S-1028.1

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**SENATE BILL 5599**

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**State of Washington 65th Legislature 2017 Regular Session**

**By** Senators Rivers, Baumgartner, Bailey, and Braun

AN ACT Relating to requiring unused state funds for the health care benefits of long-term care workers to be returned to the state; amending RCW 74.39A.310; reenacting and amending RCW 74.39A.009; and creating a new section.

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

NEW SECTION. **Sec.**  The legislature finds that state funds intended to provide health care benefits for long-term care workers serving publicly subsidized clients should be used for this purpose. The legislature further finds that, in order to maximize the number of workers receiving health care benefits and the quality of such benefits, any funds allocated, but not spent, to provide health care benefits for long-term care workers should be returned to the state.

**Sec.**  RCW 74.39A.009 and 2012 c 164 s 202 and 2012 c 10 s 63 are each reenacted and amended to read as follows:

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

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

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

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

(4) "Assisted living services" means services provided by an assisted living facility that has a contract with the department under RCW 74.39A.010 to provide personal care services, intermittent nursing services, and medication administration services, and the resident is housed in a private apartment-like unit.

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

(a) Is certified by the department of social and health services to provide to individuals who have a developmental disability as defined in RCW 71A.10.020((~~(4)~~)) (5):

(i) Group home services;

(ii) Group training home services;

(iii) Supported living services; or

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

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

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

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

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

(8) "Department" means the department of social and health services.

(9) "Developmental disability" has the same meaning as defined in RCW 71A.10.020.

(10) "Direct care worker" means a paid caregiver who provides direct, hands‑on personal care services to persons with disabilities or the elderly requiring long‑term care.

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

(12) "Functionally disabled person" or "person who is functionally disabled" is synonymous with chronic functionally disabled and means a person who because of a recognized chronic physical or mental condition or disease, or developmental disability, including chemical dependency, is impaired to the extent of being dependent upon others for direct care, support, supervision, or monitoring to perform activities of daily living. "Activities of daily living", in this context, means self-care abilities related to personal care such as bathing, eating, using the toilet, dressing, and transfer. Instrumental activities of daily living may also be used to assess a person's functional abilities as they are related to the mental capacity to perform activities in the home and the community such as cooking, shopping, house cleaning, doing laundry, working, and managing personal finances.

(13) "Home and community-based services" means adult family homes, in-home services, and other services administered or provided by contract by the department directly or through contract with area agencies on aging or similar services provided by facilities and agencies licensed by the department.

(14) "Home care aide" means a long-term care worker who has obtained certification as a home care aide by the department of health.

(15) "Individual provider" is defined according to RCW 74.39A.240.

(16) "Long-term care" is synonymous with chronic care and means care and supports delivered indefinitely, intermittently, or over a sustained time to persons of any age disabled by chronic mental or physical illness, disease, chemical dependency, or a medical condition that is permanent, not reversible or curable, or is long-lasting and severely limits their mental or physical capacity for self-care. The use of this definition is not intended to expand the scope of services, care, or assistance by any individuals, groups, residential care settings, or professions unless otherwise expressed by law.

(17) "Long-term care worker health care benefits funds" means any funds provided by the state for the purpose of providing health care benefits to agency home care workers or individual providers in accordance with RCW 74.39A.310(2).

(18)(a) "Long-term care workers" include all persons who provide paid, hands-on personal care services for the elderly or persons with disabilities, including but not limited to individual providers of home care services, direct care workers employed by home care agencies, providers of home care services to persons with developmental disabilities under Title 71A RCW, all direct care workers in state‑licensed assisted living facilities, and adult family homes, respite care providers, direct care workers employed by community residential service businesses, and any other direct care worker providing home or community-based services to the elderly or persons with functional disabilities or developmental disabilities.

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

((~~(18)~~)) (19) "Nursing home" means a facility licensed under chapter 18.51 RCW.

((~~(19)~~)) (20) "Personal care services" means physical or verbal assistance with activities of daily living and instrumental activities of daily living provided because of a person's functional disability.

((~~(20)~~)) (21) "Population specific competencies" means basic training topics unique to the care needs of the population the long-term care worker is serving, including but not limited to, mental health, dementia, developmental disabilities, young adults with physical disabilities, and older adults.

((~~(21)~~)) (22) "Qualified instructor" means a registered nurse or other person with specific knowledge, training, and work experience in the provision of direct, hands‑on personal care and other assistance services to the elderly or persons with disabilities requiring long‑term care.

