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SENATE BILL 5899

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State of Washington

65th Legislature

2017 Regular Session

By Senator Braun

Read first time 03/21/17. Referred to Committee on Ways & Means.

1 AN ACT Relating to transferring duties from the training  
2 partnership to the department of social and health services; amending  
3 RCW 74.39A.270, 74.39A.310, 74.39A.351, and 74.39A.360; and  
4 reenacting and amending RCW 74.39A.009.

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

6 **Sec. 1.** RCW 74.39A.009 and 2012 c 164 s 202 and 2012 c 10 s 63  
7 are each reenacted and amended to read as follows:

8 The definitions in this section apply throughout this chapter  
9 unless the context clearly requires otherwise.

10 (1) "Adult family home" means a home licensed under chapter  
11 70.128 RCW.

12 (2) "Adult residential care" means services provided by an  
13 assisted living facility that is licensed under chapter 18.20 RCW and  
14 that has a contract with the department under RCW 74.39A.020 to  
15 provide personal care services.

16 (3) "Assisted living facility" means a facility licensed under  
17 chapter 18.20 RCW.

18 (4) "Assisted living services" means services provided by an  
19 assisted living facility that has a contract with the department  
20 under RCW 74.39A.010 to provide personal care services, intermittent

1 nursing services, and medication administration services, and the  
2 resident is housed in a private apartment-like unit.

3 (5) "Community residential service business" means a business  
4 that:

5 (a) Is certified by the department of social and health services  
6 to provide to individuals who have a developmental disability as  
7 defined in RCW 71A.10.020(~~(+4)~~):

8 (i) Group home services;

9 (ii) Group training home services;

10 (iii) Supported living services; or

11 (iv) Voluntary placement services provided in a licensed staff  
12 residential facility for children;

13 (b) Has a contract with the division of developmental  
14 disabilities to provide the services identified in (a) of this  
15 subsection; and

16 (c) All of the business's long-term care workers are subject to  
17 statutory or regulatory training requirements that are required to  
18 provide the services identified in (a) of this subsection.

19 (6) "Core competencies" means basic training topics, including  
20 but not limited to, communication skills, worker self-care, problem  
21 solving, maintaining dignity, consumer directed care, cultural  
22 sensitivity, body mechanics, fall prevention, skin and body care,  
23 long-term care worker roles and boundaries, supporting activities of  
24 daily living, and food preparation and handling.

25 (7) "Cost-effective care" means care provided in a setting of an  
26 individual's choice that is necessary to promote the most appropriate  
27 level of physical, mental, and psychosocial well-being consistent  
28 with client choice, in an environment that is appropriate to the care  
29 and safety needs of the individual, and such care cannot be provided  
30 at a lower cost in any other setting. But this in no way precludes an  
31 individual from choosing a different residential setting to achieve  
32 his or her desired quality of life.

33 (8) "Department" means the department of social and health  
34 services.

35 (9) "Developmental disability" has the same meaning as defined in  
36 RCW 71A.10.020.

37 (10) "Direct care worker" means a paid caregiver who provides  
38 direct, hands-on personal care services to persons with disabilities  
39 or the elderly requiring long-term care.

1 (11) "Enhanced adult residential care" means services provided by  
2 an assisted living facility that is licensed under chapter 18.20 RCW  
3 and that has a contract with the department under RCW 74.39A.010 to  
4 provide personal care services, intermittent nursing services, and  
5 medication administration services.

6 (12) "Functionally disabled person" or "person who is  
7 functionally disabled" is synonymous with chronic functionally  
8 disabled and means a person who because of a recognized chronic  
9 physical or mental condition or disease, or developmental disability,  
10 including chemical dependency, is impaired to the extent of being  
11 dependent upon others for direct care, support, supervision, or  
12 monitoring to perform activities of daily living. "Activities of  
13 daily living", in this context, means self-care abilities related to  
14 personal care such as bathing, eating, using the toilet, dressing,  
15 and transfer. Instrumental activities of daily living may also be  
16 used to assess a person's functional abilities as they are related to  
17 the mental capacity to perform activities in the home and the  
18 community such as cooking, shopping, house cleaning, doing laundry,  
19 working, and managing personal finances.

20 (13) "Home and community-based services" means adult family  
21 homes, in-home services, and other services administered or provided  
22 by contract by the department directly or through contract with area  
23 agencies on aging or similar services provided by facilities and  
24 agencies licensed by the department.

25 (14) "Home care aide" means a long-term care worker who has  
26 obtained certification as a home care aide by the department of  
27 health.

28 (15) "Individual provider" is defined according to RCW  
29 74.39A.240.

