundred
20 twenty calendar days after March 29, 2012, whichever is later. In
21 computing the time periods in this subsection, the first day is the
22 date of hire or March 29, 2012, whichever is applicable.

23 (b) Except as provided in RCW 74.39A.076, the minimum training
24 requirement is seventy-five hours of entry-level training approved by
25 the department. A long-term care worker must successfully complete
26 five of these seventy-five hours before being eligible to provide
27 care.

28 (c) Training required by (d) of this subsection applies toward
29 the training required under RCW 18.20.270 or 70.128.230 or any
30 statutory or regulatory training requirements for long-term care
31 workers employed by community residential service businesses.

32 (d) The seventy-five hours of entry-level training required shall
33 be as follows:

34 (i) Before a long-term care worker is eligible to provide care,
35 he or she must complete:

36 (A) Two hours of orientation training regarding his or her role
37 as caregiver and the applicable terms of employment; and

38 (B) Three hours of safety training, including basic safety
39 precautions, emergency procedures, and infection control; and

1 (ii) Seventy hours of long-term care basic training, including
2 training related to core competencies and population specific
3 competencies.

4 (2) Only training curriculum approved by the department may be
5 used to fulfill the training requirements specified in this section.
6 The department shall only approve training curriculum that:

7 (a) Has been developed with input from consumer and worker
8 representatives; and

9 (b) Requires comprehensive instruction by qualified instructors
10 on the competencies and training topics in this section.

11 (3) Individual providers under RCW 74.39A.270 shall be
12 compensated for training time required by this section.

13 (4) The department shall adopt rules to implement this section.

14 **Sec. 5.** RCW 74.39A.076 and 2015 c 152 s 2 are each amended to
15 read as follows:

16 (1) Beginning January 7, 2012, except for long-term care workers
17 exempt from certification under RCW 18.88B.041(1) (a) and (f):

18 (a) A biological, step, or adoptive parent who is the individual
19 provider only for his or her developmentally disabled son or daughter
20 must receive twelve hours of training relevant to the needs of adults
21 with developmental disabilities within the first one hundred twenty
22 days after becoming an individual provider or within one hundred
23 twenty calendar days after March 29, 2012, whichever is later.

24 (b) Individual providers identified in (b)(i), (ii), and (iii) of
25 this subsection must complete thirty-five hours of training within
26 the first one hundred twenty days after becoming an individual
27 provider or within one hundred twenty calendar days after March 29,
28 2012, whichever is later. Five of the thirty-five hours must be
29 completed before becoming eligible to provide care. Two of these five
30 hours shall be devoted to an orientation training regarding an
31 individual provider's role as caregiver and the applicable terms of
32 employment, and three hours shall be devoted to safety training,
33 including basic safety precautions, emergency procedures, and
34 infection control. Individual providers subject to this requirement
35 include:

36 (i) An individual provider caring only for his or her biological,
37 step, or adoptive child or parent unless covered by (a) of this
38 subsection;

1 (ii) A person working as an individual provider who provides
2 twenty hours or less of care for one person in any calendar month;
3 and

4 (iii) A person working as an individual provider who only
5 provides respite services and works less than three hundred hours in
6 any calendar year.

7 (2) In computing the time periods in this section, the first day
8 is the date of hire or March 29, 2012, whichever is applicable.

9 (3) Only training curriculum approved by the department may be
10 used to fulfill the training requirements specified in this section.
11 The department shall only approve training curriculum that:

12 (a) Has been developed with input from consumer and worker
13 representatives; and

14 (b) Requires comprehensive instruction by qualified instructors.

15 (4) The department shall adopt rules to implement this section.

16 **Sec. 6.** RCW 74.39A.240 and 2011 1st sp.s. c 21 s 7 are each
17 amended to read as follows:

18 The definitions in this section apply throughout RCW 74.39A.030
19 (~~and~~), 74.39A.095 (~~and~~), 74.39A.220 through 74.39A.300, and
20 41.56.026 unless the context clearly requires otherwise.

21 (1) "Consumer" means a person to whom an individual provider
22 provides any such services.

23 (2) "Department" means the department of social and health
24 services.

