
SENATE BILL 5866

State of Washington

67th Legislature

2022 Regular Session

By Senators Robinson, Randall, Conway, Kuderer, Lovick, Nguyen, Nobles, and C. Wilson; by request of Department of Social and Health Services

Read first time 01/14/22. Referred to Committee on Health & Long Term Care.

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.

--- END ---