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HOUSE BILL 2060

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State of Washington

67th Legislature

2022 Regular Session

**By** Representatives Lekanoff and Shewmake; by request of Department of Social and Health Services

Read first time 01/20/22. Referred to Committee on Health Care & Wellness.

1 AN ACT Relating to medicaid long-term services and supports  
2 eligibility determinations completed by federally recognized Indian  
3 tribes; and amending RCW 74.39A.090, 74.39A.095, 74.39A.515,  
4 74.09.520, and 74.39A.009.

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

6 **Sec. 1.** RCW 74.39A.090 and 2018 c 278 s 11 are each amended to  
7 read as follows:

8 (1) Discharge planning, as directed in this section, is intended  
9 for residents and patients identified for discharge to long-term  
10 services under RCW 70.41.320, 74.39A.040, or 74.42.058. The purpose  
11 of discharge planning is to protect residents and patients from the  
12 financial incentives inherent in keeping residents or patients in a  
13 more expensive higher level of care and shall focus on care options  
14 that are in the best interest of the patient or resident.

15 (2) ~~((The))~~ Except as provided in subsection (3) of this section,  
16 the department shall, consistent with the intent of this section,  
17 contract with area agencies on aging:

18 (a) To provide case management services to consumers receiving  
19 home and community services in their own home; and

20 (b) To reassess and reauthorize home and community services in  
21 home or in other settings for consumers:

1 (i) Who have been initially authorized by the department to  
2 receive home and community services; and

3 (ii) Who, at the time of reassessment and reauthorization, are  
4 receiving home and community services in their own home.

5 (3) The department may contract with a federally recognized  
6 Indian tribe to determine eligibility, including assessments and  
7 reassessments, authorize and reauthorize services, and perform case  
8 management functions within its regional authority.

9 (4) In the event that an area agency on aging is unwilling to  
10 enter into or satisfactorily fulfill a contract or an individual  
11 consumer's need for case management services will be met through an  
12 alternative delivery system, the department is authorized to:

13 (a) Obtain the services through competitive bid; and

14 (b) Provide the services directly until a qualified contractor  
15 can be found.

16 (~~(4)~~) (5) (a) The department shall (~~include, in its oversight~~  
17 ~~and monitoring of area agency on aging performance, assessment of~~  
18 ~~case management roles undertaken by area agencies on aging in this~~  
19 ~~section. The scope of oversight and monitoring includes, but is not~~  
20 ~~limited to, assessing)) assess the degree and quality of the case  
21 management performed by the contracted area agency on aging staff or  
22 federally recognized Indian tribe for elderly and persons with  
23 disabilities in the community.~~

24 (b) The department shall incorporate the expected outcomes and  
25 criteria to measure the performance of service coordination  
26 organizations into contracts with area agencies on aging as provided  
27 in chapter 70.320 RCW.

28 (~~(5) Area~~) (6) The contracts must require area agencies on  
29 aging (~~shall~~) and federally recognized Indian tribes to assess the  
30 quality of the in-home care services provided to consumers who are  
31 receiving services under programs authorized through the medicaid  
32 state plan, medicaid waiver authorities, or similar state-funded in-  
33 home care programs through an individual provider or home care  
34 agency. Quality indicators may include, but are not limited to, home  
35 care consumers satisfaction surveys, how quickly home care consumers  
36 are linked with home care workers, and whether the plan of care under  
37 RCW 74.39A.095 has been honored by the agency or the individual  
38 provider.

39 (~~(6)~~) (7) The department shall develop model language for the  
40 plan of care established in RCW 74.39A.095. The plan of care shall be

1 in clear language, and written at a reading level that will ensure  
2 the ability of consumers to understand the rights and  
3 responsibilities expressed in the plan of care.

4 **Sec. 2.** RCW 74.39A.095 and 2018 c 278 s 12 are each amended to  
5 read as follows:

6 (1) In carrying out case management responsibilities established  
7 under RCW 74.39A.090 for consumers who are receiving services under  
8 programs authorized through the medicaid state plan, medicaid waiver  
9 authorities, or similar state-funded in-home care programs, to the  
10 extent of available funding, the contracts with each area agency on  
11 aging or federally recognized Indian tribe shall require the  
12 contracted agency to:

13 (a) Work with each client to develop a plan of care under this  
14 section that identifies and ensures coordination of health and long-  
15 term care services and supports. In developing the plan, the area  
16 agency on aging or federally recognized Indian tribe shall use and  
17 modify as needed any comprehensive plan of care developed by the  
18 department as provided in RCW 74.39A.040;

