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SENATE BILL 6634

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State of Washington                      62nd Legislature                      2012 1st Special Session

By Senators Murray, Harper, Conway, Kline, and Kohl-Welles; by request of Governor Gregoire

Read first time 04/04/12. Referred to Committee on Ways & Means.

1            AN ACT Relating to language access providers; amending RCW  
2 41.56.030, 41.56.510, and 74.04.025; creating new sections; and  
3 declaring an emergency.

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

5            NEW SECTION.    **Sec. 1.** It is the intent of the legislature to  
6 provide state collective bargaining rights beginning in 2014 to  
7 language access providers who provide spoken interpreter services for  
8 department of labor and industries medical appointments.

9            It is also the intent of the legislature to clarify that state  
10 collective bargaining rights of language access providers are limited  
11 to providers paid, in whole or in part, with an expenditure of state  
12 funds and to clarify that providers in legal proceedings are not  
13 intended to be covered by chapter 41.56 RCW. As a clarification of  
14 current law, the changes in this act relative to interpreters in legal  
15 proceedings and the medicaid administrative match program are intended  
16 to apply both prospectively and retroactively.

17            **Sec. 2.** RCW 41.56.030 and 2011 1st sp.s. c 21 s 11 are each  
18 amended to read as follows:

1 As used in this chapter:

2 (1) "Adult family home provider" means a provider as defined in RCW  
3 70.128.010 who receives payments from the medicaid and state-funded  
4 long-term care programs.

5 (2) "Bargaining representative" means any lawful organization which  
6 has as one of its primary purposes the representation of employees in  
7 their employment relations with employers.

8 (3) "Child care subsidy" means a payment from the state through a  
9 child care subsidy program established pursuant to RCW 74.12.340 or  
10 74.08A.340, 45 C.F.R. Sec. 98.1 through 98.17, or any successor  
11 program.

12 (4) "Collective bargaining" means the performance of the mutual  
13 obligations of the public employer and the exclusive bargaining  
14 representative to meet at reasonable times, to confer and negotiate in  
15 good faith, and to execute a written agreement with respect to  
16 grievance procedures and collective negotiations on personnel matters,  
17 including wages, hours and working conditions, which may be peculiar to  
18 an appropriate bargaining unit of such public employer, except that by  
19 such obligation neither party shall be compelled to agree to a proposal  
20 or be required to make a concession unless otherwise provided in this  
21 chapter.

22 (5) "Commission" means the public employment relations commission.

23 (6) "Executive director" means the executive director of the  
24 commission.

25 (7) "Family child care provider" means a person who: (a) Provides  
26 regularly scheduled care for a child or children in the home of the  
27 provider or in the home of the child or children for periods of less  
28 than twenty-four hours or, if necessary due to the nature of the  
29 parent's work, for periods equal to or greater than twenty-four hours;  
30 (b) receives child care subsidies; and (c) is either licensed by the  
31 state under RCW 74.15.030 or is exempt from licensing under chapter  
32 74.15 RCW.

33 (8) "Individual provider" means an individual provider as defined  
34 in RCW 74.39A.240(4) who, solely for the purposes of collective  
35 bargaining, is a public employee as provided in RCW 74.39A.270.

36 (9) "Institution of higher education" means the University of  
37 Washington, Washington State University, Central Washington University,

1 Eastern Washington University, Western Washington University, The  
2 Evergreen State College, and the various state community colleges.

3 (10)(a) "Language access provider" means any independent contractor  
4 who provides spoken language interpreter services, whether paid  
5 directly by the respective department or by the respective department  
6 through a broker or language access agency: (i) For department of  
7 social and health services appointments or medicaid enrollee  
8 appointments(, or provided these services on or after January 1, 2009,  
9 and before June 10, 2010, whether paid by a broker, language access  
10 agency, or the department)); or (ii) for department of labor and  
11 industries medical appointments.

12 (b) "Language access provider" does not mean: An owner, manager,  
13 or employee of a broker or a language access agency; an interpreter  
14 appointed or required in legal proceedings pursuant to RCW 2.43.030; or  
15 an interpreter under the medicaid administrative match program.

16 (c) "Department of social and health services appointment" does not  
17 include legal proceedings of any nature, including criminal, civil, or  
18 administrative proceedings at any level.

19 (d) "Medicaid enrollee appointment" does not include medicaid  
20 administrative match program appointments or any other service provided  
21 pursuant to that program.

22 (e) "Department of labor and industries medical appointment" does  
23 not include legal proceedings of any nature, including criminal, civil,  
24 or administrative proceedings at any level including proceedings  
25 conducted by the board of industrial insurance appeals.

