

IN THE SENATE

SENATE BILL NO. 1310

BY HEALTH AND WELFARE COMMITTEE

AN ACT

RELATING TO PERSONAL ASSISTANCE SERVICES; AMENDING SECTION 39-5601, IDAHO CODE, TO REVISE LEGISLATIVE INTENT; AMENDING SECTION 39-5602, IDAHO CODE, TO REVISE DEFINITIONS; AMENDING SECTION 39-5603, IDAHO CODE, TO REVISE TERMINOLOGY; AND AMENDING SECTION 39-5606, IDAHO CODE, TO PROVIDE FOR THE ESTABLISHMENT OF ANNUAL UNIFORM REIMBURSEMENT RATES FOR CERTAIN AGENCIES, TO PROVIDE FOR A CERTAIN SUPPLEMENTAL COMPONENT FOR CERTAIN AGENCIES AND TO PROVIDE FOR THE ESTABLISHMENT OF ANNUAL UNIFORM REIMBURSEMENT RATES FOR CERTAIN PROVIDERS ACCORDING TO A METHODOLOGY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 39-5601, Idaho Code, be, and the same is hereby amended to read as follows:

39-5601. LEGISLATIVE INTENT. The purpose and intent of this chapter is to authorize personal assistance services for medicaid eligible participants in the participant's home and community. It is further the purpose of this chapter to help maintain these eligible participants in their own homes in order to provide for the greatest degree of independence and self-reliance possible.

Personal assistance services are an integral component of the long-term care service delivery system and they are to be designed to provide a range of services for persons who are elderly, ~~and~~ for persons with disabilities and for children who meet medical necessity criteria for personal care services (PCS). These services are to help individuals compensate for functional limitations and are to be delivered over a sustained period of time to persons who lost or never acquired some degree of functional capacity. Services will be viewed as enhancing the quality of life, individual choice, consumer control, independence and community integration.

Personal assistance services related to functional need shall be provided in order to maintain the independence, privacy, and dignity of the individual in the least restrictive, most cost-effective setting.

The participant and, at the option of the participant, the family of the participant, if available, shall be involved in the development of the individual service plan based on the participant's needs identified through an assessment conducted by the department.

SECTION 2. That Section 39-5602, Idaho Code, be, and the same is hereby amended to read as follows:

39-5602. DEFINITIONS. As used in this chapter, the following terms shall have the following meanings:

1 (1) ~~"Case management" means a service which coordinates multiple~~
 2 ~~services for individual participants through a process of assessment,~~
 3 ~~planning, arranging for and monitoring services.~~

4 ~~(2)~~ "Department" means the department of health and welfare of the
 5 state of Idaho.

6 ~~(3)~~ "Director" means the director of the department of health and
 7 welfare.

8 ~~(4)~~ "Eligible participant" or "participant" means an individual
 9 determined eligible by the department for Idaho medicaid services, as
 10 authorized by title XIX, of the social security act, as amended.

11 ~~(5)~~ "Fiscal intermediary agency" means an entity that provides
 12 services that allow the participant receiving personal assistance services,
 13 or his designee or legal representative, to choose the level of control he
 14 will assume in recruiting, selecting, managing, training, and dismissing
 15 his personal assistant and over the manner in which services are delivered.

16 ~~(6)~~ "Individual service plan" means a document which outlines all
 17 services including, but not limited to, personal assistance services and
 18 IADLs, required to maintain the individual in his or her home and community.

19 ~~(7)~~ "Instrumental activities of daily living (IADL)" means those
 20 activities performed in supporting the activities of daily living for an
 21 adult, including, but not limited to: managing money, preparing meals,
 22 shopping, light housekeeping, using the telephone, or getting around in the
 23 community.

24 ~~(7)~~ "PCS family alternate care provider" means an individual licensed
 25 by the department to provide personal care services to one (1) or two (2)
 26 children who are unable to reside in their own home and require assistance
 27 with medically oriented tasks related to the child's physical or functional
 28 needs.

