

SB 5867 - S AMD 267

By Senator Van De Wege

ADOPTED 04/19/2017

1 Strike everything after the enacting clause and insert the
2 following:

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

14 Therefore, the legislature intends to create an optional
15 consumer-directed program for providing personal care services for
16 individuals with long-term care needs or developmental disabilities
17 receiving care from a family member. This program is intended to
18 provide individuals with more flexibility in accessing their benefits
19 and to reduce obstacles for consumers who wish to hire family members
20 to provide their care.

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

23 The department is directed to develop and implement a consumer-
24 directed medicaid program as provided in chapter . . ., Laws of 2017
25 (this act). This program is intended to be a voluntary alternative
26 option for individuals with long-term care needs or developmental
27 disabilities who choose to receive personal care services from a
28 family member. The department shall review existing medicaid programs
29 and determine the appropriate waiver to seek from the centers for
30 medicare and medicaid services. The department shall seek stakeholder
31 input on the new consumer-directed program's design to inform its

1 submission of a waiver proposal to the centers for medicare and
2 medicaid services. The department's waiver proposal must be submitted
3 to the centers for medicare and medicaid services by March 1, 2018.
4 By January 1, 2019, and September 1, 2019, the department must submit
5 status reports to the legislature that provide information about the
6 department's activities, program design, necessary statutory changes,
7 barriers to implementation, and estimated implementation date,
8 caseload, and costs. The consumer-directed medicaid program as
9 provided in chapter . . . , Laws of 2017 (this act) must be available
10 to consumers by January 1, 2019.

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

13 (1) The consumer-directed medicaid program is a voluntary
14 alternative option for consumers who seek to receive personal care
15 services from a family member. The consumer-directed medicaid program
16 must also reduce barriers that prevent consumers from being able to
17 select a family member as their paid personal care or respite
18 provider. The consumer, or his or her representatives, if applicable,
19 must have decision-making authority to recruit, hire and fire,
20 determine wages, train, supervise, and determine other conditions of
21 employment for his or her family member providing personal care and
22 respite services. The consumer, or his or her representatives, or
23 both, must also have decision-making authority over how the medicaid
24 funds in his or her individual budgets are spent.

25 (2) The consumer-directed medicaid program must include the
26 following characteristics:

27 (a) A consumer-centered planning process that is directed by the
28 consumer with assistance as needed or desired by a representative of
29 the consumer's choosing. The process must include an assessment and
30 service plan that establishes eligibility, the available budget
31 amount, and the preferences, abilities, needs, and desired measurable
32 outcomes of the consumer. The process may include other persons,
33 freely chosen by the consumer, who are able to serve as important
34 contributors to the process. The planning process must include
35 planning for contingencies such as when a needed service is not
36 provided due to the family member being unavailable. As part of the
37 contingency planning process, an assessment of the risks to the
38 consumer must be completed, and a discussion about how risks will be
39 addressed must be held;

1 (b) A service plan that specifies the services and supports that
2 are to be furnished to meet the preferences, choices, abilities, and
3 needs of the consumer, and that assists the consumer to direct those
4 services and supports so he or she is able to remain in his or her
5 community; and

6 (c) An individualized budget that is under the control and
7 direction of either the consumer, or his or her representative, or
8 both. The budget plan is developed using a consumer-centered planning
9 process and is individually tailored in accordance with the
10 consumer's needs and preferences as established in the service plan.
11 The department must describe the method for calculating the dollar
12 values of consumer budgets and define a process for making
13 adjustments to the budget amount when there are significant changes
14 in the consumer's support and service needs.

15 (3) The program must also include a system of supports to provide
16 information and assistance to consumers to address assessed needs
17 including, but not limited to:

18 (a) Information regarding how consumer-directed programs work;

19 (b) Information about a consumer's rights and responsibilities
20 when enrolled in a consumer-directed program;

21 (c) A consumer may provide training directly to his or her family
22 members or determine training topics that must be completed. The
23 content of the training must be related to the consumer's
24 preferences, care needs, conditions, health, safety, or topics
25 relevant to his or her consumer-centered plan and spending plan under
26 the program. The department may assist consumers by offering
27 voluntary training, including training offered under RCW 74.39A.351,
28 on how to select, manage, train, and dismiss employees. This may
29 include referrals to other agencies, educational institutions, and
30 consumer and community advocacy organizations to obtain information
31 and assistance; and

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

35 (4) The department must contract with an independent third party
36 to provide financial management services to assist consumers in
37 exercising their budget authority unless they are able to perform
38 some or all of these functions themselves. Financial management
39 services may include assistance in understanding billing and
40 documentation responsibilities, performance of payroll and employer-

1 related duties, assistance purchasing approved goods and services,
2 tracking and monitoring goods and services purchased and provided,
3 and identifying expenditures that are over or under the budget.

4 (5) The program must include necessary safeguards to protect the
5 health and welfare of consumers. The program must include a
6 requirement that any family member providing services pass
7 appropriate state and federal criminal background checks to verify
8 that he or she does not have a criminal history that would disqualify
9 him or her from working with vulnerable persons. The family member
10 providing services also must not be listed on any long-term care
11 abuse and neglect registry, child abuse registry, or any other
12 registry or list used by the department to disqualify the person from
13 caring for vulnerable persons.

