

SENATE BILL REPORT

ESB 5867

As Passed Senate, April 19, 2017

Title: An act relating to creating a flexible voluntary program to allow family members to provide personal care services to persons with developmental disabilities or long-term care needs under a consumer-directed medicaid service program.

Brief Description: Creating a flexible voluntary program to allow family members to provide personal care services to persons with developmental disabilities or long-term care needs under a consumer-directed medicaid service program.

Sponsors: Senator Braun.

Brief History:

Committee Activity: Ways & Means: 3/15/17, 3/16/17 [DP, DNP].

Floor Activity:

Passed Senate: 4/19/17, 28-21.

Brief Summary of Engrossed Bill

- Directs the Department of Social and Health Services to develop and implement a consumer-directed Medicaid program by January 1, 2018.
- Clarifies that the new Medicaid program must be designed as a voluntary alternative option for consumers who seek to receive personal care services from a family member.

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass.

Signed by Senators Braun, Chair; Brown, Vice Chair; Rossi, Vice Chair; Honeyford, Vice Chair, Capital Budget ; Bailey, Becker, Fain, Padden, Rivers, Schoesler, Warnick and Zeiger.

Minority Report: Do not pass.

Signed by Senators Ranker, Ranking Minority Member; Rolfes, Assistant Ranking Minority Member, Operating Budget; Frockt, Assistant Ranking Minority Member, Capital Budget; Carlyle, Conway, Darneille, Hasegawa, Keiser and Miloscia.

Staff: James Kettel (786-7459)

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Background: Washington State spends approximately \$1.4 billion annually on in-home care services for about 50,000 low-income individuals with developmental disabilities and/or long-term care needs. In-home services are primarily funded through the agency-directed Community First Choice (CFC) state plan. In-home care services are designed to assist individuals who need help with daily activities to continue to live as independently as possible at home. Services include supports with personal care tasks such as: bathing, bed mobility—turning and repositioning, body care, dressing, eating, locomotion, medication management, toilet use, transfer, and personal hygiene. In addition, individuals may also be eligible to receive supports with household tasks like cooking, shopping, and housekeeping.

Individuals who meet both functional and financial eligibility criteria for CFC are given the choice of using a contracted agency provider or certified individual home care worker to provide their care. Agency providers and individual homecare workers who do not already have a professional license or certification are required to complete between 30 to 75 hours of training, typically within 120 days of their start date. Homecare workers who are not classified as a parent, adult child, or limited service provider must also pass an exam to obtain a certification credential through the Department of Health.

Some individuals and families report that the current agency-directed method for in-home care services does not provide enough choice in providers for individuals and families who prefer to receive services from someone they know or with whom they have a relationship. Further, some individuals want more involvement in the delivery and direction of their services in meeting their assessed needs.

To address concerns like these, the Centers for Medicare and Medicaid services have developed consumer-directed service models that seek to give individuals with long-term care needs or developmental disabilities more options and greater personal autonomy in determining how best to meet their care needs. Medicaid consumer-directed programs provide consumers with a monthly allowance that they are given authority to self-direct on how funds are used to meet their health and welfare needs. Under these programs, consumers assume responsibility for arranging and managing their care and must use the benefit to purchase goods and services available through the new Medicaid program. The design of these programs allows consumers to ask consultants for training on how to meet those responsibilities and may include services like a fiscal agent to hold their award, manage payroll taxes, and disburse funds on their behalf.

Summary of Engrossed Bill: The Department of Social and Health Services (Department) is directed to develop and implement a consumer-directed Medicaid program that is a voluntary alternative option for consumers who seek to receive personal care services from a family member. The new Medicaid program must be available to consumers by January 1, 2019. The Department shall seek stakeholder input on the design of the new Medicaid program and must submit a proposal for the new waiver program to the Centers for Medicare and Medicaid services by March 1, 2018. By January 1, 2018, and September 1, 2018, the Department must submit status reports to the Legislature that include information about the Department's activities, program design, necessary statutory changes, barriers to implementation, and estimated implementation date, caseload, and costs.

Consumers and their representative, if applicable, must have decision-making authority to recruit, hire, fire, determine wages, train, supervise, and determine other conditions of employment for their family member providing personal care services. Consumers must also have decision-making authority over how the Medicaid funds in their individual budgets are spent.