29 (8) "Personal assistance agency" means an entity that recruits, hires,
 30 fires, trains, supervises, schedules, oversees quality of work, takes
 31 responsibility for services provided, provides payroll and benefits for
 32 personal assistants working for them, is the employer of record and in fact.

33 (9) "Personal assistance services" includes both attendant care
 34 services and personal care services and means services that involve
 35 personal and medically oriented tasks dealing with the functional needs of
 36 the participant and accommodating the participant's needs for long-term
 37 maintenance, supportive care or IADLs. These services may include, but
 38 are not limited to, personal assistance and medical tasks that can be done
 39 by unlicensed persons or delegated to unlicensed persons by a health care
 40 professional or participant. Services shall be based on the participant's
 41 abilities and limitations, ~~regardless of age,~~ medical diagnosis or other
 42 category of disability.

43 (10) "Personal assistant" means an individual who directly provides
 44 personal assistance services.

45 ~~(11)~~ "Personal care services (PCS)" means a range of medically
 46 oriented care services related to a participant's physical or functional
 47 requirements. These services are provided in the participant's home or
 48 personal residence but do not include housekeeping or skilled nursing care.

49 ~~(12)~~ "Provider" means a personal assistance agency, ~~or~~ a fiscal
 50 intermediary agency or a PCS family alternate care provider.

1 (123) "Representative" means an employee of the department of health
2 and welfare.

3 (14) "Service coordination" means a case management activity that
4 assists individuals eligible for medicaid in gaining and coordinating
5 access to necessary care and services appropriate to the needs of the
6 individual. Service coordination is a brokerage model of case management.

7 (135) "Voucher service option" means a method of service provision
8 whereby the participant receives vouchers to pay for personal assistance
9 services.

10 SECTION 3. That Section 39-5603, Idaho Code, be, and the same is hereby
11 amended to read as follows:

12 39-5603. STANDARDS FOR PROVISION OF PERSONAL ASSISTANCE SERVICES. The
13 director shall have the power and it shall be his duty to promulgate and
14 adopt appropriate rules necessary to implement and enforce standards for
15 provision of personal assistance services.

16 The following standards for provision of personal assistance services
17 and other provisions contained throughout this chapter and rules shall apply
18 to participants and providers receiving or providing personal assistance
19 services either as a medicaid option service or a waived service, unless
20 prohibited by federal law or contents of the federal waiver agreement.

21 (1) Personal care services shall be included in the medicaid services
22 described in section 56-255(3) and (4), Idaho Code.

23 (2) Attendant care shall be included as a service under medicaid home
24 and community-based waiver(s).

25 (3) All attendant care services must be authorized by the department or
26 its designee.

27 (4) The department will establish by rule maximum hours per month of
28 personal care services available to the individual participant under the
29 state medicaid plan.

30 (5) The department shall enter into agreements with providers for the
31 provision of personal assistance services. A single provider may operate
32 as both a personal assistance agency and a fiscal intermediary agency.
33 However, the agency must clearly document whether it is operating as a
34 personal assistance agency or as a fiscal intermediary for each participant.
35 The department may deny provider status or revoke that status when a provider
36 is found to endanger the health, person or property of the participant,
37 or is in violation of rules promulgated by the department or the provider
38 agreement.

39 (6) A personal assistance agency shall have the responsibility for the
40 following:

41 (a) Recruitment, hiring, firing, training, supervision, scheduling,
42 payroll, and the assurance of quality of service, of its personal
43 assistants;

44 (b) Complying with state and federal labor and tax laws, rules and
45 regulations;

46 (c) Maintaining liability insurance coverage;

47 (d) Provision of an appropriately qualified nurse when required;

1 (e) Assignment of a qualified personal assistant to each authorized
2 participant after consultation with and prior approval of that
3 participant;

4 (f) Assuring all personal assistants providing services meet the
5 standards and qualifications of this chapter;

6 (g) Billing medicaid for services approved and authorized;

7 (h) Collecting any participant contribution due;

8 (i) Referring participants to the department for ~~case management~~
9 service coordination services based on established criteria;

10 (j) Providing for care by a qualified replacement when the regular
11 personal assistant is unable to provide the services, and providing for
12 unanticipated services approved on the individual service plan when
13 requested by the participant; and

14 (k) Conducting, at least annually, participant satisfaction/quality
15 control reviews available to the department and general public.

