
SECOND ENGROSSED SENATE BILL 5867

State of Washington

65th Legislature

2017 Regular Session

By Senator Braun

1 AN ACT Relating to creating a flexible voluntary program to allow
2 family members to provide personal care services to persons with
3 developmental disabilities or long-term care needs under a consumer-
4 directed medicaid service program; amending RCW 74.39A.326; creating
5 new sections; and providing an expiration date.

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

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

18 Therefore, the legislature intends to direct a study of the
19 current options allowing for the delivery of medicaid personal care
20 services by caregivers who are family members of the state's citizens
21 who are aging, disabled, or who have a developmental disability. The

1 legislature intends to promote more flexibility for clients to access
2 their benefits and to reduce obstacles for clients who wish to hire
3 family members to provide their care.

4 NEW SECTION. **Sec. 2.** (1) The joint legislative executive
5 committee on aging and disability is directed to explore legislation
6 that would allow family members to provide personal care services to
7 persons with developmental disabilities, or long-term care needs
8 under a voluntary consumer-directed medicaid service program. As part
9 of this work, the committee must also include a discussion of
10 consumer-directed approaches, including those approaches that allow
11 family members of the consumer to provide care, and develop
12 recommendations on:

- 13 (a) Promoting consumer health, safety, and autonomy;
- 14 (b) Ensuring adequate caregiver training and support;
- 15 (c) Verifying the quality and appropriateness of care;
- 16 (d) Reducing barriers for consumers who prefer to receive care
17 from caregivers of their choosing, including family members; and
- 18 (e) Mitigating or minimizing potential liability issues that may
19 arise in the context of consumer-directed programs.

20 (2) The joint legislative executive committee on aging and
21 disability must submit a report with recommendations to the
22 appropriate policy and fiscal committee of the legislature by July 1,
23 2018.

24 (3) This section expires July 1, 2018.

25 **Sec. 3.** RCW 74.39A.326 and 2009 c 571 s 1 are each amended to
26 read as follows:

27 (1)(a) Except as provided under (b) of this subsection, the
28 department shall not pay a home care agency licensed under chapter
29 70.127 RCW for in-home personal care or respite services provided
30 under this chapter, Title 71A RCW, or chapter 74.39 RCW if the care
31 is provided to a client by a family member of the client. To the
32 extent permitted under federal law, the provisions of this subsection
33 shall not apply if the family member providing care is older than the
34 client.

35 (b) The department may, on a case-by-case basis based on the
36 client's health and safety, make exceptions to (a) of this subsection
37 to authorize payment or to provide for payment during a transition
38 period of up to three months. Within available funds, the

1 restrictions under (a) of this subsection do not apply when the care
2 is provided to: (i) A client who is an enrolled member of a federally
3 recognized Indian tribe; or (ii) a client who resides in the
4 household of an enrolled member of a federally recognized Indian
5 tribe.

6 (2) The department shall take appropriate enforcement action
7 against a home care agency found to have charged the state for hours
8 of service for which the department is not authorized to pay under
9 this section, including requiring recoupment of any payment made for
10 those hours and, under criteria adopted by the department by rule,
11 terminating the contract of an agency that violates a recoupment
12 requirement.

13 (3) For purposes of this section:

14 (a) "Client" means a person who has been deemed eligible by the
15 department to receive in-home personal care or respite services.

16 (b) "Family member" shall be liberally construed to include, but
17 not be limited to, a parent, child, sibling, aunt, uncle, cousin,
18 grandparent, grandchild, grandniece, or grandnephew, or such
19 relatives when related by marriage.

20 (4) The department shall adopt rules to implement this section.
21 The rules shall not result in affecting the amount, duration, or
22 scope of the personal care or respite services benefit to which a
23 client may be entitled pursuant to RCW 74.09.520 or Title XIX of the
24 federal social security act.

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