25 (3) "Individual provider" means a person, including a personal
26 aide, who has contracted with the department to provide personal care
27 or respite care services to functionally disabled persons under the
28 medicaid personal care, community options program entry system, chore
29 services program, or respite care program, or to provide respite care
30 or residential services and support to persons with developmental
31 disabilities under chapter 71A.12 RCW, or to provide respite care as
32 defined in RCW 74.13.270. "Individual provider" does not include a
33 family member providing personal care and respite services to a
34 consumer under the consumer-directed medicaid program created in
35 sections 2 and 3 of this act.

36 **Sec. 7.** RCW 74.39A.341 and 2015 c 152 s 3 are each amended to
37 read as follows:

1 (1) All long-term care workers shall complete twelve hours of
2 continuing education training in advanced training topics each year.
3 This requirement applies beginning July 1, 2012.

4 (2) Completion of continuing education as required in this
5 section is a prerequisite to maintaining home care aide certification
6 under chapter 18.88B RCW.

7 (3) Unless voluntarily certified as a home care aide under
8 chapter 18.88B RCW, subsection (1) of this section does not apply to:

9 (a) An individual provider caring only for his or her biological,
10 step, or adoptive child;

11 (b) Registered nurses and licensed practical nurses licensed
12 under chapter 18.79 RCW;

13 (c) Before January 1, 2016, a long-term care worker employed by a
14 community residential service business;

15 (d) A person working as an individual provider who provides
16 twenty hours or less of care for one person in any calendar month;
17 ((~~or~~))

18 (e) A person working as an individual provider who only provides
19 respite services and works less than three hundred hours in any
20 calendar year; or

21 (f) A family member providing personal care and respite services
22 to a consumer under the consumer-directed medicaid program created in
23 sections 2 and 3 of this act.

24 (4) Only training curriculum approved by the department may be
25 used to fulfill the training requirements specified in this section.
26 The department shall only approve training curriculum that:

27 (a) Has been developed with input from consumer and worker
28 representatives; and

29 (b) Requires comprehensive instruction by qualified instructors.

30 (5) Individual providers under RCW 74.39A.270 shall be
31 compensated for training time required by this section.

32 (6) The department of health shall adopt rules to implement
33 subsection (1) of this section.

34 (7) The department shall adopt rules to implement subsection (2)
35 of this section.

36 **Sec. 8.** RCW 18.88B.041 and 2015 c 152 s 1 are each amended to
37 read as follows:

38 (1) The following long-term care workers are not required to
39 become a certified home care aide pursuant to this chapter:

1 (a)(i)(A) Registered nurses, licensed practical nurses, certified
2 nursing assistants or persons who are in an approved training program
3 for certified nursing assistants under chapter 18.88A RCW, medicare-
4 certified home health aides, or other persons who hold a similar
5 health credential, as determined by the secretary, or persons with
6 special education training and an endorsement granted by the
7 superintendent of public instruction, as described in RCW
8 28A.300.010, if the secretary determines that the circumstances do
9 not require certification.

10 (B) A person who was initially hired as a long-term care worker
11 prior to January 7, 2012, and who completes all of his or her
12 training requirements in effect as of the date he or she was hired.

13 (ii) Individuals exempted by (a)(i) of this subsection may obtain
14 certification as a home care aide without fulfilling the training
15 requirements in RCW 74.39A.074(1)(d)(ii) but must successfully
16 complete a certification examination pursuant to RCW 18.88B.031.

17 (b) All long-term care workers employed by community residential
18 service businesses.

19 (c) An individual provider caring only for his or her biological,
20 step, or adoptive child or parent.

21 (d) A person working as an individual provider who provides
22 twenty hours or less of care for one person in any calendar month.

23 (e) A person working as an individual provider who only provides
24 respite services and works less than three hundred hours in any
25 calendar year.

26 (f) A family member providing personal care and respite services
27 to a consumer under the consumer-directed medicaid program created in
28 sections 2 and 3 of this act.

29 (2) A long-term care worker exempted by this section from the
30 training requirements contained in RCW 74.39A.074 may not be
31 prohibited from enrolling in training pursuant to that section.

32 (3) The department shall adopt rules to implement this section.

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