30 (16) "Long-term care" is synonymous with chronic care and means  
31 care and supports delivered indefinitely, intermittently, or over a  
32 sustained time to persons of any age disabled by chronic mental or  
33 physical illness, disease, chemical dependency, or a medical  
34 condition that is permanent, not reversible or curable, or is long-  
35 lasting and severely limits their mental or physical capacity for  
36 self-care. The use of this definition is not intended to expand the  
37 scope of services, care, or assistance by any individuals, groups,  
38 residential care settings, or professions unless otherwise expressed  
39 by law.

1           (17)(a) "Long-term care workers" include all persons who provide  
2 paid, hands-on personal care services for the elderly or persons with  
3 disabilities, including but not limited to individual providers of  
4 home care services, direct care workers employed by home care  
5 agencies, providers of home care services to persons with  
6 developmental disabilities under Title 71A RCW, all direct care  
7 workers in state-licensed assisted living facilities, and adult  
8 family homes, respite care providers, direct care workers employed by  
9 community residential service businesses, and any other direct care  
10 worker providing home or community-based services to the elderly or  
11 persons with functional disabilities or developmental disabilities.

12           (b) "Long-term care workers" do not include: (i) Persons employed  
13 by the following facilities or agencies: Nursing homes subject to  
14 chapter 18.51 RCW, hospitals or other acute care settings,  
15 residential habilitation centers under chapter 71A.20 RCW, facilities  
16 certified under 42 C.F.R., Part 483, hospice agencies subject to  
17 chapter 70.127 RCW, adult day care centers, and adult day health care  
18 centers; or (ii) persons who are not paid by the state or by a  
19 private agency or facility licensed by the state to provide personal  
20 care services.

21           (18) "Nursing home" means a facility licensed under chapter 18.51  
22 RCW.

23           (19) "Personal care services" means physical or verbal assistance  
24 with activities of daily living and instrumental activities of daily  
25 living provided because of a person's functional disability.

26           (20) "Population specific competencies" means basic training  
27 topics unique to the care needs of the population the long-term care  
28 worker is serving, including but not limited to, mental health,  
29 dementia, developmental disabilities, young adults with physical  
30 disabilities, and older adults.

31           (21) "Qualified instructor" means a registered nurse or other  
32 person with specific knowledge, training, and work experience in the  
33 provision of direct, hands-on personal care and other assistance  
34 services to the elderly or persons with disabilities requiring  
35 long-term care.

36           (22) "Secretary" means the secretary of social and health  
37 services.

38           (23) "Secretary of health" means the secretary of health or the  
39 secretary's designee.

1           (24) (~~"Training partnership" means a joint partnership or trust~~  
2 ~~that includes the office of the governor and the exclusive bargaining~~  
3 ~~representative of individual providers under RCW 74.39A.270 with the~~  
4 ~~capacity to provide training, peer mentoring, and workforce~~  
5 ~~development, or other services to individual providers.~~

6           (25)) "Tribally licensed assisted living facility" means an  
7 assisted living facility licensed by a federally recognized Indian  
8 tribe in which a facility provides services similar to assisted  
9 living facilities licensed under chapter 18.20 RCW.

10           **Sec. 2.** RCW 74.39A.270 and 2016 sp.s. c 30 s 1 are each amended  
11 to read as follows:

12           (1) Solely for the purposes of collective bargaining and as  
13 expressly limited under subsections (2) and (3) of this section, the  
14 governor is the public employer, as defined in chapter 41.56 RCW, of  
15 individual providers, who, solely for the purposes of collective  
16 bargaining, are public employees as defined in chapter 41.56 RCW. To  
17 accommodate the role of the state as payor for the community-based  
18 services provided under this chapter and to ensure coordination with  
19 state employee collective bargaining under chapter 41.80 RCW and the  
20 coordination necessary to implement RCW 74.39A.300, the public  
21 employer shall be represented for bargaining purposes by the governor  
22 or the governor's designee appointed under chapter 41.80 RCW. The  
23 governor or governor's designee shall periodically consult with the  
24 authority during the collective bargaining process to allow the  
25 authority to communicate issues relating to the long-term in-home  
26 care services received by consumers. The department shall solicit  
27 input from the developmental disabilities council, the governor's  
28 committee on disability issues and employment, the state council on  
29 aging, and other consumer advocacy organizations to obtain informed  
30 input from consumers on their interests, including impacts on  
31 consumer choice, for all issues proposed for collective bargaining  
32 under subsections (5) and (6) of this section.

