
SENATE BILL 6658

State of Washington

66th Legislature

2020 Regular Session

By Senators Braun, Brown, and Wagoner

Read first time 01/31/20. Referred to Committee on Health & Long Term Care.

1 AN ACT Relating to prioritizing services and financial relief for
2 the disabled and elderly populations; amending RCW 43.88C.010,
3 74.39A.009, 74.39A.051, 74.39A.056, 74.39A.086, 74.39A.095,
4 74.39A.210, 74.39A.240, 74.39A.250, 74.39A.261, 74.39A.270,
5 74.39A.275, 74.39A.300, 74.39A.310, 74.39A.351, 74.39A.360,
6 41.56.026, 41.56.113, 82.08.0283, and 82.12.0277; adding a new
7 section to chapter 43.88 RCW; creating a new section; repealing RCW
8 74.39A.500, 74.39A.505, 74.39A.510, 74.39A.515, 74.39A.520,
9 74.39A.525, and 74.39A.530; making an appropriation; providing an
10 effective date; and declaring an emergency.

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

12 **Part I: Eliminating the Developmental Disability Waitlist**

13 **Sec. 1.** RCW 43.88C.010 and 2019 c 406 s 24 are each amended to
14 read as follows:

15 (1) The caseload forecast council is hereby created. The council
16 shall consist of two individuals appointed by the governor and four
17 individuals, one of whom is appointed by the chairperson of each of
18 the two largest political caucuses in the senate and house of
19 representatives. The chair of the council shall be selected from

1 among the four caucus appointees. The council may select such other
2 officers as the members deem necessary.

3 (2) The council shall employ a caseload forecast supervisor to
4 supervise the preparation of all caseload forecasts. As used in this
5 chapter, "supervisor" means the caseload forecast supervisor.

6 (3) Approval by an affirmative vote of at least five members of
7 the council is required for any decisions regarding employment of the
8 supervisor. Employment of the supervisor shall terminate after each
9 term of three years. At the end of the first year of each three-year
10 term the council shall consider extension of the supervisor's term by
11 one year. The council may fix the compensation of the supervisor. The
12 supervisor shall employ staff sufficient to accomplish the purposes
13 of this section.

14 (4) The caseload forecast council shall oversee the preparation
15 of and approve, by an affirmative vote of at least four members, the
16 official state caseload forecasts prepared under RCW 43.88C.020. If
17 the council is unable to approve a forecast before a date required in
18 RCW 43.88C.020, the supervisor shall submit the forecast without
19 approval and the forecast shall have the same effect as if approved
20 by the council.

21 (5) A councilmember who does not cast an affirmative vote for
22 approval of the official caseload forecast may request, and the
23 supervisor shall provide, an alternative forecast based on
24 assumptions specified by the member.

25 (6) Members of the caseload forecast council shall serve without
26 additional compensation but shall be reimbursed for travel expenses
27 in accordance with RCW 44.04.120 while attending sessions of the
28 council or on official business authorized by the council.
29 Nonlegislative members of the council shall be reimbursed for travel
30 expenses in accordance with RCW 43.03.050 and 43.03.060.

31 (7) "Caseload," as used in this chapter, means:

32 (a) The number of persons expected to meet entitlement
33 requirements and require the services of public assistance programs,
34 state correctional institutions, state correctional noninstitutional
35 supervision, state institutions for juvenile offenders, the common
36 school system, long-term care, medical assistance, foster care, and
37 adoption support;

38 (b) The number of students who are eligible for the Washington
39 college bound scholarship program and are expected to attend an
40 institution of higher education as defined in RCW 28B.92.030;

1 (c) The number of students who are eligible for the Washington
2 college grant program under RCW 28B.92.200 and 28B.92.205 and are
3 expected to attend an institution of higher education as defined in
4 RCW 28B.92.030; and

5 (d) The number of children who are eligible, as defined in RCW
6 43.216.505, to participate in, and the number of children actually
7 served by, the early childhood education and assistance program.

8 (8) The caseload forecast council shall forecast the temporary
9 assistance for needy families and the working connections child care
10 programs as a courtesy.

11 (9) The caseload forecast council shall forecast the individual
12 and family services waiver and the basic plus waiver administered by
13 the developmental disabilities administration as a courtesy.

14 (10) The caseload forecast council shall forecast youth
15 participating in the extended foster care program pursuant to RCW
16 74.13.031 separately from other children who are residing in foster
17 care and who are under eighteen years of age.

18 ~~((10))~~ (11) The caseload forecast council shall forecast the
19 number of youth expected to receive behavioral rehabilitation
20 services while involved in the foster care system and the number of
21 screened in reports of child abuse or neglect.

22 ~~((11))~~ (12) Unless the context clearly requires otherwise, the
23 definitions provided in RCW 43.88.020 apply to this chapter.

24 NEW SECTION. **Sec. 2.** A new section is added to chapter 43.88
25 RCW to read as follows:

26 For the purposes of this chapter, expenditures for the individual
27 and family services waiver and the basic plus waiver as referenced in
28 RCW 43.88C.010 must be forecasted and budgeted as maintenance level
29 costs.

30 **Part II: Maintaining Administrative Oversight of Independent**
31 **Providers**

32 **Sec. 3.** RCW 74.39A.009 and 2018 c 278 s 2 are each amended to
33 read as follows:

34 The definitions in this section apply throughout this chapter
35 unless the context clearly requires otherwise.

36 (1) "Adult family home" means a home licensed under chapter
37 70.128 RCW.

1 (2) "Adult residential care" means services provided by an
2 assisted living facility that is licensed under chapter 18.20 RCW and
3 that has a contract with the department under RCW 74.39A.020 to
4 provide personal care services.

5 (3) "Assisted living facility" means a facility licensed under
6 chapter 18.20 RCW.

7 (4) "Assisted living services" means services provided by an
8 assisted living facility that has a contract with the department
9 under RCW 74.39A.010 to provide personal care services, intermittent
10 nursing services, and medication administration services; and the
11 facility provides these services to residents who are living in
12 private apartment-like units.

13 (5) "Community residential service business" means a business
14 that:

15 (a) Is certified by the department of social and health services
16 to provide to individuals who have a developmental disability as
17 defined in RCW 71A.10.020(5):

18 (i) Group home services;

19 (ii) Group training home services;

20 (iii) Supported living services; or

21 (iv) Voluntary placement services provided in a licensed staff
22 residential facility for children;

23 (b) Has a contract with the developmental disabilities
24 administration to provide the services identified in (a) of this
25 subsection; and

26 (c) All of the business's long-term care workers are subject to
27 statutory or regulatory training requirements that are required to
28 provide the services identified in (a) of this subsection.

29 (6) "Consumer" or "client" means a person who is receiving or has
30 applied for services under this chapter, including a person who is
31 receiving services from an individual provider.

32 (7) (~~"Consumer directed employer" is a private entity that~~
33 ~~contracts with the department to be the legal employer of individual~~
34 ~~providers for purposes of performing administrative functions. The~~
35 ~~consumer directed employer is patterned after the agency with choice~~
36 ~~model, recognized by the federal centers for medicare and medicaid~~
37 ~~services for financial management in consumer directed programs. The~~
38 ~~entity's responsibilities are described in RCW 74.39A.515 and~~
39 ~~throughout this chapter and include: (a) Coordination with the~~
40 ~~consumer, who is the individual provider's managing employer; (b)~~

1 withholding, filing, and paying income and employment taxes,
2 including workers' compensation premiums and unemployment taxes, for
3 individual providers; (c) verifying an individual provider's
4 qualifications; and (d) providing other administrative and
5 employment-related supports. The consumer directed employer is a
6 social service agency and its employees are mandated reporters as
7 defined in RCW 74.34.020.

8 ~~(8)~~) "Core competencies" means basic training topics, including
9 but not limited to, communication skills, worker self-care, problem
10 solving, maintaining dignity, consumer directed care, cultural
11 sensitivity, body mechanics, fall prevention, skin and body care,
12 long-term care worker roles and boundaries, supporting activities of
13 daily living, and food preparation and handling.

