

ESHB 2933 - S COMM AMD
By Committee on Ways & Means

ADOPTED 02/25/2004

1 Strike everything after the enacting clause and insert the
2 following:

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

5 (1) Solely for the purposes of collective bargaining and as
6 expressly limited under subsections (2) and (3) of this section, the
7 ~~((authority))~~ governor is the public employer, as defined in chapter
8 41.56 RCW, of individual providers, who, solely for the purposes of
9 collective bargaining, are public employees~~((τ))~~ as defined in chapter
10 41.56 RCW~~((τ of the authority))~~. To accommodate the role of the state
11 as payor for the community-based services provided under this chapter
12 and to ensure coordination with state employee collective bargaining
13 under chapter 41.80 RCW and the coordination necessary to implement RCW
14 74.39A.300, the public employer shall be represented for bargaining
15 purposes by the governor or the governor's designee appointed under
16 chapter 41.80 RCW. The governor or governor's designee shall
17 periodically consult with the authority during the collective
18 bargaining process to allow the authority to communicate issues
19 relating to the long-term in-home care services received by consumers.

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

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

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

1 (c) The mediation and interest arbitration provisions of RCW
2 41.56.430 through 41.56.470 and 41.56.480 apply, except that:

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

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

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

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

17 (e) Individual providers who are related to, or family members of,
18 consumers or prospective consumers are not, for that reason, exempt
19 from this chapter ((~~3, Laws of 2002~~)) or chapter 41.56 RCW.

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

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

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

1 (6) Except as expressly limited in this section and RCW 74.39A.300,
2 the wages, hours, and working conditions of individual providers are
3 determined solely through collective bargaining as provided in this
4 chapter. No agency or department of the state, other than the
5 authority, may establish policies or rules governing the wages or hours
6 of individual providers. However, this subsection does not modify:

7 (a) The department's authority to establish a plan of care for each
8 consumer and to determine the hours of care that each consumer is
9 eligible to receive;

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

13 (c) The consumer's right to assign hours to one or more individual
14 providers selected by the consumer within the maximum hours determined
15 by his or her plan of care;

16 (d) The consumer's right to select, hire, terminate, supervise the
17 work of, and determine the conditions of employment for each individual
18 provider providing services to the consumer under this chapter;

19 (e) The department's obligation to comply with the federal medicaid
20 statute and regulations and the terms of any community-based waiver
21 granted by the federal department of health and human services and to
22 ensure federal financial participation in the provision of the
23 services; and

24 (f) The legislature's right to make programmatic modifications to
25 the delivery of state services under this title, including standards of
26 eligibility of consumers and individual providers participating in the
27 programs under this title, and the nature of services provided. The
28 governor shall not enter into, extend, or renew any agreement under
29 this chapter that does not expressly reserve the legislative rights
30 described in this subsection (6)(f).

31 (7)(a) The state, the department, the authority, the area agencies
32 on aging, or their contractors under this chapter ((3, Laws of 2002))
33 may not be held vicariously or jointly liable for the action or
34 inaction of any individual provider or prospective individual provider,
35 whether or not that individual provider or prospective individual
36 provider was included on the authority's referral registry or referred
37 to a consumer or prospective consumer. The existence of a collective

1 bargaining agreement, the placement of an individual provider on the
2 referral registry, or the development or approval of a plan of care for
3 a consumer who chooses to use the services of an individual provider
4 and the provision of case management services to that consumer, by the
5 department or an area agency on aging, does not constitute a special
6 relationship with the consumer.

7 (b) The members of the board are immune from any liability
8 resulting from implementation of this chapter (~~(3, Laws of 2002)~~).

9 (~~(+7)~~) (8) Nothing in this section affects the state's
10 responsibility with respect to (~~the state payroll system or~~)
11 unemployment insurance for individual providers. However, individual
12 providers are not to be considered, as a result of the state assuming
13 this responsibility, employees of the state.

14 **Sec. 2.** RCW 74.39A.300 and 2002 c 3 s 9 are each amended to read
15 as follows:

16 (1) Upon meeting the requirements of subsection (2) of this
17 section, the governor must submit, as a part of the proposed biennial
18 or supplemental operating budget submitted to the legislature under RCW
19 43.88.030, a request for funds necessary to administer chapter 3, Laws
20 of 2002 and to implement (~~any~~) the compensation and fringe benefits
21 provisions of a collective bargaining agreement entered into under RCW
22 74.39A.270 or for legislation necessary to implement (~~any~~) such
23 agreement (~~within ten days of the date on which the agreement is~~
24 ratified or, if the legislature is not in session, within ten days
25 after the next legislative session convenes)).

26 (2) A request for funds necessary to implement the compensation and
27 fringe benefits provisions of a collective bargaining agreement entered
28 into under RCW 74.39A.270 shall not be submitted by the governor to the
29 legislature unless such request:

30 (a) Has been submitted to the director of financial management by
31 October 1st prior to the legislative session at which the request is to
32 be considered; and

33 (b) Has been certified by the director of financial management as
34 being feasible financially for the state or reflects the binding
35 decision of an arbitration panel reached under RCW 74.39A.270(2)(c).