33           (2) Chapter 41.56 RCW governs the collective bargaining  
34 relationship between the governor and individual providers, except as  
35 otherwise expressly provided in this chapter and except as follows:

36           (a) The only unit appropriate for the purpose of collective  
37 bargaining under RCW 41.56.060 is a statewide unit of all individual  
38 providers;

1 (b) The showing of interest required to request an election under  
2 RCW 41.56.060 is ten percent of the unit, and any intervener seeking  
3 to appear on the ballot must make the same showing of interest;

4 (c) The mediation and interest arbitration provisions of RCW  
5 41.56.430 through 41.56.470 and 41.56.480 apply, except that:

6 (i) With respect to commencement of negotiations between the  
7 governor and the bargaining representative of individual providers,  
8 negotiations shall be commenced by May 1st of any year prior to the  
9 year in which an existing collective bargaining agreement expires;  
10 and

11 (ii) The decision of the arbitration panel is not binding on the  
12 legislature and, if the legislature does not approve the request for  
13 funds necessary to implement the compensation and fringe benefit  
14 provisions of the arbitrated collective bargaining agreement, is not  
15 binding on the authority or the state;

16 (d) Individual providers do not have the right to strike; and

17 (e) Individual providers who are related to, or family members  
18 of, consumers or prospective consumers are not, for that reason,  
19 exempt from this chapter or chapter 41.56 RCW.

20 (3) Individual providers who are public employees solely for the  
21 purposes of collective bargaining under subsection (1) of this  
22 section are not, for that reason, employees of the state, its  
23 political subdivisions, or an area agency on aging for any purpose.  
24 Chapter 41.56 RCW applies only to the governance of the collective  
25 bargaining relationship between the employer and individual providers  
26 as provided in subsections (1) and (2) of this section.

27 (4) Consumers and prospective consumers retain the right to  
28 select, hire, supervise the work of, and terminate any individual  
29 provider providing services to them. Consumers may elect to receive  
30 long-term in-home care services from individual providers who are not  
31 referred to them by the authority.

32 (5) Except as expressly limited in this section and RCW  
33 74.39A.300, the wages, hours, and working conditions of individual  
34 providers are determined solely through collective bargaining as  
35 provided in this chapter. Except as described in subsection (9) of  
36 this section, no agency or department of the state may establish  
37 policies or rules governing the wages or hours of individual  
38 providers. This subsection does not modify:

39 (a) The department's authority to establish a plan of care for  
40 each consumer or its core responsibility to manage long-term in-home

1 care services under this chapter, including determination of the  
2 level of care that each consumer is eligible to receive. However, at  
3 the request of the exclusive bargaining representative, the governor  
4 or the governor's designee appointed under chapter 41.80 RCW shall  
5 engage in collective bargaining, as defined in RCW 41.56.030(4), with  
6 the exclusive bargaining representative over how the department's  
7 core responsibility affects hours of work for individual providers.  
8 This subsection shall not be interpreted to require collective  
9 bargaining over an individual consumer's plan of care;

10 (b)(i) The requirement that the number of hours the department  
11 may pay any single individual provider is limited to:

12 (A) Sixty hours each workweek if the individual provider was  
13 working an average number of hours in excess of forty hours for the  
14 workweeks during January 2016, except for fiscal years 2016 and 2017,  
15 the limit is sixty-five hours each workweek; or

16 (B) Forty hours each workweek if the individual provider was not  
17 working an average number of hours in excess of forty hours for the  
18 workweeks during January 2016, or had no reported hours for the month  
19 of January 2016.

20 (ii) Additional hours may be authorized under criteria  
21 established by rules adopted by the department under subsection (9)  
22 of this section.

23 (iii) Additional hours may be authorized for required training  
24 under RCW 74.39A.074, 74.39A.076, and 74.39A.341.

25 (iv) An individual provider may appeal to the department for  
26 qualification for the hour limitation in (b)(i)(A) of this subsection  
27 if the average weekly hours the (~~(individual)~~) individual provider  
28 was working in January 2016 materially underrepresent the average  
29 weekly hours worked by the individual provider during the first three  
30 months of 2016.

