
SUBSTITUTE HOUSE BILL 1880

State of Washington

56th Legislature

1999 Regular Session

By House Committee on Health Care (originally sponsored by Representatives Cody, Schual-Berke, Kenney and Edmonds)

Read first time 03/02/1999.

1 AN ACT Relating to providing for self-directed care of persons with
2 disabilities; amending RCW 74.39A.050, 74.34.020, and 43.20A.710; and
3 adding new sections to chapter 74.39 RCW.

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

5 NEW SECTION. **Sec. 1.** (1) The legislature finds that certain
6 aspects of health licensure laws have the unintended consequence of
7 limiting the right of persons with functional disabilities to care for
8 themselves in their own home, and of securing assistance from other
9 persons in performing routine health-related tasks that persons without
10 these disabilities customarily perform.

11 (2) It is the intent of the legislature to clarify the right of
12 adults with functional disabilities to choose to self-direct their own
13 health-related tasks through personal aides, and to describe the
14 circumstances under which self-directed care may take place in the home
15 setting. The legislature declares that it is in the public interest to
16 preserve the autonomy and dignity of persons with functional
17 disabilities to care for themselves in their own homes, among the
18 continuum of options for health care services where the judgment and
19 control over the care rests with the individual.

1 NEW SECTION. **Sec. 2.** The definitions in this section apply
2 throughout sections 1 through 4 and 8 of this act and RCW 43.190.060
3 unless the context clearly requires otherwise.

4 (1) "Self-directed care" means the process in which an adult
5 person, who is prevented by a functional disability from performing a
6 manual function related to health care that an individual would
7 otherwise perform for himself or herself, chooses to direct and
8 supervise a paid personal aide to perform those tasks.

9 (2) "Personal aide" means an individual, working privately or as an
10 individual provider under contract or agreement with the department of
11 social and health services, who acts at the direction of an adult
12 person with a functional disability living in his or her own home and
13 provides that person with health care services that a person without a
14 functional disability can perform, and who is identified as a personal
15 aide on the registry maintained by the department of social and health
16 services under section 4 of this act.

17 NEW SECTION. **Sec. 3.** (1) An adult person with a functional
18 disability living in his or her own home may direct and supervise a
19 paid personal aide in the performance of a health care task.

20 (2) The following requirements shall guide the provision of self-
21 directed care under this act:

22 (a) Health care tasks are those medical, nursing, or home health
23 services that enable the person to maintain independence, personal
24 hygiene, and safety in his or her own home, and that are services that
25 a person without a functional disability would customarily and
26 personally perform without the assistance of a licensed health care
27 provider.

28 (b) When a licensed health care provider orders treatment involving
29 a health care task to be performed through self-directed care, the
30 responsibility to ascertain that the patient understands the treatment
31 and will be able to follow through on the self-directed care task is
32 the same as it would be for a patient who performs the health care task
33 for himself or herself, and the licensed health care provider incurs no
34 additional liability when ordering a health care task which is to be
35 performed through self-directed care.

36 (c) The role of the personal aide in performing self-directed care
37 tasks is limited to those physical health care tasks under the
38 direction of the person for whom the tasks are being done. This shall

1 not affect the ability of a personal aide to provide other home care
2 services, such as personal care or homemaker services, which enable the
3 client to remain at home.

4 (d) The responsibility to initiate health care tasks and to
5 exercise judgment regarding the manner of their performance rests and
6 remains with the person who has chosen to self-direct those tasks,
7 including the decision to employ and dismiss a personal aide.

8 NEW SECTION. **Sec. 4.** Any individual who, for compensation, serves
9 as a personal aide, privately or as an individual provider under
10 contract or agreement with the department of social and health
11 services, to a person who self-directs his or her own care in his or
12 her own home shall register with the department of social and health
13 services, and no person may perform a directed health care task under
14 the provisions of this act unless and until he or she is duly
15 registered with the department as a personal aide.

16 **Sec. 5.** RCW 74.39A.050 and 1998 c 85 s 1 are each amended to read
17 as follows:

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

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

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

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

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

35 (5) Monitoring should be outcome based and responsive to consumer
36 complaints and a clear set of health, quality of care, and safety

1 standards that are easily understandable and have been made available
2 to providers.

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

13 (7) To the extent funding is available, all long-term care staff
14 directly responsible for the care, supervision, or treatment of
15 vulnerable persons should be screened through background checks in a
16 uniform and timely manner to ensure that they do not have a criminal
17 history that would disqualify them from working with vulnerable
18 persons. Whenever a state conviction record check is required by state
19 law, persons may be employed or engaged as volunteers or independent
20 contractors on a conditional basis according to law and rules adopted
21 by the department.

22 (8) No provider or staff, or prospective provider or staff, with a
23 stipulated finding of fact, conclusion of law, an agreed order, or
24 finding of fact, conclusion of law, or final order issued by a
25 disciplining authority, a court of law, or entered into a state
26 registry finding him or her guilty of abuse, neglect, exploitation, or
27 abandonment of a minor or a vulnerable adult as defined in chapter
28 74.34 RCW shall be employed in the care of and have unsupervised access
29 to vulnerable adults.

