

2 **2SSB 5652** - S AMD 176

3 By Senators Costa and Thibaudeau

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5 Strike everything after the enacting clause and insert the
6 following:

7 "Sec. 1. RCW 74.39A.005 and 2000 c 121 s 9 are each amended to
8 read as follows:

9 The legislature finds that the aging of the population and advanced
10 medical technology have resulted in a growing number of persons who
11 require assistance. The primary resource for long-term care continues
12 to be family and friends. However, these traditional caregivers are
13 increasingly employed outside the home. There is a growing demand for
14 improvement and expansion of home and community-based long-term care
15 services to support and complement the services provided by these
16 informal caregivers.

17 The legislature further finds that the public interest would best
18 be served by (~~a broad~~) an array of long-term care services that
19 support persons who need such services at home or in the community
20 whenever practicable and that promote individual autonomy, dignity, and
21 choice. An integrated long-term care system provided through a
22 continuum of care is the most effective means of providing quality
23 long-term care services to the residents of Washington state. The
24 services provided should be based upon consumer choice and care needs,
25 within available resources, with consumers moving through the continuum
26 as their needs change. Each service included in the long-term care
27 services continuum, including informal caregiver support, in-home
28 services provided through individual providers or home care agencies,
29 residential care, and nursing home care, plays an important role in the
30 continuum of care.

31 The legislature finds that as other long-term care options become
32 more available, the relative need for nursing homes (~~beds~~) or
33 institutional settings is likely to decline. The legislature
34 recognizes, however, that nursing home care will continue to be a
35 critical part of the state's long-term care options, and that such

1 services should promote individual dignity, autonomy, and a homelike
2 environment.

3 The legislature finds that many recipients of in-home services are
4 vulnerable and their health and well-being are dependent on their
5 caregivers. The quality, skills, and knowledge of their caregivers are
6 often the key to good care. The legislature finds that the need for
7 well-trained caregivers is growing as the state's population ages and
8 clients' needs increase. The legislature intends that current training
9 standards be enhanced and that an entity be established that has the
10 authority to recruit, stabilize, and improve the individual provider
11 work force.

12 NEW SECTION. Sec. 2. AUTHORIZATION OF INDIVIDUAL PROVIDER QUALITY
13 AUTHORITY. (1) The governor shall establish an individual provider
14 quality authority to recruit, stabilize, and improve the individual
15 provider work force as provided in this act. The authority shall be
16 established as an instrumentality of the state exercising essential
17 governmental functions, however it may not bind or obligate the state
18 to fund the provisions of any collective bargaining agreement pursuant
19 to this act. The authority shall be established within six months of
20 the enactment of this act.

21 (2) The individual provider quality authority shall consist of nine
22 members appointed by the governor. The governing board of the
23 authority shall be as follows: Five members of the governing board
24 shall be current or former consumers of home care services for the
25 elderly or people with disabilities, at least one of whom shall be a
26 person with a developmental disability; one member of the governing
27 board shall be a representative of the developmental disabilities
28 planning council; one member shall be a representative of the
29 governor's committee on disability issues and employment; one member
30 shall be a representative of the state council on aging; and one member
31 shall be a representative of the Washington state association of area
32 agencies on aging. The term of office of each member will be three
33 years. If there is a vacancy for any cause, the governor shall make an
34 appointment to become immediately effective for the unexpired term. A
35 member is eligible for reappointment and may serve no more than two
36 consecutive terms. In making appointments to the authority, the
37 governor shall take into consideration any nominations or
38 recommendations made by the representative groups or agencies.

1 (3) To assist in carrying out its duties under section 3 of this
2 act, the governing board may establish technical advisory committees.

3 (4) As used in this chapter and RCW 70.127.040, "individual
4 provider" means a person who has contracted with the department to
5 provide personal care services to functionally disabled persons under
6 the medicaid personal care, community options program entry system, or
7 chore services program; or to provide respite, attendant care,
8 individual alternatives living, or companion home services for people
9 with developmental disabilities under chapter 71A.12 RCW, or to provide
10 services as defined in RCW 74.13.270.

