

**SB 5867 - S AMD 209**

By Senator Van De Wege

PULLED 04/11/2017

1 Strike everything after the enacting clause and insert the  
2 following:

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

14 Therefore, the legislature intends to direct a study of the  
15 current options allowing for the delivery of medicaid personal care  
16 services by caregivers who are family members of the state's citizens  
17 who are aging, disabled, or who have a developmental disability. The  
18 legislature intends to promote more flexibility for clients to access  
19 their benefits and to reduce obstacles for clients who wish to hire  
20 family members to provide their care.

21 NEW SECTION. **Sec. 2.** (1) The legislative advisory committee on  
22 aging established in Engrossed Substitute Senate Bill No. 5180 shall  
23 study the various state programs allowing for the delivery of  
24 medicaid personal care services, and develop recommendations for a  
25 comprehensive and effective statewide policy to support streamlined  
26 access to personal care services for the state's citizens who are  
27 aging, disabled, or who have a developmental disability. The  
28 committee must consult with stakeholders knowledgeable about the  
29 interests and needs of both consumers and caregivers, and shall  
30 include a discussion of consumer-directed approaches, including those

1 approaches that allow family members of the consumer to provide care.

2 The recommendations must include strategies to:

3 (a) Promote consumer health, safety, and autonomy;

4 (b) Ensure adequate caregiver training and support;

5 (c) Verify the quality and appropriateness of care;

6 (d) Reduce barriers for consumers who prefer to receive care from  
7 caregivers of their choosing, including family members; and

8 (e) Mitigate or minimize potential liability issues that may  
9 arise in the context of consumer-directed programs.

10 (2) In the alternative, if Engrossed Substitute Senate Bill No.  
11 5180 is not enacted by July 1, 2017, the department of social and  
12 health services shall convene a work group consisting of stakeholders  
13 knowledgeable about the interests and needs of both consumers and  
14 caregivers to conduct the study and develop the recommendations  
15 described in subsection (1) of this section.

16 (3) The advisory legislative committee on aging or the department  
17 of social and health services must submit a report with  
18 recommendations to the appropriate policy and fiscal committee of the  
19 legislature by January 3, 2018.

20 (4) This section expires January 3, 2018.

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

23 (1)(a) Except as provided under (b) of this subsection, the  
24 department shall not pay a home care agency licensed under chapter  
25 70.127 RCW for in-home personal care or respite services provided  
26 under this chapter, Title 71A RCW, or chapter 74.39 RCW if the care  
27 is provided to a client by a family member of the client. To the  
28 extent permitted under federal law, the provisions of this subsection  
29 shall not apply if the family member providing care is older than the  
30 client.

31 (b) (~~The department may, on a case-by-case basis based on the~~  
32 ~~client's health and safety, make exceptions to (a) of this subsection~~  
33 ~~to authorize payment or to provide for payment during a transition~~  
34 ~~period of up to three months)) The restrictions under (a) of this  
35 subsection do not apply to in-home personal care or respite services  
36 provided by a family member of a client living on or in close  
37 proximity to an Indian reservation located in Washington.~~

38 (2) The department shall take appropriate enforcement action  
39 against a home care agency found to have charged the state for hours

1 of service for which the department is not authorized to pay under  
2 this section, including requiring recoupment of any payment made for  
3 those hours and, under criteria adopted by the department by rule,  
4 terminating the contract of an agency that violates a recoupment  
5 requirement.

6 (3) For purposes of this section:

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

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

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

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18 On page 1, line 4 of the title, after "program;" strike the  
19 remainder of the title and insert "amending RCW 74.39A.326; creating  
20 new sections; and providing an expiration date."

EFFECT: Strikes the provisions directing the DSHS to create a new consumer-directed program. Directs the Legislative Advisory Committee on Aging to study the need for additional flexibility in accessing Medicaid personal care services, including consumer-directed services. Requires the Committee to develop recommendations for the legislature to establish a comprehensive statewide approach to supporting access to personal care services and reducing obstacles for consumers who wish to receive personal care services in their own home from caregivers of their choosing, including family members. In the alternative, if ESSB 5180 is not enacted, the DSHS is directed to convene a work group to study and make recommendations to the legislature. Exempts in-home personal care and respite services provided on or near a tribal reservation from the prohibition on paying family members who are employed by a home care agency.

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