19 (b) Monitor the implementation of the consumer's plan of care to  
20 verify that it adequately meets the needs of the consumer through  
21 activities such as home visits, telephone contacts, and responses to  
22 information received by the area agency on aging or federally  
23 recognized Indian tribe indicating that a consumer may be  
24 experiencing problems relating to his or her home care;

25 (c) Reassess and reauthorize services;

26 (d) Explain to the consumer that consumers have the right to  
27 waive case management services offered by the area agency on aging or  
28 federally recognized Indian tribe, except consumers may not waive the  
29 ~~((area agency on aging's))~~ reassessment or reauthorization of  
30 services, or verification that services are being provided in  
31 accordance with the plan of care; and

32 (e) Document the waiver of any case management services by the  
33 consumer.

34 (2) Each consumer has the right to direct and participate in the  
35 development of their plan of care to the maximum extent practicable,  
36 and to be provided with the time and support necessary to facilitate  
37 that participation.

38 (3) As authorized by the consumer, a copy of the plan of care may  
39 be distributed to: (a) The consumer's individual provider contracted

1 with the department; (b) the entity contracted with the department to  
2 provide personal care services; and (c) other relevant providers with  
3 whom the consumer has frequent contact.

4 (4) If an individual provider is employed by a consumer directed  
5 employer, the department (~~(or)~~), area agency on aging, or federally  
6 recognized Indian tribe must notify the consumer directed employer  
7 if:

8 (a) There is reason to believe that an individual provider or  
9 prospective individual provider is not delivering or will not be able  
10 to deliver the services identified in the consumer's plan of care; or

11 (b) The individual provider's performance is jeopardizing the  
12 health, safety, or well-being of a consumer receiving services under  
13 this section.

14 **Sec. 3.** RCW 74.39A.515 and 2018 c 278 s 13 are each amended to  
15 read as follows:

16 (1) If a consumer directed employer employs individual providers,  
17 then the consumer directed employer shall:

18 (a) Verify that each individual provider has met any training  
19 requirements established under this chapter and rules adopted under  
20 this chapter;

21 (b) Conduct background checks on individual providers as required  
22 under this chapter, RCW 43.43.830 through 43.43.842, 43.20A.710, and  
23 the rules adopted by the department; or verify that a background  
24 check has been conducted for each individual provider and that the  
25 background check is still valid in accordance with department rules;

26 (c) Implement an electronic visit verification system that  
27 complies with federal requirements, or in the absence of an  
28 electronic visit verification system, monitor a statistically valid  
29 sample of individual provider's claims to the receipt of services by  
30 the consumer;

31 (d) Monitor individual provider compliance with employment  
32 requirements;

33 (e) As authorized and determined by the consumer, provide a copy  
34 of the consumer's plan of care to the individual provider who has  
35 been selected by the consumer;

36 (f) Verify the individual provider is able and willing to carry  
37 out his or her responsibilities under the plan of care;

38 (g) Take into account information provided by the consumer or the  
39 consumer's case manager about the consumer's specific needs;

1 (h) Discontinue the individual provider's assignment to a  
2 consumer when the consumer directed employer has reason to believe,  
3 or the department or area agency on aging has reported, that the  
4 health, safety, or well-being of a consumer is in imminent jeopardy  
5 due to the performance of the individual provider;

6 (i) Reject a request by a consumer to assign a specific person as  
7 his or her individual provider, if the consumer directed employer has  
8 reason to believe that the individual will be unable to appropriately  
9 meet the care needs of the consumer; and

10 (j) Establish a dispute resolution process for consumers who wish  
11 to dispute decisions made under (h) and (i) of this subsection.

12 (2) If any individual providers are contracted with the  
13 department to provide services under this chapter, the (~~area agency~~  
14 ~~on aging~~) case management responsibilities of RCW 74.39A.090 and  
15 74.39A.095 shall include:

16 (a) Verifying that each individual provider has met all training  
17 requirements under this chapter and department rules;

18 (b) Conducting background checks on individual providers as  
19 required under this chapter, RCW 43.43.830 through 43.43.842,  
20 43.20A.710, and department rules; or verifying that background checks  
21 have been conducted for each individual provider and that the  
22 background check is still valid in accordance with department rules;

23 (c) Monitoring that the individual provider is providing services  
24 as outlined in the consumer's plan of care;

25 (d) Attaching the consumer's plan of care to the contract with  
26 the individual provider;

