

CERTIFICATION OF ENROLLMENT
SUBSTITUTE SENATE BILL 5732

58th Legislature
2004 Regular Session

Passed by the Senate March 10, 2004
YEAS 48 NAYS 0

President of the Senate

Passed by the House March 4, 2004
YEAS 95 NAYS 0

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Milton H. Doumit, Jr.,
Secretary of the Senate of the
State of Washington, do hereby
certify that the attached is
SUBSTITUTE SENATE BILL 5732 as
passed by the Senate and the House
of Representatives on the dates
hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5732

AS AMENDED BY THE HOUSE

Passed Legislature - 2004 Regular Session

State of Washington 58th Legislature 2004 Regular Session

By Senate Committee on Health & Long-Term Care (originally sponsored by Senators Deccio, Rasmussen, Brandland and Winsley)

READ FIRST TIME 02/06/04.

1 AN ACT Relating to in-home long-term care services liability; and
2 amending RCW 74.39A.095, 74.09.520, and 74.39A.090.

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

4 **Sec. 1.** RCW 74.39A.095 and 2002 c 3 s 11 are each amended to read
5 as follows:

6 (1) In carrying out case management responsibilities established
7 under RCW 74.39A.090 for consumers who are receiving services under the
8 medicaid personal care, community options programs entry system or
9 chore services program through an individual provider, each area agency
10 on aging shall provide oversight of the care being provided to
11 consumers receiving services under this section to the extent of
12 available funding. Case management responsibilities incorporate this
13 oversight, and include, but are not limited to:

14 (a) Verification that any individual provider who has not been
15 referred to a consumer by the authority established under chapter 3,
16 Laws of 2002 has met any training requirements established by the
17 department;

18 (b) Verification of a sample of worker time sheets;

1 (c) Monitoring the consumer's plan of care to (~~ensure~~) verify
2 that it adequately meets the needs of the consumer, through activities
3 such as home visits, telephone contacts, and responses to information
4 received by the area agency on aging indicating that a consumer may be
5 experiencing problems relating to his or her home care;

6 (d) Reassessment and reauthorization of services;

7 (e) Monitoring of individual provider performance. If, in the
8 course of its case management activities, the area agency on aging
9 identifies concerns regarding the care being provided by an individual
10 provider who was referred by the authority, the area agency on aging
11 must notify the authority regarding its concerns; and

12 (f) Conducting criminal background checks or verifying that
13 criminal background checks have been conducted for any individual
14 provider who has not been referred to a consumer by the authority.

15 (2) The area agency on aging case manager shall work with each
16 consumer to develop a plan of care under this section that identifies
17 and ensures coordination of health and long-term care services that
18 meet the consumer's needs. In developing the plan, they shall utilize,
19 and modify as needed, any comprehensive community service plan
20 developed by the department as provided in RCW 74.39A.040. The plan of
21 care shall include, at a minimum:

22 (a) The name and telephone number of the consumer's area agency on
23 aging case manager, and a statement as to how the case manager can be
24 contacted about any concerns related to the consumer's well-being or
25 the adequacy of care provided;

26 (b) The name and telephone numbers of the consumer's primary health
27 care provider, and other health or long-term care providers with whom
28 the consumer has frequent contacts;

29 (c) A clear description of the roles and responsibilities of the
30 area agency on aging case manager and the consumer receiving services
31 under this section;

32 (d) The duties and tasks to be performed by the area agency on
33 aging case manager and the consumer receiving services under this
34 section;

35 (e) The type of in-home services authorized, and the number of
36 hours of services to be provided;

37 (f) The terms of compensation of the individual provider;

1 (g) A statement (~~that~~) by the individual provider that he or she
2 has the ability and willingness to carry out his or her
3 responsibilities relative to the plan of care; and

4 (h)(i) Except as provided in (h)(ii) of this subsection, a clear
5 statement indicating that a consumer receiving services under this
6 section has the right to waive any of the case management services
7 offered by the area agency on aging under this section, and a clear
8 indication of whether the consumer has, in fact, waived any of these
9 services.

10 (ii) The consumer's right to waive case management services does
11 not include the right to waive reassessment or reauthorization of
12 services, or verification that services are being provided in
13 accordance with the plan of care.