14 ~~((9))~~ (8) "Cost-effective care" means care provided in a
15 setting of an individual's choice that is necessary to promote the
16 most appropriate level of physical, mental, and psychosocial well-
17 being consistent with client choice, in an environment that is
18 appropriate to the care and safety needs of the individual, and such
19 care cannot be provided at a lower cost in any other setting. But
20 this in no way precludes an individual from choosing a different
21 residential setting to achieve his or her desired quality of life.

22 ~~((10))~~ (9) "Department" means the department of social and
23 health services.

24 ~~((11))~~ (10) "Developmental disability" has the same meaning as
25 defined in RCW 71A.10.020.

26 ~~((12))~~ (11) "Direct care worker" means a paid caregiver who
27 provides direct, hands-on personal care services to persons with
28 disabilities or the elderly requiring long-term care.

29 ~~((13))~~ (12) "Enhanced adult residential care" means services
30 provided by an assisted living facility that is licensed under
31 chapter 18.20 RCW and that has a contract with the department under
32 RCW 74.39A.010 to provide personal care services, intermittent
33 nursing services, and medication administration services.

34 ~~((14))~~ (13) "Facility" means an adult family home, an assisted
35 living facility, a nursing home, an enhanced services facility
36 licensed under chapter 70.97 RCW, or a facility certified to provide
37 medicare or medicaid services in nursing facilities or intermediate
38 care facilities for individuals with intellectual disabilities under
39 42 C.F.R. Part 483.

1 ~~((15))~~ (14) "Home and community-based services" means services
2 provided in adult family homes, in-home services, and other services
3 administered or provided by contract by the department directly or
4 through contract with area agencies on aging or similar services
5 provided by facilities and agencies licensed or certified by the
6 department.

7 ~~((16))~~ (15) "Home care aide" means a long-term care worker who
8 is certified as a home care aide by the department of health under
9 chapter 18.88B RCW.

10 ~~((17))~~ (16) "Individual provider" is defined according to RCW
11 74.39A.240.

12 ~~((18)) "Legal employer" means the consumer directed employer,
13 which along with the consumer, coemploys individual providers. The
14 legal employer is responsible for setting wages and benefits for
15 individual providers and must comply with applicable laws including,
16 but not limited to, workers compensation and unemployment insurance
17 laws.~~

18 ~~(19))~~ (17) "Long-term care" means care and supports delivered
19 indefinitely, intermittently, or over a sustained time to persons of
20 any age who are functionally disabled due to chronic mental or
21 physical illness, disease, chemical dependency, or a medical
22 condition that is permanent, not curable, or is long-lasting and
23 severely limits their mental or physical capacity for self-care. The
24 use of this definition is not intended to expand the scope of
25 services, care, or assistance provided by any individuals, groups,
26 residential care settings, or professions unless otherwise required
27 by law.

28 ~~((20))~~ (18)(a) "Long-term care workers" include all persons who
29 provide paid, hands-on personal care services for the elderly or
30 persons with disabilities, including but not limited to individual
31 providers of home care services, direct care workers employed by home
32 care agencies ~~((or a consumer directed employer))~~, providers of home
33 care services to persons with developmental disabilities under Title
34 71A RCW, all direct care workers in state-licensed assisted living
35 facilities, enhanced services facilities, and adult family homes,
36 respite care providers, direct care workers employed by community
37 residential service businesses, and any other direct care worker
38 providing home or community-based services to the elderly or persons
39 with functional disabilities or developmental disabilities.

1 (b) "Long-term care workers" do not include: (i) Persons employed
2 by the following facilities or agencies: Nursing homes licensed under
3 chapter 18.51 RCW, hospitals or other acute care settings,
4 residential habilitation centers under chapter 71A.20 RCW, facilities
5 certified under 42 C.F.R., Part 483, hospice agencies subject to
6 chapter 70.127 RCW, adult day care centers, and adult day health care
7 centers; or (ii) persons who are not paid by the state or by a
8 private agency or facility licensed or certified by the state to
9 provide personal care services.

10 ~~((21) "Managing employer" means a consumer who coemploys one or~~
11 ~~more individual providers and whose responsibilities include (a)~~
12 ~~choosing potential individual providers and referring them to the~~
13 ~~consumer directed employer; (b) overseeing the day-to-day management~~
14 ~~and scheduling of the individual provider's tasks consistent with the~~
15 ~~plan of care; and (c) dismissing the individual provider when~~
16 ~~desired.~~

17 ~~((22))~~ (19) "Nursing home" or "nursing facility" means a facility
18 licensed under chapter 18.51 RCW or certified as a medicaid nursing
19 facility under 42 C.F.R. Part 483, or both.

20 ~~((23))~~ (20) "Person who is functionally disabled" means a
21 person who because of a recognized chronic physical or mental
22 condition or disease, including chemical dependency or developmental
23 disability, is dependent upon others for direct care, support,
24 supervision, or monitoring to perform activities of daily living.
25 "Activities of daily living," in this context, means self-care
26 abilities related to personal care such as bathing, eating, using the
27 toilet, dressing, and transfer. Instrumental activities of daily
28 living such as cooking, shopping, house cleaning, doing laundry,
29 working, and managing personal finances may also be considered when
30 assessing a person's functional ~~((abilities [ability]))~~ ability to
31 perform activities in the home and the community.

32 ~~((24))~~ (21) "Personal care services" means physical or verbal
33 assistance with activities of daily living and instrumental
34 activities of daily living provided because of a person's functional
35 disability.

36 ~~((25))~~ (22) "Population specific competencies" means basic
37 training topics unique to the care needs of the population the long-
38 term care worker is serving, including but not limited to, mental
39 health, dementia, developmental disabilities, young adults with
40 physical disabilities, and older adults.

1 (~~(26)~~) (23) "Qualified instructor" means a registered nurse or
2 other person with specific knowledge, training, and work experience
3 in the provision of direct, hands-on personal care and other
4 assistance services to the elderly or persons with disabilities
5 requiring long-term care.

6 (~~(27)~~) (24) "Secretary" means the secretary of social and
7 health services.

8 (~~(28)~~) (25) "Training partnership" means a joint partnership or
9 trust that includes the office of the governor and the exclusive
10 bargaining representative of individual providers under RCW
11 74.39A.270 with the capacity to provide training, peer mentoring, and
12 workforce development, or other services to individual providers.

13 (~~(29)~~) (26) "Tribally licensed assisted living facility" means
14 an assisted living facility licensed by a federally recognized Indian
15 tribe in which a facility provides services similar to services
16 provided by assisted living facilities licensed under chapter 18.20
17 RCW.

18 **Sec. 4.** RCW 74.39A.051 and 2018 c 278 s 7 are each amended to
19 read as follows:

20 The department's system of quality improvement for long-term care
21 services shall use the following principles, consistent with
22 applicable federal laws and regulations:

23 (1) The system shall be client-centered and promote privacy,
24 independence, dignity, choice, and a home or home-like environment
25 for consumers consistent with chapter 392, Laws of 1997.

26 (2) The goal of the system is continuous quality improvement with
27 the focus on consumer satisfaction and outcomes for consumers. This
28 includes that when conducting licensing or contract inspections, the
29 department shall interview an appropriate percentage of residents,
30 family members, resident case managers, and advocates in addition to
31 interviewing providers and staff.

32 (3) Providers should be supported in their efforts to improve
33 quality and address identified problems initially through training,
34 consultation, technical assistance, and case management.

35 (4) The emphasis should be on problem prevention both in
36 monitoring and in screening potential providers of service.

37 (5) Monitoring should be outcome based and responsive to consumer
38 complaints and based on a clear set of health, quality of care, and

1 safety standards that are easily understandable and have been made
2 available to providers, residents, and other interested parties.

