
HOUSE BILL 2818

State of Washington 57th Legislature 2002 Regular Session

By Representatives Cody and Campbell; by request of Governor Locke

Read first time 01/29/2002. Referred to Committee on Health Care.

1 AN ACT Relating to technical and clarifying amendments to
2 Initiative 775; amending RCW 74.39A.230, 74.39A.250, 74.39A.270,
3 74.39A.280, and 74.39A.300; and providing an effective date.

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

5 **Sec. 1.** RCW 74.39A.230 and 2002 c 3 s 2 (Initiative Measure No.
6 775) are each amended to read as follows:

7 (1) The home care quality authority is established to regulate and
8 improve the quality of long-term in-home care services by recruiting,
9 training, and stabilizing the work force of individual providers.

10 (2) The authority consists of a board of nine members appointed by
11 the governor. Five board members shall be current and/or former
12 consumers of long-term in-home care services provided for functionally
13 disabled persons, at least one of whom shall be a person with a
14 developmental disability; one board member shall be a representative of
15 the developmental disabilities planning council; one board member shall
16 be a representative of the governor's committee on disability issues
17 and employment; one board member shall be a representative of the state
18 council on aging; and one board member shall be a representative of the
19 Washington state association of area agencies on aging. In making

1 appointments, the governor shall consider any nominations or
2 recommendations made by the groups or agencies represented.

3 (3) The initial appointments to the board will be as follows:
4 Three board members will be appointed for a one-year term, three board
5 members will be appointed for a two-year term, and three board members
6 will be appointed to a three-year term. Thereafter, each board member
7 ((serves)) will be appointed to serve a term of three years. If a
8 vacancy occurs, the governor will make an appointment to become
9 immediately effective for the unexpired term. Each board member is
10 eligible for reappointment and may serve no more than two consecutive
11 terms. ((In making appointments, the governor will take into
12 consideration any nominations or recommendations made by the groups or
13 agencies represented.))

14 (4) Members of the home care quality authority board will be
15 compensated in accordance with RCW 43.03.250, 43.03.050, and 43.03.060.

16 **Sec. 2.** RCW 74.39A.250 and 2002 c 3 s 4 (Initiative Measure No.
17 775) are each amended to read as follows:

18 (1) Within funds appropriated specifically for this purpose, the
19 authority must carry out the following duties:

20 (a) Establish qualifications and reasonable standards for
21 accountability for and investigate the background of individual
22 providers and prospective individual providers, except in cases where,
23 after the department has sought approval of any appropriate amendments
24 or waivers under RCW 74.09.740, federal law or regulation requires that
25 such qualifications and standards for accountability be established by
26 another entity in order to preserve eligibility for federal funding.
27 Qualifications established must include compliance with the minimum
28 requirements for training and satisfactory criminal background checks
29 as provided in RCW 74.39A.050 and confirmation that the individual
30 provider or prospective individual provider is not currently listed on
31 any long-term care abuse and neglect registry used by the department at
32 the time of the investigation;

33 (b) Undertake recruiting activities to identify and recruit
34 individual providers and prospective individual providers;

35 (c) Provide training opportunities, either directly or through
36 contract, for individual providers, prospective individual providers,
37 consumers, and prospective consumers;

1 (d) Provide assistance to consumers and prospective consumers in
2 finding individual providers and prospective individual providers
3 through the establishment of a referral registry of individual
4 providers and prospective individual providers. Before placing an
5 individual provider or prospective individual provider on the referral
6 registry, the authority shall determine that:

7 (i) The individual provider or prospective individual provider has
8 met the minimum requirements for training set forth in RCW 74.39A.050;

9 (ii) The individual provider or prospective individual provider has
10 satisfactorily undergone a criminal background check conducted within
11 the prior twelve months; and

12 (iii) The individual provider or prospective individual provider is
13 not listed on any long-term care abuse and neglect registry used by the
14 department;

15 (e) Remove from the referral registry any individual provider or
16 prospective individual provider the authority determines not to meet
17 the qualifications set forth in (d) of this subsection or to have
18 committed misfeasance or malfeasance in the performance of his or her
19 duties as an individual provider. The individual provider or
20 prospective individual provider, or the consumer to which the
21 individual provider is providing services, may request a fair hearing
22 to contest the removal from the referral registry, as provided in
23 chapter 34.05 RCW;