14 (3) Each area agency on aging shall retain a record of each waiver
15 of services included in a plan of care under this section.

16 (4) Each consumer has the right to direct and participate in the
17 development of their plan of care to the maximum practicable extent of
18 their abilities and desires, and to be provided with the time and
19 support necessary to facilitate that participation.

20 (5) A copy of the plan of care must be distributed to the
21 consumer's primary care provider, individual provider, and other
22 relevant providers with whom the consumer has frequent contact, as
23 authorized by the consumer.

24 (6) The consumer's plan of care shall be an attachment to the
25 contract between the department, or their designee, and the individual
26 provider.

27 (7) If the department or area agency on aging case manager finds
28 that an individual provider's inadequate performance or inability to
29 deliver quality care is jeopardizing the health, safety, or well-being
30 of a consumer receiving service under this section, the department or
31 the area agency on aging may take action to terminate the contract
32 between the department and the individual provider. If the department
33 or the area agency on aging has a reasonable, good faith belief that
34 the health, safety, or well-being of a consumer is in imminent
35 jeopardy, the department or area agency on aging may summarily suspend
36 the contract pending a fair hearing. The consumer may request a fair
37 hearing to contest the planned action of the case manager, as provided
38 in chapter 34.05 RCW. When the department or area agency on aging

1 terminates or summarily suspends a contract under this subsection, it
2 must provide oral and written notice of the action taken to the
3 authority. The department may by rule adopt guidelines for
4 implementing this subsection.

5 (8) The department or area agency on aging may reject a request by
6 a consumer receiving services under this section to have a family
7 member or other person serve as his or her individual provider if the
8 case manager has a reasonable, good faith belief that the family member
9 or other person will be unable to appropriately meet the care needs of
10 the consumer. The consumer may request a fair hearing to contest the
11 decision of the case manager, as provided in chapter 34.05 RCW. The
12 department may by rule adopt guidelines for implementing this
13 subsection.

14 **Sec. 2.** RCW 74.09.520 and 2003 c 279 s 1 are each amended to read
15 as follows:

16 (1) The term "medical assistance" may include the following care
17 and services: (a) Inpatient hospital services; (b) outpatient hospital
18 services; (c) other laboratory and x-ray services; (d) nursing facility
19 services; (e) physicians' services, which shall include prescribed
20 medication and instruction on birth control devices; (f) medical care,
21 or any other type of remedial care as may be established by the
22 secretary; (g) home health care services; (h) private duty nursing
23 services; (i) dental services; (j) physical and occupational therapy
24 and related services; (k) prescribed drugs, dentures, and prosthetic
25 devices; and eyeglasses prescribed by a physician skilled in diseases
26 of the eye or by an optometrist, whichever the individual may select;
27 (l) personal care services, as provided in this section; (m) hospice
28 services; (n) other diagnostic, screening, preventive, and
29 rehabilitative services; and (o) like services when furnished to a
30 child by a school district in a manner consistent with the requirements
31 of this chapter. For the purposes of this section, the department may
32 not cut off any prescription medications, oxygen supplies, respiratory
33 services, or other life-sustaining medical services or supplies.

34 "Medical assistance," notwithstanding any other provision of law,
35 shall not include routine foot care, or dental services delivered by
36 any health care provider, that are not mandated by Title XIX of the

1 social security act unless there is a specific appropriation for these
2 services.

3 (2) The department shall amend the state plan for medical
4 assistance under Title XIX of the federal social security act to
5 include personal care services, as defined in 42 C.F.R. 440.170(f), in
6 the categorically needy program.

7 (3) The department shall adopt, amend, or rescind such
8 administrative rules as are necessary to ensure that Title XIX personal
9 care services are provided to eligible persons in conformance with
10 federal regulations.

11 (a) These administrative rules shall include financial eligibility
12 indexed according to the requirements of the social security act
13 providing for medicaid eligibility.

14 (b) The rules shall require clients be assessed as having a medical
15 condition requiring assistance with personal care tasks. Plans of care
16 for clients requiring health-related consultation for assessment and
17 service planning may be reviewed by a nurse.

18 (c) The department shall determine by rule which clients have a
19 health-related assessment or service planning need requiring registered
20 nurse consultation or review. This definition may include clients that
21 meet indicators or protocols for review, consultation, or visit.