3 (6) Prompt and specific enforcement remedies shall also be
4 implemented without delay, pursuant to RCW 70.97.110, 71A.12.300,
5 74.39A.080, or 70.128.160, or chapter 18.51 or 74.42 RCW, for
6 providers found to have delivered care or failed to deliver care
7 resulting in problems that are serious, recurring, or uncorrected, or
8 that create a hazard that is causing or likely to cause death or
9 serious harm to one or more residents. These enforcement remedies may
10 also include, when appropriate, reasonable conditions on a contract
11 or license. In the selection of remedies, the safety, health, and
12 well-being of residents shall be of paramount importance.

13 (7) Background checks of long-term care workers must be conducted
14 as provided in RCW 74.39A.056.

15 (8) Except as provided in RCW 74.39A.074 and 74.39A.076,
16 individual providers and home care agency providers must
17 satisfactorily complete department-approved orientation, basic
18 training, and continuing education within the time period specified
19 by the department in rule. The department shall adopt rules to
20 implement this section. The department shall deny payment to ((a
21 consumer directed employer)) an individual provider or a home care
22 agency for services provided by ((employees)) an employee who
23 ((have)) does not ((completed)) complete the training requirements
24 within the time limit specified by department rules. The department
25 shall deny payment to any individual providers who provide services
26 under a contract with the department if they have been notified that
27 they are no longer permitted to work because they have not completed
28 the training requirements within the time period required by
29 department rules.

30 (9) Under existing funds the department shall establish
31 internally a quality improvement standards committee to monitor the
32 development of standards and to suggest modifications.

33 **Sec. 5.** RCW 74.39A.056 and 2018 c 278 s 8 are each amended to
34 read as follows:

35 (1)(a) All long-term care workers shall be screened through state
36 and federal background checks in a uniform and timely manner to
37 verify that they do not have a history that would disqualify them
38 from working with vulnerable persons. The department must ((process))
39 perform background checks for ((long-term care workers)) individual

1 providers and prospective individual providers and make the
2 information available (~~(to employers, prospective employers, and~~
3 ~~others))~~) as (~~(authorized)~~) provided by law.

4 (b) (i) Except as provided in (b) (ii) of this subsection, for
5 long-term care workers hired on or after January 7, 2012, the
6 background checks required under this section shall include checking
7 against the federal bureau of investigation fingerprint
8 identification records system and against the national sex offenders
9 registry or their successor programs. The department shall require
10 these long-term care workers to submit fingerprints for the purpose
11 of investigating conviction records through both the Washington state
12 patrol and the federal bureau of investigation. The department shall
13 not pass on the cost of these criminal background checks to the
14 workers or their employers.

15 (ii) This subsection does not apply to long-term care workers
16 employed by community residential service businesses until January 1,
17 2016.

18 (c) The department shall share state and federal background check
19 results with the department of health in accordance with RCW
20 18.88B.080.

21 ~~((d) Background check screening required under this section and~~
22 ~~department rules is not required for an employee of a consumer~~
23 ~~directed employer if all of the following circumstances apply:~~

24 ~~(i) The individual has an individual provider contract with the~~
25 ~~department;~~

26 ~~(ii) The last background check on the contracted individual~~
27 ~~provider is still valid under department rules and did not disqualify~~
28 ~~the individual from providing personal care services;~~

29 ~~(iii) Employment by the consumer directed employer is the only~~
30 ~~reason a new background check would be required; and~~

31 ~~(iv) The department's background check results have been shared~~
32 ~~with the consumer directed employer.))~~

33 (2) No provider, or its staff, or long-term care worker, or
34 prospective provider or long-term care worker, with a stipulated
35 finding of fact, conclusion of law, an agreed order, or finding of
36 fact, conclusion of law, or final order issued by a disciplining
37 authority or a court of law or entered into a state registry with a
38 final substantiated finding of abuse, neglect, exploitation, or
39 abandonment of a minor or a vulnerable adult as defined in chapter

1 74.34 RCW shall be employed in the care of and have unsupervised
2 access to vulnerable adults.

3 (3) The department shall establish, by rule, a state registry
4 which contains identifying information about long-term care workers
5 identified under this chapter who have final substantiated findings
6 of abuse, neglect, financial exploitation, or abandonment of a
7 vulnerable adult as defined in RCW 74.34.020. The rule must include
8 disclosure, disposition of findings, notification, findings of fact,
9 appeal rights, and fair hearing requirements. The department shall
10 disclose, upon request, final substantiated findings of abuse,
11 neglect, financial exploitation, or abandonment to any person so
12 requesting this information. This information must also be shared
13 with the department of health to advance the purposes of chapter
14 18.88B RCW.

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

16 **Sec. 6.** RCW 74.39A.086 and 2018 c 278 s 10 are each amended to
17 read as follows:

18 (1) The department:

19 (a) Shall deny payment to any individual provider of home care
20 services who has not been certified as a home care aide as required
21 under chapter 18.88B RCW or whose certification is revoked or, if
22 exempted from certification under RCW 18.88B.041, who has not
23 completed his or her required training pursuant to RCW 74.39A.074.

24 (b) May terminate the contract of any individual provider of home
25 care services, or take any other enforcement measure deemed
26 appropriate by the department if the individual provider has not been
27 certified or the individual provider's certification is revoked under
28 chapter 18.88B RCW or, if exempted from certification by RCW
29 18.88B.041, the individual provider has not completed his or her
30 required training pursuant to RCW 74.39A.074.

31 (2) The department shall take appropriate enforcement action
32 related to the contract of a ((consumer directed employer or a
33 licensed or certified)) private agency or facility that provides
34 long-term care services, other than an individual provider, and
35 knowingly employs a long-term care worker who is not a certified home
36 care aide as required under chapter 18.88B RCW or whose certification
37 is revoked or, if exempted from certification under RCW 18.88B.041,
38 who has not completed his or her required training under RCW
39 74.39A.074.

1 ~~((2) The department shall deny payment to individual providers~~
2 ~~who provided services under a contract with the department if they~~
3 ~~have been notified that they are no longer permitted to work because~~
4 ~~they:~~

5 ~~(a) Were not certified as home care aides as required under~~
6 ~~chapter 18.88B RCW; or~~

7 ~~(b) Had not completed the training required under RCW 74.39A.074.~~

8 ~~(3) The department may terminate the contract of any individual~~
9 ~~provider under contract with the department who:~~

10 ~~(a) Is not certified as a home care aide as required under~~
11 ~~chapter 18.88B RCW; or~~

12 ~~(b) Has not completed the training required under RCW 74.39A.074.~~

13 ~~(4))~~ (3) Chapter 34.05 RCW shall govern actions by the
14 department under this section.

15 ~~((5))~~ (4) The department shall adopt rules to implement this
16 section.

