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**SUBSTITUTE SENATE BILL 5331**

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**State of Washington 66th Legislature 2019 Regular Session**

**By** Senate Health & Long Term Care (originally sponsored by Senators Palumbo, Honeyford, Cleveland, Walsh, Randall, King, Frockt, Billig, Conway, Dhingra, Keiser, Kuderer, Pedersen, Saldaña, and Warnick)

AN ACT Relating to long-term services and supports; amending RCW 74.39A.076 and 18.88B.041; adding a new section to chapter 44.28 RCW; and adding a new chapter to Title 50A RCW.

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

NEW SECTION. **Sec.**  The legislature finds that:

(1) Long-term care is not covered by medicare or other health insurance plans, and the few private long-term care insurance plans that exist are unaffordable for most people, leaving more than ninety percent of seniors uninsured for long-term care. The current market for long-term care insurance is broken: In 2002, there were one hundred two companies offering long-term care insurance coverage, but today that number is only twelve.

(2) The majority of people over sixty-five years of age will need long-term services and supports within their lifetimes. The senior population has doubled in Washington since 1980, to currently over one million, and will more than double again by 2040. Without access to insurance, seniors must rely on family care and spend their life savings down to poverty levels in order to access long-term care through medicaid. In Washington, more than eight hundred fifty thousand unpaid family caregivers provided care valued at eleven billion dollars in 2015. Furthermore, family caregivers who leave the workforce to provide unpaid long-term services and supports lose an average of three hundred thousand dollars in their own income and health and retirement benefits.

(3) Paying out-of-pocket for long-term care is expensive. In Washington, the average cost for medicaid in-home care is twenty-four thousand dollars per year and the average cost for nursing home care is sixty-five thousand dollars per year. These are costs that most seniors cannot afford.

(4) Seniors and the state will not be able to continue their reliance on family caregivers in the near future. Demographic shifts mean that fewer potential family caregivers will be available in the future. Today, there are around seven potential caregivers for each senior, but by 2030 that ratio will decrease to four potential caregivers for each senior.

(5) Long-term services and supports comprise approximately six percent of the state operating budget, and demand for these services will double by 2030 to over twelve percent. This will result in an additional six billion dollars in increased near-general fund costs for the state by 2030.

(6) An alternative funding mechanism for long-term care access in Washington state could relieve hardship on families and lessen the burden of medicaid on the state budget. In addition, an alternative funding mechanism could result in positive economic impact to our state through increased state competition and fewer Washingtonians leaving the workforce to provide unpaid care.

(7) The average aging and long-term supports administration medicaid consumer utilizes ninety-six hours of care per month. At current costs, a one hundred dollars per day benefit for three hundred sixty-five days would provide complete financial relief for the average in-home care consumer and substantial relief for the average facility care consumer for a full year or more.

(8) Under current caseload and demographic projections, an alternative funding mechanism for long-term care access could save the medicaid program eight hundred ninety-eight million dollars in the 2051-2053 biennium.

(9) As the state pursues an alternative funding mechanism for long-term care access, the state must continue its commitment to promoting choice in approved services and long-term care settings. Therefore, any alternative funding mechanism program should be structured such that:

(a) Individuals are able to use their benefits for long-term care services in the setting of their choice, whether in the home, a residential community-based setting, or a skilled nursing facility;

(b) The choice of provider types and approved services is the same or greater than currently available through Washington's publicly funded long-term services and supports;

(c) Transitions from private and public funding sources for consumers are seamless; and

(d) Long-term care health status data is collected across all home and community-based settings.

(10) The creation of a long-term care insurance benefit of an established dollar amount per day for three hundred sixty-five days each year for all eligible Washington employees, paid through an employee payroll premium, is in the best interest of the state of Washington.

NEW SECTION. **Sec.**  The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Account" means the long-term services and supports trust account created in section 10 of this act.

(2) "Approved service" means long-term services and supports including, but not limited to:

(a) Adult day services;

(b) Care transition coordination;

(c) Memory care;

(d) Adaptive equipment and technology;

(e) Environmental modification;

(f) Personal emergency response system;

(g) Home safety evaluation;

(h) Respite for family caregivers;

(i) Home delivered meals;

(j) Transportation;

(k) Dementia supports;

(l) Education and consultation;

(m) Eligible relative care;

(n) Professional services;

(o) Services that assist paid and unpaid family members caring for eligible individuals, including training for individuals providing care who are not otherwise employed as long-term care workers under RCW 74.39A.074;

(p) In-home personal care;

(q) Assisted living services;

(r) Adult family home services; and

(s) Nursing home services.