22 (4) The department shall design and implement a means to assess the
23 level of functional disability of persons eligible for personal care
24 services under this section. The personal care services benefit shall
25 be provided to the extent funding is available according to the
26 assessed level of functional disability. Any reductions in services
27 made necessary for funding reasons should be accomplished in a manner
28 that assures that priority for maintaining services is given to persons
29 with the greatest need as determined by the assessment of functional
30 disability.

31 (5) Effective July 1, 1989, the department shall offer hospice
32 services in accordance with available funds.

33 (6) For Title XIX personal care services administered by aging and
34 (~~adult~~) disability services administration of the department, the
35 department shall contract with area agencies on aging:

36 (a) To provide case management services to individuals receiving
37 Title XIX personal care services in their own home; and

1 (b) To reassess and reauthorize Title XIX personal care services or
2 other home and community services as defined in RCW 74.39A.009 in home
3 or in other settings for individuals consistent with the intent of this
4 section:

5 (i) Who have been initially authorized by the department to receive
6 Title XIX personal care services or other home and community services
7 as defined in RCW 74.39A.009; and

8 (ii) Who, at the time of reassessment and reauthorization, are
9 receiving such services in their own home.

10 (7) In the event that an area agency on aging is unwilling to enter
11 into or satisfactorily fulfill a contract (~~(to provide these services))~~
12 or an individual consumer's need for case management services will be
13 met through an alternative delivery system, the department is
14 authorized to:

15 (a) Obtain the services through competitive bid; and

16 (b) Provide the services directly until a qualified contractor can
17 be found.

18 **Sec. 3.** RCW 74.39A.090 and 1999 c 175 s 2 are each amended to read
19 as follows:

20 (1) The legislature intends that any staff reassigned by the
21 department as a result of shifting of the reauthorization
22 responsibilities by contract outlined in this section shall be
23 dedicated for discharge planning and assisting with discharge planning
24 and information on existing discharge planning cases. Discharge
25 planning, as directed in this section, is intended for residents and
26 patients identified for discharge to long-term care pursuant to RCW
27 70.41.320, 74.39A.040, and 74.42.058. The purpose of discharge
28 planning is to protect residents and patients from the financial
29 incentives inherent in keeping residents or patients in a more
30 expensive higher level of care and shall focus on care options that are
31 in the best interest of the patient or resident.

32 (2) The department shall contract with area agencies on aging:

33 (a) To provide case management services to consumers receiving home
34 and community services in their own home; and

35 (b) To reassess and reauthorize home and community services in home
36 or in other settings for consumers consistent with the intent of this
37 section:

1 (i) Who have been initially authorized by the department to receive
2 home and community services; and

3 (ii) Who, at the time of reassessment and reauthorization, are
4 receiving home and community services in their own home.

5 (3) In the event that an area agency on aging is unwilling to enter
6 into or satisfactorily fulfill a contract (~~(to provide these services)~~)
7 or an individual consumer's need for case management services will be
8 met through an alternative delivery system, the department is
9 authorized to:

10 (a) Obtain the services through competitive bid; and

11 (b) Provide the services directly until a qualified contractor can
12 be found.

13 (4) The department shall include, in its oversight and monitoring
14 of area agency on aging performance, assessment of case management
15 roles undertaken by area agencies on aging in this section. The scope
16 of oversight and monitoring (~~(must be expanded to)~~) includes, but is
17 not limited to, assessing the degree and quality of the case management
18 performed by area agency on aging staff for elderly and disabled
19 persons in the community.

20 (5) Area agencies on aging shall assess the quality of the in-home
21 care services provided to consumers who are receiving services under
22 the medicaid personal care, community options programs entry system or
23 chore services program through an individual provider or home care
24 agency. Quality indicators may include, but are not limited to, home
25 care consumers satisfaction surveys, how quickly home care consumers
26 are linked with home care workers, and whether the plan of care under
27 RCW 74.39A.095 has been honored by the agency or the individual
28 provider.

29 (6) The department shall develop model language for the plan of
30 care established in RCW 74.39A.095. The plan of care shall be in clear
31 language, and written at a reading level that will ensure the ability
32 of consumers to understand the rights and responsibilities expressed in
33 the plan of care.

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