
SECOND SUBSTITUTE HOUSE BILL 1725

State of Washington

64th Legislature

2016 Regular Session

By House Appropriations (originally sponsored by Representatives Cody and Tharinger; by request of Department of Social and Health Services)

1 AN ACT Relating to the consumer's right to assign hours to
2 individual providers and the department of social and health
3 services' authority to adopt rules related to payment of individual
4 providers; amending RCW 74.39A.270; creating a new section; and
5 declaring an emergency.

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

7 **Sec. 1.** RCW 74.39A.270 and 2011 1st sp.s. c 21 s 10 are each
8 amended to read as follows:

9 (1) Solely for the purposes of collective bargaining and as
10 expressly limited under subsections (2) and (3) of this section, the
11 governor is the public employer, as defined in chapter 41.56 RCW, of
12 individual providers, who, solely for the purposes of collective
13 bargaining, are public employees as defined in chapter 41.56 RCW. To
14 accommodate the role of the state as payor for the community-based
15 services provided under this chapter and to ensure coordination with
16 state employee collective bargaining under chapter 41.80 RCW and the
17 coordination necessary to implement RCW 74.39A.300, the public
18 employer shall be represented for bargaining purposes by the governor
19 or the governor's designee appointed under chapter 41.80 RCW. The
20 governor or governor's designee shall periodically consult with the
21 authority during the collective bargaining process to allow the

1 authority to communicate issues relating to the long-term in-home
2 care services received by consumers. The department shall solicit
3 input from the developmental disabilities council, the governor's
4 committee on disability issues and employment, the state council on
5 aging, and other consumer advocacy organizations to obtain informed
6 input from consumers on their interests, including impacts on
7 consumer choice, for all issues proposed for collective bargaining
8 under subsections (5) and (6) of this section.

9 (2) Chapter 41.56 RCW governs the collective bargaining
10 relationship between the governor and individual providers, except as
11 otherwise expressly provided in this chapter and except as follows:

12 (a) The only unit appropriate for the purpose of collective
13 bargaining under RCW 41.56.060 is a statewide unit of all individual
14 providers;

15 (b) The showing of interest required to request an election under
16 RCW 41.56.060 is ten percent of the unit, and any intervener seeking
17 to appear on the ballot must make the same showing of interest;

18 (c) The mediation and interest arbitration provisions of RCW
19 41.56.430 through 41.56.470 and 41.56.480 apply, except that:

20 (i) With respect to commencement of negotiations between the
21 governor and the bargaining representative of individual providers,
22 negotiations shall be commenced by May 1st of any year prior to the
23 year in which an existing collective bargaining agreement expires;
24 and

25 (ii) The decision of the arbitration panel is not binding on the
26 legislature and, if the legislature does not approve the request for
27 funds necessary to implement the compensation and fringe benefit
28 provisions of the arbitrated collective bargaining agreement, is not
29 binding on the authority or the state;

30 (d) Individual providers do not have the right to strike; and

31 (e) Individual providers who are related to, or family members
32 of, consumers or prospective consumers are not, for that reason,
33 exempt from this chapter or chapter 41.56 RCW.

34 (3) Individual providers who are public employees solely for the
35 purposes of collective bargaining under subsection (1) of this
36 section are not, for that reason, employees of the state, its
37 political subdivisions, or an area agency on aging for any purpose.
38 Chapter 41.56 RCW applies only to the governance of the collective
39 bargaining relationship between the employer and individual providers
40 as provided in subsections (1) and (2) of this section.

1 (4) Consumers and prospective consumers retain the right to
2 select, hire, supervise the work of, and terminate any individual
3 provider providing services to them. Consumers may elect to receive
4 long-term in-home care services from individual providers who are not
5 referred to them by the authority.