(3) "Benefit unit" means up to one hundred dollars, increasing at a three percent index subject to annual commission approval, paid by the department of social and health services to a long-term services and supports provider as reimbursement for approved services provided to an eligible beneficiary on a specific date.

(4) "Commission" means the long-term services and supports trust commission established in section 4 of this act.

(5) "Eligible beneficiary" means a qualified individual who has been determined to meet the minimum level of assistance with activities of daily living necessary to receive benefits through the trust program, as established in this chapter, and who has not exhausted the lifetime limit of benefit units.

(6) "Employee" has the meaning provided in RCW 50A.04.010.

(7) "Employer" has the meaning provided in RCW 50A.04.010.

(8) "Employment" has the meaning provided in RCW 50A.04.010.

(9) "Long-term services and supports provider" means an entity that meets the qualifications applicable in law to the approved service they provide, including a qualified or certified home care aide, licensed assisted living facility, licensed adult family home, licensed nursing home, licensed in-home services agency, adult day services program, vendor, instructor, qualified family member, or other entities as registered by the department of social and health services.

(10) "Premium" or "premiums" means the payments required by section 8 of this act and paid to the employment security department for deposit in the account created in section 10 of this act.

(11) "Program" means the long-term services and supports trust program established in this chapter.

(12) "Qualified family member" means a relative of an eligible beneficiary qualified to meet requirements established in state law for the approved service they provide that would be required of any other long-term services and supports provider to receive payments from the state.

(13) "Qualified individual" means an individual who meets the age, residence, and duration of payment requirements, as established in this chapter.

(14) "Wages" has the meaning provided in RCW 50A.04.010, except that all wages are subject to a premium assessment and not limited by the commissioner of the employment security department, as provided under RCW 50A.04.115.

NEW SECTION. **Sec.**  (1) The health care authority, the department of social and health services, and the employment security department each have distinct responsibilities in the implementation and administration of the program. In the performance of their activities, they shall actively collaborate to realize program efficiencies and provide persons served by the program with a well-coordinated experience.

(2) The health care authority shall:

(a) Make determinations regarding an individual's status as a qualified individual under section 5 of this act;

(b) Ensure approved services are provided through audits or service verification processes within the service provider payment system for registered long-term services and supports providers and recoup any inappropriate payments;

(c) Establish criteria for the payment of benefits to registered long-term services and supports providers under section 7 of this act; and

(d) Adopt rules and procedures necessary to implement and administer the activities specified in this section related to the program.

(3) The department of social and health services shall:

(a) Make determinations regarding an individual's status as an eligible beneficiary under section 6 of this act;

(b) Approve long-term services and supports eligible for payment as approved services under the program, as informed by the commission;

(c) Register long-term services and supports providers that meet minimum qualifications;

(d) Discontinue the registration of long-term services and supports providers that: (i) Fail to meet the minimum qualifications applicable in law to the approved service that they provide; or (ii) violate the operational standards of the program;

(e) Disburse payments of benefits to registered long-term services and supports providers, utilizing and leveraging existing payment systems for the provision of approved services to eligible beneficiaries under section 7 of this act;

(f) Prepare and distribute written or electronic materials to qualified individuals, eligible beneficiaries, and the public as deemed necessary by the commission to inform them of program design and updates;

(g) Provide customer service and address questions and complaints, including referring individuals to other appropriate agencies;

(h) Provide administrative and operational support to the commission;

(i) Track data useful in monitoring and informing the program, as identified by the commission;

(j) Establish rules and procedures for benefit coordination when the eligible beneficiary is also funded for medicaid and other long-term services and supports, including medicare, coverage through the department of labor and industries, and private long-term care coverage; and

(k) Adopt rules and procedures necessary to implement and administer the activities specified in this section related to the program.

(4) The employment security department shall:

(a) Collect and assess employee premiums as provided in section 8 of this act;

(b) Assist the commission in monitoring the solvency and financial status of the program;

(c) Perform investigations to determine the compliance of premium payments in section 8 of this act in coordination with the same activities conducted under the family and medical leave act, chapter 50A.04 RCW, to the extent possible; and

(d) Adopt rules and procedures necessary to implement and administer the activities specified in this section related to the program.