17 **Sec. 7.** RCW 74.39A.095 and 2018 c 278 s 12 are each amended to
18 read as follows:

19 (1) In carrying out case management responsibilities established
20 under RCW 74.39A.090 for consumers who are receiving services under
21 programs authorized through the medicaid state plan, medicaid waiver
22 authorities, or similar state-funded in-home care programs, each area
23 agency on aging shall provide oversight of the care provided to
24 consumers receiving services under this section, to the extent of
25 available funding (~~, each area agency on aging shall:~~

26 ~~(a) Work with each client to develop a plan of care under this~~
27 ~~section that identifies and ensures coordination of health and long-~~
28 ~~term care services and supports. In developing the plan, the area~~
29 ~~agency on aging shall use and modify as needed any comprehensive plan~~
30 ~~of care developed by the department as provided in RCW 74.39A.040;~~

31 ~~(b) Monitor the implementation of the consumer's plan of care to~~
32 ~~verify that it adequately meets the needs of the consumer through~~
33 ~~activities such as home visits, telephone contacts, and responses to~~
34 ~~information received by the area agency on aging indicating that a~~
35 ~~consumer may be experiencing problems relating to his or her home~~
36 ~~care;~~

37 ~~(c) Reassess and reauthorize services;~~

38 ~~(d) Explain to the consumer that consumers have the right to~~
39 ~~waive case management services offered by the area agency on aging,~~

1 ~~except consumers may not waive the area agency on aging's~~
2 ~~reassessment or reauthorization of services, or verification that~~
3 ~~services are being provided in accordance with the plan of care; and~~

4 ~~(e) Document the waiver of any case management services by the~~
5 ~~consumer)). Case management responsibilities incorporate this~~
6 ~~oversight, and include, but are not limited to:~~

7 (a) Verification that any individual provider has met any
8 training requirements established by the department;

9 (b) Verification of a sample of worker time sheets until the
10 state electronic payment system is available for individual providers
11 to record their hours at which time a verification of worker time
12 sheets may be done electronically;

13 (c) Monitoring the consumer's plan of care to verify that it
14 adequately meets the needs of the consumer, through activities such
15 as home visits, telephone contacts, and responses to information
16 received by the area agency on aging indicating that a consumer may
17 be experiencing problems relating to his or her home care;

18 (d) Reassessing and reauthorizing services;

19 (e) Monitoring of individual provider performance; and

20 (f) Conducting criminal background checks or verifying that
21 criminal background checks have been conducted for any individual
22 provider. Individual providers who are hired after January 7, 2012,
23 are subject to background checks under RCW 74.39A.056.

24 (2) The area agency on aging case manager shall work with each
25 consumer to develop a plan of care under this section that identifies
26 and ensures coordination of health and long-term care services that
27 meet the consumer's needs. In developing the plan, the case manager
28 shall utilize, and modify as needed, any comprehensive community
29 service plan developed by the department as provided in RCW
30 74.39A.040. The plan of care shall include, at a minimum:

31 (a) The name and telephone number of the consumer's area agency
32 on aging case manager, and a statement as to how the case manager can
33 be contacted about any concerns related to the consumer's well-being
34 or the adequacy of care provided;

35 (b) The name and telephone numbers of the consumer's primary
36 health care provider, and other health or long-term care providers
37 with whom the consumer has frequent contact;

38 (c) A clear description of the roles and responsibilities of the
39 area agency on aging case manager and the consumer receiving services
40 under this section;

1 (d) The duties and tasks to be performed by the area agency on
2 aging case manager and the consumer receiving services under this
3 section;

4 (e) The type of in-home services authorized, and the number of
5 hours of services to be provided;

6 (f) The terms of compensation of the individual provider;

7 (g) A statement by the individual provider that he or she has the
8 ability and willingness to carry out his or her responsibilities
9 relative to the plan of care; and

10 (h) (i) Except as provided in (h) (ii) of this subsection, a clear
11 statement indicating that a consumer receiving services under this
12 section has the right to waive any of the case management services
13 offered by the area agency on aging under this section, and a clear
14 indication of whether the consumer has, in fact, waived any of these
15 services.

16 (ii) The consumer's right to waive case management services does
17 not include the right to waive reassessment or reauthorization of
18 services, or verification that services are being provided in
19 accordance with the plan of care.

20 (3) Each area agency on aging must retain a record of each waiver
21 of services included in a plan of care under this section.

22 (4) Each consumer has the right to direct and participate in the
23 development of ((their)) the consumer's plan of care to the maximum
24 extent practicable, and to be provided with the time and support
25 necessary to facilitate that participation.

26 ~~((3) As authorized by the consumer, a))~~ (5) A copy of the plan
27 of care ((may)) must be distributed to((:(a) The)) the consumer's
28 primary care provider, individual provider ((contracted with the
29 department; (b) the entity contracted with the department to provide
30 personal care services; and (c)), and other relevant providers with
31 whom the consumer has frequent contact, as authorized by the
32 consumer.

33 ~~((4) If an individual provider is employed by a consumer~~
34 ~~directed employer, the department or area agency on aging must notify~~
35 ~~the consumer directed employer if:~~

36 ~~(a) There is reason to believe that an individual provider or~~
37 ~~prospective individual provider is not delivering or will not be able~~
38 ~~to deliver the services identified in the consumer's plan of care; or~~

39 ~~(b) The individual provider's performance is jeopardizing the~~
40 ~~health, safety, or well-being of a consumer receiving services under~~

1 ~~this section.~~) (6) The consumer's plan of care must be an attachment
2 to the contract between the department, or the department's designee,
3 and the individual provider.

4 (7) If the department or area agency on aging case manager finds
5 that an individual provider's inadequate performance or inability to
6 deliver quality care is jeopardizing the health, safety, or well-
7 being of a consumer receiving service under this section, the
8 department or the area agency on aging may take action to terminate
9 the contract between the department and the individual provider. If
10 the department or the area agency on aging has a reasonable, good
11 faith belief that the health, safety, or well-being of a consumer is
12 in imminent jeopardy, the department or area agency on aging may
13 summarily suspend the contract pending a fair hearing. The consumer
14 may request a fair hearing to contest the planned action of the case
15 manager, as provided in chapter 34.05 RCW. The department may adopt
16 rules for implementing this subsection.

17 (8) The department or area agency on aging may reject a request
18 by a consumer receiving services under this section to have a family
19 member or other person serve as his or her individual provider if the
20 case manager has a reasonable, good faith belief that the family
21 member or other person will be unable to appropriately meet the care
22 needs of the consumer. The consumer may request a fair hearing to
23 contest the decision of the case manager, as provided in chapter
24 34.05 RCW. The department may adopt rules for implementing this
25 subsection.

26 **Sec. 8.** RCW 74.39A.210 and 2018 c 278 s 15 are each amended to
27 read as follows:

28 An employer providing home and community services, including
29 facilities licensed under chapters 18.51, 18.20, 70.97, and 70.128
30 RCW, an employer of a program operating under RCW 71A.12.040(10), (~~a~~
31 ~~consumer directed employer,~~) or an in-home services agency employer
32 licensed under chapter 70.127 RCW, who discloses information about a
33 former or current employee to a prospective home and community
34 services employer, nursing home employer, (~~consumer directed~~
35 ~~employer,~~) or an in-home services agency employer, is presumed to be
36 acting in good faith and is immune from civil and criminal liability
37 for such disclosure or its consequences if the disclosed information
38 relates to: (1) The employee's ability to perform his or her job; (2)
39 the diligence, skill, or reliability with which the employee carried

1 out the duties of his or her job; or (3) any illegal or wrongful act
2 committed by the employee when related to his or her ability to care
3 for a vulnerable adult. For purposes of this section, the presumption
4 of good faith may only be rebutted upon a showing by clear and
5 convincing evidence that the information disclosed by the employer
6 was knowingly false or made with reckless disregard for the truth of
7 the information disclosed. If the employee successfully rebuts the
8 presumption of good faith standard in a court of competent
9 jurisdiction, as the prevailing party, the employee shall be entitled
10 to recover reasonable attorneys' fees against the employer. Nothing
11 in this section shall affect or limit any other state, federal, or
12 constitutional right otherwise available.

13 **Sec. 9.** RCW 74.39A.240 and 2018 c 278 s 16 are each amended to
14 read as follows:

15 The definitions in this section apply throughout RCW 74.39A.030,
16 74.39A.095, 74.39A.220 through 74.39A.300, and 41.56.026 unless the
17 context clearly requires otherwise.

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

20 (2) "Department" means the department of social and health
21 services.