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

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

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

18 (i) Is functionally disabled and eligible for personal care or
19 respite care services under medicaid personal care, community first
20 choice option, community options program entry system, chore services
21 program, new freedom system, or respite care program;

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

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

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

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

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

33 (1)(a) Beginning January 7, 2012, except for long-term care
34 workers exempt from certification under RCW 18.88B.041(1) (a) and (f)
35 and, until January 1, 2016, those exempt under RCW 18.88B.041(1)(b),
36 all persons hired as long-term care workers must meet the minimum
37 training requirements in this section within one hundred twenty
38 calendar days after the date of being hired or within one hundred
39 twenty calendar days after March 29, 2012, whichever is later. In

1 computing the time periods in this subsection, the first day is the
2 date of hire or March 29, 2012, whichever is applicable.

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

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

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

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

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

18 (B) Three hours of safety training, including basic safety
19 precautions, emergency procedures, and infection control; and

20 (ii) Seventy hours of long-term care basic training, including
21 training related to core competencies and population specific
22 competencies.

23 (2) Only training curriculum approved by the department may be
24 used to fulfill the training requirements specified in this section.
25 The department shall only approve training curriculum that:

26 (a) Has been developed with input from consumer and worker
27 representatives; and

28 (b) Requires comprehensive instruction by qualified instructors
29 on the competencies and training topics in this section.

30 (3) Individual providers under RCW 74.39A.270 shall be
31 compensated for training time required by this section.

32 (4) The department shall adopt rules to implement this section.

33 **Sec. 5.** RCW 74.39A.076 and 2015 c 152 s 2 are each amended to
34 read as follows:

35 (1) Beginning January 7, 2012, except for long-term care workers
36 exempt from certification under RCW 18.88B.041(1) (a) and (f):

37 (a) A biological, step, or adoptive parent who is the individual
38 provider only for his or her developmentally disabled son or daughter
39 must receive twelve hours of training relevant to the needs of adults

1 with developmental disabilities within the first one hundred twenty
2 days after becoming an individual provider or within one hundred
3 twenty calendar days after March 29, 2012, whichever is later.

4 (b) Individual providers identified in (b)(i), (ii), and (iii) of
5 this subsection must complete thirty-five hours of training within
6 the first one hundred twenty days after becoming an individual
7 provider or within one hundred twenty calendar days after March 29,
8 2012, whichever is later. Five of the thirty-five hours must be
9 completed before becoming eligible to provide care. Two of these five
10 hours shall be devoted to an orientation training regarding an
11 individual provider's role as caregiver and the applicable terms of
12 employment, and three hours shall be devoted to safety training,
13 including basic safety precautions, emergency procedures, and
14 infection control. Individual providers subject to this requirement
15 include:

16 (i) An individual provider caring only for his or her biological,
17 step, or adoptive child or parent unless covered by (a) of this
18 subsection;

19 (ii) A person working as an individual provider who provides
20 twenty hours or less of care for one person in any calendar month;
21 and

22 (iii) A person working as an individual provider who only
23 provides respite services and works less than three hundred hours in
24 any calendar year.

25 (2) In computing the time periods in this section, the first day
26 is the date of hire or March 29, 2012, whichever is applicable.

27 (3) Only training curriculum approved by the department may be
28 used to fulfill the training requirements specified in this section.
29 The department shall only approve training curriculum that:

30 (a) Has been developed with input from consumer and worker
31 representatives; and

32 (b) Requires comprehensive instruction by qualified instructors.

33 (4) The department shall adopt rules to implement this section.

34 **Sec. 6.** RCW 74.39A.240 and 2011 1st sp.s. c 21 s 7 are each
35 amended to read as follows:

36 The definitions in this section apply throughout RCW 74.39A.030
37 ((and)) 74.39A.095 ((and)) 74.39A.220 through 74.39A.300, and
38 41.56.026 unless the context clearly requires otherwise.

1 (1) "Consumer" means a person to whom an individual provider
2 provides any such services.

3 (2) "Department" means the department of social and health
4 services.

5 (3) "Individual provider" means a person, including a personal
6 aide, who has contracted with the department to provide personal care
7 or respite care services to functionally disabled persons under the
8 medicaid personal care, community options program entry system, chore
9 services program, or respite care program, or to provide respite care
10 or residential services and support to persons with developmental
11 disabilities under chapter 71A.12 RCW, or to provide respite care as
12 defined in RCW 74.13.270. "Individual provider" does not include a
13 family member providing personal care and respite services to a
14 consumer under the consumer-directed medicaid program created in
15 sections 2 and 3 of this act.

16 **Sec. 7.** RCW 74.39A.341 and 2015 c 152 s 3 are each amended to
17 read as follows:

18 (1) All long-term care workers shall complete twelve hours of
19 continuing education training in advanced training topics each year.
20 This requirement applies beginning July 1, 2012.