NEW SECTION. **Sec.**  (1) The long-term services and supports trust commission is established.

(2) The commission includes:

(a) Two members from each of the two largest caucuses of the house of representatives, appointed by the speaker of the house of representatives;

(b) Two members from each of the two largest caucuses of the senate, appointed by the president of the senate;

(c) The commissioner of the employment security department, or the commissioner's designee;

(d) The secretary of the department of social and health services, or the secretary's designee;

(e) The director of the health care authority, or the director's designee, who shall serve as a nonvoting member;

(f) One representative of the organization representing the area agencies on aging;

(g) One representative of a home care association that represents caregivers who provide services to private pay and medicaid clients;

(h) One representative of a union representing long-term care workers;

(i) One representative of an organization representing retired persons;

(j) One representative of an association representing skilled nursing facilities and assisted living providers;

(k) One representative of an association representing adult family home providers;

(l) Two individuals receiving long-term services and supports, or their designees, or representatives of consumers receiving long-term services and supports under the program;

(m) One member who is a worker who is, or will likely be, paying the premium established in section 8 of this act and who is not employed by a long-term services and supports provider; and

(n) One representative of an organization of employers whose members collect, or will likely be collecting, the premium established in section 8 of this act.

(3)(a) Other than the agency heads identified in subsection (2) of this section, members of the commission are appointed for terms of two years, except that the governor shall appoint the initial members identified in subsection (2)(f) through (n) of this section to staggered terms not to exceed four years.

(b) The secretary of the department of social and health services, or the secretary's designee, shall serve as chair of the commission. Meetings of the commission are at the call of the chair.

(c) Members of the commission must be compensated in accordance with RCW 43.03.250 and must be reimbursed for their travel expenses while on official business in accordance with RCW 43.03.050 and 43.03.060.

(4) Beginning January 1, 2021, the commission shall propose recommendations to the appropriate executive agency or the legislature regarding:

(a) The establishment of criteria for determining that an individual has met the requirements to be a qualified individual as established in section 5 of this act or an eligible beneficiary as established in section 6 of this act;

(b) The establishment of criteria for minimum qualifications for the registration of long-term services and supports providers who provide approved services to eligible beneficiaries;

(c) Changes to rules or policies to improve the operation of the program;

(d) The annual adjustment of the benefit unit in accordance with the formula established in section 2 of this act; and

(e) The preparation of regular actuarial reports on the solvency and financial status of the program.

(5) The commission shall monitor agency administrative expenses over time. Beginning November 15, 2020, the commission must annually report to the governor and the fiscal committees of the legislature on agency spending for administrative expenses and anticipated administrative expenses as the program shifts into different phases of implementation and operation. The November 15, 2025, report must include recommendations for a method of calculating future agency administrative expenses to limit administrative expenses while providing sufficient funds to adequately operate the program.

NEW SECTION. **Sec.**  The health care authority shall deem a person to be a qualified individual as provided in this chapter if the person:

(1) Is at least eighteen years old;

(2) Is a Washington resident; and

(3) Has paid the long-term services and supports premiums required by section 8 of this act for the equivalent of either:

(a) A total of ten years without interruption of five or more consecutive years; or

(b) Three years within the last six years.

NEW SECTION. **Sec.**  (1) Beginning January 1, 2025, approved services must be available and benefits payable to a registered long-term services and supports provider on behalf of a qualified individual under this section.

(2) A qualified individual may receive approved services and benefits that are payable to a registered long-term services and supports provider on behalf of a qualified individual under this section if the qualified individual has been determined by the department of social and health services to require assistance with at least three activities of daily living. The department of social and health services must engage sufficient qualified assessor capacity, including via contract, so that the determination may be made within forty-five days from receipt of a request by a beneficiary to use a benefit.

(3)(a) An eligible beneficiary may receive approved services and benefits through the program in the form of a benefit unit payable to a registered long-term services and supports provider.

(b) An eligible beneficiary may not receive more than the dollar equivalent of three hundred sixty-five benefit units over the course of the eligible beneficiary's lifetime.

(i) If the department of social and health services reimburses a long-term services and supports provider for approved services provided to an eligible beneficiary and the payment is less than the benefit unit, only the portion of the benefit unit that is used shall be taken into consideration when calculating the person's remaining lifetime limit on receipt of benefits.

(ii) Eligible beneficiaries may combine benefit units to receive more approved services per day as long as the total number of lifetime benefit units has not been exceeded.