22 (3) "Individual provider" means a person, including a personal
23 aide, who (~~(, under an individual provider contract with the~~
24 ~~department or as an employee of a consumer directed employer,~~
25 ~~provides)) has contracted with the department to provide personal
26 care or respite care services to persons who are functionally
27 disabled or otherwise eligible under programs authorized and funded
28 by the medicaid state plan, medicaid waiver programs(~~(+,+)~~), chapter
29 71A.12 RCW, RCW 74.13.270, or similar state-funded in-home care
30 programs.~~

31 **Sec. 10.** RCW 74.39A.250 and 2018 c 278 s 17 are each amended to
32 read as follows:

33 (1) (~~(If a consumer directed employer employs individual~~
34 ~~providers, the consumer directed employer)) The department shall:~~

35 (a) Provide assistance to consumers and prospective consumers in
36 finding individual providers and prospective individual providers
37 through the operation of a referral registry of individual providers
38 and prospective individual providers.

1 (b) Before placing an individual provider or prospective
2 individual provider on the referral registry, determine that the
3 individual provider or prospective individual provider:

4 (i) Has met the minimum requirements for training under RCW
5 74.39A.051 and 74.39A.074;

6 (ii) Has satisfactorily completed a background check within the
7 prior twelve months; and

8 (iii) Is not listed on any state or federal registry described in
9 RCW 74.39A.056 or on other registries maintained by the department.

10 (c) Remove from the referral registry any individual provider or
11 prospective individual provider who does not meet the qualifications
12 set forth in this subsection (1) (~~or whose employment as an~~
13 ~~individual provider has been terminated based on good cause~~) or who
14 has committed misfeasance or malfeasance in the performance of his or
15 her duties. The individual provider or prospective individual
16 provider, or the consumer to which the individual provider is
17 providing services, may request a fair hearing to contest the removal
18 from the referral registry, as provided in chapter 34.05 RCW.

19 (d) Provide routine, emergency, and respite referrals of
20 individual providers and prospective individual providers to
21 consumers and prospective consumers who are authorized to receive
22 long-term in-home care services through an individual provider.

23 (e) Not allow an individual provider to provide services to a
24 consumer without the consumer's consent.

25 (2) The department shall (~~perform the activities under~~
26 ~~subsection (1) of this section if the department has not transitioned~~
27 ~~the responsibilities under this section to a consumer directed~~
28 ~~employer~~) give preference in the recruiting, training, referral, and
29 employment of individual providers and prospective individual
30 providers to recipients of public assistance or other low-income
31 persons who would qualify for public assistance in the absence of
32 such employment.

33 **Sec. 11.** RCW 74.39A.261 and 2018 c 278 s 18 are each amended to
34 read as follows:

35 (~~If the department contracts with individual providers, the~~)
36 The department must perform background checks for individual
37 providers and prospective individual providers under RCW 74.39A.056.

1 **Sec. 12.** RCW 74.39A.270 and 2018 c 278 s 19 are each amended to
2 read as follows:

3 The following provisions apply only to individual providers who
4 are contracted with the department to provide personal care or
5 respite care services:

6 (1) Solely for the purposes of collective bargaining and as
7 expressly limited under subsections (2) and (3) of this section, the
8 governor is the public employer, as defined in chapter 41.56 RCW, of
9 individual providers, who, solely for the purposes of collective
10 bargaining, are public employees as defined in chapter 41.56 RCW. To
11 accommodate the role of the state as payor for the community-based
12 services provided under this chapter and to ensure coordination with
13 state employee collective bargaining under chapter 41.80 RCW and the
14 coordination necessary to implement RCW 74.39A.300, the public
15 employer shall be represented for bargaining purposes by the governor
16 or the governor's designee appointed under chapter 41.80 RCW. The
17 department shall solicit input from the developmental disabilities
18 council, the governor's committee on disability issues and
19 employment, the state council on aging, and other consumer advocacy
20 organizations to obtain informed input from consumers on their
21 interests, including impacts on consumer choice, for all issues
22 proposed for collective bargaining under subsections (5) and ~~((+7))~~
23 (15) of this section.

24 (2) Chapter 41.56 RCW governs the collective bargaining
25 relationship between the governor and individual providers, except as
26 otherwise expressly provided in this chapter and except as follows:

27 (a) The only unit appropriate for the purpose of collective
28 bargaining under RCW 41.56.060 is a statewide unit of all individual
29 providers;

30 (b) The showing of interest required to request an election under
31 RCW 41.56.060 is ten percent of the unit, and any intervener seeking
32 to appear on the ballot must make the same showing of interest;

33 (c) The mediation and interest arbitration provisions of RCW
34 41.56.430 through 41.56.470 and 41.56.480 apply, except that:

35 (i) With respect to commencement of negotiations between the
36 governor and the bargaining representative of individual providers,
37 negotiations shall be commenced by May 1st of any year prior to the
38 year in which an existing collective bargaining agreement expires;
39 and

1 (ii) The decision of the arbitrator is not binding on the
2 legislature and, if the legislature does not approve the request for
3 funds necessary to implement the compensation and fringe benefit
4 provisions of the arbitrated collective bargaining agreement, is not
5 binding on the authority or the state;

6 (d) Individual providers do not have the right to strike; and

7 (e) Individual providers who are related to, or family members
8 of, consumers or prospective consumers are not, for that reason,
9 exempt from this chapter or chapter 41.56 RCW.

10 (3) Individual providers who are public employees solely for the
11 purposes of collective bargaining under subsection (1) of this
12 section are not, for that reason, employees of the state, its
13 political subdivisions, or an area agency on aging for any purpose.
14 Chapter 41.56 RCW applies only to the governance of the collective
15 bargaining relationship between the employer and individual providers
16 as provided in subsections (1) and (2) of this section.

17 (4) Consumers and prospective consumers retain the right to
18 select, hire, supervise the work of, and terminate any individual
19 provider providing services to them. Consumers may elect to receive
20 long-term in-home care services from individual providers who are not
21 referred to them by the department or a department contractor.

22 (5) Except as expressly limited in this section and RCW
23 74.39A.300, the wages, hours, and working conditions of individual
24 providers are determined solely through collective bargaining as
25 provided in this chapter. (~~Except as described in RCW 74.39A.525, no~~
26 ~~agency or department of the state may establish policies or rules~~
27 ~~governing the wages or hours of individual providers.~~)

28 (6) The department shall adopt rules describing criteria under
29 which a consumer may be permitted to use a single individual provider
30 for more than forty hours per week. At a minimum, the criteria shall
31 limit the state's exposure to exceeding the expenditure limits
32 established in this section, require consumers to use good faith
33 efforts to locate additional providers, address travel time from
34 worksite to worksite, and address the following needs of consumers:

35 (a) Emergencies that could pose a health and safety risk for
36 consumers; and

37 (b) Circumstances that could increase the risk of
38 institutionalization without the use of overtime.

39 (7) An individual provider may be authorized to work more than
40 forty hours in a workweek:

1 (a) If the department established a permanent workweek limit
2 between forty and one-quarter hours and sixty-five hours for an
3 individual provider, based upon work performed by the individual
4 provider in January 2016, as modified by an appeal, if any; or

5 (b) For required training under RCW 74.39A.074, 74.39A.076, and
6 74.39A.341, and for required travel time between clients.

7 (8) Expenditures for hours in excess of forty hours each workweek
8 shall not exceed eight and one-fourth percent of the total actual
9 authorized personal care hours for the fiscal year as projected by
10 the caseload forecast council.

11 (9) The caseload forecast council may adopt a temporary
12 adjustment to the eight and one-fourth percent of the total average
13 in-home personal care hours projection for that fiscal year, up to a
14 maximum of ten percent, if it finds a higher percentage of overtime
15 hours is necessitated by a shortage of individual providers to
16 provide adequate client care, taking into consideration the rules
17 adopted by the department. If the council elects to temporarily
18 increase the limit, it may do so only upon a majority vote of the
19 council.

20 (10) The department shall prepare expenditure reports beginning
21 September 1, 2018, and on September 1st every year thereafter. The
22 report shall include the results of the department's monitoring of
23 authorizations and costs of hours in excess of forty hours each
24 workweek. If the department determines that the annual expenditures
25 will exceed the limitation established in subsection (6) of this
26 section, the department shall take those actions necessary to ensure
27 compliance with the limitation.