16 (7) A fiscal intermediary agency shall have the responsibility for the
17 following:

18 (a) To assure compliance with legal requirements related to the
19 employment of participant/family directed personal assistants;

20 (b) To offer services to enable participants or families to perform
21 required employer tasks themselves;

22 (c) To bill the medicaid program for services approved and authorized
23 by the department;

24 (d) To collect any participant contribution due;

25 (e) To pay personal assistants for services;

26 (f) To perform all necessary withholding as required by state and
27 federal labor and tax laws, rules and regulations;

28 (g) To assure that all personal assistants providing services meet the
29 standards and qualifications of this chapter;

30 (h) To refer participants to ~~case management~~ service coordination
31 services based on established criteria;

32 (i) To maintain liability insurance coverage;

33 (j) To conduct, at least annually, participant satisfaction and
34 quality control reviews which shall be available to the department and
35 to the general public; and

36 (k) To maintain documentation that the participant or his legal
37 representative agrees in writing that he takes responsibility for and
38 accepts potential risks, and any resulting consequences, for his choice
39 to manage his own personal assistance services.

40 (8) Personal assistants are not employees of the state.

41 (9) ~~Case management~~ Service coordination shall be made available to
42 personal assistance participants where and when appropriate. In order to
43 avoid a conflict of interest, ~~case management~~ service coordination shall not
44 be provided by the same agency that provides personal assistance services to
45 the participant.

46 (10) The department's regional medicaid staff shall review and approve
47 the individual service plan, authorize personal assistance services, the
48 hours of service, and make appropriate referrals for ~~case management~~ service
49 coordination for eligible individuals.

1 (11) The department shall establish and maintain a community awareness
2 program that will educate Idaho citizens regarding the purpose and function
3 of all long-term care alternatives including, but not limited to, personal
4 assistance services and individual participant rights. This program
5 will be developed in cooperation with other state agencies including, but
6 not limited to, the commission on aging and the state independent living
7 council.

8 (12) It shall be the responsibility of the participant or his designee
9 or legal representative, when appropriate, to select the provider of
10 personal assistance services.

11 (13) The department shall provide the participant, his designee or
12 legal representative, with a list of available providers of personal
13 assistance services; however, this does not relieve the participant or
14 his designee or legal representative of the responsibility of provider
15 selection.

16 (14) In those cases where the participant or his designee or legal
17 representative cannot arrange for personal assistance services or asks
18 for help in making arrangements, a representative of the department may
19 arrange for or help arrange for personal assistance services on behalf of the
20 participant.

21 SECTION 4. That Section 39-5606, Idaho Code, be, and the same is hereby
22 amended to read as follows:

23 39-5606. PAYMENT TO BE MADE TO PROVIDER. Within the appropriations
24 provided by law, and as authorized by rule, the department shall reimburse
25 the provider for personal assistance services received by the participant.
26 To qualify for reimbursement, personal assistance services must be
27 delivered in accordance with the participant's individual service plan and
28 all federal requirements.

29 The department will establish annually uniform reimbursement rates
30 for ~~providers~~ personal assistance agencies. This rate will be based on
31 the prevailing hourly rate paid for comparable positions in the state for
32 nursing home and intermediate care facility for the mentally retarded
33 (ICF/MR) industry employees. ~~Providers~~ Personal assistance agencies and
34 fiscal intermediary agencies shall also receive a fifty-five percent (55%)
35 supplemental component to cover travel, administration, training and all
36 payroll taxes and fringe benefits. The department will establish annually
37 uniform reimbursement rates for the PCS family alternate care providers
38 according to methodology described in agency rule.

39 The director shall promulgate and adopt such necessary rules to
40 implement the requirements of this section.