
SENATE BILL 5599

State of Washington

65th Legislature

2017 Regular Session

By Senators Rivers, Baumgartner, Bailey, and Braun

1 AN ACT Relating to requiring unused state funds for the health
2 care benefits of long-term care workers to be returned to the state;
3 amending RCW 74.39A.310; reenacting and amending RCW 74.39A.009; and
4 creating a new section.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that state funds
7 intended to provide health care benefits for long-term care workers
8 serving publicly subsidized clients should be used for this purpose.
9 The legislature further finds that, in order to maximize the number
10 of workers receiving health care benefits and the quality of such
11 benefits, any funds allocated, but not spent, to provide health care
12 benefits for long-term care workers should be returned to the state.

13 **Sec. 2.** RCW 74.39A.009 and 2012 c 164 s 202 and 2012 c 10 s 63
14 are each reenacted and amended to read as follows:

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

17 (1) "Adult family home" means a home licensed under chapter
18 70.128 RCW.

19 (2) "Adult residential care" means services provided by an
20 assisted living facility that is licensed under chapter 18.20 RCW and

1 that has a contract with the department under RCW 74.39A.020 to
2 provide personal care services.

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

5 (4) "Assisted living services" means services provided by an
6 assisted living facility that has a contract with the department
7 under RCW 74.39A.010 to provide personal care services, intermittent
8 nursing services, and medication administration services, and the
9 resident is housed in a private apartment-like unit.

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

12 (a) Is certified by the department of social and health services
13 to provide to individuals who have a developmental disability as
14 defined in RCW 71A.10.020(~~(+4)~~) (5):

15 (i) Group home services;

16 (ii) Group training home services;

17 (iii) Supported living services; or

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

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

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

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

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

1 (8) "Department" means the department of social and health
2 services.

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

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

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

13 (12) "Functionally disabled person" or "person who is
14 functionally disabled" is synonymous with chronic functionally
15 disabled and means a person who because of a recognized chronic
16 physical or mental condition or disease, or developmental disability,
17 including chemical dependency, is impaired to the extent of being
18 dependent upon others for direct care, support, supervision, or
19 monitoring to perform activities of daily living. "Activities of
20 daily living", in this context, means self-care abilities related to
21 personal care such as bathing, eating, using the toilet, dressing,
22 and transfer. Instrumental activities of daily living may also be
23 used to assess a person's functional abilities as they are related to
24 the mental capacity to perform activities in the home and the
25 community such as cooking, shopping, house cleaning, doing laundry,
26 working, and managing personal finances.

27 (13) "Home and community-based services" means adult family
28 homes, in-home services, and other services administered or provided
29 by contract by the department directly or through contract with area
30 agencies on aging or similar services provided by facilities and
31 agencies licensed by the department.

32 (14) "Home care aide" means a long-term care worker who has
33 obtained certification as a home care aide by the department of
34 health.

35 (15) "Individual provider" is defined according to RCW
36 74.39A.240.

37 (16) "Long-term care" is synonymous with chronic care and means
38 care and supports delivered indefinitely, intermittently, or over a
39 sustained time to persons of any age disabled by chronic mental or
40 physical illness, disease, chemical dependency, or a medical

1 condition that is permanent, not reversible or curable, or is long-
2 lasting and severely limits their mental or physical capacity for
3 self-care. The use of this definition is not intended to expand the
4 scope of services, care, or assistance by any individuals, groups,
5 residential care settings, or professions unless otherwise expressed
6 by law.

7 (17) "Long-term care worker health care benefits funds" means any
8 funds provided by the state for the purpose of providing health care
9 benefits to agency home care workers or individual providers in
10 accordance with RCW 74.39A.310(2).

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

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

31 ~~((18))~~ (19) "Nursing home" means a facility licensed under
32 chapter 18.51 RCW.

33 ~~((19))~~ (20) "Personal care services" means physical or verbal
34 assistance with activities of daily living and instrumental
35 activities of daily living provided because of a person's functional
36 disability.

37 ~~((20))~~ (21) "Population specific competencies" means basic
38 training topics unique to the care needs of the population the long-
39 term care worker is serving, including but not limited to, mental

1 health, dementia, developmental disabilities, young adults with
2 physical disabilities, and older adults.

3 ~~((+21))~~ (22) "Qualified instructor" means a registered nurse or
4 other person with specific knowledge, training, and work experience
5 in the provision of direct, hands-on personal care and other
6 assistance services to the elderly or persons with disabilities
7 requiring long-term care.

8 ~~((+22))~~ (23) "Recipient of long-term care worker health care
9 benefits funds" means any person or entity that:

10 (a) Receives long-term care worker health care benefits funds,
11 directly or indirectly;

12 (b) Determines workers' eligibility criteria for health care
13 benefits; and

14 (c) Determines the amount of health care benefits to purchase for
15 eligible workers.

16 (24) "Secretary" means the secretary of social and health
17 services.

18 ~~((+23))~~ (25) "Secretary of health" means the secretary of health
19 or the secretary's designee.

