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**SECOND SUBSTITUTE SENATE BILL 6275**

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**State of Washington**

**66th Legislature**

**2020 Regular Session**

**By** Senate Ways & Means (originally sponsored by Senators Cleveland and O'Ban)

READ FIRST TIME 02/11/20.

1 AN ACT Relating to increasing patient access rights to timely and  
2 appropriate postacute care by addressing the medicaid functional  
3 assessment and financial eligibility process for medicaid funded  
4 long-term services and supports; amending RCW 74.39A.040; adding a  
5 new section to chapter 74.39A RCW; and creating new sections.

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

7 **Sec. 1.** RCW 74.39A.040 and 1995 1st sp.s. c 18 s 6 are each  
8 amended to read as follows:

9 The department shall work in partnership with hospitals in  
10 assisting patients and their families to find and gain timely access  
11 to long-term care services of their choice. The department shall not  
12 delay hospital discharges but shall assist and support the activities  
13 of hospital discharge planners. The department also shall coordinate  
14 with home health and hospice agencies whenever appropriate. The role  
15 of the department is to assist the hospital and to assist patients  
16 and their families in making informed choices by providing  
17 information regarding home and community options to individuals who  
18 are hospitalized and likely to need long-term care.

19 (1) To the extent of available funds, the department shall assess  
20 individuals who:

1 (a) Are medicaid clients, medicaid applicants, or eligible for  
2 both medicare and medicaid; and

3 (b) Apply or are likely to apply for admission to a nursing  
4 facility.

5 (2) A hospital may, at its option, enter into an agreement with  
6 the department to allow the hospital to support the department's  
7 functional assessment of eligibility and level of care determination  
8 for individuals who are hospitalized and likely to need long-term  
9 care.

10 (a) If a hospital and the department enter into such an  
11 agreement:

12 (i) The hospital may prepare and submit preassessment information  
13 to the department. For purposes of this section, "preassessment  
14 information" means information regarding an individual's specific  
15 care needs, whether medical, behavioral, or cognitive, and ability to  
16 perform activities of daily living; and

17 (ii) The department must take the submitted preassessment  
18 information into consideration, and shall to the extent feasible, use  
19 the information in completing the functional assessment of an  
20 individual discharging from the hospital.

21 (b) The department shall make training on the department's  
22 assessment tool and process available for hospital personnel. A  
23 hospital employee or contractor who is qualified and has received the  
24 department's training is eligible to prepare and submit preassessment  
25 information to the department.

26 (c) The individual's medical record must substantiate any  
27 preassessment information provided to the department.

28 (d) Subject to the availability of amounts appropriated for this  
29 specific purpose, the department shall complete its assessment and  
30 determine a hospitalized individual's eligibility for medicaid funded  
31 long-term services and supports no later than ten business days after  
32 receipt of preassessment information from a hospital or, if the  
33 hospital has not submitted preassessment information, twenty business  
34 days after receiving the request for an assessment.

35 (e) If the department is not able to determine eligibility within  
36 the relevant timeline in (d) of this subsection due to patient-  
37 specific situations beyond the control of the department, the  
38 department shall notify the hospital where the patient is located of  
39 the specific reason for the delay, the status of the assessment and  
40 determination, and the expected completion date.

1 (f) The department shall track and make publicly available data  
2 on delays in assessments and determinations related to hospitalized  
3 individuals, including the number of and reasons for such delays.

4 (g) This subsection (2) does not impact assessments performed in  
5 community settings or case management functions performed by  
6 department employees.

7 (3) Subject to the availability of amounts appropriated for this  
8 specific purpose, the department shall develop specialty contracts  
9 that prioritize the transition of long length of stay clients who are  
10 ready to discharge from acute care hospitals, but are not able to  
11 discharge to appropriate locations due to complex medical and  
12 behavioral needs requiring additional supports and funding.

13 (4) For individuals who are reasonably expected to become  
14 medicaid recipients within one hundred eighty days of admission to a  
15 nursing facility, the department shall, to the extent of available  
16 funds, offer an assessment and information regarding appropriate in-  
17 home and community services.

18 ~~((3))~~ (5) When the department finds, based on assessment, that  
19 the individual prefers and could live appropriately and cost-  
20 effectively at home or in some other community-based setting, the  
21 department shall:

22 (a) Advise the individual that an in-home or other community  
23 service is appropriate;

24 (b) Develop, with the individual or the individual's  
25 representative, a comprehensive community service plan;

26 (c) Inform the individual regarding the availability of services  
27 that could meet the applicant's needs as set forth in the community  
28 service plan and explain the cost to the applicant of the available  
29 in-home and community services relative to nursing facility care; and

30 (d) Discuss and evaluate the need for ongoing involvement with  
31 the individual or the individual's representative.

32 ~~((4))~~ (6) When the department finds, based on assessment, that  
33 the individual prefers and needs nursing facility care, the  
34 department shall:

35 (a) Advise the individual that nursing facility care is  
36 appropriate and inform the individual of the available nursing  
37 facility vacancies;

38 (b) If appropriate, advise the individual that the stay in the  
39 nursing facility may be short term; and

1 (c) Describe the role of the department in providing nursing  
2 facility case management.

