

1 **HB 1777** - H AMD
2 By Representative Conway

3 On page 12, after line 2, insert the following:

4 "NEW SECTION. **Sec. 5.** A new section is added to chapter 51.12
5 RCW to read as follows:

6 (1) The legislature finds that the voters of Washington state,
7 in Initiative Measure No. 775, recognized the value of seniors and
8 persons with disabilities receiving in-home care from providers
9 hired directly by them under state-supported programs. The voters
10 also recognized the need for quality and stability in the
11 individual provider work force. The legislature finds that these
12 provisions create a unique set of relationships between the persons
13 receiving care, their individual provider employees, and the
14 agencies providing support assistance to them. This section is
15 intended to provide the supplemental enactments necessary to
16 implement these initiative provisions under the industrial
17 insurance system.

18 (2) With respect to individual providers, the following
19 applies solely for the purposes of this title:

20 (a) The consumer is the employer of an individual provider
21 within the meaning of this title and the individual provider is a
22 domestic employee of the consumer exempt from mandatory coverage as
23 provided under RCW 51.12.020(1).

24 (b) When necessary to implement a collective bargaining
25 agreement entered into under RCW 74.39A.270 and 74.39A.300:

26 (i) Pursuant to its obligation under chapter 74.39A RCW as an
27 employer for collective bargaining purposes only, the authority,
28 acting on behalf of the consumer, shall perform the consumer's
29 rights and obligations for the purpose of taking action under RCW
30 51.12.110;

31 (ii) The department of social and health services, acting on
32 behalf of the consumer, shall perform the consumer's obligations
33 required by chapter 51.16 RCW; and

1 (iii) The authority shall, on behalf of the consumer, contract
2 with a third party to perform the consumer's other rights and
3 obligations under this title. The authority may adopt rules, as
4 necessary, concerning the manner in which it contracts with third
5 parties under this subsection.

6 (c) The authority, the department of social and health
7 services, and the area agencies on aging are immune from suit as
8 provided in section 6 of this act.

9 (3) Neither the department of social and health services, the
10 authority, or the area agencies on aging shall be considered the
11 employer of individual providers for any purposes other than those
12 specifically set forth in this section or in RCW 74.39A.270(1).

13 (4) For purposes of this section, "consumer," "individual
14 provider," and "authority" mean the same as the terms are defined
15 in RCW 74.39A.240.

16 NEW SECTION. **Sec. 6.** A new section is added to chapter 51.24
17 RCW to read as follows:

18 Notwithstanding RCW 51.24.030(1), an individual provider, as
19 defined in section 5 of this act, or his or her beneficiary may not
20 seek damages against the home care quality authority, the
21 department of social and health services, or the area agencies on
22 aging arising from any industrial injury or occupational disease
23 incurred by the individual provider while the individual provider
24 is performing services described in RCW 74.39A.240(4) covered by
25 a collective bargaining agreement entered into under RCW 79.39A.270
26 and 79.39A.300 that provides for coverage under this title."

27 Renumber the sections consecutively, correct internal references
28 accordingly, and correct the title.

29 On page 13, line 11, after "8." insert "(1)"

30 On page 13, after line 22, insert the following:

31 "(2) The sum of six hundred thousand dollars, or as much
32 thereof as may be necessary, from the general fund«state for the
33 fiscal year ending June 30, 2004, and the sum of five hundred
34 thousand dollars, or as much thereof as may be necessary, from the
35 general fund--state for the fiscal year ending June 30, 2005, are

1 appropriated to the home care quality authority, and the sum of one
2 million one hundred thousand dollars, or as much thereof as may be
3 necessary, from the general fund--federal for the biennium ending
4 June 30, 2005, is appropriated to the department of social and
5 health services for administrative costs associated with providing
6 workers' compensation benefits as stated in section 5(2)(b)(iii) of
7 this act and as required by the terms of the collective bargaining
8 agreement between the home care quality authority and the exclusive
9 bargaining representative of individual providers."

EFFECT: The amendment adds provisions that:

- ∅ Recognize, in an intent section, the unique set of relationships that apply to consumers receiving in-home care and their individual provider home care workers.
- ∅ Establish that (1) the consumer receiving care is the common-law employer of his or her individual provider; and (2) the individual provider is a domestic employee of the consumer subject to the exemption from mandatory coverage.
- ∅ Establish that, when necessary to implement coverage in a collective bargaining agreement between the Home Care Quality Authority (HCQA) and the exclusive bargaining representative of the individual providers:
 - ∅ the HCQA elects the industrial insurance coverage on behalf of the consumer.
 - ∅ the Department of Social and Health Services (DSHS) pays the industrial insurance premiums and makes quarterly reports on behalf of the consumer.
 - ∅ the HCQA contracts with a third party to perform the consumer's rights and obligations related to reporting injuries to the state fund and other matters under industrial insurance.
 - ∅ the DSHS, the HCQA, and the Area Agencies on Aging are not the individual providers' employers for other purposes.
- ∅ Explicitly grant immunity from suit to the HCQA, DSHS, and the Area Agencies on Aging with respect to injuries and occupational diseases incurred by individual providers while performing services covered by a collective bargaining agreement that provides for individual provider coverage.
- ∅ Give the HCQA rule-making authority to implement the third party contract.

- ø Adds an appropriation of \$2.2 million for the biennium ending June 30, 2005, for the costs of administering the requirements related to contracting with a third party for claims reporting functions.