The new consumer-directed Medicaid program must include the following characteristics:

- a consumer-centered planning process that is directed by the consumer with assistance as needed or desired by a representative of the consumer's choosing;
- a service plan that specifies the services and supports that are to be furnished to meet the consumers preferences, choices, abilities, and needs of the consumer;
- an individualized budget that is under the control and direction of the consumer, or their representative, or both;
- information regarding how consumer-directed programs work;
- information regarding the consumer's rights and responsibilities;
- the authority to establish their own training criteria and provide training directly to their own family members—the Department may assist consumers by offering voluntary training on how to select, manage, train, and dismiss employees;
- authority to determine the compensation, hours, and working conditions of their family members as long as the wage paid is at least the state minimum wage;
- financial management services to assist consumers in exercising their budget authority unless they are able to perform some or all of these functions themselves;
- individuals hired to provide services by consumers must pass appropriate state and federal background checks to verify that the provider does not have a criminal history that would disqualify them from working with vulnerable persons;
- individuals must not be listed on any long-term care abuse and neglect registry, child-abuse registry, or any other registry used by the Department to disqualify a person from caring for a vulnerable person; and
- the ability for the consumer to disenroll from the program at any time to return to agency-directed, personal care service program.

Family members providing personal care or respite services to a consumer under the new consumer-directed Medicaid program are also exempted from training requirements, continuing education training requirements, and certification requirements for long-term care workers. However, the Department must offer 70 hours of voluntary training to family caregivers. The definition of individual provider is also amended not to include family members providing personal care and respite services to consumers under the new consumer-directed Medicaid program.

If a worker provides care to an enrolled member of a federally recognized Indian tribe, then the DSHS may exempt that worker from the prohibition of paying family members employed by a home care agency.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: PRO: The idea of flexibility and consumer choice is excellent. A consumer operated budget makes a great deal of sense. Flexibility and consumer choice could be accomplished under the existing waivers already. Unfortunately, DSHS has chosen to create an inflexible, bureaucratic, and siloed system for its waiver structure. As the existing waivers are redesigned there should be more attention paid to the concept of flexibility and consumer choice. The program envisioned under this legislation may take individuals out of the mainstream. It would be a problem in the personal care program experience, something similar to the foster care system. It is possible that individuals who choose this program could be penalized with cuts that are not present in the larger Medicaid program.

CON: The state should explore flexibility and innovative approaches to care. However, this legislation would undermine the high quality of care that exists in Washington. The New Freedom program already exists. The New Freedom program allows for an individualized budget and provides client choice to build their own care plan. The main difference between the New Freedom program and the program envisioned by this legislation is how the caregiver is treated. There would be less protection for caregivers under the new program. Under New Freedom, workers are able to negotiate for wages, health benefits, paid time off, and other benefits. Retirement is particularly important because many relative providers are excluded from social security. Labor and industries protection is also important due to the high rate of injuries for caregivers. Under the new program, costs associated with an injury would be entirely covered by the caregiver. Consumers may face additional costs for training or transportation. The homecare industry should be more professional in advance of the age wave.

OTHER: A self-directed waiver has been under consideration for a long time. Self-advocates will say that clients would like to be able to have more control over their service plan. It is unclear, however, if CMS will approve a waiver that includes two different administrations. There will be some additional costs associated with this waiver, including the cost of developing a person-centered plan and costs associated with a third party financial administrator. To be a viable self-directed option, the waiver should include more than just personal care. Clients who are receiving services on a different waiver will not want to switch to the self-directed waiver unless all of their needs can be met. Also, the current Medicaid program at the federal level is not stable. It is impossible to know what will happen with Medicaid over the next few years, including whether or not this new program would gain approval. As an alternative, it may make more sense for a stakeholder group to review options for a self-directed program, and to report those options to the Legislature next year. Consumer involvement in all aspects of the care plan is a great idea, including involvement in training long-term care workers. It is important to make sure that long-term care workers continue to have access to a living wage and health benefits. Clients know their needs best. Clients are in the best position to know how their own care plan should be determined and modified. Clients also know what kind of training is necessary for their long-term care worker. It is important to make sure that clients who select this voluntary option would not lose out on other important services.

Persons Testifying: PRO: Senator John Braun, Prime Sponsor; Loren Freeman, Freeman & Associates.

CON: Demas Nesterenko, SEIU775.

OTHER: Diana Stadden, The Arc Of WA; Noah Seidel, Self Advocates in Leadership; David Lord, Disability Rights Washington.

Persons Signed In To Testify But Not Testifying: No one.