

SENATE BILL REPORT

2ESB 5867

As Passed Senate, June 30, 2017

Title: An act relating to creating a flexible voluntary program to allow family members to provide personal care services to persons with developmental disabilities or long-term care needs under a consumer-directed medicaid service program.

Brief Description: Creating a flexible voluntary program to allow family members to provide personal care services to persons with developmental disabilities or long-term care needs under a consumer-directed medicaid service program.

Sponsors: Senator Braun.

Brief History:

Committee Activity: Ways & Means: 3/15/17, 3/16/17 [DP, DNP].

Floor Activity:

Passed Senate: 4/19/17, 28-21.

Third Special Session: Passed Senate: 6/30/17, 49-0.

Brief Summary of Second Engrossed Bill

- Directs the Joint Legislative Executive Community on Aging and Disability to develop recommendations for a voluntary consumer-directed personal care program.
- Exempts in-home personal care and respite services provided to enrolled members of federally recognized Indian tribes, including their household members, from the prohibition on paying family members who are employed by a home care agency.

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass.

Signed by Senators Braun, Chair; Brown, Vice Chair; Rossi, Vice Chair; Honeyford, Vice Chair, Capital Budget ; Bailey, Becker, Fain, Padden, Rivers, Schoesler, Warnick and Zeiger.

Minority Report: Do not pass.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Signed by Senators Ranker, Ranking Minority Member; Rolfes, Assistant Ranking Minority Member, Operating Budget; Frockt, Assistant Ranking Minority Member, Capital Budget; Carlyle, Conway, Darneille, Hasegawa, Keiser and Miloscia.

Staff: James Kettel (786-7459)

Background: Washington State spends approximately \$1.4 billion annually on in-home care services for about 50,000 low-income individuals with developmental disabilities and/or long-term care needs. In-home services are primarily funded through the agency-directed Community First Choice (CFC) state plan. In-home care services are designed to assist individuals who need help with daily activities to continue to live as independently as possible at home. Services include supports with personal care tasks such as: bathing, bed mobility—turning and repositioning, body care, dressing, eating, locomotion, medication management, toilet use, transfer, and personal hygiene. In addition, individuals may also be eligible to receive supports with household tasks like cooking, shopping, and housekeeping.

Individuals who meet both functional and financial eligibility criteria for CFC are given the choice of using a contracted agency provider or certified individual home care worker to provide their care. Agency providers and individual homecare workers who do not already have a professional license or certification are required to complete between 30 to 75 hours of training, typically within 120 days of their start date. Homecare workers who are not classified as a parent, adult child, or limited service provider must also pass an exam to obtain a certification credential through the Department of Health.

Some individuals and families report that the current agency-directed method for in-home care services does not provide enough choice in providers for individuals and families who prefer to receive services from someone they know or with whom they have a relationship. Further, some individuals want more involvement in the delivery and direction of their services in meeting their assessed needs.

To address concerns like these, the Centers for Medicare and Medicaid services have developed consumer-directed service models that seek to give individuals with long-term care needs or developmental disabilities more options and greater personal autonomy in determining how best to meet their care needs. Medicaid consumer-directed programs provide consumers with a monthly allowance that they are given authority to self-direct on how funds are used to meet their health and welfare needs. Under these programs, consumers assume responsibility for arranging and managing their care and must use the benefit to purchase goods and services available through the new Medicaid program. The design of these programs allows consumers to ask consultants for training on how to meet those responsibilities and may include services like a fiscal agent to hold their award, manage payroll taxes, and disburse funds on their behalf.

Summary of Second Engrossed Bill: The Joint Legislative Executive Committee on Aging and Disability must develop recommendations on consumer-directed approaches that allow family members of the consumer to provide care that:

- promotes consumer health and safety;
- ensures caregiver training and support;
- verifies the quality and appropriateness of care;

- reduces barriers to care; and
- mitigates potential liability issues under consumer-directed programs.

Within available funds, in-home personal care and respite services provided to enrolled members of federally recognized Indian tribes, including their household members, are exempted from the prohibition on paying family members who are employed by a home care agency.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: PRO: The idea of flexibility and consumer choice is excellent. A consumer operated budget makes a great deal of sense. Flexibility and consumer choice could be accomplished under the existing waivers already. Unfortunately, DSHS has chosen to create an inflexible, bureaucratic, and siloed system for its waiver structure. As the existing waivers are redesigned there should be more attention paid to the concept of flexibility and consumer choice. The program envisioned under this legislation may take individuals out of the mainstream. It would be a problem in the personal care program experience, something similar to the foster care system. It is possible that individuals who choose this program could be penalized with cuts that are not present in the larger Medicaid program.

CON: The state should explore flexibility and innovative approaches to care. However, this legislation would undermine the high quality of care that exists in Washington. The New Freedom program already exists. The New Freedom program allows for an individualized budget and provides client choice to build their own care plan. The main difference between the New Freedom program and the program envisioned by this legislation is how the caregiver is treated. There would be less protection for caregivers under the new program. Under New Freedom, workers are able to negotiate for wages, health benefits, paid time off, and other benefits. Retirement is particularly important because many relative providers are excluded from social security. Labor and industries protection is also important due to the high rate of injuries for caregivers. Under the new program, costs associated with an injury would be entirely covered by the caregiver. Consumers may face additional costs for training or transportation. The homecare industry should be more professional in advance of the age wave.

OTHER: A self-directed waiver has been under consideration for a long time. Self-advocates will say that clients would like to be able to have more control over their service plan. It is unclear, however, if CMS will approve a waiver that includes two different administrations. There will be some additional costs associated with this waiver, including the cost of developing a person-centered plan and costs associated with a third party financial administrator. To be a viable self-directed option, the waiver should include more than just personal care. Clients who are receiving services on a different waiver will not want to

switch to the self-directed waiver unless all of their needs can be met. Also, the current Medicaid program at the federal level is not stable. It is impossible to know what will happen with Medicaid over the next few years, including whether or not this new program would gain approval. As an alternative, it may make more sense for a stakeholder group to review options for a self-directed program, and to report those options to the Legislature next year. Consumer involvement in all aspects of the care plan is a great idea, including involvement in training long-term care workers. It is important to make sure that long-term care workers continue to have access to a living wage and health benefits. Clients know their needs best. Clients are in the best position to know how their own care plan should be determined and modified. Clients also know what kind of training is necessary for their long-term care worker. It is important to make sure that clients who select this voluntary option would not lose out on other important services.

Persons Testifying: PRO: Senator John Braun, Prime Sponsor; Loren Freeman, Freeman & Associates.

CON: Demas Nesterenko, SEIU775.

OTHER: Diana Stadden, The Arc Of WA; Noah Seidel, Self Advocates in Leadership; David Lord, Disability Rights Washington.

Persons Signed In To Testify But Not Testifying: No one.