28 (11) The expenditure reports must be submitted to the legislative
29 fiscal committees and the joint legislative-executive overtime
30 oversight task force. The joint legislative-executive overtime
31 oversight task force members are as follows:

32 (a) Two members from each of the two largest caucuses of the
33 senate, appointed by the respective caucus leaders;

34 (b) Two members from each of the two largest caucuses of the
35 house of representatives, appointed by the speaker of the house of
36 representatives;

37 (c) The governor shall appoint members representing the
38 department of social and health services and the office of financial
39 management;

1 (d) The governor shall appoint two members representing
2 individual providers and two members representing consumers receiving
3 personal care or respite care services from an individual provider.

4 (12) The task force shall meet when the department determines
5 that it is projected to or is exceeding the expenditure limits
6 established in subsection (8) of this section but may meet more
7 frequently as desired by the task force. The task force shall choose
8 cochairs, one from among the legislative members and one from among
9 the executive branch members.

10 (13) The department may take appropriate corrective action, up to
11 and including termination of an individual provider's contract, when
12 the individual provider works more than his or her workweek limit in
13 any given workweek.

14 (14) Nothing in this section modifies:

15 (a) The department's authority to deny individual provider
16 contracts to individuals who will not be able to meet the needs of a
17 consumer or to terminate contracts of individual providers who are
18 not adequately meeting the needs of a particular consumer; or

19 (b) The consumer's right to: (i) Assign hours to one or more
20 individual providers consistent with the rules adopted under this
21 chapter and his or her plan of care; and (ii) select, hire,
22 terminate, supervise the work of, and determine the conditions of
23 employment for each individual provider providing services to the
24 consumer under this chapter.

25 ~~((7))~~ (15) At the request of the exclusive bargaining
26 representative, the governor or the governor's designee appointed
27 under chapter 41.80 RCW shall engage in collective bargaining, as
28 defined in RCW 41.56.030(4), with the exclusive bargaining
29 representative over the following subjects:

30 (a) Employer contributions to the training partnership for the
31 costs of: (i) Meeting all training and peer mentoring requirements
32 under this chapter; and (ii) other training intended to promote the
33 career development of individual providers; and

34 (b) How the department's core responsibility affects hours of
35 work for individual providers; this subsection shall not be
36 interpreted to require collective bargaining over an individual
37 consumer's plan of care.

38 ~~((8))~~ (16) The state, the department, the area agencies on
39 aging, or their contractors under this chapter may not be held
40 vicariously or jointly liable for the action or inaction of any

1 individual provider or prospective individual provider, whether or
2 not that individual provider or prospective individual provider was
3 included on the referral registry or referred to a consumer or
4 prospective consumer. The existence of a collective bargaining
5 agreement, the placement of an individual provider on the referral
6 registry, or the development or approval of a plan of care for a
7 consumer who chooses to use the services of an individual provider
8 and the provision of case management services to that consumer, by
9 the department or an area agency on aging, does not constitute a
10 special relationship with the consumer.

11 ~~((9))~~ (17) Nothing in this section affects the state's
12 responsibility with respect to unemployment insurance for individual
13 providers. However, individual providers are not to be considered, as
14 a result of the state assuming this responsibility, employees of the
15 state.

16 **Sec. 13.** RCW 74.39A.275 and 2018 c 278 s 21 are each amended to
17 read as follows:

18 In order to monitor quality of care and safety of consumers,
19 employment conditions of individual providers, and compliance with
20 the provisions of payment of hours in excess of forty hours each
21 workweek for any single individual provider, the department must
22 provide annual expenditure reports to the legislative fiscal
23 committees and joint legislative-executive overtime oversight task
24 force created under RCW ~~((74.39A.525))~~ 74.39A.270(11). The report
25 must contain the following information:

26 (1) The number of individual providers receiving payment for more
27 than forty hours in a workweek, specifying how many of those
28 individual providers were eligible for those hours due to meeting the
29 conditions of RCW ~~((74.39A.525))~~ 74.39A.270(6).

30 (2) The number of hours paid and the amount paid for hours in
31 excess of forty hours in a workweek, specifying how many of those
32 hours and payments were for individual providers eligible for those
33 hours and payments due to meeting the conditions of RCW ~~((74.39A.525~~
34 ~~(1) or (2))~~) 74.39A.270(6).

35 (3) In reporting the information required in subsections (1) and
36 (2) of this section, the department must provide total amounts,
37 averages, and a display of the distribution of the amounts.

38 (4) The information required must be provided by department
39 region and county of client, department program, and must be

1 specified for individual providers by the number of clients they
2 serve.

3 (5) Any personally identifiable information of consumers and
4 individual providers used to develop this report is confidential
5 under RCW 43.17.410 and exempt from public disclosure, inspection, or
6 copying in accordance with chapter 42.56 RCW. However, information
7 may be released in aggregate form, with any personally identifiable
8 information redacted, for the purpose of statistical analysis and
9 oversight of agency performance and actions.

10 **Sec. 14.** RCW 74.39A.300 and 2018 c 278 s 22 are each amended to
11 read as follows:

12 ~~((If the department contracts with any individual providers for
13 personal care services, funding will be determined in accordance with
14 the following process:))~~

15 (1) Upon meeting the requirements of subsection (2) of this
16 section, the governor must submit, as a part of the proposed biennial
17 or supplemental operating budget submitted to the legislature under
18 RCW 43.88.030, a request for funds necessary to administer in-home
19 care programs under this chapter and to implement the compensation
20 and fringe benefits provisions of a collective bargaining agreement
21 entered into under RCW 74.39A.270 or for legislation necessary to
22 implement such agreement.

23 (2) A request for funds necessary to implement the compensation
24 and fringe benefits provisions of a collective bargaining agreement
25 entered into under RCW 74.39A.270 shall not be submitted by the
26 governor to the legislature unless such request:

27 (a) Has been submitted to the director of financial management by
28 October 1st prior to the legislative session at which the request is
29 to be considered; and

30 (b) Has been certified by the director of financial management as
31 being feasible financially for the state or reflects the binding
32 decision of an arbitrator reached under RCW 74.39A.270(2)(c).

33 (3) The legislature must approve or reject the submission of the
34 request for funds as a whole. If the legislature rejects or fails to
35 act on the submission, any such agreement will be reopened solely for
36 the purpose of renegotiating the funds necessary to implement the
37 agreement.

38 (4) When any increase in individual provider wages or benefits is
39 negotiated or agreed to, no increase in wages or benefits negotiated

1 or agreed to under this chapter will take effect unless and until,
2 before its implementation, the department has determined that the
3 increase is consistent with federal law and federal financial
4 participation in the provision of services under Title XIX of the
5 federal social security act.

6 (5) The governor shall periodically consult with the joint
7 committee on employment relations established by RCW 41.80.010
8 regarding appropriations necessary to implement the compensation and
9 fringe benefits provisions of any collective bargaining agreement
10 and, upon completion of negotiations, advise the committee on the
11 elements of the agreement and on any legislation necessary to
12 implement such agreement.

13 (6) After the expiration date of any collective bargaining
14 agreement entered into under RCW 74.39A.270, all of the terms and
15 conditions specified in any such agreement remain in effect until the
16 effective date of a subsequent agreement, not to exceed one year from
17 the expiration date stated in the agreement, except as provided in
18 RCW 74.39A.270.

19 (7) If, after the compensation and benefit provisions of an
20 agreement are approved by the legislature, a significant revenue
21 shortfall occurs resulting in reduced appropriations, as declared by
22 proclamation of the governor or by resolution of the legislature,
23 both parties shall immediately enter into collective bargaining for a
24 mutually agreed upon modification of the agreement.

