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**HOUSE BILL 2597**

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**State of Washington 66th Legislature 2020 Regular Session**

**By** Representatives Robinson, Harris, Macri, J. Johnson, Tharinger, Santos, and Pollet

AN ACT Relating to increasing patient access rights to timely and appropriate postacute care by addressing the medicaid functional assessment and financial eligibility process for medicaid funded long-term services and supports; amending RCW 74.39A.040; adding a new section to chapter 74.39A RCW; creating new sections; and providing an expiration date.

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

**Sec.**  RCW 74.39A.040 and 1995 1st sp.s. c 18 s 6 are each amended to read as follows:

The department shall work in partnership with hospitals in assisting patients and their families to find and gain timely access to long-term care services of their choice. The department shall not delay hospital discharges but shall assist and support the activities of hospital discharge planners. The department also shall coordinate with home health and hospice agencies whenever appropriate. The role of the department is to assist the hospital and to assist patients and their families in making informed choices by providing information regarding home and community options to individuals who are hospitalized and likely to need long-term care.

(1) To the extent of available funds, the department shall assess individuals who:

(a) Are medicaid clients, medicaid applicants, or eligible for both medicare and medicaid; and

(b) Apply or are likely to apply for admission to a nursing facility.

(2) A hospital may, at its option, enter into an agreement with the department to allow the hospital to support the department's functional assessment of eligibility and level of care determination for individuals who are hospitalized and likely to need long-term care.

(a) If a hospital and the department enter into such an agreement:

(i) The hospital may prepare and submit preassessment information to the department. For purposes of this section, "preassessment information" means information regarding an individual's specific care needs, whether medical, behavioral, or cognitive, and ability to perform activities of daily living; and

(ii) The department must take the submitted preassessment information into consideration, and shall to the extent feasible, use the information in completing the functional assessment of an individual discharging from the hospital.

(b) The department shall make training on the department's assessment tool and process available for hospital personnel. A hospital employee or contractor who is qualified and has received the department's training is eligible to prepare and submit preassessment information to the department.

(c) The individual's medical record must substantiate any preassessment information provided to the department.

(d) The department shall complete its assessment and determine a hospitalized individual's eligibility for medicaid funded long-term services and supports no later than ten business days after receipt of preassessment information from a hospital or, if the hospital has not submitted preassessment information, twenty business days after receiving the request for an assessment. If the department is not able to determine eligibility within the relevant timeline in this section due to patient-specific situations beyond the control of the department, the department shall notify the hospital where the patient is located of the specific reason for the delay, the status of the assessment and determination, and the expected completion date. The department shall track and make publicly available data on delays, including the number of and reasons for such delays.

(e) This subsection (2) does not impact assessments performed in community settings or case management functions performed by department employees.

(3) For individuals who are reasonably expected to become medicaid recipients within one hundred eighty days of admission to a nursing facility, the department shall, to the extent of available funds, offer an assessment and information regarding appropriate in-home and community services.

((~~(3)~~)) (4) When the department finds, based on assessment, that the individual prefers and could live appropriately and cost-effectively at home or in some other community-based setting, the department shall:

(a) Advise the individual that an in-home or other community service is appropriate;

(b) Develop, with the individual or the individual's representative, a comprehensive community service plan;

(c) Inform the individual regarding the availability of services that could meet the applicant's needs as set forth in the community service plan and explain the cost to the applicant of the available in-home and community services relative to nursing facility care; and

(d) Discuss and evaluate the need for ongoing involvement with the individual or the individual's representative.

((~~(4)~~)) (5) When the department finds, based on assessment, that the individual prefers and needs nursing facility care, the department shall:

(a) Advise the individual that nursing facility care is appropriate and inform the individual of the available nursing facility vacancies;

(b) If appropriate, advise the individual that the stay in the nursing facility may be short term; and

(c) Describe the role of the department in providing nursing facility case management.

NEW SECTION. **Sec.**  A new section is added to chapter 74.39A RCW to read as follows:

(1) A patient, client, health care provider, hospital, facility, or department case manager may submit a request justifying the need for additional personal care services and an increased daily rate to the department's exception to rule committee.

