

SHB 2933 - H AMD

By Representative Conway

1 On page 1, beginning on line 6, strike all of section 1
2 and insert the following:

3 "**Sec. 1.** RCW 74.39A.270 and 2002 c 3 s 6 are each amended to
4 read as follows:

5 (1) Solely for the purposes of collective bargaining and as
6 expressly limited under subsections (2) and (3) of this section,
7 the authority is the public employer, as defined in chapter 41.56
8 RCW, of individual providers, who, solely for the purposes of
9 collective bargaining, are public employees, as defined in chapter
10 41.56 RCW, of the authority. To accommodate the role of the state
11 as payor for the community-based services provided under this
12 chapter and to ensure the coordination necessary to implement RCW
13 74.39A.300(1) and (2), bargaining under this section shall be
14 conducted by the governor's designee appointed under chapter 41.80
15 RCW. The governor's designee shall consult with the authority
16 before any agreement is reached under this section.

17 (2) Chapter 41.56 RCW governs the ((~~employment~~)) collective
18 bargaining relationship between the authority and individual
19 providers, except as otherwise expressly provided in chapter 3,
20 Laws of 2002 and except as follows:

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

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

28 (c) The mediation and interest arbitration provisions of RCW
29 41.56.430 through 41.56.470 and 41.56.480 apply, except that:

1 (i) Negotiations shall be commenced by May 1 of any year prior
2 to the year in which an existing collective bargaining agreement
3 expires;

4 (ii) With respect to factors to be taken into consideration by
5 an interest arbitration panel, the panel shall consider the
6 financial ability of the state to pay for the compensation and
7 fringe benefit provisions of a collective bargaining agreement; and

8 (iii) The decision of the arbitration panel is not binding on
9 the legislature and, if the legislature does not approve the
10 request for funds necessary to implement the compensation and
11 fringe benefit provisions of the arbitrated collective bargaining
12 agreement, is not binding on the authority or the state;

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

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

17 (3) Individual providers who are public employees (~~of the~~
18 authority) solely for the purposes of collective bargaining under
19 subsection (1) of this section are not, for that reason, employees
20 of the state, its political subdivisions, or an area agency on
21 aging for any purpose. Chapter 41.56 RCW applies only to the
22 governance of the collective bargaining relationship between the
23 authority and individual providers as provided in subsections (1)
24 and (2) of this section.

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

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

35 (6) Except as expressly limited in this section and RCW
36 74.39A.300, the wages, hours, and working conditions of individual
37 providers are determined solely through collective bargaining as
38 provided in this section. No agency or department of the state,
39 other than the authority, may establish policies or rules governing

1 the wages or hours of individual providers. However, to recognize
2 the obligation of the department to comply with Title XIX of the
3 federal social security act and with the terms and conditions of
4 any community-based waiver granted by the federal department of
5 health and human services, including those related to client safety
6 and quality of care, and to ensure federal financial participation
7 in the provision of these services, the department retains
8 authority to:

9 (a) Establish a plan of care for each consumer and to determine
10 the hours of care that each consumer is eligible to receive;

11 (b) Terminate its contracts with individual providers who are
12 not adequately meeting the needs of a particular consumer; and

13 (c) Deny a contract under RCW 74.39A.095(8).

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

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

23 ((+7)) (8) Nothing in this section affects the state's
24 responsibility with respect to ((the state payroll system or))
25 unemployment insurance for individual providers. However,
26 individual providers are not to be considered, as a result of the
27 state assuming this responsibility, employees of the state."

EFFECT: The amendment:

(1) deletes the requirement for the Home Care Quality Authority (HCQA) to contract for collective bargaining with the Office of Labor Relations and, instead, requires the bargaining to be conducted by that office, with consultation with the HCQA before an agreement is reached;

(2) adds a statement that to comply with the community-based program waivers under federal medicaid law, the Department of Social and Health Services retains authority over consumers' plans of care, and termination and denial of provider contracts and deletes a reference

to the consumer's right to assign hours and determine conditions of employment (but retaining the consumer's right to select, hire, supervise the work of, and terminate individual providers);

- (3) adds that the state also is not bound by an arbitration award that is not funded by the Legislature; and
- (4) removes a reference to negotiations between the HCQA and the bargaining representative.