26 (11) "Public employee" means any employee of a public employer  
27 except any person (a) elected by popular vote, or (b) appointed to  
28 office pursuant to statute, ordinance or resolution for a specified  
29 term of office as a member of a multimember board, commission, or  
30 committee, whether appointed by the executive head or body of the  
31 public employer, or (c) whose duties as deputy, administrative  
32 assistant or secretary necessarily imply a confidential relationship to  
33 (i) the executive head or body of the applicable bargaining unit, or  
34 (ii) any person elected by popular vote, or (iii) any person appointed  
35 to office pursuant to statute, ordinance or resolution for a specified  
36 term of office as a member of a multimember board, commission, or  
37 committee, whether appointed by the executive head or body of the  
38 public employer, or (d) who is a court commissioner or a court

1 magistrate of superior court, district court, or a department of a  
2 district court organized under chapter 3.46 RCW, or (e) who is a  
3 personal assistant to a district court judge, superior court judge, or  
4 court commissioner. For the purpose of (e) of this subsection, no more  
5 than one assistant for each judge or commissioner may be excluded from  
6 a bargaining unit.

7 (12) "Public employer" means any officer, board, commission,  
8 council, or other person or body acting on behalf of any public body  
9 governed by this chapter, or any subdivision of such public body. For  
10 the purposes of this section, the public employer of district court or  
11 superior court employees for wage-related matters is the respective  
12 county legislative authority, or person or body acting on behalf of the  
13 legislative authority, and the public employer for nonwage-related  
14 matters is the judge or judge's designee of the respective district  
15 court or superior court.

16 (13) "Uniformed personnel" means: (a) Law enforcement officers as  
17 defined in RCW 41.26.030 employed by the governing body of any city or  
18 town with a population of two thousand five hundred or more and law  
19 enforcement officers employed by the governing body of any county with  
20 a population of ten thousand or more; (b) correctional employees who  
21 are uniformed and nonuniformed, commissioned and noncommissioned  
22 security personnel employed in a jail as defined in RCW 70.48.020(9),  
23 by a county with a population of seventy thousand or more, and who are  
24 trained for and charged with the responsibility of controlling and  
25 maintaining custody of inmates in the jail and safeguarding inmates  
26 from other inmates; (c) general authority Washington peace officers as  
27 defined in RCW 10.93.020 employed by a port district in a county with  
28 a population of one million or more; (d) security forces established  
29 under RCW 43.52.520; (e) firefighters as that term is defined in RCW  
30 41.26.030; (f) employees of a port district in a county with a  
31 population of one million or more whose duties include crash fire  
32 rescue or other firefighting duties; (g) employees of fire departments  
33 of public employers who dispatch exclusively either fire or emergency  
34 medical services, or both; or (h) employees in the several classes of  
35 advanced life support technicians, as defined in RCW 18.71.200, who are  
36 employed by a public employer.

1       **Sec. 3.** RCW 41.56.510 and 2010 c 296 s 2 are each amended to read  
2 as follows:

3       (1) In addition to the entities listed in RCW 41.56.020, this  
4 chapter applies to the governor with respect to language access  
5 providers. Solely for the purposes of collective bargaining and as  
6 expressly limited under subsections (2) and (3) of this section, the  
7 governor is the public employer of language access providers who,  
8 solely for the purposes of collective bargaining, are public employees.  
9 The governor or the governor's designee shall represent the public  
10 employer for bargaining purposes.

11       (2) There shall be collective bargaining, as defined in RCW  
12 41.56.030, between the governor and language access providers, except  
13 as follows:

14       (a) (~~A statewide unit of all language access providers is~~) The  
15 only units appropriate for purposes of collective bargaining under RCW  
16 41.56.060 are:

17       (i) A statewide unit for language access providers who provide  
18 spoken language interpreter services for department of social and  
19 health services appointments or medicaid enrollee appointments; and

20       (ii) A statewide unit for language access providers who provide  
21 spoken language interpreter services for department of labor and  
22 industries medical appointments. The public employment relations  
23 commission may not certify a bargaining unit under this subsection  
24 (2)(a)(ii) before July 1, 2013;

25       (b) The exclusive bargaining representatives of language access  
26 providers in the units specified in (a) of this subsection shall be the  
27 representatives chosen in (~~an~~) elections conducted pursuant to RCW  
28 41.56.070.