11 NEW SECTION. **Sec. 3.** DUTIES. By August 1, 2002, the individual
12 provider quality authority shall develop and present to the governor an
13 implementation plan to carry out the following duties:

14 (1) Systematically recruit new individual providers into the work
15 force through an outreach program that focuses on the needs of low-
16 income recipients;

17 (2) Establish a referral service that will provide timely access to
18 qualified individual providers in every part of the state;

19 (3) Develop a method for securing relevant background information
20 about individuals on the referral list, including assessing the value
21 of a new abuse registry and establishing an interface with the
22 department's current background check programs;

23 (4) Expand current respite care services to meet emergency and
24 routine needs of caregivers through the use of trained providers who
25 may be paid or unpaid;

26 (5) Improve access to training for both caregivers and clients
27 incorporating existing qualified training programs in any facility,
28 agency, school, or private business;

29 (6) Cooperate with any agency or entity currently providing long-
30 term care services through contracting or by any other appropriate
31 means;

32 (7) Augment current case management of individual providers in both
33 aging and developmental disabilities programs; and

34 (8) Maintain autonomy in representing the interests of clients in
35 directing their care.

36 NEW SECTION. **Sec. 4.** EMPLOYMENT RELATIONSHIP AND CONSUMER RIGHTS.

37 (1) The office of financial management shall be deemed to be the

1 employer of individual providers for the purpose of the application of
2 chapter 41.56 RCW. The office of financial management shall be deemed
3 to be a public employer as that term is defined in RCW 41.56.030(1) and
4 the individual providers shall be deemed to be public employees as that
5 term is defined in RCW 41.56.030(2). The individual provider authority
6 authorized by this act will act as an adviser to the office of
7 financial management for collective bargaining purposes under chapter
8 41.56 RCW. The provisions of chapter 41.56 RCW shall govern the
9 relations between the office of financial management and the individual
10 providers except: (a) The only unit appropriate for the purpose of
11 collective bargaining under RCW 41.56.060 shall be a statewide unit of
12 all individual providers; (b) the showing of interest needed to request
13 an election under RCW 41.56.060 shall be ten percent of the unit and
14 any intervener seeking to appear on the ballot shall make the same
15 showing of interest; (c) the mediation and interest arbitration
16 provisions of RCW 41.56.430 through 41.56.470 and 41.56.480 shall apply
17 to the extent they do not conflict with this act; (d) individual
18 providers shall not have a right to strike; and (e) as otherwise
19 expressly provided in this act.

20 (2) The individual providers shall not be considered employees of
21 the state of Washington for any purpose.

22 (3) Functionally disabled persons retain the right to select,
23 supervise, and terminate the work of any individual provider providing
24 services to them. Functionally disabled persons may elect to receive
25 services from individual providers who are not referred to them by the
26 individual provider quality authority. Those providers shall be
27 referred to the authority for the purposes of wages, benefits, and
28 other terms and conditions of employment.

29 (4) In implementing and administering this act, no individual
30 provider quality authority, any of its subcontractors, or a combination
31 thereof, shall reduce or increase the authorized hours of service for
32 any functionally disabled person below the amount determined to be
33 necessary under any assessment prepared by the department or an area
34 agency on aging.

35 (5) The individual provider quality authority authorized under this
36 act may enter into contracts and adopt rules under chapter 34.05 RCW as
37 are necessary or proper to carry out this chapter.

38 (6) To the extent permitted by federal law, federal matching funds
39 under Title XIX of the federal social security act may be used to

1 establish and operate the individual provider quality authority
2 authorized by this act.

3 (7)(a) The individual provider quality authority authorized under
4 this act shall be deemed not to be the employer of individual providers
5 referred to functionally disabled persons under this act for purposes
6 of vicarious liability due to the negligence or intentional torts of
7 the individual provider. Neither the individual provider quality
8 authority, nor its subcontractors, nor the state, nor the area agencies
9 on aging, nor their case management subcontractors, nor their
10 employees, shall be held vicariously liable for the acts or omissions
11 of any individual provider, whether or not the authority included the
12 individual provider on its referral list or otherwise referred him or
13 her to a functionally disabled person receiving services in his or her
14 home under the medicaid personal care, community options program entry
15 system, chore services program, programs under Title 71A RCW through
16 which persons with developmental disabilities receive services from
17 individual providers, or programs under RCW 74.13.270.

