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**SECOND ENGROSSED SENATE BILL 5867**

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**State of Washington 65th Legislature 2017 Regular Session**

**By** Senator Braun

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; amending RCW 74.39A.326; creating new sections; and providing an expiration date.

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

NEW SECTION. **Sec.**  The legislature finds that the most common form of long-term care provided to persons who are elderly, disabled, or have a developmental disability is provided by a family member in a personal residence. The legislature also finds that care provided by a family member who is chosen by the recipient is often the most appropriate form of care, allowing vulnerable individuals to remain independent while maintaining a sense of dignity and choice. The current system of medicaid services has complexities that may create obstacles for consumers who wish to be cared for by a family member and for family members who enter the system solely to provide care for their loved ones.

Therefore, the legislature intends to direct a study of the current options allowing for the delivery of medicaid personal care services by caregivers who are family members of the state's citizens who are aging, disabled, or who have a developmental disability. The legislature intends to promote more flexibility for clients to access their benefits and to reduce obstacles for clients who wish to hire family members to provide their care.

NEW SECTION. **Sec.**  (1) The joint legislative executive committee on aging and disability is directed to explore legislation that would allow family members to provide personal care services to persons with developmental disabilities, or long-term care needs under a voluntary consumer-directed medicaid service program. As part of this work, the committee must also include a discussion of consumer-directed approaches, including those approaches that allow family members of the consumer to provide care, and develop recommendations on:

(a) Promoting consumer health, safety, and autonomy;

(b) Ensuring adequate caregiver training and support;

(c) Verifying the quality and appropriateness of care;

(d) Reducing barriers for consumers who prefer to receive care from caregivers of their choosing, including family members; and

(e) Mitigating or minimizing potential liability issues that may arise in the context of consumer-directed programs.

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

(3) This section expires July 1, 2018.

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

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

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

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

(3) For purposes of this section:

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

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

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

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