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**SENATE BILL 5866**

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**State of Washington 67th Legislature 2022 Regular Session**

**By** Senators Robinson, Randall, Conway, Kuderer, Lovick, Nguyen, Nobles, and C. Wilson; by request of Department of Social and Health Services

AN ACT Relating to medicaid long-term services and supports eligibility determinations completed by federally recognized Indian tribes; and amending RCW 74.39A.090, 74.39A.095, 74.39A.515, 74.09.520, and 74.39A.009.

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

**Sec.**  RCW 74.39A.090 and 2018 c 278 s 11 are each amended to read as follows:

(1) Discharge planning, as directed in this section, is intended for residents and patients identified for discharge to long-term services under RCW 70.41.320, 74.39A.040, or 74.42.058. The purpose of discharge planning is to protect residents and patients from the financial incentives inherent in keeping residents or patients in a more expensive higher level of care and shall focus on care options that are in the best interest of the patient or resident.

(2) ((~~The~~)) Except as provided in subsection (3) of this section, the department shall, consistent with the intent of this section, contract with area agencies on aging:

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

(b) To reassess and reauthorize home and community services in home or in other settings for consumers:

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

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

(3) The department may contract with a federally recognized Indian tribe to determine eligibility, including assessments and reassessments, authorize and reauthorize services, and perform case management functions within its regional authority.

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

(a) Obtain the services through competitive bid; and

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

((~~(4)~~)) (5)(a) The department shall ((~~include, in its oversight and monitoring of area agency on aging performance, assessment of case management roles undertaken by area agencies on aging in this section. The scope of oversight and monitoring includes, but is not limited to, assessing~~)) assess the degree and quality of the case management performed by the contracted area agency on aging staff or federally recognized Indian tribe for elderly and persons with disabilities in the community.

(b) The department shall incorporate the expected outcomes and criteria to measure the performance of service coordination organizations into contracts with area agencies on aging as provided in chapter 70.320 RCW.

((~~(5) Area~~)) (6) The contracts must require area agencies on aging ((~~shall~~)) and federally recognized Indian tribes to assess the quality of the in-home care services provided to consumers who are receiving services under programs authorized through the medicaid state plan, medicaid waiver authorities, or similar state-funded in-home care programs through an individual provider or home care agency. Quality indicators may include, but are not limited to, home care consumers satisfaction surveys, how quickly home care consumers are linked with home care workers, and whether the plan of care under RCW 74.39A.095 has been honored by the agency or the individual provider.

((~~(6)~~)) (7) The department shall develop model language for the plan of care established in RCW 74.39A.095. The plan of care shall be in clear language, and written at a reading level that will ensure the ability of consumers to understand the rights and responsibilities expressed in the plan of care.

**Sec.**  RCW 74.39A.095 and 2018 c 278 s 12 are each amended to read as follows:

(1) In carrying out case management responsibilities established under RCW 74.39A.090 for consumers who are receiving services under programs authorized through the medicaid state plan, medicaid waiver authorities, or similar state-funded in-home care programs, to the extent of available funding, the contracts with each area agency on aging or federally recognized Indian tribe shall require the contracted agency to:

(a) Work with each client to develop a plan of care under this section that identifies and ensures coordination of health and long-term care services and supports. In developing the plan, the area agency on aging or federally recognized Indian tribe shall use and modify as needed any comprehensive plan of care developed by the department as provided in RCW 74.39A.040;

(b) Monitor the implementation of the consumer's plan of care to verify that it adequately meets the needs of the consumer through activities such as home visits, telephone contacts, and responses to information received by the area agency on aging or federally recognized Indian tribe indicating that a consumer may be experiencing problems relating to his or her home care;

(c) Reassess and reauthorize services;

(d) Explain to the consumer that consumers have the right to waive case management services offered by the area agency on aging or federally recognized Indian tribe, except consumers may not waive the ((~~area agency on aging's~~)) reassessment or reauthorization of services, or verification that services are being provided in accordance with the plan of care; and

(e) Document the waiver of any case management services by the consumer.

(2) Each consumer has the right to direct and participate in the development of their plan of care to the maximum extent practicable, and to be provided with the time and support necessary to facilitate that participation.

(3) As authorized by the consumer, a copy of the plan of care may be distributed to: (a) The consumer's individual provider contracted with the department; (b) the entity contracted with the department to provide personal care services; and (c) other relevant providers with whom the consumer has frequent contact.

(4) If an individual provider is employed by a consumer directed employer, the department ((~~or~~)), area agency on aging, or federally recognized Indian tribe must notify the consumer directed employer if:

(a) There is reason to believe that an individual provider or prospective individual provider is not delivering or will not be able to deliver the services identified in the consumer's plan of care; or

(b) The individual provider's performance is jeopardizing the health, safety, or well-being of a consumer receiving services under this section.