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

6 ~~((+2))~~ (4) When any increase in individual provider wages or
7 benefits is negotiated or agreed to ~~((by the authority))~~, no increase
8 in wages or benefits negotiated or agreed to under this chapter ~~((3,~~
9 ~~Laws of 2002))~~ will take effect unless and until, before its
10 implementation, the department has determined that the increase is
11 consistent with federal law and federal financial participation in the
12 provision of services under Title XIX of the federal social security
13 act.

14 ~~((+3))~~ (5) The governor shall periodically consult with the joint
15 committee on employment relations established by RCW 41.80.010
16 regarding appropriations necessary to implement the compensation and
17 fringe benefits provisions of any collective bargaining agreement and,
18 upon completion of negotiations, advise the committee on the elements
19 of the agreement and on any legislation necessary to implement such
20 agreement.

21 (6) After the expiration date of any collective bargaining
22 agreement entered into under RCW 74.39A.270, all of the terms and
23 conditions specified in any such agreement remain in effect until the
24 effective date of a subsequent agreement, not to exceed one year from
25 the expiration date stated in the agreement, except as provided in RCW
26 74.39A.270(6)(f).

27 (7) If, after the compensation and benefit provisions of an
28 agreement are approved by the legislature, a significant revenue
29 shortfall occurs resulting in reduced appropriations, as declared by
30 proclamation of the governor or by resolution of the legislature, both
31 parties shall immediately enter into collective bargaining for a
32 mutually agreed upon modification of the agreement.

33 NEW SECTION. Sec. 3. A new section is added to chapter 41.04 RCW
34 to read as follows:

35 Individual providers, as defined in RCW 74.39A.240, are not

1 employees of the state or any of its political subdivisions and are
2 specifically and entirely excluded from all provisions of this title,
3 except as provided in RCW 74.39A.270.

4 NEW SECTION. **Sec. 4.** A new section is added to chapter 43.01 RCW
5 to read as follows:

6 RCW 43.01.040 through 43.01.044 do not apply to individual
7 providers under RCW 74.39A.220 through 74.39A.300.

8 **Sec. 5.** RCW 74.39A.901 and 1993 c 508 s 11 are each amended to
9 read as follows:

10 If any part of this ((~~aet~~)) chapter or a collective bargaining
11 agreement under this chapter is found by a court of competent
12 jurisdiction to be in conflict with federal requirements that are a
13 prescribed condition to the allocation of federal funds to the state,
14 the conflicting part of this ((~~aet~~)) chapter or the agreement is
15 inoperative solely to the extent of the conflict and with respect to
16 the agencies directly affected, and this finding does not affect the
17 operation of the remainder of this ((~~aet~~)) chapter or the agreement in
18 its application to the agencies concerned. The rules under this
19 ((~~aet~~)) chapter shall meet federal requirements that are a necessary
20 condition to the receipt of federal funds by the state.

21 **Sec. 6.** RCW 41.56.030 and 2002 c 99 s 2 are each amended to read
22 as follows:

23 As used in this chapter:

24 (1) "Public employer" means any officer, board, commission,
25 council, or other person or body acting on behalf of any public body
26 governed by this chapter, or any subdivision of such public body. For
27 the purposes of this section, the public employer of district court or
28 superior court employees for wage-related matters is the respective
29 county legislative authority, or person or body acting on behalf of the
30 legislative authority, and the public employer for nonwage-related
31 matters is the judge or judge's designee of the respective district
32 court or superior court.

33 (2) "Public employee" means any employee of a public employer
34 except any person (a) elected by popular vote, or (b) appointed to

1 office pursuant to statute, ordinance or resolution for a specified
2 term of office as a member of a multimember board, commission, or
3 committee, whether appointed by the executive head or body of the
4 public employer, or (c) whose duties as deputy, administrative
5 assistant or secretary necessarily imply a confidential relationship to
6 (i) the executive head or body of the applicable bargaining unit, or
7 (ii) any person elected by popular vote, or (iii) any person appointed
8 to office pursuant to statute, ordinance or resolution for a specified
9 term of office as a member of a multimember board, commission, or
10 committee, whether appointed by the executive head or body of the
11 public employer, or (d) who is a court commissioner or a court
12 magistrate of superior court, district court, or a department of a
13 district court organized under chapter 3.46 RCW, or (e) who is a
14 personal assistant to a district court judge, superior court judge, or
15 court commissioner, or (f) excluded from a bargaining unit under RCW
16 41.56.201(2)(a). For the purpose of (e) of this subsection, no more
17 than one assistant for each judge or commissioner may be excluded from
18 a bargaining unit.

19 (3) "Bargaining representative" means any lawful organization which
20 has as one of its primary purposes the representation of employees in
21 their employment relations with employers.

22 (4) "Collective bargaining" means the performance of the mutual
23 obligations of the public employer and the exclusive bargaining
24 representative to meet at reasonable times, to confer and negotiate in
25 good faith, and to execute a written agreement with respect to
26 grievance procedures and collective negotiations on personnel matters,
27 including wages, hours and working conditions, which may be peculiar to
28 an appropriate bargaining unit of such public employer, except that by
29 such obligation neither party shall be compelled to agree to a proposal
30 or be required to make a concession unless otherwise provided in this
31 chapter.

