

**SB 5867 - S AMD 267**

By Senator Van De Wege

ADOPTED 04/19/2017

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 create an optional  
15 consumer-directed program for providing personal care services for  
16 individuals with long-term care needs or developmental disabilities  
17 receiving care from a family member. This program is intended to  
18 provide individuals with more flexibility in accessing their benefits  
19 and to reduce obstacles for consumers who wish to hire family members  
20 to provide their care.

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

23 The department is directed to develop and implement a consumer-  
24 directed medicaid program as provided in chapter . . ., Laws of 2017  
25 (this act). This program is intended to be a voluntary alternative  
26 option for individuals with long-term care needs or developmental  
27 disabilities who choose to receive personal care services from a  
28 family member. The department shall review existing medicaid programs  
29 and determine the appropriate waiver to seek from the centers for  
30 medicare and medicaid services. The department shall seek stakeholder  
31 input on the new consumer-directed program's design to inform its

1 submission of a waiver proposal to the centers for medicare and  
2 medicaid services. The department's waiver proposal must be submitted  
3 to the centers for medicare and medicaid services by March 1, 2018.  
4 By January 1, 2019, and September 1, 2019, the department must submit  
5 status reports to the legislature that provide information about the  
6 department's activities, program design, necessary statutory changes,  
7 barriers to implementation, and estimated implementation date,  
8 caseload, and costs. The consumer-directed medicaid program as  
9 provided in chapter . . . , Laws of 2017 (this act) must be available  
10 to consumers by January 1, 2019.

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

13 (1) The consumer-directed medicaid program is a voluntary  
14 alternative option for consumers who seek to receive personal care  
15 services from a family member. The consumer-directed medicaid program  
16 must also reduce barriers that prevent consumers from being able to  
17 select a family member as their paid personal care or respite  
18 provider. The consumer, or his or her representatives, if applicable,  
19 must have decision-making authority to recruit, hire and fire,  
20 determine wages, train, supervise, and determine other conditions of  
21 employment for his or her family member providing personal care and  
22 respite services. The consumer, or his or her representatives, or  
23 both, must also have decision-making authority over how the medicaid  
24 funds in his or her individual budgets are spent.

25 (2) The consumer-directed medicaid program must include the  
26 following characteristics:

27 (a) A consumer-centered planning process that is directed by the  
28 consumer with assistance as needed or desired by a representative of  
29 the consumer's choosing. The process must include an assessment and  
30 service plan that establishes eligibility, the available budget  
31 amount, and the preferences, abilities, needs, and desired measurable  
32 outcomes of the consumer. The process may include other persons,  
33 freely chosen by the consumer, who are able to serve as important  
34 contributors to the process. The planning process must include  
35 planning for contingencies such as when a needed service is not  
36 provided due to the family member being unavailable. As part of the  
37 contingency planning process, an assessment of the risks to the  
38 consumer must be completed, and a discussion about how risks will be  
39 addressed must be held;

1 (b) A service plan that specifies the services and supports that  
2 are to be furnished to meet the preferences, choices, abilities, and  
3 needs of the consumer, and that assists the consumer to direct those  
4 services and supports so he or she is able to remain in his or her  
5 community; and

6 (c) An individualized budget that is under the control and  
7 direction of either the consumer, or his or her representative, or  
8 both. The budget plan is developed using a consumer-centered planning  
9 process and is individually tailored in accordance with the  
10 consumer's needs and preferences as established in the service plan.  
11 The department must describe the method for calculating the dollar  
12 values of consumer budgets and define a process for making  
13 adjustments to the budget amount when there are significant changes  
14 in the consumer's support and service needs.

