

Initiative Measure No. 1164

filed April 21, 2011

LTC VERSION 7 (I-2434.1/11) Final

AN ACT Relating to restoring long-term care services for eligible elderly and persons with disabilities; adding new sections to chapter 74.39A RCW; creating new sections; repealing RCW 82.08.0273; and providing an effective date.

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

NEW SECTION. **Sec. 1.** (1) It is the intent of the people to restore access to safe, quality care for the vulnerable elderly and persons with disabilities by reversing cuts to the home care program enacted in 2010. The people of the state of Washington find that the governor and state legislature have adopted budget cuts that deprive vulnerable elderly and persons with disabilities of the long-term care that they need to remain living in their homes, rather than being forced to move into nursing homes. Providing these services is a sound investment for Washington taxpayers, who would otherwise be forced to incur much higher costs for nursing home care.

(2) To protect vulnerable elderly and persons with disabilities during this budget crisis, the people intend to restore the cuts to the long-term care system by extending the sales tax to out-of-state residents. Taxpayers' investment will be protected by requiring regular program audits, including fraud investigations, and capping administrative expenses.

PART I

RESTORING CUTS TO IN-HOME CARE SERVICES FOR THE VULNERABLE ELDERLY AND PERSONS WITH DISABILITIES.

NEW SECTION. **Sec. 101.** The people of the state of Washington intend to restore funding for in-home care for eligible elderly and persons with disabilities by extending the sales tax to nonresidents.

NEW SECTION. **Sec. 102.** RCW 82.08.0273 (Exemptions--Sales to nonresidents of tangible personal property, digital goods, and digital codes for use outside the state--Proof of nonresident status--Penalties) and 2011 c 7 s 1, 2010 c 106 s 215, 2009 c 535 s 512, 2007 c 135 s 2, 2003 c 53 s 399, 1993 c 444 s 1, 1988 c 96 s 1, 1982 1st ex.s. c 5 s 1, & 1980 c 37 s 39 are each repealed.

NEW SECTION. **Sec. 103.** All revenue generated from the repeal of the tax exemption in section 102 of this act must be deposited into the quality home care trust account created in section 302 of this act, and used solely to implement this act and to restore cuts to in-home care hours that were adopted in emergency rules codified at WSR 11-02-041 (filed December 30, 2010, effective January 1, 2011) as set forth in this section. Within sixty days of the effective date of this section, the state must restore seventy percent of the cuts to in-home care that were enacted through WSR 11-02-041 (filed December 30, 2010, effective January 1, 2011). The restoration of services is required even if the cuts originally enacted by WSR 11-02-041 have been readopted, recodified, or modified and regardless of the ongoing effect of WSR 11-02-041. Within forty-five days of the effective date of this section, the department of social and health services must adopt emergency rules amending WAC 388-106-0125 to codify the restoration of these services, using the same formula that it used to reduce in-home care hours. Any additional revenue generated by this act must be used to fund additional restoration of cuts to in-home care hours and for no other purpose.

NEW SECTION. **Sec. 104.** After in-home care hours are restored under section 103 of this act, the department of social and health services may not reduce in-home care hours to an eligible elderly or person with disabilities except as a result of an individualized

reassessment of that individual's medical condition or need. The department may not reduce in-home care hours to eligible elderly or persons with disabilities based upon a classwide assistance adjustment for a group of eligible recipients.

PART II

PROTECTING TAXPAYERS BY REQUIRING ANNUAL INDEPENDENT AUDITS, INCREASING FRAUD INVESTIGATION, AND CAPPING ADMINISTRATIVE EXPENSES

NEW SECTION. **Sec. 201.** The state auditor shall conduct performance audits of the long-term in-home care program. The first audit must be completed within twelve months after the effective date of this section, and must be completed on a biannual basis thereafter. As part of this auditing process, the state shall hire five additional fraud investigators to ensure that clients receiving services at taxpayers' expense are medically and financially qualified to receive the services and are actually receiving the services.

NEW SECTION. **Sec. 202.** The people hereby establish limits on the percentage of tax revenues that can be used for administrative expenses in the long-term in-home care program. Within one hundred eighty days of the effective date of this section, the state shall prepare a plan to cap administrative expenses so that at least ninety percent of taxpayer spending must be devoted to direct care. This limitation must be achieved within two years from the effective date of this section.

PART III

PROTECTING TAXPAYERS BY ENSURING THAT FUNDING IS HELD IN TRUST AND DEVOTED TO THE IN-HOME CARE PROGRAM BUDGET

NEW SECTION. **Sec. 301.** The people require that funding provided for in-home care is devoted to the in-home care budget and not diverted to other purposes. Funding provided by this act must be held in trust and restricted to the in-home care budget.

NEW SECTION. **Sec. 302.** A new section is added to chapter 74.39A RCW to read as follows:

The quality home care trust account is hereby created in the custody of the state treasurer. Revenue generated by this act must be placed in the quality home care trust account and used solely to fund the costs of implementing this act to restore quality in-home care for eligible elderly and persons with disabilities.

NEW SECTION. **Sec. 303.** A new section is added to chapter 74.39A RCW to read as follows:

(1) If any provision of this act triggers changes to an agreement reached under RCW 74.39A.300, the changes must go into effect immediately without need for legislative approval.

(2) The requirements contained in RCW 74.39A.300 and section 103 of this act constitute ministerial, mandatory, and nondiscretionary duties. Failure to fully perform such duties constitutes a violation of this act. Any person may bring an action to require the governor or other responsible persons to perform such duties. Such action may be brought in the superior court, at the petitioner's option, for (a) Thurston county, or (b) the county of the petitioner's residence or principal place of business, or such action may be filed directly with the supreme court, which is hereby given original jurisdiction over such action.

PART IV

MISCELLANEOUS

NEW SECTION. **Sec. 401.** The provisions of this act are to be liberally construed to effectuate the intent, policies, and purposes of this act.

NEW SECTION. **Sec. 402.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec. 403.** This act takes effect sixty days from its enactment by the people.

NEW SECTION. **Sec. 404.** This act may be known and cited as the restoring quality home care initiative.