NEW SECTION. **Sec.**  (1) Benefits provided under this chapter shall be paid periodically and promptly to registered long-term services and supports providers.

(2) Qualified family members may be paid for approved personal care services in the same way as individual providers, through a licensed home care agency, or through a third option if recommended by the commission and adopted by the department of social and health services.

NEW SECTION. **Sec.**  (1) Beginning January 1, 2022, the employment security department shall assess for each individual in employment with an employer for at least ten percent of full-time employment status a premium based on the amount of the individual's wages. The premium is fifty-eight hundredths of one percent of the individual's wages.

(2)(a) The employer must collect from the employees the premiums provided under this section through payroll deductions and remit the amounts collected to the employment security department.

(b) In collecting employee premiums through payroll deductions, the employer shall act as the agent of the employees and shall remit the amounts to the employment security department as required by this chapter.

(3)(a) Premiums shall be collected in the manner and at such intervals as provided in this chapter and directed by the employment security department.

(b) To the extent feasible, the employment security department shall use the premium assessment, collection, and reporting procedures in chapter 50A.04 RCW.

(4) The employment security department shall deposit all premiums collected in this section in the long-term services and supports trust account created in section 10 of this act.

(5) Premiums collected in this section are placed in trust for the individuals that the program is intended to assist.

NEW SECTION. **Sec.**  (1) Beginning January 1, 2023, any self-employed person, including a sole proprietor, independent contractor, partner, or joint venturer, may elect coverage under this chapter. Those electing coverage under this subsection are responsible for payment of one hundred percent of all premiums assessed to an employee under section 8 of this act. The self-employed person must file a notice of election in writing with the employment security department, in the manner required by the employment security department in rule. The self-employed person is eligible for benefits after paying the long-term services and supports premium for the time required under section 5 of this act.

(2) A self-employed person who has elected coverage may withdraw from coverage, at such times as the employment security department may adopt by rule, by filing a notice of withdrawal in writing with the employment security department, with the withdrawal to take effect not sooner than thirty days after filing the notice with the employment security department.

(3) The employment security department may cancel elective coverage if the self-employed person fails to make required payments or file reports. The employment security department may collect due and unpaid premiums and may levy an additional premium for the remainder of the period of coverage. The cancellation must be effective no later than thirty days from the date of the notice in writing advising the self-employed person of the cancellation.

(4) Those electing coverage are considered employers or employees where the context so dictates.

(5) For the purposes of this section, "independent contractor" means an individual excluded from the definition of "employment" in section 2(8) of this act.

(6) The employment security department shall adopt rules for determining the hours worked and the wages of individuals who elect coverage under this section and rules for enforcement of this section.

NEW SECTION. **Sec.**  (1) The long-term services and supports trust account is created in the custody of the state treasurer. All receipts from employers under section 8 of this act must be deposited in the account. Expenditures from the account may be used for the administrative activities and payment of benefits associated with the program. Only the secretary of the department of social and health services or the secretary's designee may authorize disbursements from the account. The account is subject to the allotment procedures under chapter 43.88 RCW. An appropriation is required for administrative expenses, but not for benefit payments. The account must provide reimbursement of any amounts from other sources that may have been used for the initial establishment of the program.

(2) The revenue generated pursuant to this chapter shall be utilized to expand long-term care in the state. These funds may not be used either in whole or in part to supplant existing state or county funds for programs that meet the definition of approved services.

NEW SECTION. **Sec.**  (1) Determinations made by the health care authority or the department of social and health services under this chapter, including determinations regarding functional eligibility or related to registration of long-term services and supports providers, are subject to appeal in accordance with chapter 34.05 RCW. In addition, the standards and procedures adopted for these appeals must address the following:

(a) Timelines;

(b) Eligibility and benefit determination;

(c) Judicial review; and

(d) Fees.

(2) Determinations made by the employment security department under this chapter are subject to appeal in accordance with the appeal procedures under chapter 50A.04 RCW. The employment security department shall adopt standards and procedures for appeals for persons aggrieved by any determination or redetermination made by the department. The standards and procedures must be consistent with those adopted for the family and medical leave program under chapter 50A.04 RCW and must address topics including:

(a) Premium liability;

(b) Premium collection;

(c) Judicial review; and

(d) Fees.

