

# HOUSE BILL REPORT

## SHB 2361

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### As Amended by the Senate

**Title:** An act relating to modifying state payments for in-home care by prohibiting payment for services provided by agency employees who are related to or live with the client.

**Brief Description:** Concerning modifying state payments for in-home care by prohibiting payment for services provided by agency employees who are related to the client.

**Sponsors:** House Committee on Ways & Means (originally sponsored by Representative Cody).

### Brief History:

#### Committee Activity:

Ways & Means: 4/16/09, 4/18/09 [DPS].

#### Floor Activity

Passed House: 4/20/09, 90-8.

Senate Amended.

Passed Senate: 4/25/09, 29-20.

### Brief Summary of Substitute Bill

- Prohibits the Department of Social and Health Services (DSHS) from paying an agency for in-home personal care service if the care is provided to a client by the client's family member.
- Allows the DSHS to take enforcement action against a home care agency that charges for hours which the DSHS is not authorized to pay.

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### HOUSE COMMITTEE ON WAYS & MEANS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 22 members: Representatives Linville, Chair; Ericks, Vice Chair; Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Dammeier, Assistant Ranking Minority Member; Chandler, Cody, Conway, Darneille, Haigh, Hinkle, Hunt, Hunter, Kagi, Kenney, Kessler, Pettigrew, Priest, Ross, Schmick, Seaquist and Sullivan.

**Staff:** Carma Matti (786-7140) and Chris Cordes (786-7103)

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Background:**

Various programs in the Department of Social and Health Services' (DSHS) Aging and Adult Services and Developmental Disabilities divisions provide personal care services to elderly or disabled clients who are eligible for publicly funded services. These services may be provided in the client's home by individual providers who contract directly with the DSHS or by agency providers who are employees of a licensed home care agency. This paid provider may be a relative or a household member, although the client's spouse may not be a paid provider under most programs. Personal care services include assistance with various tasks such as toileting, bathing, dressing, ambulating, meal preparation, and household chores.

A plan of care is developed for each client to determine the services allowed. The client may choose whether to obtain services through an individual provider or an agency provider, but the benefits must be the same in amount, duration, and scope under either service option.

Individual providers who contract with the DSHS are compensated at rates established through collective bargaining and funded in the state's operating budget. Agency providers are paid by their employers who are reimbursed by DSHS based on a vendor rate that provides parity with the compensation established for individual providers. By statute the DSHS must, in determining the agency vendor rate, use a formula that accounts for:

- wages and fringe benefits;
- payroll taxes;
- mileage;
- any contributions that the state pays to the Training Partnership (a program to provide training for individual providers); and
- average increases in workers' compensation costs.

In addition, contributions for health care benefits are paid at the same rate as for individual providers.

The Home Care Quality Authority (HCQA) was created in 2002 to have oversight of in-home care services and to improve and stabilize the workforce. The Joint Legislative Audit and Review Committee is required to conduct two performance reviews of the HCQA. The first report, No. 07-2, concluded that the cost of providing services through agency providers was \$5 per hour higher than providing the services through independent providers.

**Summary of Substitute Bill:**

The DSHS is prohibited from paying a licensed home care agency for in-home personal care or respite services if the care is provided to a client by the client's family member. The DSHS may make exceptions to this requirement on a case-by-case basis based on the client's health and safety.

The DSHS must adopt rules to implement this requirement, but the rules may not affect the amount, duration, or scope of benefits to which a client may be entitled under state or federal law. The DSHS may take enforcement action against a home care agency that charges the state for hours for which the DSHS is not authorized to pay. Enforcement action may

include recoupment of payments and termination of the agency's contract for violating a recoupment requirement.

"Family member" includes parent, child, sibling, aunt, uncle, cousin, grandparent, grandchild, grandniece, or grandnephew.

**EFFECT OF SENATE AMENDMENT(S):**

The Senate amendment (1) adds that the prohibition against the DSHS paying for in-home care provided by an agency employee who is the client's family member does not apply if the family member is older than the client; (2) beginning July 1, 2010, requires that the DSHS must not pay a home care agency for in-home care services if the agency does not verify agency employee hours by electronic time keeping; and (3) amends the title to remove the reference to prohibiting payments when the agency employee is related to or lives with the client.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.

**Staff Summary of Public Testimony:**

(In support) The state currently provides care for over 40,000 in-home clients, a majority of whom are cared for by individual providers who are also family members. The clients currently served by individual providers have the same client profile as those that will be affected by this proposal. This proposal moves a small group of people over to a system that is already in place. If a savings must be taken during these unsettled economic times, then this is the right way to do it. There are agencies that will lose between \$3 million and \$7 million, but they support this proposal because it is a sensible way to assure services are available to the most vulnerable while also providing a state savings. Agencies are paid \$5 an hour more to recruit, supervise, schedule and terminate an employee. A caregiver does not need to be recruited or scheduled if that caregiver is related to or living with the client because they are already at the client's location or making arrangements directly with the client or the client's guardian. It is very difficult to supervise someone who is a family member because it requires the agency to get in the middle of a relationship. It is impossible to fire a family member. When an agency tries to apply policy and procedures to a family member who is a caregiver, the caregiver usually leaves the agency. Case managers work with legal guardians to make sure vulnerable clients are safe and that their needs are met. Language and culture is not the issue here. The issue is the state needs to be accountable for what is happening with the economy. Many agencies are offering to be accountable along with the Legislature. An agency has a strong role to play in terms of management of care. Family members caring for family members require less administration which can be handled by state workers. In every situation whether it is an individual provider or an agency provider, there are risk factors. Agencies experience lawsuits and so do individual providers.

(With concerns) The proposal needs to have provisions for the DSHS to make exceptions on a case-by-case basis. This bill would harm choices based on cultural reasons for Indian nations. Case managers take caseloads of about 90 and for those placed in agency care supervision is shared by the agency is a partnership. This partnership helps case managers deal with their workloads.

(Opposed) This will force clients to move out of their homes. Agencies have the responsibility to ensure safety oversight. Clients are often afraid to speak out when they have problems and an agency gives them extra oversight and support to help detect problems early. Case managers cannot offer the clients the safety oversight they need because they are already stretched beyond capacity. The case management system is weak and frail and only provides a once a year assessment. You cannot reach case managers 24 hours a day, 7 days a week like you can agencies. Individual providers do not have the appropriate oversight to make sure the client is protected and that the client's needs are covered with appropriate caregiver scheduling. This will have a devastating impact to businesses and there is no small business impact on this proposal. This will destabilize more than 25 agencies and it does not support the current system of choice. Clients need help with the stress of managing their schedules. This proposal will increase state liability because agencies currently have liability for the care provided to these clients. There will be a negative impact on immigrant and non-English speaking families that currently rely on agency assistance for scheduling and oversight.

**Persons Testifying:** (In support) Stella Ogiale, Chesterfield Health Services; Peter Nazzal, Catholic Community Services; Bill Moss, Department of Social and Health Services; and Lua Pritchard, Korean Women's Association.

(With concerns) Melissa Johnson, Addus Health Care.

(Opposed) Brad Peterson; Cindy O'Neill; Margaret Casey, Aging and Disability Services of Seattle-King County and Area Agencies on Aging; Emily Coomer; Sally Coomer; Deb Duke; Roman Manelyuk, Elite Home Care; Don Lookabill; Sue Closser and Alex Naumchik, Sunrise Services; Martha Schultey; Ron Ralph; Jeff Freimund; and Sally Gustafson Garratt.

**Persons Signed In To Testify But Not Testifying:** None.