
ENGROSSED SENATE BILL 5867

State of Washington

65th Legislature

2017 Regular Session

By Senator Braun

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, 18.88B.041, and 74.39A.326;
6 adding new sections to chapter 74.39A RCW; and creating a new
7 section.

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

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

20 Therefore, the legislature intends to create an optional
21 consumer-directed program for providing personal care services for

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

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

8 The department is directed to develop and implement a consumer-
9 directed medicaid program as provided in chapter . . ., Laws of 2017
10 (this act). This program is intended to be a voluntary alternative
11 option for individuals with long-term care needs or developmental
12 disabilities who choose to receive personal care services from a
13 family member. The department shall review existing medicaid programs
14 and determine the appropriate waiver to seek from the centers for
15 medicare and medicaid services. The department shall seek stakeholder
16 input on the new consumer-directed program's design to inform its
17 submission of a waiver proposal to the centers for medicare and
18 medicaid services. The department's waiver proposal must be submitted
19 to the centers for medicare and medicaid services by March 1, 2018.
20 By January 1, 2019, and September 1, 2019, the department must submit
21 status reports to the legislature that provide information about the
22 department's activities, program design, necessary statutory changes,
23 barriers to implementation, and estimated implementation date,
24 caseload, and costs. The consumer-directed medicaid program as
25 provided in chapter . . ., Laws of 2017 (this act) must be available
26 to consumers by January 1, 2019.

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

29 (1) The consumer-directed medicaid program is a voluntary
30 alternative option for consumers who seek to receive personal care
31 services from a family member. The consumer-directed medicaid program
32 must also reduce barriers that prevent consumers from being able to
33 select a family member as their paid personal care or respite
34 provider. The consumer, or his or her representatives, if applicable,
35 must have decision-making authority to recruit, hire and fire,
36 determine wages, train, supervise, and determine other conditions of
37 employment for his or her family member providing personal care and
38 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, including training offered under RCW 74.39A.351,
5 on how to select, manage, train, and dismiss employees. This may
6 include referrals to other agencies, educational institutions, and
7 consumer and community advocacy organizations to obtain information
8 and assistance; and

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

12 (4) The department must contract with an independent third party
13 to provide financial management services to assist consumers in
14 exercising their budget authority unless they are able to perform
15 some or all of these functions themselves. Financial management
16 services may include assistance in understanding billing and
17 documentation responsibilities, performance of payroll and employer-
18 related duties, assistance purchasing approved goods and services,
19 tracking and monitoring goods and services purchased and provided,
20 and identifying expenditures that are over or under the budget.

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

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

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

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

35 (i) Is functionally disabled and eligible for personal care or
36 respite care services under medicaid personal care, community first
37 choice option, community options program entry system, chore services
38 program, new freedom system, or respite care program;

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

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

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

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

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

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

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

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

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

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

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

36 (B) Three hours of safety training, including basic safety
37 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.

33 **Sec. 9.** RCW 74.39A.326 and 2009 c 571 s 1 are each amended to
34 read as follows:

35 (1)(a) Except as provided under (b) of this subsection, the
36 department shall not pay a home care agency licensed under chapter
37 70.127 RCW for in-home personal care or respite services provided
38 under this chapter, Title 71A RCW, or chapter 74.39 RCW if the care
39 is provided to a client by a family member of the client. To the

1 extent permitted under federal law, the provisions of this subsection
2 shall not apply if the family member providing care is older than the
3 client.

4 (b) The department may, on a case-by-case basis based on the
5 client's health and safety, make exceptions to (a) of this subsection
6 to authorize payment or to provide for payment during a transition
7 period of up to three months. The restrictions under (a) of this
8 subsection do not apply when the care is provided to: (i) A client
9 who is an enrolled member of a federally recognized Indian tribe; or
10 (ii) a client who resides in the household of an enrolled member of a
11 federally recognized Indian tribe.

12 (2) The department shall take appropriate enforcement action
13 against a home care agency found to have charged the state for hours
14 of service for which the department is not authorized to pay under
15 this section, including requiring recoupment of any payment made for
16 those hours and, under criteria adopted by the department by rule,
17 terminating the contract of an agency that violates a recoupment
18 requirement.

19 (3) For purposes of this section:

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

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

26 (4) The department shall adopt rules to implement this section.
27 The rules shall not result in affecting the amount, duration, or
28 scope of the personal care or respite services benefit to which a
29 client may be entitled pursuant to RCW 74.09.520 or Title XIX of the
30 federal social security act.

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