

ESB 5867 - S AMD 323

By Senator Van De Wege

ADOPTED 06/30/2017

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 joint legislative executive
22 committee on aging and disability is directed to explore legislation
23 that would allow family members to provide personal care services to
24 persons with developmental disabilities, or long-term care needs
25 under a voluntary consumer-directed medicaid service program. As part
26 of this work, the committee must also include a discussion of
27 consumer-directed approaches, including those approaches that allow
28 family members of the consumer to provide care, and develop
29 recommendations on:

- 30 (a) Promoting consumer health, safety, and autonomy;
31 (b) Ensuring adequate caregiver training and support;

- 1 (c) Verifying the quality and appropriateness of care;
2 (d) Reducing barriers for consumers who prefer to receive care
3 from caregivers of their choosing, including family members; and
4 (e) Mitigating or minimizing potential liability issues that may
5 arise in the context of consumer-directed programs.

6 (2) The joint legislative executive committee on aging and
7 disability must submit a report with recommendations to the
8 appropriate policy and fiscal committee of the legislature by July 1,
9 2018.

10 (3) This section expires July 1, 2018.

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

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

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

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

37 (3) For purposes of this section:

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

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

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

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

EFFECT: Strikes the provisions directing the DSHS to create a new consumer-directed program. Directs the Joint Legislative Executive Committee on Aging and Disability to develop recommendations on consumer-directed approaches that allow family members of the consumer to provide care and that: Promote consumer health and safety, ensure caregiver training and support, verify the quality and appropriateness of care, reduce barriers to care, and mitigate potential liability issues under consumer-directed programs. Within available funds, 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.

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