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

33 (6) "Executive director" means the executive director of the
34 commission.

35 (7) "Uniformed personnel" means: (a) Law enforcement officers as
36 defined in RCW 41.26.030 employed by the governing body of any city or
37 town with a population of two thousand five hundred or more and law

1 enforcement officers employed by the governing body of any county with
2 a population of ten thousand or more; (b) correctional employees who
3 are uniformed and nonuniformed, commissioned and noncommissioned
4 security personnel employed in a jail as defined in RCW 70.48.020(5),
5 by a county with a population of seventy thousand or more, and who are
6 trained for and charged with the responsibility of controlling and
7 maintaining custody of inmates in the jail and safeguarding inmates
8 from other inmates; (c) general authority Washington peace officers as
9 defined in RCW 10.93.020 employed by a port district in a county with
10 a population of one million or more; (d) security forces established
11 under RCW 43.52.520; (e) fire fighters as that term is defined in RCW
12 41.26.030; (f) employees of a port district in a county with a
13 population of one million or more whose duties include crash fire
14 rescue or other fire fighting duties; (g) employees of fire departments
15 of public employers who dispatch exclusively either fire or emergency
16 medical services, or both; or (h) employees in the several classes of
17 advanced life support technicians, as defined in RCW 18.71.200, who are
18 employed by a public employer.

19 (8) "Institution of higher education" means the University of
20 Washington, Washington State University, Central Washington University,
21 Eastern Washington University, Western Washington University, The
22 Evergreen State College, and the various state community colleges.

23 (9) "Home care quality authority" means the authority under chapter
24 74.39A RCW.

25 (10) "Individual provider" means an individual provider as defined
26 in RCW 74.39A.240(4) who, solely for the purposes of collective
27 bargaining, is (~~employed by the home care quality authority~~) a public
28 employee as provided in RCW 74.39A.270.

29 **Sec. 7.** RCW 41.56.113 and 2002 c 99 s 1 are each amended to read
30 as follows:

31 (1) Upon the written authorization of an individual provider within
32 the bargaining unit and after the certification or recognition of the
33 bargaining unit's exclusive bargaining representative, the state as
34 payor, but not as the employer, shall, subject to subsection (3) of
35 this section, deduct from the payments to an individual provider the

1 monthly amount of dues as certified by the secretary of the exclusive
2 bargaining representative and shall transmit the same to the treasurer
3 of the exclusive bargaining representative.

4 (2) If the (~~home care quality authority~~) governor and the
5 exclusive bargaining representative of a bargaining unit of individual
6 providers enter into a collective bargaining agreement that:

7 (a) Includes a union security provision authorized in RCW
8 41.56.122, the state as payor, but not as the employer, shall, subject
9 to subsection (3) of this section, enforce the agreement by deducting
10 from the payments to bargaining unit members the dues required for
11 membership in the exclusive bargaining representative, or, for
12 nonmembers thereof, a fee equivalent to the dues; or

13 (b) Includes requirements for deductions of payments other than the
14 deduction under (a) of this subsection, the state, as payor, but not as
15 the employer, shall, subject to subsection (3) of this section, make
16 such deductions upon written authorization of the individual provider.

17 (3)(a) The initial additional costs to the state in making
18 deductions from the payments to individual providers under this section
19 shall be negotiated, agreed upon in advance, and reimbursed to the
20 state by the exclusive bargaining representative.

21 (b) The allocation of ongoing additional costs to the state in
22 making deductions from the payments to individual providers under this
23 section shall be an appropriate subject of collective bargaining
24 between the exclusive bargaining representative and the (~~home care
25 quality authority~~) governor unless prohibited by another statute. If
26 no collective bargaining agreement containing a provision allocating
27 the ongoing additional cost is entered into between the exclusive
28 bargaining representative and the (~~home care quality authority~~)
29 governor, or if the legislature does not approve funding for the
30 collective bargaining agreement as provided in RCW 74.39A.300, the
31 ongoing additional costs to the state in making deductions from the
32 payments to individual providers under this section shall be
33 negotiated, agreed upon in advance, and reimbursed to the state by the
34 exclusive bargaining representative.

35 NEW SECTION. **Sec. 8.** If any provision of this act or its

1 application to any person or circumstance is held invalid, the
2 remainder of the act or the application of the provision to other
3 persons or circumstances is not affected.

4 NEW SECTION. **Sec. 9.** This act is necessary for the immediate
5 preservation of the public peace, health, or safety, or support of the
6 state government and its existing public institutions, and takes effect
7 immediately."

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8 On page 1, line 2 of the title, after "providers;" strike the
9 remainder of the title and insert "amending RCW 74.39A.270, 74.39A.300,
10 74.39A.901, 41.56.030, and 41.56.113; adding a new section to chapter
11 41.04 RCW; adding a new section to chapter 43.01 RCW; and declaring an
12 emergency."

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