27 (e) Verifying with the individual provider that he or she is able  
28 and willing to carry out his or her responsibilities under the plan  
29 of care;

30 (f) Terminating the contract between the department and the  
31 individual provider if the department (~~(or)~~) area agency on aging,  
32 or federally recognized Indian tribe finds that an individual  
33 provider's inadequate performance or inability to deliver quality  
34 care is jeopardizing the health, safety, or well-being of a consumer  
35 receiving service under this section;

36 (g) Summarily suspending the contract pending a fair hearing, if  
37 there is reason to believe the health, safety, or well-being of a  
38 consumer is in imminent jeopardy; and

39 (h) Rejecting a request by a consumer receiving services under  
40 this section to have a family member or other person serve as his or

1 her individual provider if the (~~case manager~~) department, area  
2 agency on aging, or federally recognized Indian tribe has reason to  
3 believe that the family member or other person will be unable to  
4 appropriately meet the care needs of the consumer.

5 (3) The consumer may request a fair hearing under chapter 34.05  
6 RCW to contest a planned action of the (~~case manager~~) department  
7 under subsection (2)(g) and (h) of this section.

8 (4) The department may adopt rules to implement this section.

9 **Sec. 4.** RCW 74.09.520 and 2021 c 126 s 2 are each amended to  
10 read as follows:

11 (1) The term "medical assistance" may include the following care  
12 and services subject to rules adopted by the authority or department:

13 (a) Inpatient hospital services; (b) outpatient hospital services;  
14 (c) other laboratory and X-ray services; (d) nursing facility  
15 services; (e) physicians' services, which shall include prescribed  
16 medication and instruction on birth control devices; (f) medical  
17 care, or any other type of remedial care as may be established by the  
18 secretary or director; (g) home health care services; (h) private  
19 duty nursing services; (i) dental services; (j) physical and  
20 occupational therapy and related services; (k) prescribed drugs,  
21 dentures, and prosthetic devices; and eyeglasses prescribed by a  
22 physician skilled in diseases of the eye or by an optometrist,  
23 whichever the individual may select; (l) personal care services, as  
24 provided in this section; (m) hospice services; (n) other diagnostic,  
25 screening, preventive, and rehabilitative services; and (o) like  
26 services when furnished to a child by a school district in a manner  
27 consistent with the requirements of this chapter. For the purposes of  
28 this section, neither the authority nor the department may cut off  
29 any prescription medications, oxygen supplies, respiratory services,  
30 or other life-sustaining medical services or supplies.

31 "Medical assistance," notwithstanding any other provision of law,  
32 shall not include routine foot care, or dental services delivered by  
33 any health care provider, that are not mandated by Title XIX of the  
34 social security act unless there is a specific appropriation for  
35 these services.

36 (2) The department shall adopt, amend, or rescind such  
37 administrative rules as are necessary to ensure that Title XIX  
38 personal care services are provided to eligible persons in  
39 conformance with federal regulations.

1 (a) These administrative rules shall include financial  
2 eligibility indexed according to the requirements of the social  
3 security act providing for medicaid eligibility.

4 (b) The rules shall require clients be assessed as having a  
5 medical condition requiring assistance with personal care tasks.  
6 Plans of care for clients requiring health-related consultation for  
7 assessment and service planning may be reviewed by a nurse.

8 (c) The department shall determine by rule which clients have a  
9 health-related assessment or service planning need requiring  
10 registered nurse consultation or review. This definition may include  
11 clients that meet indicators or protocols for review, consultation,  
12 or visit.

13 (3) The department shall design and implement a means to assess  
14 the level of functional disability of persons eligible for personal  
15 care services under this section. The personal care services benefit  
16 shall be provided to the extent funding is available according to the  
17 assessed level of functional disability. Any reductions in services  
18 made necessary for funding reasons should be accomplished in a manner  
19 that assures that priority for maintaining services is given to  
20 persons with the greatest need as determined by the assessment of  
21 functional disability.

22 (4) Effective July 1, 1989, the authority shall offer hospice  
23 services in accordance with available funds.

24 (5) For Title XIX personal care services administered by (~~aging  
25 and disability services administration of~~) the department, the  
26 department shall contract with area agencies on aging or may contract  
27 with a federally recognized Indian tribe under RCW 74.39A.090(3):

28 (a) To provide case management services to individuals receiving  
29 Title XIX personal care services in their own home; and

30 (b) To reassess and reauthorize Title XIX personal care services  
31 or other home and community services as defined in RCW 74.39A.009 in  
32 home or in other settings for individuals consistent with the intent  
33 of this section:

34 (i) Who have been initially authorized by the department to  
35 receive Title XIX personal care services or other home and community  
36 services as defined in RCW 74.39A.009; and

37 (ii) Who, at the time of reassessment and reauthorization, are  
38 receiving such services in their own home.