6 (5) Except as expressly limited in this section and RCW
7 74.39A.300, the wages, hours, and working conditions of individual
8 providers are determined solely through collective bargaining as
9 provided in this chapter. Except as described in this subsection, no
10 agency or department of the state may establish policies or rules
11 governing the wages or hours of individual providers. ~~((However,))~~
12 This subsection does not modify:

13 (a) The department's authority to establish a plan of care for
14 each consumer or its core responsibility to manage long-term in-home
15 care services under this chapter, including determination of the
16 level of care that each consumer is eligible to receive. However, at
17 the request of the exclusive bargaining representative, the governor
18 or the governor's designee appointed under chapter 41.80 RCW shall
19 engage in collective bargaining, as defined in RCW 41.56.030(4), with
20 the exclusive bargaining representative over how the department's
21 core responsibility affects hours of work for individual providers.
22 This subsection shall not be interpreted to require collective
23 bargaining over an individual consumer's plan of care;

24 (b) The department's authority to adopt rules establishing
25 criteria regarding the number of hours per week the department may
26 pay any single provider;

27 (c) The department's authority to terminate its contracts with
28 individual providers who are not adequately meeting the needs of a
29 particular consumer, or to deny a contract under RCW 74.39A.095(8);

30 ~~((e))~~ (d) The consumer's right to assign hours to one or more
31 individual providers ~~((selected by the consumer within the maximum~~
32 ~~hours determined by))~~ consistent with the rules and criteria adopted
33 under this chapter and his or her plan of care;

34 ~~((d))~~ (e) The consumer's right to select, hire, terminate,
35 supervise the work of, and determine the conditions of employment for
36 each individual provider providing services to the consumer under
37 this chapter;

38 ~~((e))~~ (f) The department's obligation to comply with the
39 federal medicaid statute and regulations and the terms of any
40 community-based waiver granted by the federal department of health

1 and human services and to ensure federal financial participation in
2 the provision of the services; and

3 ~~((f))~~ (g) The legislature's right to make programmatic
4 modifications to the delivery of state services under this title,
5 including standards of eligibility of consumers and individual
6 providers participating in the programs under this title, and the
7 nature of services provided. The governor shall not enter into,
8 extend, or renew any agreement under this chapter that does not
9 expressly reserve the legislative rights described in this subsection
10 ~~(5)(f))~~ (g).

11 (6) At the request of the exclusive bargaining representative,
12 the governor or the governor's designee appointed under chapter 41.80
13 RCW shall engage in collective bargaining, as defined in RCW
14 41.56.030(4), with the exclusive bargaining representative over
15 employer contributions to the training partnership for the costs of:
16 (a) Meeting all training and peer mentoring required under this
17 chapter; and (b) other training intended to promote the career
18 development of individual providers.

19 (7) The state, the department, the area agencies on aging, or
20 their contractors under this chapter may not be held vicariously or
21 jointly liable for the action or inaction of any individual provider
22 or prospective individual provider, whether or not that individual
23 provider or prospective individual provider was included on the
24 referral registry or referred to a consumer or prospective consumer.
25 The existence of a collective bargaining agreement, the placement of
26 an individual provider on the referral registry, or the development
27 or approval of a plan of care for a consumer who chooses to use the
28 services of an individual provider and the provision of case
29 management services to that consumer, by the department or an area
30 agency on aging, does not constitute a special relationship with the
31 consumer.

32 (8) Nothing in this section affects the state's responsibility
33 with respect to unemployment insurance for individual providers.
34 However, individual providers are not to be considered, as a result
35 of the state assuming this responsibility, employees of the state.

36 NEW SECTION. **Sec. 2.** The department shall immediately adopt
37 emergency rules under RCW 34.05.350 that establish criteria regarding
38 the number of hours per week that the department may pay any single

1 provider in accordance with section 1 of this act. The emergency
2 rules shall remain in effect until permanent rules can be adopted.

3 NEW SECTION. **Sec. 3.** This act is necessary for the immediate
4 preservation of the public peace, health, or safety, or support of
5 the state government and its existing public institutions, and takes
6 effect immediately.

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