30 (9) The department shall establish, by rule, a state registry which
31 contains identifying information about personal care aides identified
32 in RCW 74.34.020(8)(g), including those who have substantiated findings
33 of abuse, neglect, financial exploitation, or abandonment of a
34 vulnerable adult as defined in RCW 74.34.020. The rule must include
35 disclosure, disposition of findings, notification, findings of fact,
36 appeal rights, and fair hearing requirements. The department shall
37 disclose, upon request, substantiated findings of abuse, neglect,
38 financial exploitation, or abandonment to any person so requesting this
39 information.

1 (10) The department shall by rule develop training requirements for
2 individual providers and home care agency providers. The department
3 shall deny payment to an individual provider or a home care provider
4 who does not complete the training requirement within the time limit
5 specified by the department by rule.

6 (11) The department shall establish, by rule, training, background
7 checks, and other quality assurance requirements for personal aides who
8 provide in-home services funded by medicaid personal care as described
9 in RCW 74.09.520, community options program entry system waiver
10 services as described in RCW 74.39A.030, or chore services as described
11 in RCW 74.39A.110 that are equivalent to requirements for individual
12 providers.

13 (12) Under existing funds the department shall establish internally
14 a quality improvement standards committee to monitor the development of
15 standards and to suggest modifications.

16 (~~(10)~~) (13) Within existing funds, the department shall design,
17 develop, and implement a long-term care training program that is
18 flexible, relevant, and qualifies towards the requirements for a
19 nursing assistant certificate as established under chapter 18.88A RCW.
20 This subsection does not require completion of the nursing assistant
21 certificate training program by providers or their staff. The long-
22 term care teaching curriculum must consist of a fundamental module, or
23 modules, and a range of other available relevant training modules that
24 provide the caregiver with appropriate options that assist in meeting
25 the resident's care needs. Some of the training modules may include,
26 but are not limited to, specific training on the special care needs of
27 persons with developmental disabilities, dementia, mental illness, and
28 the care needs of the elderly. No less than one training module must
29 be dedicated to workplace violence prevention. The nursing care
30 quality assurance commission shall work together with the department to
31 develop the curriculum modules. The nursing care quality assurance
32 commission shall direct the nursing assistant training programs to
33 accept some or all of the skills and competencies from the curriculum
34 modules towards meeting the requirements for a nursing assistant
35 certificate as defined in chapter 18.88A RCW. A process may be
36 developed to test persons completing modules from a caregiver's class
37 to verify that they have the transferable skills and competencies for
38 entry into a nursing assistant training program. The department may
39 review whether facilities can develop their own related long-term care

1 training programs. The department may develop a review process for
2 determining what previous experience and training may be used to waive
3 some or all of the mandatory training. The department of social and
4 health services and the nursing care quality assurance commission shall
5 work together to develop an implementation plan by December 12, 1998.

6 **Sec. 6.** RCW 74.34.020 and 1997 c 392 s 523 are each amended to
7 read as follows:

8 Unless the context clearly requires otherwise, the definitions in
9 this section apply throughout this chapter.

10 (1) "Abandonment" means action or inaction by a person or entity
11 with a duty of care for a (~~frail elder or a~~) vulnerable adult that
12 leaves the vulnerable person without the means or ability to obtain
13 necessary food, clothing, shelter, or health care.

14 (2) "Abuse" means (~~a nonaccidental act of physical or mental~~
15 ~~mistreatment or injury, or sexual mistreatment, which harms a person~~
16 ~~through action or inaction by another individual~~) the willful action
17 or inaction that inflicts injury, unreasonable confinement,
18 intimidation, or punishment on a vulnerable adult. In instances of
19 abuse of a vulnerable adult who is unable to express or demonstrate
20 physical harm, pain, or mental anguish, the abuse is presumed to cause
21 physical harm, pain, or mental anguish. Abuse includes sexual abuse,
22 mental abuse, physical abuse, and exploitation of a vulnerable adult,
23 which have the following meanings:

24 (a) "Sexual abuse" means any form of nonconsensual sexual contact,
25 including but not limited to unwanted or inappropriate touching, rape,
26 sodomy, sexual coercion, sexually explicit photographing, and sexual
27 harassment. Sexual abuse includes any sexual contact between a staff
28 person, who is not also a resident or client, of a facility or a staff
29 person of a program authorized under chapter 71A.12 RCW, and a
30 vulnerable adult living in that facility or receiving service from a
31 program authorized under chapter 71A.12 RCW, whether or not it is
32 consensual.

33 (b) "Physical abuse" means the willful action of inflicting bodily
34 injury or physical mistreatment. Physical abuse includes, but is not
35 limited to, striking with or without an object, slapping, pinching,
36 choking, kicking, shoving, prodding, or the use of chemical restraints
37 or physical restraints unless the restraints are consistent with

1 licensing requirements, and includes restraints that are otherwise
2 being used inappropriately.