((~~(22)~~)) (23) "Recipient of long-term care worker health care benefits funds" means any person or entity that:

(a) Receives long-term care worker health care benefits funds, directly or indirectly;

(b) Determines workers' eligibility criteria for health care benefits; and

(c) Determines the amount of health care benefits to purchase for eligible workers.

(24) "Secretary" means the secretary of social and health services.

((~~(23)~~)) (25) "Secretary of health" means the secretary of health or the secretary's designee.

((~~(24)~~)) (26) "Training partnership" means a joint partnership or trust that includes the office of the governor and the exclusive bargaining representative of individual providers under RCW 74.39A.270 with the capacity to provide training, peer mentoring, and workforce development, or other services to individual providers.

((~~(25)~~)) (27) "Tribally licensed assisted living facility" means an assisted living facility licensed by a federally recognized Indian tribe in which a facility provides services similar to assisted living facilities licensed under chapter 18.20 RCW.

**Sec.**  RCW 74.39A.310 and 2007 c 361 s 8 are each amended to read as follows:

(1) The department shall create a formula that converts the cost of the increase in wages and benefits negotiated and funded in the contract for individual providers of home care services pursuant to RCW 74.39A.270 and 74.39A.300, into a per‑hour amount, excluding those benefits defined in subsection (2) of this section. That per‑hour amount shall be added to the statewide home care agency vendor rate and shall be used exclusively for improving the wages and benefits of home care agency workers who provide direct care. The formula shall account for:

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

(i) Regular wages;

(ii) Benefit pay, such as vacation, sick, and holiday pay;

(iii) Taxes on wages/benefit pay;

(iv) Mileage; and

(v) Contributions to a training partnership; and

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

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

(3) Any recipient of long-term care worker health care benefits funds must:

(a) Offer health care benefits to all eligible long-term care workers without discrimination;

(b) Notify new long-term care workers of the availability of health care benefits and eligibility criteria;

(c) Offer health care benefits to long-term care workers when eligibility criteria are met;

(d) Maintain documentation that each eligible long-term care worker is offered health care benefits. If an eligible long-term care worker declines health care benefits, the recipient must include the worker's signature declining the benefits in its documentation;

(e) Keep monthly records of all such revenue received from the state, all workers eligible for health care benefits, and the cost of health care benefits purchased per worker by month of eligibility. Group payments must have documentation to separate noneligible employee costs from eligible worker costs for each payment month. The recipient must keep records regarding its health care benefits policies and eligibility criteria;

(f) Conduct, at least annually, an independent financial audit of their operations, receipts, and expenditures to determine and report: (i) Whether the financial statements of the recipient present fairly its financial position and the results of its financial operation in accordance with generally accepted accounting principles, and whether the recipient has complied with laws and regulations that may have a material effect upon its financial statements; (ii) whether the recipient has internal control systems to provide reasonable assurance that it is managing federal and state funded programs in compliance with applicable laws and regulations; and (iii) whether the full amount received from the state for long-term care worker health care benefits was paid out for such benefits. The cost of the annual independent audit may be considered part of the payments for long-term care worker health care benefits; and

(g) Return any unspent long-term care worker health care benefits funds to the state within thirty days of completion of the recipient's annual independent audit, or more frequently if desired by the recipient. All payments to the state must be accompanied by a reimbursement calculation form, to be developed by the department, including at least: (i) The name and contact information of the recipient; (ii) the period reviewed; (iii) the total hours billed for the review period; (iv) the total amount of long-term care worker health care benefits funds received during the review period; (v) total expenditures for long-term care worker health care benefits made during the review period; and (vi) the amount of long-term care worker health care benefits funds not expended for such purpose during the review period.

(4) The department may periodically audit recipients of long-term care worker health care benefits funds to ensure compliance with subsection (3) of this section.

(5) The failure of a recipient of long-term care worker health care benefits funds to return any unspent funds to the state as specified in subsection (3) of this section must be treated by the department as a vendor overpayment, and the department must attempt to recover the funds in accordance with RCW 43.20B.675.

(6) If a recipient of long-term care worker health benefits funds fails to comply with subsection (3) of this section and the department is unable to recover unspent long-term care worker health benefits funds from the recipient in accordance with subsection (5) of this section, the state must terminate or not renew any contractual requirement to provide the recipient with long-term care worker health benefits funds.

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