15 (3) The program must also include a system of supports to provide  
16 information and assistance to consumers to address assessed needs  
17 including, but not limited to:

18 (a) Information regarding how consumer-directed programs work;

19 (b) Information about a consumer's rights and responsibilities  
20 when enrolled in a consumer-directed program;

21 (c) A consumer may provide training directly to his or her family  
22 members or determine training topics that must be completed. The  
23 content of the training must be related to the consumer's  
24 preferences, care needs, conditions, health, safety, or topics  
25 relevant to his or her consumer-centered plan and spending plan under  
26 the program. The department may assist consumers by offering  
27 voluntary training, including training offered under RCW 74.39A.351,  
28 on how to select, manage, train, and dismiss employees. This may  
29 include referrals to other agencies, educational institutions, and  
30 consumer and community advocacy organizations to obtain information  
31 and assistance; and

32 (d) A consumer must determine the compensation, hours, and  
33 working conditions of his or her family members. The hourly wage paid  
34 must be at least the state minimum wage.

35 (4) The department must contract with an independent third party  
36 to provide financial management services to assist consumers in  
37 exercising their budget authority unless they are able to perform  
38 some or all of these functions themselves. Financial management  
39 services may include assistance in understanding billing and  
40 documentation responsibilities, performance of payroll and employer-

1 related duties, assistance purchasing approved goods and services,  
2 tracking and monitoring goods and services purchased and provided,  
3 and identifying expenditures that are over or under the budget.

4 (5) The program must include necessary safeguards to protect the  
5 health and welfare of consumers. The program must include a  
6 requirement that any family member providing services pass  
7 appropriate state and federal criminal background checks to verify  
8 that he or she does not have a criminal history that would disqualify  
9 him or her from working with vulnerable persons. The family member  
10 providing services also must not be listed on any long-term care  
11 abuse and neglect registry, child abuse registry, or any other  
12 registry or list used by the department to disqualify the person from  
13 caring for vulnerable persons.

14 (6) A consumer must be allowed to disenroll from the program at  
15 any time and return to a traditional service delivery system.

16 (7) For the purposes of this section and section 2 of this act:

17 (a) "Consumer" means a person who:

18 (i) Is functionally disabled and eligible for personal care or  
19 respite care services under medicaid personal care, community first  
20 choice option, community options program entry system, chore services  
21 program, new freedom system, or respite care program;

22 (ii) Is eligible for respite care or residential service and  
23 support as a person with developmental disabilities under Title 71A  
24 RCW; or

25 (iii) Is eligible for respite care as defined in RCW 74.13.270.

26 (b) "Family member" means a person who is related by blood,  
27 adoption, or marriage as a child, parent, or sibling, including those  
28 relations denoted with the prefix "grand" or "great."

29 (8) The department shall adopt rules necessary to implement this  
30 section.

31 **Sec. 4.** RCW 74.39A.074 and 2012 c 164 s 401 are each amended to  
32 read as follows:

33 (1)(a) Beginning January 7, 2012, except for long-term care  
34 workers exempt from certification under RCW 18.88B.041(1) (a) and (f)  
35 and, until January 1, 2016, those exempt under RCW 18.88B.041(1)(b),  
36 all persons hired as long-term care workers must meet the minimum  
37 training requirements in this section within one hundred twenty  
38 calendar days after the date of being hired or within one hundred  
39 twenty calendar days after March 29, 2012, whichever is later. In

1 computing the time periods in this subsection, the first day is the  
2 date of hire or March 29, 2012, whichever is applicable.

3 (b) Except as provided in RCW 74.39A.076, the minimum training  
4 requirement is seventy-five hours of entry-level training approved by  
5 the department. A long-term care worker must successfully complete  
6 five of these seventy-five hours before being eligible to provide  
7 care.

8 (c) Training required by (d) of this subsection applies toward  
9 the training required under RCW 18.20.270 or 70.128.230 or any  
10 statutory or regulatory training requirements for long-term care  
11 workers employed by community residential service businesses.