**Sec.**  RCW 74.39A.515 and 2018 c 278 s 13 are each amended to read as follows:

(1) If a consumer directed employer employs individual providers, then the consumer directed employer shall:

(a) Verify that each individual provider has met any training requirements established under this chapter and rules adopted under this chapter;

(b) Conduct background checks on individual providers as required under this chapter, RCW 43.43.830 through 43.43.842, 43.20A.710, and the rules adopted by the department; or verify that a background check has been conducted for each individual provider and that the background check is still valid in accordance with department rules;

(c) Implement an electronic visit verification system that complies with federal requirements, or in the absence of an electronic visit verification system, monitor a statistically valid sample of individual provider's claims to the receipt of services by the consumer;

(d) Monitor individual provider compliance with employment requirements;

(e) As authorized and determined by the consumer, provide a copy of the consumer's plan of care to the individual provider who has been selected by the consumer;

(f) Verify the individual provider is able and willing to carry out his or her responsibilities under the plan of care;

(g) Take into account information provided by the consumer or the consumer's case manager about the consumer's specific needs;

(h) Discontinue the individual provider's assignment to a consumer when the consumer directed employer has reason to believe, or the department or area agency on aging has reported, that the health, safety, or well-being of a consumer is in imminent jeopardy due to the performance of the individual provider;

(i) Reject a request by a consumer to assign a specific person as his or her individual provider, if the consumer directed employer has reason to believe that the individual will be unable to appropriately meet the care needs of the consumer; and

(j) Establish a dispute resolution process for consumers who wish to dispute decisions made under (h) and (i) of this subsection.

(2) If any individual providers are contracted with the department to provide services under this chapter, the ((~~area agency on aging~~)) case management responsibilities of RCW 74.39A.090 and 74.39A.095 shall include:

(a) Verifying that each individual provider has met all training requirements under this chapter and department rules;

(b) Conducting background checks on individual providers as required under this chapter, RCW 43.43.830 through 43.43.842, 43.20A.710, and department rules; or verifying that background checks have been conducted for each individual provider and that the background check is still valid in accordance with department rules;

(c) Monitoring that the individual provider is providing services as outlined in the consumer's plan of care;

(d) Attaching the consumer's plan of care to the contract with the individual provider;

(e) Verifying with the individual provider that he or she is able and willing to carry out his or her responsibilities under the plan of care;

(f) Terminating the contract between the department and the individual provider if the department ((~~or~~)), area agency on aging, or federally recognized Indian tribe finds that an individual provider's inadequate performance or inability to deliver quality care is jeopardizing the health, safety, or well-being of a consumer receiving service under this section;

(g) Summarily suspending the contract pending a fair hearing, if there is reason to believe the health, safety, or well-being of a consumer is in imminent jeopardy; and

(h) Rejecting a request by a consumer receiving services under this section to have a family member or other person serve as his or her individual provider if the ((~~case manager~~)) department, area agency on aging, or federally recognized Indian tribe has reason to believe that the family member or other person will be unable to appropriately meet the care needs of the consumer.

(3) The consumer may request a fair hearing under chapter 34.05 RCW to contest a planned action of the ((~~case manager~~)) department under subsection (2)(g) and (h) of this section.

(4) The department may adopt rules to implement this section.

**Sec.**  RCW 74.09.520 and 2021 c 126 s 2 are each amended to read as follows:

(1) The term "medical assistance" may include the following care and services subject to rules adopted by the authority or department: (a) Inpatient hospital services; (b) outpatient hospital services; (c) other laboratory and X-ray services; (d) nursing facility services; (e) physicians' services, which shall include prescribed medication and instruction on birth control devices; (f) medical care, or any other type of remedial care as may be established by the secretary or director; (g) home health care services; (h) private duty nursing services; (i) dental services; (j) physical and occupational therapy and related services; (k) prescribed drugs, dentures, and prosthetic devices; and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select; (l) personal care services, as provided in this section; (m) hospice services; (n) other diagnostic, screening, preventive, and rehabilitative services; and (o) like services when furnished to a child by a school district in a manner consistent with the requirements of this chapter. For the purposes of this section, neither the authority nor the department may cut off any prescription medications, oxygen supplies, respiratory services, or other life-sustaining medical services or supplies.

"Medical assistance," notwithstanding any other provision of law, shall not include routine foot care, or dental services delivered by any health care provider, that are not mandated by Title XIX of the social security act unless there is a specific appropriation for these services.

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

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

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

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

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

(4) Effective July 1, 1989, the authority shall offer hospice services in accordance with available funds.