29       Bargaining authorization cards furnished as the showing of interest  
30 in support of any representation petition or motion for intervention  
31 filed under this section are exempt from disclosure under chapter 42.56  
32 RCW;

33       (c) Notwithstanding the definition of "collective bargaining" in  
34 RCW 41.56.030(4), the scope of collective bargaining for language  
35 access providers under this section is limited solely to: (i) Economic  
36 compensation, such as the manner and rate of payments; (ii)  
37 professional development and training; (iii) labor-management  
38 committees; and (iv) grievance procedures. Retirement benefits are not

1 subject to collective bargaining. By such obligation neither party may  
2 be compelled to agree to a proposal or be required to make a concession  
3 unless otherwise provided in this chapter;

4 (d) In addition to the entities listed in the mediation and  
5 interest arbitration provisions of RCW 41.56.430 through 41.56.470 and  
6 41.56.480, the provisions apply to the governor or the governor's  
7 designee and the exclusive bargaining representatives of language  
8 access providers, except that:

9 (i) In addition to the factors to be taken into consideration by an  
10 interest arbitration panel under RCW 41.56.465, the panel shall  
11 consider the financial ability of the state to pay for the compensation  
12 and benefit provisions of a collective bargaining agreement;

13 (ii) The decision of the arbitration panel is not binding on the  
14 legislature and, if the legislature does not approve the request for  
15 funds necessary to implement the compensation and benefit provisions of  
16 the arbitrated collective bargaining agreement, the decision is not  
17 binding on the state;

18 (e) Language access providers do not have the right to strike.

19 (3) Language access providers who are public employees solely for  
20 the purposes of collective bargaining under subsection (1) of this  
21 section are not, for that reason, employees of the state for any other  
22 purpose. This section applies only to the governance of the collective  
23 bargaining relationship between the employer and language access  
24 providers as provided in subsections (1) and (2) of this section.

25 (4) Each party with whom the department of social and health  
26 services and the department of labor and industries contract(~~s~~) for  
27 language access services and each of their subcontractors shall provide  
28 to the respective department an accurate list of language access  
29 providers, as defined in RCW 41.56.030, including their names,  
30 addresses, and other contact information, annually by January 30th,  
31 except that initially for language access providers as defined in RCW  
32 41.56.030(10)(a)(ii) the lists must be provided within thirty days of  
33 (~~June 10, 2010~~) July 1, 2013. The department shall, upon request,  
34 provide a list of all language access providers, including their names,  
35 addresses, and other contact information, to a labor union seeking to  
36 represent language access providers.

37 (5) This section does not create or modify:

1 (a) The (~~department's~~) obligation of the department of social and  
2 health services or the department of labor and industries to comply  
3 with the federal statute and regulations; and

4 (b) The legislature's right to make programmatic modifications to  
5 the delivery of state services under chapter 74.04 RCW or Title 51 RCW.  
6 The governor may not enter into, extend, or renew any agreement under  
7 this chapter that does not expressly reserve the legislative rights  
8 described in this subsection.

9 (6) Upon meeting the requirements of subsection (7) of this  
10 section, the governor must submit, as a part of the proposed biennial  
11 or supplemental operating budget submitted to the legislature under RCW  
12 43.88.030, a request for funds necessary to implement the compensation  
13 and benefit provisions of a collective bargaining agreement entered  
14 into under this section or for legislation necessary to implement the  
15 agreement.

16 (7) A request for funds necessary to implement the compensation and  
17 benefit provisions of a collective bargaining agreement entered into  
18 under this section may not be submitted by the governor to the  
19 legislature unless the request has been:

20 (a) Submitted to the director of financial management by October  
21 1st prior to the legislative session at which the requests are to be  
22 considered, except that, for initial negotiations under this section  
23 for the unit defined in subsection (2)(a)(ii) of this section, the  
24 request may not be submitted before July 1, (~~2011~~) 2014; and

25 (b) Certified by the director of financial management as  
26 financially feasible for the state or reflective of a binding decision  
27 of an arbitration panel reached under subsection (2)(d) of this  
28 section.

29 (8) The legislature must approve or reject the submission of the  
30 request for funds as a whole. If the legislature rejects or fails to  
31 act on the submission, any collective bargaining agreement must be  
32 reopened for the sole purpose of renegotiating the funds necessary to  
33 implement the agreement.

34 (9) If, after the compensation and benefit provisions of an  
35 agreement are approved by the legislature, a significant revenue  
36 shortfall occurs resulting in reduced appropriations, as declared by  
37 proclamation of the governor or by resolution of the legislature, both

1 parties shall immediately enter into collective bargaining for a  
2 mutually agreed upon modification of the agreement.