12 (d) The seventy-five hours of entry-level training required shall  
13 be as follows:

14 (i) Before a long-term care worker is eligible to provide care,  
15 he or she must complete:

16 (A) Two hours of orientation training regarding his or her role  
17 as caregiver and the applicable terms of employment; and

18 (B) Three hours of safety training, including basic safety  
19 precautions, emergency procedures, and infection control; and

20 (ii) Seventy hours of long-term care basic training, including  
21 training related to core competencies and population specific  
22 competencies.

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

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

28 (b) Requires comprehensive instruction by qualified instructors  
29 on the competencies and training topics in this section.

30 (3) Individual providers under RCW 74.39A.270 shall be  
31 compensated for training time required by this section.

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

33 **Sec. 5.** RCW 74.39A.076 and 2015 c 152 s 2 are each amended to  
34 read as follows:

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

37 (a) A biological, step, or adoptive parent who is the individual  
38 provider only for his or her developmentally disabled son or daughter  
39 must receive twelve hours of training relevant to the needs of adults

1 with developmental disabilities within the first one hundred twenty  
2 days after becoming an individual provider or within one hundred  
3 twenty calendar days after March 29, 2012, whichever is later.

4 (b) Individual providers identified in (b)(i), (ii), and (iii) of  
5 this subsection must complete thirty-five hours of training within  
6 the first one hundred twenty days after becoming an individual  
7 provider or within one hundred twenty calendar days after March 29,  
8 2012, whichever is later. Five of the thirty-five hours must be  
9 completed before becoming eligible to provide care. Two of these five  
10 hours shall be devoted to an orientation training regarding an  
11 individual provider's role as caregiver and the applicable terms of  
12 employment, and three hours shall be devoted to safety training,  
13 including basic safety precautions, emergency procedures, and  
14 infection control. Individual providers subject to this requirement  
15 include:

16 (i) An individual provider caring only for his or her biological,  
17 step, or adoptive child or parent unless covered by (a) of this  
18 subsection;

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

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

25 (2) In computing the time periods in this section, the first day  
26 is the date of hire or March 29, 2012, whichever is applicable.

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

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

32 (b) Requires comprehensive instruction by qualified instructors.

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

34 **Sec. 6.** RCW 74.39A.240 and 2011 1st sp.s. c 21 s 7 are each  
35 amended to read as follows:

36 The definitions in this section apply throughout RCW 74.39A.030  
37 ((and)) 74.39A.095 ((and)) 74.39A.220 through 74.39A.300, and  
38 41.56.026 unless the context clearly requires otherwise.

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

3 (2) "Department" means the department of social and health  
4 services.

5 (3) "Individual provider" means a person, including a personal  
6 aide, who has contracted with the department to provide personal care  
7 or respite care services to functionally disabled persons under the  
8 medicaid personal care, community options program entry system, chore  
9 services program, or respite care program, or to provide respite care  
10 or residential services and support to persons with developmental  
11 disabilities under chapter 71A.12 RCW, or to provide respite care as  
12 defined in RCW 74.13.270. "Individual provider" does not include a  
13 family member providing personal care and respite services to a  
14 consumer under the consumer-directed medicaid program created in  
15 sections 2 and 3 of this act.

16 **Sec. 7.** RCW 74.39A.341 and 2015 c 152 s 3 are each amended to  
17 read as follows:

18 (1) All long-term care workers shall complete twelve hours of  
19 continuing education training in advanced training topics each year.  
20 This requirement applies beginning July 1, 2012.

21 (2) Completion of continuing education as required in this  
22 section is a prerequisite to maintaining home care aide certification  
23 under chapter 18.88B RCW.

24 (3) Unless voluntarily certified as a home care aide under  
25 chapter 18.88B RCW, subsection (1) of this section does not apply to:

26 (a) An individual provider caring only for his or her biological,  
27 step, or adoptive child;

28 (b) Registered nurses and licensed practical nurses licensed  
29 under chapter 18.79 RCW;

30 (c) Before January 1, 2016, a long-term care worker employed by a  
31 community residential service business;

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

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

1 (f) A family member providing personal care and respite services  
2 to a consumer under the consumer-directed medicaid program created in  
3 sections 2 and 3 of this act.