24 (f) Provide routine, emergency, and respite referrals of individual
25 providers and prospective individual providers to consumers and
26 prospective consumers who are authorized to receive long-term in-home
27 care services through an individual provider;

28 (g) Give preference in the recruiting, training, referral, and
29 employment of individual providers and prospective individual providers
30 to recipients of public assistance or other low-income persons who
31 would qualify for public assistance in the absence of such employment;
32 and

33 (h) Cooperate with the department, area agencies on aging, and
34 other federal, state, and local agencies to provide the services
35 described and set forth in this section. If, in the course of carrying
36 out its duties, the authority identifies concerns regarding the
37 services being provided by an individual provider, the authority must
38 notify the relevant area agency or department case manager regarding
39 such concerns.

1 (2) In determining how best to carry out its duties, the authority
2 must identify existing individual provider recruitment, training, and
3 referral resources made available to consumers by other state and local
4 public, private, and nonprofit agencies. The authority may coordinate
5 with the agencies to provide a local presence for the authority and to
6 provide consumers greater access to individual provider recruitment,
7 training, and referral resources in a cost-effective manner. Using
8 requests for proposals or similar processes, the authority may contract
9 with the agencies to provide recruitment, training, and referral
10 services if the authority determines the agencies can provide the
11 services according to reasonable standards of performance determined by
12 the authority. The authority must provide an opportunity for consumer
13 participation in the determination of the standards.

14 **Sec. 3.** RCW 74.39A.270 and 2002 c 3 s 6 (Initiative Measure No.
15 775) are each amended to read as follows:

16 (1) Solely for the purposes of collective bargaining, the authority
17 is the public employer, as defined in chapter 41.56 RCW, of individual
18 providers, who are public employees, as defined in chapter 41.56 RCW,
19 of the authority.

20 (2) Chapter 41.56 RCW governs the employment relationship between
21 the authority and individual providers, except as otherwise expressly
22 provided in chapter 3, Laws of 2002 and except as follows:

23 (a) The only unit appropriate for the purpose of collective
24 bargaining under RCW 41.56.060 is a statewide unit of all individual
25 providers;

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

29 (c) The mediation and interest arbitration provisions of RCW
30 41.56.430 through 41.56.470 and 41.56.480 apply;

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

32 (e) Individual providers who are related to, or family members of,
33 consumers or prospective consumers are not, for that reason, exempt
34 from chapter 3, Laws of 2002 or chapter 41.56 RCW.

35 (3) Individual providers who are employees of the authority under
36 subsection (1) of this section are not, for that reason, employees of
37 the state for any purpose.

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

6 (5) In implementing and administering chapter 3, Laws of 2002,
7 neither the authority nor any of its contractors may reduce or increase
8 the hours of service for any consumer below or above the amount
9 determined to be necessary under any assessment prepared by the
10 department or an area agency on aging.

11 (6)(a) The authority, the area agencies on aging, or their
12 contractors under chapter 3, Laws of 2002 may not be held vicariously
13 liable for the action or inaction of any individual provider or
14 prospective individual provider, whether or not that individual
15 provider or prospective individual provider was included on the
16 authority's referral registry or referred to a consumer or prospective
17 consumer.

18 (b) The members of the board are immune from any liability
19 resulting from implementation of chapter 3, Laws of 2002.

20 (c) The authority, acting in good faith in recruiting providers,
21 listing providers on the referral registry, referring providers, and
22 training consumers and providers, is immune from civil or criminal
23 liability for such action.

24 (7) Nothing in this section affects the state's responsibility with
25 respect to the state payroll system or unemployment insurance for
26 individual providers.