31 (v) No individual provider is subject to the hour limitations in  
32 (b)(i)(A) of this subsection until the department has conducted a  
33 review of the plan of care for the consumers served by the  
34 (~~(individual)~~) individual provider. The department shall review  
35 plans of care expeditiously, starting with consumers connected with  
36 the most individual provider overtime;

37 (c) The requirement that the total number of additional hours in  
38 excess of forty hours authorized under (b) of this subsection and  
39 subsection (9) of this section are limited by the total hours as  
40 provided in subsection (10) of this section;

1 (d) The department's authority to terminate its contracts with  
2 individual providers who are not adequately meeting the needs of a  
3 particular consumer, or to deny a contract under RCW 74.39A.095(8);

4 (e) The consumer's right to assign hours to one or more  
5 individual providers consistent with the rules adopted under this  
6 chapter and his or her plan of care;

7 (f) The consumer's right to select, hire, terminate, supervise  
8 the work of, and determine the conditions of employment for each  
9 individual provider providing services to the consumer under this  
10 chapter;

11 (g) The department's obligation to comply with the federal  
12 medicaid statute and regulations and the terms of any community-based  
13 waiver granted by the federal department of health and human services  
14 and to ensure federal financial participation in the provision of the  
15 services; and

16 (h) The legislature's right to make programmatic modifications to  
17 the delivery of state services under this title, including standards  
18 of eligibility of consumers and individual providers participating in  
19 the programs under this title, and the nature of services provided.  
20 The governor shall not enter into, extend, or renew any agreement  
21 under this chapter that does not expressly reserve the legislative  
22 rights described in this subsection (5)(h).

23 (6) At the request of the exclusive bargaining representative,  
24 the governor or the governor's designee appointed under chapter 41.80  
25 RCW shall engage in collective bargaining, as defined in RCW  
26 41.56.030(4), with the exclusive bargaining representative (~~over~~  
27 ~~employer contributions to the training partnership~~) for the costs  
28 of: (a) Meeting all training and peer mentoring required under this  
29 chapter; and (b) other training intended to promote the career  
30 development of individual providers.

31 (7) The state, the department, the area agencies on aging, or  
32 their contractors under this chapter may not be held vicariously or  
33 jointly liable for the action or inaction of any individual provider  
34 or prospective individual provider, whether or not that individual  
35 provider or prospective individual provider was included on the  
36 referral registry or referred to a consumer or prospective consumer.  
37 The existence of a collective bargaining agreement, the placement of  
38 an individual provider on the referral registry, or the development  
39 or approval of a plan of care for a consumer who chooses to use the  
40 services of an individual provider and the provision of case



1 management services to that consumer, by the department or an area  
2 agency on aging, does not constitute a special relationship with the  
3 consumer.

4 (8) Nothing in this section affects the state's responsibility  
5 with respect to unemployment insurance for individual providers.  
6 However, individual providers are not to be considered, as a result  
7 of the state assuming this responsibility, employees of the state.

8 (9) The department may not pay any single individual provider  
9 more than the hours listed in subsection (5)(b) of this section  
10 unless the department authorizes additional hours under criteria  
11 established by rule. The criteria must be limited in scope to reduce  
12 the state's exposure to payment of overtime, address travel time from  
13 worksite to worksite, and address the following needs of consumers:

14 (a) Ensuring that consumers are not at increased risk for  
15 institutionalization;

16 (b) When there is a limited number of (~~(individual)~~) individual  
17 providers within the geographic region of the consumer;

18 (c) When there is a limited number of (~~(individual)~~) individual  
19 providers available to support a consumer with complex medical and  
20 behavioral needs or specific language needs;

21 (d) Emergencies that could pose a health and safety risk for  
22 consumers; and

23 (e) Instances where the cost of the allowed hour is less than  
24 other alternatives to provide care to a consumer, distinct from any  
25 increased risk of institutionalization.

26 (10)(a) Each fiscal year, the department shall establish a  
27 spending plan and a system to monitor the authorization and cost of  
28 hours in excess of forty hours each workweek from subsections (5)(b)  
29 and (9) of this section beginning July 1, 2016, and each fiscal year  
30 thereafter. Expenditures for hours in excess of forty hours each  
31 workweek under subsections (5)(b) and (9) of this section shall not  
32 exceed 8.75 percent of the total average authorized personal care  
33 hours for the fiscal year as projected by the caseload forecast  
34 council. The caseload forecast council may adopt a temporary  
35 adjustment to the 8.75 percent of the total average hours projection  
36 for that fiscal year, up to a maximum of 10.0 percent, if it finds a  
37 higher percentage of overtime hours is necessitated by a shortage of  
38 individual providers to provide adequate client care, taking into  
39 consideration factors including the criteria in subsection (9) of

1 this section. If the council elects to temporarily increase the  
2 limit, it may do so only upon a majority vote of the council.

3 (b) The department also shall provide expenditure reports  
4 beginning September 1, 2016, and on a quarterly basis thereafter. If  
5 the department determines, based upon quarterly expenditure reports,  
6 that the annual expenditures will exceed the limitation established  
7 in (a) of this subsection, the department shall take those actions  
8 necessary to ensure compliance with the limitation.

