

SENATE BILL REPORT

SB 6662

As Reported by Senate Committee On:
Ways & Means, March 3, 2016

Title: An act relating to creating a flexible voluntary program to allow family members to provide personal care services to persons with developmental disabilities or long-term care needs under a consumer-directed medicaid service program.

Brief Description: Creating a flexible voluntary program to allow family members to provide personal care services to persons with developmental disabilities or long-term care needs under a consumer-directed medicaid service program.

Sponsors: Senator Braun.

Brief History:

Committee Activity: Ways & Means: 3/02/16, 3/03/16 [DPS, DNP].

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 6662 be substituted therefor, and the substitute bill do pass.

Signed by Senators Braun, Vice Chair; Dammeier, Vice Chair; Honeyford, Vice Chair, Capital Budget Chair; Hargrove, Ranking Member; Bailey, Becker, Brown, Hewitt, O'Ban, Padden, Parlette, Schoesler and Warnick.

Minority Report: Do not pass.

Signed by Senators Keiser, Assistant Ranking Member on the Capital Budget; Ranker, Ranking Minority Member, Operating; Billig, Conway, Darneille, Hasegawa, Nelson, Pedersen and Rolfes.

Staff: Mark Eliason (786-7454)

Background: Washington State spends approximately \$1.4 billion annually on in-home care services for about 50,000 low-income individuals with developmental disabilities and/or long-term care needs. In-home services are primarily funded through the agency-directed Community First Choice (CFC) state-plan. In-home care services are designed to assist individuals who need help with daily activities to continue to live as independently as possible at home. Services include supports with personal care tasks such as: bathing, bed mobility - turning and repositioning, body care, dressing, eating, locomotion, medication

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management, toilet use, transfer, and personal hygiene. In addition, individuals may also be eligible to receive supports with household tasks like cooking, shopping, and housekeeping.

Individuals who meet both functional and financial eligibility criteria for CFC are given the choice of using a contracted agency provider or certified individual home care worker to provide their care. Agency providers and individual homecare workers who do not already have a professional license or certification are required to complete between 30 to 75 hours of training, typically within 120 days of their start date. Homecare workers who are not classified as a parent, adult child, or limited service provider must also pass an exam to obtain a certification credential through the Health Care Authority.

There are a number of individuals and families who continue to report that the current agency-directed method for in-home care services does not provide enough choice in providers for individuals and families who prefer to receive services from someone they know or with whom they have a relationship. Further, they assert that they would like to have more involvement in the delivery and direction of their services in meeting their assessed needs.

To address concerns like these, the Centers for Medicare and Medicaid services have developed consumer-directed service models that seek to give individuals with long-term care needs or developmental disabilities more options and greater personal autonomy in determining how best to meet their care needs. Medicaid consumer-directed programs provide consumers with a monthly allowance that they are given authority to self-direct on how funds are used to meet their health and welfare needs. Under these programs, consumers assume responsibility for arranging and managing their care and must use the benefit to purchase goods and services available through the new Medicaid program. The design of these programs allows consumers to ask consultants for training on how to meet those responsibilities and may include services like a fiscal agent to hold their award, manage payroll taxes, and disburse funds on their behalf.

States have several options under their state plans and waivers for providing consumers with the option to self-direct Medicaid services and as of June 2015, 49 states offer some sort form of a consumer-directed Medicaid program.

Summary of Bill (Recommended Substitute): The Department is directed to develop and implement a consumer-directed Medicaid program that is a voluntary alternative option for consumers who seek to receive personal care services from a family member. The new Medicaid program must be available to consumers by January 1, 2018. The department shall seek stakeholder input on the design of the new Medicaid program and must submit a proposal for the new waiver program to the Centers for Medicare and Medicaid services by March 1, 2017. By January 1, 2017 and September 1, 2017, the department must submit status reports to the Legislature that include information about the department's activities, program design, necessary statutory changes, barriers to implementation, and estimated implementation date, caseload and costs.

Consumers and their representative, if applicable, must have decision-making authority to recruit, hire, fire, determine wages, train, supervise, and determine other conditions of employment for their family member providing personal care services. Consumers must also

have decision-making authority over how the Medicaid funds in their individual budgets are spent.

The new consumer-directed Medicaid program must include the following characteristics:

- a consumer-centered planning process that is directed by the consumer with assistance as needed or desired by a representative of the consumer's choosing;
- a service plan that specifies the services and supports that are to be furnished to meet the consumers preferences, choices, abilities, and needs of the consumer;
- an individualized budget that is under the control and direction of the consumer, or his representative, or both;
- information regarding how consumer-directed programs work;
- information regarding the consumer's rights and responsibilities;
- the authority to establish their own training criteria and provide training directly to their own family members - the department may assist consumers by offering voluntary training on how to select, manage, train and dismiss employees;
- authority to determine the compensation, hours, and working conditions of their family members as long as the wage paid is at least the state minimum wage;
- financial management services to assist consumers in exercising their budget authority unless they are able to perform some or all of these functions themselves;
- individuals hired to provide services by consumers must pass appropriate state and federal background checks to verify that the provider does not have a criminal history that would disqualify them from working with vulnerable persons;
- family members, providing services in the consumer directed program must be covered by industrial insurance and the party providing fiscal management services must ensure that the consumer or family member providing services is paying required premiums to the department of labor.
- individuals must not be listed on any long-term care abuse and neglect registry, child-abuse registry, or any other registry used by the department to disqualify a person from caring for a vulnerable person; and
- the ability for the consumer to disenroll from the program at anytime to return to agency-directed, personal care service program.