20 ~~((+24))~~ (26) "Training partnership" means a joint partnership or
21 trust that includes the office of the governor and the exclusive
22 bargaining representative of individual providers under RCW
23 74.39A.270 with the capacity to provide training, peer mentoring, and
24 workforce development, or other services to individual providers.

25 ~~((+25))~~ (27) "Tribally licensed assisted living facility" means
26 an assisted living facility licensed by a federally recognized Indian
27 tribe in which a facility provides services similar to assisted
28 living facilities licensed under chapter 18.20 RCW.

29 **Sec. 3.** RCW 74.39A.310 and 2007 c 361 s 8 are each amended to
30 read as follows:

31 (1) The department shall create a formula that converts the cost
32 of the increase in wages and benefits negotiated and funded in the
33 contract for individual providers of home care services pursuant to
34 RCW 74.39A.270 and 74.39A.300, into a per-hour amount, excluding
35 those benefits defined in subsection (2) of this section. That
36 per-hour amount shall be added to the statewide home care agency
37 vendor rate and shall be used exclusively for improving the wages and
38 benefits of home care agency workers who provide direct care. The
39 formula shall account for:

1 (a) All types of wages, benefits, and compensation negotiated and
2 funded each biennium, including but not limited to:

3 (i) Regular wages;

4 (ii) Benefit pay, such as vacation, sick, and holiday pay;

5 (iii) Taxes on wages/benefit pay;

6 (iv) Mileage; and

7 (v) Contributions to a training partnership; and

8 (b) The increase in the average cost of worker's compensation for
9 home care agencies and application of the increases identified in (a)
10 of this subsection to all hours required to be paid, including travel
11 time, of direct service workers under the wage and hour laws and
12 associated employer taxes.

13 (2) The contribution rate for health care benefits, including but
14 not limited to medical, dental, and vision benefits, for eligible
15 agency home care workers shall be paid by the department to home care
16 agencies at the same rate as negotiated and funded in the collective
17 bargaining agreement for individual providers of home care services.

18 (3) Any recipient of long-term care worker health care benefits
19 funds must:

20 (a) Offer health care benefits to all eligible long-term care
21 workers without discrimination;

22 (b) Notify new long-term care workers of the availability of
23 health care benefits and eligibility criteria;

24 (c) Offer health care benefits to long-term care workers when
25 eligibility criteria are met;

26 (d) Maintain documentation that each eligible long-term care
27 worker is offered health care benefits. If an eligible long-term care
28 worker declines health care benefits, the recipient must include the
29 worker's signature declining the benefits in its documentation;

30 (e) Keep monthly records of all such revenue received from the
31 state, all workers eligible for health care benefits, and the cost of
32 health care benefits purchased per worker by month of eligibility.
33 Group payments must have documentation to separate noneligible
34 employee costs from eligible worker costs for each payment month. The
35 recipient must keep records regarding its health care benefits
36 policies and eligibility criteria;

37 (f) Conduct, at least annually, an independent financial audit of
38 their operations, receipts, and expenditures to determine and report:

39 (i) Whether the financial statements of the recipient present fairly
40 its financial position and the results of its financial operation in

1 accordance with generally accepted accounting principles, and whether
2 the recipient has complied with laws and regulations that may have a
3 material effect upon its financial statements; (ii) whether the
4 recipient has internal control systems to provide reasonable
5 assurance that it is managing federal and state funded programs in
6 compliance with applicable laws and regulations; and (iii) whether
7 the full amount received from the state for long-term care worker
8 health care benefits was paid out for such benefits. The cost of the
9 annual independent audit may be considered part of the payments for
10 long-term care worker health care benefits; and

11 (g) Return any unspent long-term care worker health care benefits
12 funds to the state within thirty days of completion of the
13 recipient's annual independent audit, or more frequently if desired
14 by the recipient. All payments to the state must be accompanied by a
15 reimbursement calculation form, to be developed by the department,
16 including at least: (i) The name and contact information of the
17 recipient; (ii) the period reviewed; (iii) the total hours billed for
18 the review period; (iv) the total amount of long-term care worker
19 health care benefits funds received during the review period; (v)
20 total expenditures for long-term care worker health care benefits
21 made during the review period; and (vi) the amount of long-term care
22 worker health care benefits funds not expended for such purpose
23 during the review period.

24 (4) The department may periodically audit recipients of long-term
25 care worker health care benefits funds to ensure compliance with
26 subsection (3) of this section.

27 (5) The failure of a recipient of long-term care worker health
28 care benefits funds to return any unspent funds to the state as
29 specified in subsection (3) of this section must be treated by the
30 department as a vendor overpayment, and the department must attempt
31 to recover the funds in accordance with RCW 43.20B.675.

32 (6) If a recipient of long-term care worker health benefits funds
33 fails to comply with subsection (3) of this section and the
34 department is unable to recover unspent long-term care worker health
35 benefits funds from the recipient in accordance with subsection (5)
36 of this section, the state must terminate or not renew any
37 contractual requirement to provide the recipient with long-term care
38 worker health benefits funds.

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