(5) For Title XIX personal care services administered by ((~~aging and disability services administration of~~)) the department, the department shall contract with area agencies on aging or may contract with a federally recognized Indian tribe under RCW 74.39A.090(3):

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

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

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

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

(6) In the event that an area agency on aging or federally recognized Indian tribe is unwilling to enter into or satisfactorily fulfill a contract or an individual consumer's need for case management services will be met through an alternative delivery system, the department is authorized to:

(a) Obtain the services through competitive bid; and

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

(7) Subject to the availability of amounts appropriated for this specific purpose, the authority may offer medicare part D prescription drug copayment coverage to full benefit dual eligible beneficiaries.

(8) Effective January 1, 2016, the authority shall require universal screening and provider payment for autism and developmental delays as recommended by the bright futures guidelines of the American academy of pediatrics, as they existed on August 27, 2015. This requirement is subject to the availability of funds.

(9) Subject to the availability of amounts appropriated for this specific purpose, effective January 1, 2018, the authority shall require provider payment for annual depression screening for youth ages twelve through eighteen as recommended by the bright futures guidelines of the American academy of pediatrics, as they existed on January 1, 2017. Providers may include, but are not limited to, primary care providers, public health nurses, and other providers in a clinical setting. This requirement is subject to the availability of funds appropriated for this specific purpose.

(10) Subject to the availability of amounts appropriated for this specific purpose, effective January 1, 2018, the authority shall require provider payment for maternal depression screening for mothers of children ages birth to six months. This requirement is subject to the availability of funds appropriated for this specific purpose.

(11) Subject to the availability of amounts appropriated for this specific purpose, the authority shall:

(a) Allow otherwise eligible reimbursement for the following related to mental health assessment and diagnosis of children from birth through five years of age:

(i) Up to five sessions for purposes of intake and assessment, if necessary;

(ii) Assessments in home or community settings, including reimbursement for provider travel; and

(b) Require providers to use the current version of the DC:0-5 diagnostic classification system for mental health assessment and diagnosis of children from birth through five years of age.

**Sec.**  RCW 74.39A.009 and 2018 c 278 s 2 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Adult family home" means a home licensed under chapter 70.128 RCW.

(2) "Adult residential care" means services provided by an assisted living facility that is licensed under chapter 18.20 RCW and that has a contract with the department under RCW 74.39A.020 to provide personal care services.

(3) "Assisted living facility" means a facility licensed under chapter 18.20 RCW.

(4) "Assisted living services" means services provided by an assisted living facility that has a contract with the department under RCW 74.39A.010 to provide personal care services, intermittent nursing services, and medication administration services; and the facility provides these services to residents who are living in private apartment-like units.

(5) "Community residential service business" means a business that:

(a) Is certified by the department of social and health services to provide to individuals who have a developmental disability as defined in RCW 71A.10.020(5):

(i) Group home services;

(ii) Group training home services;

(iii) Supported living services; or

(iv) Voluntary placement services provided in a licensed staff residential facility for children;

(b) Has a contract with the developmental disabilities administration to provide the services identified in (a) of this subsection; and

(c) All of the business's long-term care workers are subject to statutory or regulatory training requirements that are required to provide the services identified in (a) of this subsection.

(6) "Consumer" or "client" means a person who is receiving or has applied for services under this chapter, including a person who is receiving services from an individual provider.

(7) "Consumer directed employer" is a private entity that contracts with the department to be the legal employer of individual providers for purposes of performing administrative functions. The consumer directed employer is patterned after the agency with choice model, recognized by the federal centers for medicare and medicaid services for financial management in consumer directed programs. The entity's responsibilities are described in RCW 74.39A.515 and throughout this chapter and include: (a) Coordination with the consumer, who is the individual provider's managing employer; (b) withholding, filing, and paying income and employment taxes, including workers' compensation premiums and unemployment taxes, for individual providers; (c) verifying an individual provider's qualifications; and (d) providing other administrative and employment-related supports. The consumer directed employer is a social service agency and its employees are mandated reporters as defined in RCW 74.34.020.

(8) "Core competencies" means basic training topics, including but not limited to, communication skills, worker self‑care, problem solving, maintaining dignity, consumer directed care, cultural sensitivity, body mechanics, fall prevention, skin and body care, long-term care worker roles and boundaries, supporting activities of daily living, and food preparation and handling.

(9) "Cost-effective care" means care provided in a setting of an individual's choice that is necessary to promote the most appropriate level of physical, mental, and psychosocial well-being consistent with client choice, in an environment that is appropriate to the care and safety needs of the individual, and such care cannot be provided at a lower cost in any other setting. But this in no way precludes an individual from choosing a different residential setting to achieve his or her desired quality of life.

(10) "Department" means the department of social and health services.

(11) "Developmental disability" has the same meaning as defined in RCW 71A.10.020.