3 (10) After the expiration date of any collective bargaining  
4 agreement entered into under this section, all of the terms and  
5 conditions specified in the agreement remain in effect until the  
6 effective date of a subsequent agreement, not to exceed one year from  
7 the expiration date stated in the agreement.

8 (11) If an exclusive bargaining representative represents both  
9 bargaining units defined in subsection (2)(a) of this section, the  
10 governor and the exclusive bargaining representative shall negotiate  
11 one collective bargaining agreement on behalf of all language access  
12 providers in both bargaining units.

13 (12) In enacting this section, the legislature intends to provide  
14 state action immunity under federal and state antitrust laws for the  
15 joint activities of language access providers and their exclusive  
16 bargaining representative to the extent the activities are authorized  
17 by this chapter.

18 **Sec. 4.** RCW 74.04.025 and 2011 1st sp.s. c 15 s 63 are each  
19 amended to read as follows:

20 (1) The department, the authority, and the office of administrative  
21 hearings shall ensure that bilingual services are provided to non-  
22 English speaking applicants and recipients. The services shall be  
23 provided to the extent necessary to assure that non-English speaking  
24 persons are not denied, or unable to obtain or maintain, services or  
25 benefits because of their inability to speak English.

26 (2) If the number of non-English speaking applicants or recipients  
27 sharing the same language served by any community service office client  
28 contact job classification equals or exceeds fifty percent of the  
29 average caseload of a full-time position in such classification, the  
30 department shall, through attrition, employ bilingual personnel to  
31 serve such applicants or recipients.

32 (3) Regardless of the applicant or recipient caseload of any  
33 community service office, each community service office shall ensure  
34 that bilingual services required to supplement the community service  
35 office staff are provided through contracts with language access  
36 providers, local agencies, or other community resources.

1 (4) The department shall certify, authorize, and qualify language  
2 access providers as needed to maintain an adequate pool of providers.

3 (5) The department shall require compliance with RCW 41.56.113(2)  
4 through its contracts with third parties.

5 (6) Initial client contact materials shall inform clients in all  
6 primary languages of the availability of interpretation services for  
7 non-English speaking persons. Basic informational pamphlets shall be  
8 translated into all primary languages.

9 (7) To the extent all written communications directed to applicants  
10 or recipients are not in the primary language of the applicant or  
11 recipient, the department and the office of administrative hearings  
12 shall include with the written communication a notice in all primary  
13 languages of applicants or recipients describing the significance of  
14 the communication and specifically how the applicants or recipients may  
15 receive assistance in understanding, and responding to if necessary,  
16 the written communication. The department shall assure that sufficient  
17 resources are available to assist applicants and recipients in a timely  
18 fashion with understanding, responding to, and complying with the  
19 requirements of all such written communications.

20 (8) As used in this section:

21 (a) "Language access provider" means any independent contractor who  
22 provides spoken language interpreter services for department  
23 appointments or medicaid enrollee appointments(~~(, or provided these~~  
24 ~~services on or after January 1, 2009, and before June 10, 2010)),~~  
25 whether paid by a broker, language access agency, or the department.  
26 "Language access provider" does not mean: An owner, manager, or  
27 employee of a broker or a language access agency; an interpreter  
28 appointed or required in legal proceedings pursuant to RCW 2.43.030; or  
29 an interpreter under the medicaid administrative match program.

30 (b) "Department appointment" does not include legal proceedings of  
31 any nature, including criminal, civil, or administrative proceedings at  
32 any level.

33 (c) "Medicaid enrollee appointment" does not include medicaid  
34 administrative match program appointments or any other service provided  
35 pursuant to that program.

36 (d) "Primary languages" includes but is not limited to Spanish,  
37 Vietnamese, Cambodian, Laotian, and Chinese.

1        NEW SECTION.    **Sec. 5.**    If any part of this act is found to be in  
2 conflict with federal requirements that are a prescribed condition to  
3 the allocation of federal funds to the state, the conflicting part of  
4 this act is inoperative solely to the extent of the conflict and with  
5 respect to the agencies directly affected, and this finding does not  
6 affect the operation of the remainder of this act in its application to  
7 the agencies concerned. Rules adopted under this act must meet federal  
8 requirements that are a necessary condition to the receipt of federal  
9 funds by the state.

10        NEW SECTION.    **Sec. 6.**    This act applies both prospectively and  
11 retroactively.

12        NEW SECTION.    **Sec. 7.**    This act is necessary for the immediate  
13 preservation of the public peace, health, or safety, or support of the  
14 state government and its existing public institutions, and takes effect  
15 immediately.

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