39 (6) In the event that an area agency on aging or federally  
40 recognized Indian tribe is unwilling to enter into or satisfactorily

1 fulfill a contract or an individual consumer's need for case  
2 management services will be met through an alternative delivery  
3 system, the department is authorized to:

4 (a) Obtain the services through competitive bid; and

5 (b) Provide the services directly until a qualified contractor  
6 can be found.

7 (7) Subject to the availability of amounts appropriated for this  
8 specific purpose, the authority may offer medicare part D  
9 prescription drug copayment coverage to full benefit dual eligible  
10 beneficiaries.

11 (8) Effective January 1, 2016, the authority shall require  
12 universal screening and provider payment for autism and developmental  
13 delays as recommended by the bright futures guidelines of the  
14 American academy of pediatrics, as they existed on August 27, 2015.  
15 This requirement is subject to the availability of funds.

16 (9) Subject to the availability of amounts appropriated for this  
17 specific purpose, effective January 1, 2018, the authority shall  
18 require provider payment for annual depression screening for youth  
19 ages twelve through eighteen as recommended by the bright futures  
20 guidelines of the American academy of pediatrics, as they existed on  
21 January 1, 2017. Providers may include, but are not limited to,  
22 primary care providers, public health nurses, and other providers in  
23 a clinical setting. This requirement is subject to the availability  
24 of funds appropriated for this specific purpose.

25 (10) Subject to the availability of amounts appropriated for this  
26 specific purpose, effective January 1, 2018, the authority shall  
27 require provider payment for maternal depression screening for  
28 mothers of children ages birth to six months. This requirement is  
29 subject to the availability of funds appropriated for this specific  
30 purpose.

31 (11) Subject to the availability of amounts appropriated for this  
32 specific purpose, the authority shall:

33 (a) Allow otherwise eligible reimbursement for the following  
34 related to mental health assessment and diagnosis of children from  
35 birth through five years of age:

36 (i) Up to five sessions for purposes of intake and assessment, if  
37 necessary;

38 (ii) Assessments in home or community settings, including  
39 reimbursement for provider travel; and



1 (b) Require providers to use the current version of the DC:0-5  
2 diagnostic classification system for mental health assessment and  
3 diagnosis of children from birth through five years of age.

4 **Sec. 5.** RCW 74.39A.009 and 2018 c 278 s 2 are each amended to  
5 read as follows:

6 The definitions in this section apply throughout this chapter  
7 unless the context clearly requires otherwise.

8 (1) "Adult family home" means a home licensed under chapter  
9 70.128 RCW.

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

14 (3) "Assisted living facility" means a facility licensed under  
15 chapter 18.20 RCW.

16 (4) "Assisted living services" means services provided by an  
17 assisted living facility that has a contract with the department  
18 under RCW 74.39A.010 to provide personal care services, intermittent  
19 nursing services, and medication administration services; and the  
20 facility provides these services to residents who are living in  
21 private apartment-like units.

22 (5) "Community residential service business" means a business  
23 that:

24 (a) Is certified by the department of social and health services  
25 to provide to individuals who have a developmental disability as  
26 defined in RCW 71A.10.020(5):

27 (i) Group home services;

28 (ii) Group training home services;

29 (iii) Supported living services; or

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

32 (b) Has a contract with the developmental disabilities  
33 administration to provide the services identified in (a) of this  
34 subsection; and

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

1 (6) "Consumer" or "client" means a person who is receiving or has  
2 applied for services under this chapter, including a person who is  
3 receiving services from an individual provider.

4 (7) "Consumer directed employer" is a private entity that  
5 contracts with the department to be the legal employer of individual  
6 providers for purposes of performing administrative functions. The  
7 consumer directed employer is patterned after the agency with choice  
8 model, recognized by the federal centers for medicare and medicaid  
9 services for financial management in consumer directed programs. The  
10 entity's responsibilities are described in RCW 74.39A.515 and  
11 throughout this chapter and include: (a) Coordination with the  
12 consumer, who is the individual provider's managing employer; (b)  
13 withholding, filing, and paying income and employment taxes,  
14 including workers' compensation premiums and unemployment taxes, for  
15 individual providers; (c) verifying an individual provider's  
16 qualifications; and (d) providing other administrative and  
17 employment-related supports. The consumer directed employer is a  
18 social service agency and its employees are mandated reporters as  
19 defined in RCW 74.34.020.