18 (b) The state is immune from any liability resulting from
19 implementation of this act. Any obligation of the individual provider
20 quality authority under this act, whether statutory, contractual, or
21 otherwise, is the obligation solely of the individual provider quality
22 authority, and is not the obligation of the state.

23 (8) Nothing in this section shall be construed to affect the
24 state's responsibility with respect to the state payroll system or
25 unemployment insurance for individual providers.

26 NEW SECTION. **Sec. 5.** LEGISLATIVE AUTHORITY OVER COMPENSATION
27 PROVISIONS. Any increase in compensation negotiated or imposed through
28 arbitration for individual providers in the bargaining unit shall be
29 subject to the following:

30 (1) Compensation increases shall not be implemented unless funds
31 are appropriated for that purpose by the legislature.

32 (2) The exclusive bargaining representative shall meet before a
33 legislative session with the governor or governor's designee and the
34 representative of the individual provider quality authority concerning
35 the total dollar amount for compensation increases recommended by the
36 authority for inclusion in the appropriations proposed by the governor
37 under RCW 43.88.060;

1 (3) Any provisions of the collective bargaining agreements
2 pertaining to compensation increases shall be subject to modification
3 by the legislature. If any provision of a compensation increase is
4 changed by subsequent modification of the appropriations act by the
5 legislature, both parties shall immediately enter into collective
6 bargaining for the sole purpose of arriving at a mutually agreed upon
7 replacement for the modified provision.

8 **Sec. 6.** RCW 74.39A.030 and 1995 1st sp.s. c 18 s 2 are each
9 amended to read as follows:

10 (1) To the extent of available funding, the department shall expand
11 cost-effective options for home and community services for consumers
12 for whom the state participates in the cost of their care.

13 (2) In expanding home and community services, the department shall:

14 (a) Take full advantage of federal funding available under Title XVIII
15 and Title XIX of the federal social security act, including home
16 health, adult day care, waiver options, and state plan services; and

17 (b) be authorized to use funds available under its community options
18 program entry system waiver granted under section 1915(c) of the
19 federal social security act to expand the availability of in-home,
20 adult residential care, adult family homes, enhanced adult residential
21 care, and assisted living services. By June 30, 1997, the department
22 shall undertake to reduce the nursing home medicaid census by at least
23 one thousand six hundred by assisting individuals who would otherwise
24 require nursing facility services to obtain services of their choice,
25 including assisted living services, enhanced adult residential care,
26 and other home and community services. If a resident, or his or her
27 legal representative, objects to a discharge decision initiated by the
28 department, the resident shall not be discharged if the resident has
29 been assessed and determined to require nursing facility services. In
30 contracting with nursing homes and boarding homes for enhanced adult
31 residential care placements, the department shall not require, by
32 contract or through other means, structural modifications to existing
33 building construction.

34 (3)(a) Except to the extent provided otherwise in section 5 of this
35 act, the department shall by rule establish payment rates for home and
36 community services that support the provision of cost-effective care.

37 (b) The department may authorize an enhanced adult residential care
38 rate for nursing homes that temporarily or permanently convert their

1 bed use for the purpose of providing enhanced adult residential care
2 under chapter 70.38 RCW, when the department determines that payment of
3 an enhanced rate is cost-effective and necessary to foster expansion of
4 contracted enhanced adult residential care services. As an incentive
5 for nursing homes to permanently convert a portion of its nursing home
6 bed capacity for the purpose of providing enhanced adult residential
7 care, the department may authorize a supplemental add-on to the
8 enhanced adult residential care rate.

9 (c) The department may authorize a supplemental assisted living
10 services rate for up to four years for facilities that convert from
11 nursing home use and do not retain rights to the converted nursing home
12 beds under chapter 70.38 RCW, if the department determines that payment
13 of a supplemental rate is cost-effective and necessary to foster
14 expansion of contracted assisted living services.

15 NEW SECTION. **Sec. 7.** Sections 2 through 5 of this act are each
16 added to chapter 74.39A RCW.

17 NEW SECTION. **Sec. 8.** Captions used in this act are not any part
18 of the law."

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22 On page 1, beginning on line 2 of the title, after "providers;"
23 strike the remainder of the title and insert "amending RCW 74.39A.005
24 and 74.39A.030; adding new sections to chapter 74.39A RCW; and creating
25 a new section."

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