3 (c) "Mental abuse" means any willful action or inaction of mental
4 or verbal abuse. Mental abuse includes, but is not limited to,
5 coercion, harassment, inappropriately isolating a vulnerable adult from
6 family, friends, or regular activity, and verbal assault that includes
7 ridiculing, intimidating, yelling, or swearing.

8 (d) "Exploitation" means an act of forcing, compelling, or exerting
9 undue influence over a vulnerable adult causing the vulnerable adult to
10 act in a way that is inconsistent with relevant past behavior, or
11 causing the vulnerable adult to perform services for the benefit of
12 another.

13 (3) "Consent" means express written consent granted after the
14 ~~((person))~~ vulnerable adult or his or her legal representative has been
15 fully informed of the nature of the services to be offered and that the
16 receipt of services is voluntary.

17 (4) "Department" means the department of social and health
18 services.

19 (5) "Exploitation" means the illegal or improper use of a frail
20 elder or vulnerable adult or that person's income or resources,
21 including trust funds, for another person's profit or advantage.

22 (6) "Neglect" means a pattern of conduct or inaction by a person or
23 entity with a duty of care for a frail elder or vulnerable adult that
24 results in the deprivation of care necessary to maintain the vulnerable
25 person's physical or mental health.

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

27 (8) "~~((Frail elder or))~~ Vulnerable adult" ~~((means))~~ includes a
28 person:

29 (a) Sixty years of age or older who has the functional, mental, or
30 physical inability to care for himself or herself~~((~~-"Frail elder or~~~~
31 ~~~~vulnerable adult" shall include persons))~~;~~

32 (b) Found incapacitated under chapter 11.88 RCW~~((~~, or a person))~~;~~

33 (c) Who has a developmental disability ~~((under chapter 71A.10 RCW,~~
34 ~~and persons))~~ as defined under RCW 71A.10.020;

35 (d) Admitted to any ~~((long-term care))~~ facility ~~((that is licensed~~
36 ~~or required to be licensed under chapter 18.20, 18.51, 72.36, or 70.128~~
37 ~~RCW, or persons))~~;

38 (e) Receiving services from home health, hospice, or home care
39 agencies licensed or required to be licensed under chapter 70.127 RCW;

1 (f) Receiving services from an individual provider; or
2 (g) Receiving services from any individual who for compensation
3 serves as a personal aide to a person who self-directs his or her own
4 care in his or her home pursuant to this act.

5 (9) No (~~frail-elder-or~~) vulnerable person who relies upon and is
6 being provided spiritual treatment in lieu of medical treatment in
7 accordance with the tenets and practices of a well-recognized religious
8 denomination shall for that reason alone be considered abandoned,
9 abused, or neglected.

10 **Sec. 7.** RCW 43.20A.710 and 1997 c 392 s 525 are each amended to
11 read as follows:

12 (1) The secretary shall investigate the conviction records, pending
13 charges or disciplinary board final decisions of:

14 (a) Persons being considered for state employment in positions
15 directly responsible for the supervision, care, or treatment of
16 children or individuals with mental illness or developmental
17 disabilities; and

18 (b) Individual providers who are paid by the state for in-home
19 services and hired by individuals with physical disabilities,
20 developmental disabilities, mental illness, or mental impairment,
21 including but not limited to services provided under chapter 74.39A
22 RCW.

23 (2) The investigation may include an examination of state and
24 national criminal identification data. The secretary shall use the
25 information solely for the purpose of determining the character,
26 suitability, and competence of these applicants.

27 (3) The secretary shall provide the results of the state background
28 check on individual providers to the individuals with physical
29 disabilities, developmental disabilities, mental illness, or mental
30 impairment or to their legal guardians, if any, for their determination
31 of the character, suitability, and competence of the applicants. If an
32 individual elects to hire or retain an individual provider after
33 receiving notice from the department that the applicant has a
34 conviction for an offense that would disqualify the applicant from
35 employment with the department, then the secretary (~~may~~) shall deny
36 payment for any subsequent services rendered by the disqualified
37 individual provider.

1 (4) Criminal justice agencies shall provide the secretary such
2 information as they may have and that the secretary may require for
3 such purpose.

4 NEW SECTION. **Sec. 8.** A personal aide, in the performance of a
5 health care task, who is directed and supervised by a person with a
6 functional disability in his or her own home, and who is registered
7 with the department of social and health services as a personal aide,
8 is exempt from any legal requirement to qualify and be credentialed by
9 the department of health as a health care provider under Title 18 RCW
10 to the extent of the responsibilities provided and health care tasks
11 performed under this act.

12 NEW SECTION. **Sec. 9.** Sections 2 through 4 and 8 of this act are
13 each added to chapter 74.39 RCW.

--- END ---