9 (c) The spending plan and expenditure reports must be submitted  
10 to the legislative fiscal committees and the joint legislative-  
11 executive overtime oversight task force. The joint legislative-  
12 executive overtime oversight task force members are as follows:

13 (i) Two members from each of the two largest caucuses of the  
14 senate, appointed by the respective caucus leaders.

15 (ii) The speaker of the house of representatives shall appoint  
16 two members from each of the two largest caucuses of the house of  
17 representatives.

18 (iii) The governor shall appoint members representing the  
19 department of social and health services and the office of financial  
20 management.

21 (iv) The governor shall appoint two members representing  
22 individual providers and two members representing consumers receiving  
23 personal care or respite care services from an individual provider.

24 (d) The task force shall meet at least annually, but may meet  
25 more frequently as desired by the task force. The task force shall  
26 choose cochairs, one from among the legislative members and one from  
27 among the executive branch members.

28 (e) The department is authorized to adopt rules, including  
29 emergency rules under RCW 34.05.350, to implement this subsection.

30 **Sec. 3.** RCW 74.39A.310 and 2007 c 361 s 8 are each amended to  
31 read as follows:

32 (1) The department shall create a formula that converts the cost  
33 of the increase in wages and benefits negotiated and funded in the  
34 contract for individual providers of home care services pursuant to  
35 RCW 74.39A.270 and 74.39A.300, into a per-hour amount, excluding  
36 those benefits defined in subsection (2) of this section. That  
37 per-hour amount shall be added to the statewide home care agency  
38 vendor rate and shall be used exclusively for improving the wages and

1 benefits of home care agency workers who provide direct care. The  
2 formula shall account for:

3 (a) All types of wages, benefits, and compensation negotiated and  
4 funded each biennium, including but not limited to:

5 (i) Regular wages;

6 (ii) Benefit pay, such as vacation, sick, and holiday pay;

7 (iii) Taxes on wages/benefit pay; and

8 (iv) Mileage; and

9 (~~(v) Contributions to a training partnership; and~~)

10 (b) The increase in the average cost of worker's compensation for  
11 home care agencies and application of the increases identified in (a)  
12 of this subsection to all hours required to be paid, including travel  
13 time, of direct service workers under the wage and hour laws and  
14 associated employer taxes.

15 (2) The contribution rate for health care benefits, including but  
16 not limited to medical, dental, and vision benefits, for eligible  
17 agency home care workers shall be paid by the department to home care  
18 agencies at the same rate as negotiated and funded in the collective  
19 bargaining agreement for individual providers of home care services.

20 **Sec. 4.** RCW 74.39A.351 and 2012 c 164 s 404 are each amended to  
21 read as follows:

22 (1) The department shall offer, directly or through contract,  
23 training opportunities sufficient for a long-term care worker to  
24 accumulate seventy hours of training within a reasonable time period.  
25 (~~For individual providers represented by an exclusive bargaining  
26 representative under RCW 74.39A.270, the training opportunities shall  
27 be offered through the training partnership established under RCW  
28 74.39A.360.~~)

29 (2) Training topics offered under this section shall include, but  
30 are not limited to: Client rights; personal care; mental illness;  
31 dementia; developmental disabilities; depression; medication  
32 assistance; advanced communication skills; positive client behavior  
33 support; developing or improving client-centered activities; dealing  
34 with wandering or aggressive client behaviors; medical conditions;  
35 nurse delegation core training; peer mentor training; and advocacy  
36 for quality care training.

37 (3) The department may not require long-term care workers to  
38 obtain the training described in this section.

1 (4) The requirement to offer advanced training applies beginning  
2 January 1, 2013, except that it does not apply to long-term care  
3 workers employed by community residential service businesses until  
4 January 1, 2016.

5 **Sec. 5.** RCW 74.39A.360 and 2007 c 361 s 6 are each amended to  
6 read as follows:

7 Beginning (~~(January 1, 2010, for individual providers represented~~  
8 ~~by an exclusive bargaining representative under RCW 74.39A.270)) July  
9 1, 2018, all training and peer mentoring required under this chapter  
10 shall be (~~(provided by a training partnership. Contributions to the~~  
11 ~~partnership pursuant to a collective bargaining agreement negotiated~~  
12 ~~under this chapter shall be made beginning July 1, 2009. The training~~  
13 ~~partnership shall provide reports as required by the department~~  
14 ~~verifying that all individual providers have complied with all~~  
15 ~~training requirements. The exclusive bargaining representative shall~~  
16 ~~designate the training partnership)) coordinated by the department of  
17 social and health services.~~~~

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