(12) "Direct care worker" means a paid caregiver who provides direct, hands‑on personal care services to persons with disabilities or the elderly requiring long‑term care.

(13) "Enhanced adult residential care" means services provided by an assisted living facility that is licensed under chapter 18.20 RCW and that has a contract with the department under RCW 74.39A.010 to provide personal care services, intermittent nursing services, and medication administration services.

(14) "Facility" means an adult family home, an assisted living facility, a nursing home, an enhanced services facility licensed under chapter 70.97 RCW, or a facility certified to provide medicare or medicaid services in nursing facilities or intermediate care facilities for individuals with intellectual disabilities under 42 C.F.R. Part 483.

(15) "Home and community-based services" means services provided in adult family homes, in-home services, and other services administered or provided by contract by the department directly or through contract with area agencies on aging or federally recognized Indian tribes, or similar services provided by facilities and agencies licensed or certified by the department.

(16) "Home care aide" means a long-term care worker who is certified as a home care aide by the department of health under chapter 18.88B RCW.

(17) "Individual provider" is defined according to RCW 74.39A.240.

(18) "Legal employer" means the consumer directed employer, which along with the consumer, coemploys individual providers. The legal employer is responsible for setting wages and benefits for individual providers and must comply with applicable laws including, but not limited to, workers compensation and unemployment insurance laws.

(19) "Long-term care" means care and supports delivered indefinitely, intermittently, or over a sustained time to persons of any age who are functionally disabled due to chronic mental or physical illness, disease, chemical dependency, or a medical condition that is permanent, not curable, or is long-lasting and severely limits their mental or physical capacity for self-care. The use of this definition is not intended to expand the scope of services, care, or assistance provided by any individuals, groups, residential care settings, or professions unless otherwise required by law.

(20)(a) "Long-term care workers" include all persons who provide paid, hands-on personal care services for the elderly or persons with disabilities, including but not limited to individual providers of home care services, direct care workers employed by home care agencies or a consumer directed employer, providers of home care services to persons with developmental disabilities under Title 71A RCW, all direct care workers in state‑licensed assisted living facilities, enhanced services facilities, and adult family homes, respite care providers, direct care workers employed by community residential service businesses, and any other direct care worker providing home or community-based services to the elderly or persons with functional disabilities or developmental disabilities.

(b) "Long-term care workers" do not include: (i) Persons employed by the following facilities or agencies: Nursing homes licensed under chapter 18.51 RCW, hospitals or other acute care settings, residential habilitation centers under chapter 71A.20 RCW, facilities certified under 42 C.F.R., Part 483, hospice agencies subject to chapter 70.127 RCW, adult day care centers, and adult day health care centers; or (ii) persons who are not paid by the state or by a private agency or facility licensed or certified by the state to provide personal care services.

(21) "Managing employer" means a consumer who coemploys one or more individual providers and whose responsibilities include (a) choosing potential individual providers and referring them to the consumer directed employer; (b) overseeing the day-to-day management and scheduling of the individual provider's tasks consistent with the plan of care; and (c) dismissing the individual provider when desired.

(22) "Nursing home" or "nursing facility" means a facility licensed under chapter 18.51 RCW or certified as a medicaid nursing facility under 42 C.F.R. Part 483, or both.

(23) "Person who is functionally disabled" means a person who because of a recognized chronic physical or mental condition or disease, including chemical dependency or developmental disability, is dependent upon others for direct care, support, supervision, or monitoring to perform activities of daily living. "Activities of daily living," in this context, means self-care abilities related to personal care such as bathing, eating, using the toilet, dressing, and transfer. Instrumental activities of daily living such as cooking, shopping, house cleaning, doing laundry, working, and managing personal finances may also be considered when assessing a person's functional ((~~abilities [ability]~~)) ability to perform activities in the home and the community.

(24) "Personal care services" means physical or verbal assistance with activities of daily living and instrumental activities of daily living provided because of a person's functional disability.

(25) "Population specific competencies" means basic training topics unique to the care needs of the population the long-term care worker is serving, including but not limited to, mental health, dementia, developmental disabilities, young adults with physical disabilities, and older adults.

(26) "Qualified instructor" means a registered nurse or other person with specific knowledge, training, and work experience in the provision of direct, hands‑on personal care and other assistance services to the elderly or persons with disabilities requiring long‑term care.

(27) "Secretary" means the secretary of social and health services.

(28) "Training partnership" means a joint partnership or trust that includes the office of the governor and the exclusive bargaining representative of individual providers under RCW 74.39A.270 with the capacity to provide training, peer mentoring, and workforce development, or other services to individual providers.

(29) "Tribally licensed assisted living facility" means an assisted living facility licensed by a federally recognized Indian tribe in which a facility provides services similar to services provided by assisted living facilities licensed under chapter 18.20 RCW.

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