21 (2) Completion of continuing education as required in this
22 section is a prerequisite to maintaining home care aide certification
23 under chapter 18.88B RCW.

24 (3) Unless voluntarily certified as a home care aide under
25 chapter 18.88B RCW, subsection (1) of this section does not apply to:

26 (a) An individual provider caring only for his or her biological,
27 step, or adoptive child;

28 (b) Registered nurses and licensed practical nurses licensed
29 under chapter 18.79 RCW;

30 (c) Before January 1, 2016, a long-term care worker employed by a
31 community residential service business;

32 (d) A person working as an individual provider who provides
33 twenty hours or less of care for one person in any calendar month;
34 ((~~or~~))

35 (e) A person working as an individual provider who only provides
36 respite services and works less than three hundred hours in any
37 calendar year; or

1 (f) A family member providing personal care and respite services
2 to a consumer under the consumer-directed medicaid program created in
3 sections 2 and 3 of this act.

4 (4) 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 (5) Individual providers under RCW 74.39A.270 shall be
11 compensated for training time required by this section.

12 (6) The department of health shall adopt rules to implement
13 subsection (1) of this section.

14 (7) The department shall adopt rules to implement subsection (2)
15 of this section.

16 **Sec. 8.** RCW 18.88B.041 and 2015 c 152 s 1 are each amended to
17 read as follows:

18 (1) The following long-term care workers are not required to
19 become a certified home care aide pursuant to this chapter:

20 (a)(i)(A) Registered nurses, licensed practical nurses, certified
21 nursing assistants or persons who are in an approved training program
22 for certified nursing assistants under chapter 18.88A RCW, medicare-
23 certified home health aides, or other persons who hold a similar
24 health credential, as determined by the secretary, or persons with
25 special education training and an endorsement granted by the
26 superintendent of public instruction, as described in RCW
27 28A.300.010, if the secretary determines that the circumstances do
28 not require certification.

29 (B) A person who was initially hired as a long-term care worker
30 prior to January 7, 2012, and who completes all of his or her
31 training requirements in effect as of the date he or she was hired.

32 (ii) Individuals exempted by (a)(i) of this subsection may obtain
33 certification as a home care aide without fulfilling the training
34 requirements in RCW 74.39A.074(1)(d)(ii) but must successfully
35 complete a certification examination pursuant to RCW 18.88B.031.

36 (b) All long-term care workers employed by community residential
37 service businesses.

38 (c) An individual provider caring only for his or her biological,
39 step, or adoptive child or parent.

1 (d) A person working as an individual provider who provides
2 twenty hours or less of care for one person in any calendar month.

3 (e) A person working as an individual provider who only provides
4 respite services and works less than three hundred hours in any
5 calendar year.

6 (f) A family member providing personal care and respite services
7 to a consumer under the consumer-directed medicaid program created in
8 sections 2 and 3 of this act.

9 (2) A long-term care worker exempted by this section from the
10 training requirements contained in RCW 74.39A.074 may not be
11 prohibited from enrolling in training pursuant to that section.

12 (3) The department shall adopt rules to implement this section.

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

15 (1)(a) Except as provided under (b) of this subsection, the
16 department shall not pay a home care agency licensed under chapter
17 70.127 RCW for in-home personal care or respite services provided
18 under this chapter, Title 71A RCW, or chapter 74.39 RCW if the care
19 is provided to a client by a family member of the client. To the
20 extent permitted under federal law, the provisions of this subsection
21 shall not apply if the family member providing care is older than the
22 client.

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

31 (2) The department shall take appropriate enforcement action
32 against a home care agency found to have charged the state for hours
33 of service for which the department is not authorized to pay under
34 this section, including requiring recoupment of any payment made for
35 those hours and, under criteria adopted by the department by rule,
36 terminating the contract of an agency that violates a recoupment
37 requirement.

38 (3) For purposes of this section:

1 (a) "Client" means a person who has been deemed eligible by the
2 department to receive in-home personal care or respite services.
3 (b) "Family member" shall be liberally construed to include, but
4 not be limited to, a parent, child, sibling, aunt, uncle, cousin,
5 grandparent, grandchild, grandniece, or grandnephew, or such
6 relatives when related by marriage.
7 (4) The department shall adopt rules to implement this section.
8 The rules shall not result in affecting the amount, duration, or
9 scope of the personal care or respite services benefit to which a
10 client may be entitled pursuant to RCW 74.09.520 or Title XIX of the
11 federal social security act."

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12 On page 1, line 4 of the title, after "program;" strike the
13 remainder of the title and insert "amending RCW 74.39A.074,
14 74.39A.076, 74.39A.240, 74.39A.341, 18.88B.041, and 74.39A.326;
15 adding new sections to chapter 74.39A RCW; and creating a new
16 section."

EFFECT: Exempts in-home personal care and respite services provided to enrolled members of federally recognized Indian tribes, including their household members, from the prohibition on paying family members who are employed by a home care agency. Clarifies that DSHS shall offer 70 hours of voluntary training to family caregivers.

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