(2) The exception to rule committee shall:

(a) Meet no less often than once a week to review requests;

(b) Make publicly available the steps involved in receiving, analyzing, and responding to requests; and

(c) Provide the requesting person or entity with a copy of its final decision, including whether the request was approved, modified, or denied, and whether or not the individual differed from the majority. The final decision must be made as expeditiously as possible but in no case later than seven business days after the date of the committee meeting at which the committee had the information necessary to make a decision.

(3) If the exception to rule committee denies or modifies the request or fails to meet the deadlines established under subsection (2) of this section, the requesting person or entity may request a review by the director of the home and community services division or designee. No later than ten days after receiving the request, the director or designee shall provide the requesting person or entity with a copy of the director's or designee's decision, which must identify the information that was taken into consideration in making the decision.

NEW SECTION. **Sec.**  (1) The Washington state institute for public policy shall conduct a review of the department of social and health services' tool and process for assessing eligibility for home and community-based services under chapter 74.39A RCW. In conducting the review, the institute shall consult with the department and relevant stakeholders, including the Washington state hospital association, facilities as defined in RCW 74.39A.009, and individual providers as defined in RCW 74.39A.009. No later than November 15, 2020, the institute shall submit a report with its findings to the office of financial management, the research and data analysis division of the department of social and health services, and the appropriate committees of the legislature. At a minimum, the report must:

(a) Covering a period beginning January 1, 2010, analyze data from the department's assessment tool and other sources to identify trends in:

(i) The total number of assessments requested each month;

(ii) The average and median length of time to perform each step of the assessment process and to complete assessments, disaggregated by county;

(iii) Patients' conditions and identified care needs;

(iv) The average rates offered under RCW 74.39A.032 using the assessment tool;

(v) The percentage of assessments that have been subject to the exception to rule process, disaggregated by county; and

(vi) The results of the exception to rule process, including what percentage of requests are approved, modified, or denied, as well as the reasons why requests are approved or modified, disaggregated by county;

(b) Identify the number of full-time equivalent employees needed to complete assessments within the time frames identified in RCW 74.39A.040 and the aging and long-term support administration's long-term care manual; and

(c) Provide any recommendations for changes to the process or tools used to determine individuals' level of care determination for home and community-based services under chapter 74.39A RCW related to adequately reflecting the impact of patient behaviors in the delivery of long-term services and supports.

(2) The research and data analysis division of the department of social and health services, in collaboration with the health care authority, the Washington state hospital association, and other stakeholders, shall prepare a report regarding patients who remain in a hospital setting due to barriers in accessing community alternatives.

(a) In preparing the report, the division may use administrative data sources in the integrated client databases maintained by the division. The division will consider information and recommendations produced pursuant to subsection (1) of this section. The Washington state hospital association and hospitals may provide data identifying the target populations for the division to link to its integrated client databases. The division will work with the Washington state hospital association to develop the format hospitals may use in providing the data.

(b) The report must, at a minimum:

(i) Describe the physical and behavioral health, cognitive performance, functional support, and housing needs of these patients;

(ii) Identify how the department's current assessment tool captures patients' personal care needs related to behavioral health and cognitive function;

(iii) Identify barriers for patients accessing postacute settings, including funding, services, and supports, that are not captured or accounted for in the department's current assessment tool and identify alternative sources for addressing and resolving the identified barriers; and

(iv) Identify the potential types and sources of funding that may be used to transition patients to a postacute care setting.

(c) The division shall submit the report to the office of financial management and the appropriate committees of the legislature by November 15, 2021.

(3) This section expires January 1, 2022.

NEW SECTION. **Sec.**  (1) No later than December 31, 2021, the health care authority and the department of social and health services shall submit a waiver request to the federal department of health and human services to authorize presumptive eligibility for long-term services and supports.

(2) The authority and the department shall hold ongoing stakeholder discussions as they develop the waiver request and shall provide opportunities for public review and comment as the request is developed.

(3) Upon submission of the waiver request, the authority and the department shall submit a report to the governor and the appropriate committees of the legislature describing the request and identifying any statutory changes that may be necessary if the request is approved.

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