27 **Sec. 4.** RCW 74.39A.280 and 2002 c 3 s 7 (Initiative Measure No.
28 775) are each amended to read as follows:

29 In carrying out its duties under chapter 3, Laws of 2002, the
30 authority may:

31 (1) Make and execute contracts and all other instruments necessary
32 or convenient for the performance of its duties or exercise of its
33 powers, including contracts with public and private agencies,
34 organizations, corporations, and individuals to pay them for services
35 rendered or furnished;

36 (2) Offer and provide recruitment, training, and referral services
37 to providers of long-term in-home care services other than individual

1 providers and prospective individual providers, for a fee to be
2 determined by the authority;

3 (3) Issue rules under the administrative procedure act, chapter
4 34.05 RCW, as necessary for the purpose and policies of chapter 3, Laws
5 of 2002;

6 (4) Establish offices, employ and discharge employees, agents, and
7 contractors as necessary, and prescribe their duties and powers and fix
8 their compensation, incur expenses, and create such liabilities as are
9 reasonable and proper for the administration of chapter 3, Laws of
10 2002;

11 (5)(a) Appoint an executive director of the home care quality
12 authority who is exempt from chapter 41.06 RCW, and who will be
13 appointed by and serve at the pleasure of the home care quality
14 authority board. The salary of the executive director will be fixed by
15 the board in accordance with RCW 43.03.040.

16 (b) The executive director may appoint and discharge other
17 personnel who are exempt from chapter 41.06 RCW. Such personnel will
18 serve at the pleasure of the executive director who will prescribe
19 their duties and powers and fix their compensation;

20 (6) Solicit and accept for use any grant of money, services, or
21 property from the federal government, the state, or any political
22 subdivision or agency thereof, including federal matching funds under
23 Title XIX of the federal social security act, and do all things
24 necessary to cooperate with the federal government, the state, or any
25 political subdivision or agency thereof in making an application for
26 any grant;

27 ~~((+6+))~~ (7) Coordinate its activities and cooperate with similar
28 agencies in other states;

29 ~~((+7+))~~ (8) Establish technical advisory committees to assist the
30 board;

31 ~~((+8+))~~ (9) Keep records and engage in research and the gathering
32 of relevant statistics;

33 ~~((+9+))~~ (10) Acquire, hold, or dispose of real or personal property
34 or any interest therein, and construct, lease, or otherwise provide
35 facilities for the activities conducted under this chapter, provided
36 that the authority may not exercise any power of eminent domain;

37 ~~((+10+))~~ (11) Sue and be sued in its own name;

38 ~~((+11+))~~ (12) Delegate to the appropriate persons the power to
39 execute contracts and other instruments on its behalf and delegate any

1 of its powers and duties if consistent with the purposes of this
2 chapter; and

3 ~~((12))~~ (13) Do other acts necessary or convenient to execute the
4 powers expressly granted to it.

5 **Sec. 5.** RCW 74.39A.300 and 2002 c 3 s 9 (Initiative Measure No.
6 775) are each amended to read as follows:

7 (1) The governor must submit a request for funds necessary to
8 administer chapter 3, Laws of 2002 ~~((and))~~.

9 (2) The governor must also submit a biennial request for funds
10 necessary to implement any collective bargaining agreement entered into
11 under RCW 74.39A.270 or for legislation necessary to implement any such
12 agreement within ten days of the date on which the agreement is
13 ratified or, if the legislature is not in session, within ten days
14 after the next legislative session convenes. Requests for funds
15 necessary to implement bargaining agreements will not be submitted to
16 the legislature by the governor unless such requests:

17 (a) Have been submitted to the director of financial management on
18 or before October 1st of the year preceding the next ensuing biennium;
19 and

20 (b) Have been certified by the director of financial management as
21 being feasible financially for the state.

22 (3) The legislature must approve or reject the submission of the
23 request for funds as a whole. If the legislature rejects or fails to
24 act on the submission, any such agreement will be reopened solely for
25 the purpose of renegotiating the funds necessary to implement the
26 agreement.

27 ~~((2))~~ (4) When any increase in individual provider wages or
28 benefits is negotiated or agreed to by the authority, no increase in
29 wages or benefits negotiated or agreed to under chapter 3, Laws of 2002
30 will take effect unless and until, before its implementation, the
31 department has determined that the increase is consistent with federal
32 law and federal financial participation in the provision of services
33 under Title XIX of the federal social security act.

34 ~~((3))~~ (5) After the expiration date of any collective bargaining
35 agreement entered into under RCW 74.39A.270, all of the terms and
36 conditions specified in any such agreement remain in effect until the
37 effective date of a subsequent agreement, not to exceed one year from
38 the expiration date stated in the agreement.

1 NEW SECTION. **Sec. 6.** Section 5 of this act takes effect July 1,
2 2003.

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