25 **Sec. 15.** RCW 74.39A.310 and 2018 c 278 s 23 are each amended to
26 read as follows:

27 (1) The department shall create a formula that converts into a
28 per-hour amount, excluding those benefits defined in subsection (3)
29 of this section, the cost of the increase in(~~+~~

30 ~~(a) Wages~~) wages and benefits negotiated and funded in the
31 contract for individual providers of home care services pursuant to
32 RCW 74.39A.270 and 74.39A.300(~~+~~~~or~~

33 ~~(b) The labor rates established under RCW 74.39A.530~~)).

34 (2) The per-hour amount from subsection (1) of this section shall
35 be added to the statewide home care agency vendor rate and shall be
36 used exclusively for improving the wages and benefits of home care
37 agency workers who provide direct care. The formula shall account
38 for:

1 (a) All types of wages, benefits, and compensation negotiated and
2 funded each biennium, including but not limited to:

- 3 (i) Regular wages;
- 4 (ii) Benefit pay, such as vacation, sick, and holiday pay;
- 5 (iii) Taxes on wages/benefit pay;
- 6 (iv) Mileage; and
- 7 (v) Contributions to a training partnership; and

8 (b) The increase in the average cost of worker's compensation for
9 home care agencies and application of the increases identified in (a)
10 of this subsection to all hours required to be paid, including travel
11 time, of direct service workers under the wage and hour laws and
12 associated employer taxes.

13 (3) The contribution rate for health care benefits, including but
14 not limited to medical, dental, and vision benefits, for eligible
15 agency home care workers shall be paid by the department to home care
16 agencies at the same rate as negotiated and funded in the collective
17 bargaining agreement for individual providers of home care services.

18 **Sec. 16.** RCW 74.39A.351 and 2018 c 278 s 24 are each amended to
19 read as follows:

20 (1) The department shall offer, directly or through contract,
21 training opportunities sufficient for a long-term care worker to
22 accumulate seventy hours of training within a reasonable time period.
23 For individual providers represented by an exclusive bargaining
24 representative under RCW 74.39A.270, the training opportunities shall
25 be offered through the training partnership established under RCW
26 74.39A.360.

27 (2) Training topics offered under this section shall include, but
28 are not limited to: Client rights; personal care; mental illness;
29 dementia; developmental disabilities; depression; medication
30 assistance; advanced communication skills; positive client behavior
31 support; developing or improving client-centered activities; dealing
32 with wandering or aggressive client behaviors; medical conditions;
33 nurse delegation core training; peer mentor training; and advocacy
34 for quality care training.

35 (3) The department may not require long-term care workers to
36 obtain the training described in this section.

37 **Sec. 17.** RCW 74.39A.360 and 2018 c 278 s 25 are each amended to
38 read as follows:

1 ~~((1))~~ If the department has any contracts for personal care
2 services with any individual providers represented by an exclusive
3 bargaining representative under RCW 74.39A.270:

4 ~~((a))~~ (1) All training and peer mentoring required under this
5 chapter shall be provided by a training partnership;

6 ~~((b))~~ (2) Contributions to the partnership shall be made under
7 a collective bargaining agreement negotiated under this chapter;

8 ~~((c))~~ (3) The training partnership shall provide reports as
9 required by the department verifying that all individual providers
10 have complied with all training requirements; and

11 ~~((d))~~ (4) The exclusive bargaining representative shall
12 designate the training partnership.

13 ~~((2) When individual providers are employed by a consumer
14 directed employer, funding for training shall be included in the
15 labor rate component paid to the consumer directed employer as
16 determined and funded under RCW 74.39A.530.)~~)

17 **Sec. 18.** RCW 41.56.026 and 2018 c 278 s 28 are each amended to
18 read as follows:

19 In addition to the entities listed in RCW 41.56.020, this chapter
20 applies to individual providers ~~((who have contracts with the
21 department))~~ under chapter 74.39A RCW.

22 **Sec. 19.** RCW 41.56.113 and 2019 c 230 s 10 are each amended to
23 read as follows:

24 (1) This subsection (1) applies only if the state makes the
25 payments directly to a provider.

26 (a) Upon the authorization of an individual provider ~~((who
27 contracts with the department of social and health services))~~, a
28 family child care provider, an adult family home provider, or a
29 language access provider within the bargaining unit and after the
30 certification or recognition of the bargaining unit's exclusive
31 bargaining representative, the state as payor, but not as the
32 employer, shall, subject to (c) of this subsection, deduct from the
33 payments to an individual provider ~~((who contracts with the
34 department of social and health services))~~, a family child care
35 provider, an adult family home provider, or a language access
36 provider the monthly amount of dues as certified by the secretary of
37 the exclusive bargaining representative and shall transmit the same
38 to the treasurer of the exclusive bargaining representative.

1 (b) (i) An employee's written, electronic, or recorded voice
2 authorization to have the employer deduct membership dues from the
3 employee's salary must be made by the employee to the exclusive
4 bargaining representative. If the employer receives a request for
5 authorization of deductions, the employer shall as soon as
6 practicable forward the request to the exclusive bargaining
7 representative.

8 (ii) Upon receiving notice of the employee's authorization from
9 the exclusive bargaining representative, the employer shall deduct
10 from the employee's salary membership dues and remit the amounts to
11 the exclusive bargaining representative.

12 (iii) The employee's authorization remains in effect until
13 expressly revoked by the employee in accordance with the terms and
14 conditions of the authorization.

15 (iv) An employee's request to revoke authorization for payroll
16 deductions must be in writing and submitted by the employee to the
17 exclusive bargaining representative in accordance with the terms and
18 conditions of the authorization.

19 (v) After the employer receives confirmation from the exclusive
20 bargaining representative that the employee has revoked authorization
21 for deductions, the employer shall end the deduction no later than
22 the second payroll after receipt of the confirmation.

23 (vi) The employer shall rely on information provided by the
24 exclusive bargaining representative regarding the authorization and
25 revocation of deductions.

26 (vii) If the governor and the exclusive bargaining representative
27 of a bargaining unit of individual providers who contract with the
28 department of social and health services, family child care
29 providers, adult family home providers, or language access providers
30 enter into a collective bargaining agreement that includes
31 requirements for deductions of other payments, the state, as payor,
32 but not as the employer, shall, subject to (c) of this subsection,
33 make such deductions upon authorization of the individual provider,
34 family child care provider, adult family home provider, or language
35 access provider.

36 (c) (i) The initial additional costs to the state in making
37 deductions from the payments to individual providers, family child
38 care providers, adult family home providers, and language access
39 providers under this section shall be negotiated, agreed upon in

1 advance, and reimbursed to the state by the exclusive bargaining
2 representative.

3 (ii) The allocation of ongoing additional costs to the state in
4 making deductions from the payments to individual providers, family
5 child care providers, adult family home providers, or language access
6 providers under this section shall be an appropriate subject of
7 collective bargaining between the exclusive bargaining representative
8 and the governor unless prohibited by another statute. If no
9 collective bargaining agreement containing a provision allocating the
10 ongoing additional cost is entered into between the exclusive
11 bargaining representative and the governor, or if the legislature
12 does not approve funding for the collective bargaining agreement as
13 provided in RCW 74.39A.300, 41.56.028, 41.56.029, or 41.56.510, as
14 applicable, the ongoing additional costs to the state in making
15 deductions from the payments to individual providers, family child
16 care providers, adult family home providers, or language access
17 providers under this section shall be negotiated, agreed upon in
18 advance, and reimbursed to the state by the exclusive bargaining
19 representative.

20 (2) This subsection (2) applies only if the state does not make
21 the payments directly to a language access provider. Upon the
22 authorization of a language access provider within the bargaining
23 unit and after the certification or recognition of the bargaining
24 unit's exclusive bargaining representative, the state shall require
25 through its contracts with third parties that:

26 (a) The monthly amount of dues as certified by the secretary of
27 the exclusive bargaining representative be deducted from the payments
28 to the language access provider and transmitted to the treasurer of
29 the exclusive bargaining representative; and

30 (b) A record showing that dues have been deducted as specified in
31 (a) of this subsection be provided to the state.