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

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

34 (10) "Department" means the department of social and health  
35 services.

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

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

1 (13) "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 (14) "Facility" means an adult family home, an assisted living  
7 facility, a nursing home, an enhanced services facility licensed  
8 under chapter 70.97 RCW, or a facility certified to provide medicare  
9 or medicaid services in nursing facilities or intermediate care  
10 facilities for individuals with intellectual disabilities under 42  
11 C.F.R. Part 483.

12 (15) "Home and community-based services" means services provided  
13 in adult family homes, in-home services, and other services  
14 administered or provided by contract by the department directly or  
15 through contract with area agencies on aging or federally recognized  
16 Indian tribes, or similar services provided by facilities and  
17 agencies licensed or certified by the department.

18 (16) "Home care aide" means a long-term care worker who is  
19 certified as a home care aide by the department of health under  
20 chapter 18.88B RCW.

21 (17) "Individual provider" is defined according to RCW  
22 74.39A.240.

23 (18) "Legal employer" means the consumer directed employer, which  
24 along with the consumer, coemploys individual providers. The legal  
25 employer is responsible for setting wages and benefits for individual  
26 providers and must comply with applicable laws including, but not  
27 limited to, workers compensation and unemployment insurance laws.

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

38 (20)(a) "Long-term care workers" include all persons who provide  
39 paid, hands-on personal care services for the elderly or persons with  
40 disabilities, including but not limited to individual providers of

1 home care services, direct care workers employed by home care  
2 agencies or a consumer directed employer, providers of home care  
3 services to persons with developmental disabilities under Title 71A  
4 RCW, all direct care workers in state-licensed assisted living  
5 facilities, enhanced services facilities, and adult family homes,  
6 respite care providers, direct care workers employed by community  
7 residential service businesses, and any other direct care worker  
8 providing home or community-based services to the elderly or persons  
9 with functional disabilities or developmental disabilities.

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

19 (21) "Managing employer" means a consumer who coemploys one or  
20 more individual providers and whose responsibilities include (a)  
21 choosing potential individual providers and referring them to the  
22 consumer directed employer; (b) overseeing the day-to-day management  
23 and scheduling of the individual provider's tasks consistent with the  
24 plan of care; and (c) dismissing the individual provider when  
25 desired.

26 (22) "Nursing home" or "nursing facility" means a facility  
27 licensed under chapter 18.51 RCW or certified as a medicaid nursing  
28 facility under 42 C.F.R. Part 483, or both.

29 (23) "Person who is functionally disabled" means a person who  
30 because of a recognized chronic physical or mental condition or  
31 disease, including chemical dependency or developmental disability,  
32 is dependent upon others for direct care, support, supervision, or  
33 monitoring to perform activities of daily living. "Activities of  
34 daily living," in this context, means self-care abilities related to  
35 personal care such as bathing, eating, using the toilet, dressing,  
36 and transfer. Instrumental activities of daily living such as  
37 cooking, shopping, house cleaning, doing laundry, working, and  
38 managing personal finances may also be considered when assessing a  
39 person's functional (~~abilities—[ability]~~) ability to perform  
40 activities in the home and the community.

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

4 (25) "Population specific competencies" means basic training  
5 topics unique to the care needs of the population the long-term care  
6 worker is serving, including but not limited to, mental health,  
7 dementia, developmental disabilities, young adults with physical  
8 disabilities, and older adults.

9 (26) "Qualified instructor" means a registered nurse or other  
10 person with specific knowledge, training, and work experience in the  
11 provision of direct, hands-on personal care and other assistance  
12 services to the elderly or persons with disabilities requiring  
13 long-term care.

14 (27) "Secretary" means the secretary of social and health  
15 services.

16 (28) "Training partnership" means a joint partnership or trust  
17 that includes the office of the governor and the exclusive bargaining  
18 representative of individual providers under RCW 74.39A.270 with the  
19 capacity to provide training, peer mentoring, and workforce  
20 development, or other services to individual providers.

21 (29) "Tribally licensed assisted living facility" means an  
22 assisted living facility licensed by a federally recognized Indian  
23 tribe in which a facility provides services similar to services  
24 provided by assisted living facilities licensed under chapter 18.20  
25 RCW.

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