NEW SECTION. **Sec.**  The department of social and health services must:

(1) Seek access to medicare data from the federal centers for medicare and medicaid services to analyze the potential savings in medicare expenditures due to the operation of the program;

(2) Apply for a demonstration waiver from the federal centers for medicare and medicaid services to allow for the state to share in the savings generated in the federal match for medicaid long-term services and supports and medicare due to the operation of the program;

(3) Submit a report, in compliance with RCW 43.01.036, on the status of the waiver to the office of financial management and the appropriate committees of the legislature by December 1, 2022.

NEW SECTION. **Sec.**  Beginning December 1, 2026, and annually thereafter, and in compliance with RCW 43.01.036, the commission must report to the legislature on the program, including:

(1) Projected and actual program participation;

(2) Adequacy of premium rates;

(3) Fund balances;

(4) Benefits paid;

(5) Demographic information on program participants, including age, gender, race, ethnicity, geographic distribution by county, legislative district, and employment sector; and

(6) The extent to which the operation of the program has resulted in savings to the medicaid program by avoiding costs that would have otherwise been the responsibility of the state.

NEW SECTION. **Sec.**  Any benefits used by an individual under this chapter are not income or resources for any determinations of eligibility for any other state program or benefit, for medicaid, or a state-federal program.

NEW SECTION. **Sec.**  Nothing in this chapter creates an entitlement for a person to receive, or requires a state agency to provide, case management services including, but not limited to, case management services under chapter 74.39A RCW.

NEW SECTION. **Sec.**  A new section is added to chapter 44.28 RCW to read as follows:

By December 1, 2032, the joint legislative audit and review committee must report on the performance of the long-term services and supports trust commission established in section 4 of this act in providing oversight to the long-term services and supports trust program and make recommendations to the legislature on ways to improve the functioning, efficiency, and membership, as well as whether the long-term services and supports trust commission should continue to exist or should expire.

**Sec.**  RCW 74.39A.076 and 2018 c 220 s 1 are each amended to read as follows:

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

(a) A biological, step, or adoptive parent who is the individual provider only for ((~~his or her~~)) the person's developmentally disabled son or daughter must receive twelve hours of training relevant to the needs of adults with developmental disabilities within the first one hundred twenty days after becoming an individual provider.

(b) A spouse or registered domestic partner who is a long-term care worker only for a spouse or domestic partner, pursuant to the long-term services and supports trust program established in chapter 50A.--- RCW (the new chapter created in section 19 of this act), must receive fifteen hours of basic training, and at least six hours of additional focused training based on the care-receiving spouse's or partner's needs, within the first one hundred twenty days after becoming a long-term care worker.

(c) A person working as an individual provider who (i) provides respite care services only for individuals with developmental disabilities receiving services under Title 71A RCW or only for individuals who receive services under this chapter, and (ii) works three hundred hours or less in any calendar year, must complete fourteen hours of training within the first one hundred twenty days after becoming an individual provider. Five of the fourteen hours must be completed before becoming eligible to provide care, including two hours of orientation training regarding the caregiving role and terms of employment and three hours of safety training. The training partnership identified in RCW 74.39A.360 must offer at least twelve of the fourteen hours online, and five of those online hours must be individually selected from elective courses.

((~~(c)~~)) (d) Individual providers identified in ((~~(c)~~)) (d)(i) or (ii) of this subsection must complete thirty‑five hours of training within the first one hundred twenty days after becoming an individual provider. Five of the thirty‑five hours must be completed before becoming eligible to provide care. Two of these five hours shall be devoted to an orientation training regarding an individual provider's role as caregiver and the applicable terms of employment, and three hours shall be devoted to safety training, including basic safety precautions, emergency procedures, and infection control. Individual providers subject to this requirement include:

(i) An individual provider caring only for ((~~his or her~~)) the individual provider's biological, step, or adoptive child or parent unless covered by (a) of this subsection; and

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

(2) In computing the time periods in this section, the first day is the date of hire.

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

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

(b) Requires comprehensive instruction by qualified instructors.

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

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

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

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

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

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

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

(c) An individual provider caring only for ((~~his or her~~)) the individual provider's biological, step, or adoptive child or parent.

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

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

(f) A long-term care worker providing approved services only for a spouse or registered domestic partner, pursuant to the long-term services and supports trust program established in chapter 50A.--- RCW (the new chapter created in section 19 of this act).

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

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

NEW SECTION. **Sec.**  Sections 1 through 15 of this act constitute a new chapter in Title 50A RCW.

**--- END ---**