32 ~~(3) ((This subsection (3) applies only to individual providers~~
33 ~~who contract with the department of social and health services.))~~ The
34 exclusive bargaining representative of individual providers may
35 designate a third-party entity to act as the individual provider's
36 agent in receiving payments from the state to the individual
37 provider, so long as the individual provider has entered into an
38 agency agreement with a third-party entity for the purposes of
39 deducting and remitting voluntary payments to the exclusive
40 bargaining representative. A third-party entity that receives such

1 payments is responsible for making and remitting deductions
2 authorized by the individual provider. The costs of such deductions
3 must be paid by the exclusive bargaining representative.

4 NEW SECTION. **Sec. 20.** The following acts or parts of acts are
5 each repealed:

6 (1) RCW 74.39A.500 (Consumer directed employer program—
7 Establishment—Structure—Vendor qualifications—Transition—Department
8 duties) and 2018 c 278 s 3;

9 (2) RCW 74.39A.505 (Consumer directed employer program—Rule-
10 making authority—2018 c 278) and 2018 c 278 s 4;

11 (3) RCW 74.39A.510 (Consumer directed employer program—
12 Limitations) and 2018 c 278 s 5;

13 (4) RCW 74.39A.515 (Duties of consumer directed employers that
14 employ individual providers—Duties of area agencies on aging with
15 respect to individual providers contracted with the department—Rule
16 making) and 2018 c 278 s 13;

17 (5) RCW 74.39A.520 (Individual providers employed by a consumer
18 directed employer—Consumer's right to select, schedule, supervise, or
19 dismiss individual providers) and 2018 c 278 s 20;

20 (6) RCW 74.39A.525 (Overtime criteria—Department-contracted
21 individual providers—Individual providers employed by a consumer
22 directed employer—Rule making—Expenditure reports—Joint
23 legislative-executive overtime oversight task force) and 2018 c 278 s
24 26; and

25 (7) RCW 74.39A.530 (Consumer directed employer program—Labor and
26 administrative rates—Rate-setting board—Funding process) and 2018 c
27 278 s 27.

28 **Part III: Expanding the Meals on Wheels Program**

29 NEW SECTION. **Sec. 21.** The sum of seven million one hundred
30 thousand dollars, or as much thereof as may be necessary, is
31 appropriated for the fiscal year ending June 30, 2021, from the
32 general fund to the department of social and health services for the
33 meals on wheels program under RCW 74.39A.035.

34 **Part IV: Providing a Sales and Use Tax Exemption for Mobility**
35 **Enhancing Equipment**

1 **Sec. 22.** RCW 82.08.0283 and 2007 c 6 s 1101 are each amended to
2 read as follows:

3 (1) The tax levied by RCW 82.08.020 (~~shall~~) does not apply to
4 sales of:

5 (a) Prosthetic devices prescribed, fitted, or furnished for an
6 individual by a person licensed under the laws of this state to
7 prescribe, fit, or furnish prosthetic devices, and the components of
8 such prosthetic devices;

9 (b) Medicines of mineral, animal, and botanical origin
10 prescribed, administered, dispensed, or used in the treatment of an
11 individual by a person licensed under chapter 18.36A RCW; (~~and~~)

12 (c) Medically prescribed oxygen, including, but not limited to,
13 oxygen concentrator systems, oxygen enricher systems, liquid oxygen
14 systems, and gaseous, bottled oxygen systems prescribed for an
15 individual by a person licensed under chapter 18.57 or 18.71 RCW for
16 use in the medical treatment of that individual; and

17 (d) Mobility enhancing equipment, and the components of mobility
18 enhancing equipment, prescribed by a person licensed under the laws
19 of this state to prescribe such equipment.

20 (2) In addition, the tax levied by RCW 82.08.020 (~~shall~~) does
21 not apply to charges made for labor and services rendered in respect
22 to the repairing, cleaning, altering, or improving of any of the
23 items exempted under subsection (1) of this section.

24 (3) The exemption in subsection (1) of this section (~~shall~~)
25 does not apply to sales of durable medical equipment, other than as
26 specified in subsection (1)(c) of this section(~~(, or mobility~~
27 ~~enhancing equipment))~~).

28 (4) The definitions in this subsection apply throughout this
29 section unless the context clearly requires otherwise.

30 (a) "Prosthetic device" means a replacement, corrective, or
31 supportive device, including repair and replacement parts for a
32 prosthetic device, worn on or in the body to:

33 (i) Artificially replace a missing portion of the body;

34 (ii) Prevent or correct a physical deformity or malfunction; or

35 (iii) Support a weak or deformed portion of the body.

36 (b) "Durable medical equipment" means equipment, including repair
37 and replacement parts for durable medical equipment that:

38 (i) Can withstand repeated use;

39 (ii) Is primarily and customarily used to serve a medical
40 purpose;

1 (iii) Generally is not useful to a person in the absence of
2 illness or injury; and

3 (iv) Is not worn in or on the body.

4 (c) "Mobility enhancing equipment" means equipment, including
5 repair and replacement parts for mobility enhancing equipment that:

6 (i) Is primarily and customarily used to provide or increase the
7 ability to move from one place to another and that is appropriate for
8 use either in a home or a motor vehicle;

9 (ii) Is not generally used by persons with normal mobility; and

10 (iii) Does not include any motor vehicle or equipment on a motor
11 vehicle normally provided by a motor vehicle manufacturer.

12 (d) The terms "durable medical equipment" and "mobility enhancing
13 equipment" are mutually exclusive.

14 **Sec. 23.** RCW 82.12.0277 and 2007 c 6 s 1102 are each amended to
15 read as follows:

16 (1) The provisions of this chapter (~~shall~~) do not apply in
17 respect to the use of:

18 (a) Prosthetic devices prescribed, fitted, or furnished for an
19 individual by a person licensed under the laws of this state to
20 prescribe, fit, or furnish prosthetic devices, and the components of
21 such prosthetic devices;

22 (b) Medicines of mineral, animal, and botanical origin
23 prescribed, administered, dispensed, or used in the treatment of an
24 individual by a person licensed under chapter 18.36A RCW; (~~and~~)

25 (c) Medically prescribed oxygen, including, but not limited to,
26 oxygen concentrator systems, oxygen enricher systems, liquid oxygen
27 systems, and gaseous, bottled oxygen systems prescribed for an
28 individual by a person licensed under chapter 18.57 or 18.71 RCW for
29 use in the medical treatment of that individual; and

30 (d) Mobility enhancing equipment, and the components of mobility
31 enhancing equipment, prescribed by a person licensed under the laws
32 of this state to prescribe such equipment.

33 (2) In addition, the provisions of this chapter (~~shall~~) do not
34 apply in respect to the use of labor and services rendered in respect
35 to the repairing, cleaning, altering, or improving of any of the
36 items exempted under subsection (1) of this section.

37 (3) The exemption provided by subsection (1) of this section
38 (~~shall~~) does not apply to the use of durable medical equipment,

1 other than as specified in subsection (1)(c) of this section(~~or~~
2 ~~mobility enhancing equipment~~)).

3 (4) "Prosthetic device," "durable medical equipment," and
4 "mobility enhancing equipment" have the same meanings as in RCW
5 82.08.0283.

6 **Part V: Miscellaneous**

7 NEW SECTION. **Sec. 24.** The provisions of RCW 82.32.805 and
8 82.32.808 do not apply to this act.

9 NEW SECTION. **Sec. 25.** If any provision of this act or its
10 application to any person or circumstance is held invalid, the
11 remainder of the act or the application of the provision to other
12 persons or circumstances is not affected.

13 NEW SECTION. **Sec. 26.** (1) Except for sections 1, 2, 22, and 23
14 of this act, this act is necessary for the immediate preservation of
15 the public peace, health, or safety, or support of the state
16 government and its existing public institutions, and takes effect
17 immediately.

18 (2) Sections 22 and 23 of this act take effect July 1, 2020.

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