Family members providing personal care or respite services to a consumer under the new consumer-directed Medicaid program are also exempted from training requirements, continuing education training requirements and certification requirements for long-term care workers. The definition of individual provider is also amended not to include family members providing personal care and respite services to consumers under the new consumer-directed Medicaid program.

EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (Recommended Substitute): Proposed substitute adopted requiring that family members, providing services in the consumer directed program, must be covered by industrial insurance and the party providing fiscal management services must ensure that the consumer or family member providing services is paying required premiums to the department of labor.

Appropriation: None.

Fiscal Note: Requested on 2/18/2016.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: There are a lot of families who have difficulties finding a provider. A lot of families do not believe the current required training helps. Particularly in outlying areas of the state, individuals and families have difficulties finding people to provide their care. Not everyone will take advantage of a program like this, but there are families who want this type of a program. The current 75 training requirements make it very difficult to find a provider. Especially for families who have a family member who has developmental disabilities, even when they get a provider who has completed the training, it does not really help them, because they often need to train the workers themselves. I don't need this training barrier in my way. The bill is proposing a voluntary program option that would be a big help to people who need this care. Everyone in opposition is just concerned about their own pocketbooks. Please support this bill. I receive 393 hours of care per month. I am concerned about overtime and if I have to restrict the hours of my caregiver, I will need to find two or three more workers, which is a challenge. We still have some questions and concerns and want to be able to participate in the program's design. We think people with developmental disabilities should have self-directed services. People know what they need and are the best to advocate for themselves.

CON: The program is voluntary for consumers but not for the providers who love and care for them. It is also not voluntary for the workers who depend on these wages and trainings to give safe care. The New Freedom waiver keeps these providers as individual providers, giving them the same protections as everybody else. I am thankful for the training I have received related to my care giving. They have helped me provide safer and better care for my grandson. If it was up to my grandson, his mom, or aunt to decide what trainings I should take, he would never require me to go through training. I also object to the section that requires the consumer to set wages and benefits for their care provider. My daughter is the caregiver for my grandson and asking her to do that would be terribly unfair. I think training has helped me to be a better caregiver and I believe I am able to do a better job keeping him safe. If we did not have protections of L&I, I would not be comfortable being a care provider. This bill eliminates protections like these for caregivers. This bill takes away decades of progress in supporting caregivers. The current training requirements have not been a burden. Thankfully, care giving is a recognized profession in Washington State, and I am able to get medical and vacation benefits as a caregiver. The benefits and training I get from my union are a blessing and not a hindrance. People could use this new program to bargain with themselves, give themselves as high a wage as they want, and exploit their vulnerable family members since they would be able to negotiate and set their own wages. The state is responsible for individuals in these programs and part of that responsibility includes ensuring that the consumer is protected and the care provider is able to give safe, professional care.

OTHER: I like the expansion of training exemptions to family members. A lot of times, the parent is training a sibling and it does not make sense to have the barrier of the current training requirements. My concern is that this bill take pressure off of the Department to simplify the regular agency-directed programs. I am concerned that the current complexity of the existing programs will drive individuals to this program. We like this idea. However,

it is a big system change. Please do more study. The state currently uses agency and individual providers to provide care. For agencies, we hire, fire, manage, and supervise the individuals who provide this care when they are not related to the individual. As an industry, we believe there is a difference in what we provide and what parents provide and support having a separate program for this group. Having said that, we have concerns if the program degrades the wages to the consumers.

Persons Testifying: PRO: Diana Stadden, ARC of Washington, Developmental Disabilities Council and WA State Parent Coalitions; Noah Seidel, Self Advocates in Leadership, People First and SAW; Nathan Loose, Passport for Change.

CON: Richard Ross, SEIU 775; Sharon Kitchel-Perdue, SEIU 775; Lani Todd, SEIU 775.

OTHER: Gerald Reily, Elder Care Alliance; Peter Nazzal, Catholic Community Services; Loren Freeman, Freeman & Associates.

Persons Signed In To Testify But Not Testifying: PRO: Donna Patrick, Developmental Disabilities Council; Brittany Stadden, Self-Advocates of Washington; Ivanova Smith, People First of Washington; David Lord, Disability Rights Washington.

CON: Michael Temple, Washington State Association for Justice; Lucinda Young, Washington Education Association; Alex Hur, SEIU 925; Eric Gonzalez, Washington State Labor Council, AFL-CIO; Majken, Ryherd, SPEEA; Ellicott Dandy, OneAmerica; Neil Hartman, Washington Building & Construction Trades Council; Seamus Petrie, Washington Public Employees Association; Shaunie Jacqueline Wheeler, IBEW Local Union 77, Phillip Bradford.

OTHER: Walt Bowen, WA Senior Lobby.