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

5 (1) A patient, client, health care provider, hospital, facility,  
6 or department case manager may submit a request justifying the need  
7 for additional personal care services and an increased daily rate to  
8 the department's exception to rule committee.

9 (2) The committee shall provide the requesting person or entity,  
10 the client, and the hospital or facility where the patient is  
11 located, with a copy of its final decision, including whether the  
12 request was approved, modified, or denied, and the reason for the  
13 decision. The department shall track and make publicly available data  
14 on the number of requests and decisions by the committee.

15 NEW SECTION. **Sec. 3.** (1) The Washington state institute for  
16 public policy shall conduct a review of data from the department of  
17 social and health services' tool used for assessing eligibility for  
18 home and community-based services under chapter 74.39A RCW. No later  
19 than September 1, 2021, the institute shall submit a report with its  
20 findings to the office of financial management, the research and data  
21 analysis division of the department of social and health services,  
22 and the appropriate committees of the legislature. At a minimum, the  
23 report must, covering a period beginning January 1, 2010, analyze  
24 data from the department's assessment tool and other sources to  
25 identify trends in:

26 (a) The total number of assessments requested each month;

27 (b) The average and median length of time to perform each step of  
28 the assessment process and to complete assessments, disaggregated by  
29 county;

30 (c) Patients' conditions and identified care needs;

31 (d) The average rates offered under RCW 74.39A.032 using the  
32 assessment tool;

33 (e) The percentage of assessments that have been subject to the  
34 exception to rule process, disaggregated by county; and

35 (f) The results of the exception to rule process, including what  
36 percentage of requests are approved, modified, or denied, as well as  
37 the reasons why requests are approved or modified, disaggregated by  
38 county.

1 (2) Until January 1, 2022, the joint legislative audit and review  
2 committee shall conduct a review of the approach the department of  
3 social and health services uses to determine staffing levels for  
4 assessing eligibility for home and community-based services under  
5 chapter 74.39A RCW for patients located in an acute care setting. In  
6 conducting the review, the committee shall consult with the  
7 department. No later than September 1, 2021, the committee shall  
8 submit a report with its findings to the office of financial  
9 management, the research and data analysis division of the department  
10 of social and health services, and the appropriate committees of the  
11 legislature.

12 (3) Until January 1, 2022, the research and data analysis  
13 division of the department of social and health services, in  
14 collaboration with the health care authority, the Washington state  
15 hospital association, and other stakeholders, shall prepare a report  
16 regarding patients who remain in a hospital setting due to barriers  
17 in accessing community alternatives.

18 (a) In preparing the report, the division may use administrative  
19 data sources in the integrated client databases maintained by the  
20 division. The division will consider information and recommendations  
21 produced pursuant to subsections (1) and (2) of this section. The  
22 Washington state hospital association and hospitals may provide data  
23 identifying the target populations for the division to link to its  
24 integrated client databases. The division will work with the  
25 Washington state hospital association to develop the format hospitals  
26 may use in providing the data.

27 (b) The report must, at a minimum:

28 (i) Describe the physical and behavioral health, cognitive  
29 performance, functional support, and housing needs of these patients;

30 (ii) Identify how the department's current assessment tool  
31 captures patients' personal care needs related to behavioral health  
32 and cognitive function;

33 (iii) Identify barriers for patients accessing postacute  
34 settings, including funding, services, and supports, that are not  
35 captured or accounted for in the department's current assessment tool  
36 and identify alternative sources for addressing and resolving the  
37 identified barriers; and

38 (iv) Identify the potential types and sources of funding that may  
39 be used to transition patients to a postacute care setting.

1 (c) The division shall submit the report to the office of  
2 financial management and the appropriate committees of the  
3 legislature by November 15, 2021.

4 (4)(a) The department of health shall work with the Washington  
5 state hospital association to develop a statewide system for  
6 collecting data on difficult to discharge hospital patients. The  
7 system must allow for the use of queries to find specific data by  
8 filtering specific criteria. At a minimum, the system must collect  
9 information relating to:

10 (i) The number of difficult to discharge patients at each  
11 hospital licensed under chapter 70.41 RCW;

12 (ii) The number of days each patient stayed past the hospital's  
13 determination that the patient was ready for discharge; and

14 (iii) The reasons each patient was unable to discharge.

15 (b) For the purposes of this subsection, "difficult to discharge  
16 hospital patients" means patients who are admitted or in observation  
17 at an acute care hospital but remain at the hospital without a  
18 medical need and are unable to be discharged to an appropriate  
19 location.

20 (c) The department shall report the status of the system  
21 development and any recommendations to the appropriate committees of  
22 the legislature by December 1, 2020.

23 NEW SECTION. **Sec. 4.** (1) No later than December 31, 2021, the  
24 health care authority and the department of social and health  
25 services shall submit a waiver request to the federal department of  
26 health and human services to authorize presumptive eligibility for  
27 long-term services and supports.

28 (2) The authority and the department shall hold ongoing  
29 stakeholder discussions as they develop the waiver request and shall  
30 provide opportunities for public review and comment as the request is  
31 developed.

32 (3) Upon submission of the waiver request, the authority and the  
33 department shall submit a report to the governor and the appropriate  
34 committees of the legislature describing the request and identifying  
35 any statutory changes that may be necessary if the request is  
36 approved.

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