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

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

9 (b) Requires comprehensive instruction by qualified instructors.

10 (5) Individual providers under RCW 74.39A.270 shall be  
11 compensated for training time required by this section.

12 (6) The department of health shall adopt rules to implement  
13 subsection (1) of this section.

14 (7) The department shall adopt rules to implement subsection (2)  
15 of this section.

16 **Sec. 8.** RCW 18.88B.041 and 2015 c 152 s 1 are each amended to  
17 read as follows:

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

20 (a)(i)(A) Registered nurses, licensed practical nurses, certified  
21 nursing assistants or persons who are in an approved training program  
22 for certified nursing assistants under chapter 18.88A RCW, medicare-  
23 certified home health aides, or other persons who hold a similar  
24 health credential, as determined by the secretary, or persons with  
25 special education training and an endorsement granted by the  
26 superintendent of public instruction, as described in RCW  
27 28A.300.010, if the secretary determines that the circumstances do  
28 not require certification.

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

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

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

38 (c) An individual provider caring only for his or her biological,  
39 step, or adoptive child or parent.



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

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

6 (f) A family member providing personal care and respite services  
7 to a consumer under the consumer-directed medicaid program created in  
8 sections 2 and 3 of this act.

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

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

13 **Sec. 9.** RCW 74.39A.326 and 2009 c 571 s 1 are each amended to  
14 read as follows:

15 (1)(a) Except as provided under (b) of this subsection, the  
16 department shall not pay a home care agency licensed under chapter  
17 70.127 RCW for in-home personal care or respite services provided  
18 under this chapter, Title 71A RCW, or chapter 74.39 RCW if the care  
19 is provided to a client by a family member of the client. To the  
20 extent permitted under federal law, the provisions of this subsection  
21 shall not apply if the family member providing care is older than the  
22 client.

23 (b) The department may, on a case-by-case basis based on the  
24 client's health and safety, make exceptions to (a) of this subsection  
25 to authorize payment or to provide for payment during a transition  
26 period of up to three months. The restrictions under (a) of this  
27 subsection do not apply when the care is provided to: (i) A client  
28 who is an enrolled member of a federally recognized Indian tribe; or  
29 (ii) a client who resides in the household of an enrolled member of a  
30 federally recognized Indian tribe.

31 (2) The department shall take appropriate enforcement action  
32 against a home care agency found to have charged the state for hours  
33 of service for which the department is not authorized to pay under  
34 this section, including requiring recoupment of any payment made for  
35 those hours and, under criteria adopted by the department by rule,  
36 terminating the contract of an agency that violates a recoupment  
37 requirement.

38 (3) For purposes of this section:

1 (a) "Client" means a person who has been deemed eligible by the  
2 department to receive in-home personal care or respite services.  
3 (b) "Family member" shall be liberally construed to include, but  
4 not be limited to, a parent, child, sibling, aunt, uncle, cousin,  
5 grandparent, grandchild, grandniece, or grandnephew, or such  
6 relatives when related by marriage.  
7 (4) The department shall adopt rules to implement this section.  
8 The rules shall not result in affecting the amount, duration, or  
9 scope of the personal care or respite services benefit to which a  
10 client may be entitled pursuant to RCW 74.09.520 or Title XIX of the  
11 federal social security act."

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**ADOPTED 04/19/2017**

12 On page 1, line 4 of the title, after "program;" strike the  
13 remainder of the title and insert "amending RCW 74.39A.074,  
14 74.39A.076, 74.39A.240, 74.39A.341, 18.88B.041, and 74.39A.326;  
15 adding new sections to chapter 74.39A RCW; and creating a new  
16 section."

EFFECT: Exempts in-home personal care and respite services provided to enrolled members of federally recognized Indian tribes, including their household members, from the prohibition on paying family members who are employed by a home care agency. Clarifies that DSHS shall offer 70 hours of voluntary training to family caregivers.

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