

---

HOUSE BILL 2463

---

State of Washington

58th Legislature

2004 Regular Session

By Representatives Cody, Morrell, Alexander, Armstrong, Bush, Dickerson, Moeller and Clibborn; by request of Home Care Quality Authority

Read first time 01/14/2004. Referred to Committee on Health Care.

1 AN ACT Relating to further reaffirmation and clarification of  
2 individual providers' work roles as nonstate employees, excluding these  
3 workers from specific provisions under Title 41 RCW; and amending RCW  
4 74.39A.240 and 74.39A.270.

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

6 **Sec. 1.** RCW 74.39A.240 and 2002 c 3 s 3 are each amended to read  
7 as follows:

8 The definitions in this section apply throughout RCW 74.39A.030 and  
9 74.39A.095 and 74.39A.220 through 74.39A.300, 41.56.026, 70.127.041,  
10 and 74.09.740 unless the context clearly requires otherwise.

11 (1) "Authority" means the home care quality authority.

12 (2) "Board" means the board created under RCW 74.39A.230.

13 (3) "Consumer" means a person to whom an individual provider  
14 provides any such services.

15 (4) "Individual provider" means a person, including a personal  
16 aide, who has contracted with the department to provide personal care  
17 or respite care services to (~~functionally disabled persons~~)  
18 individuals with functional disabilities under the medicaid personal  
19 care, community options program entry system, chore services program,

1 or respite care program, or to provide respite care or residential  
2 services and support to persons with developmental disabilities under  
3 chapter 71A.12 RCW, or to provide respite care as defined in RCW  
4 74.13.270. An individual provider is not to be considered for any  
5 purpose an employee of the state of Washington, an area agency on  
6 aging, or any other public agency.

7 **Sec. 2.** RCW 74.39A.270 and 2002 c 3 s 6 are each amended to read  
8 as follows:

9 (1) Solely for the purposes of collective bargaining and as  
10 expressly limited under subsections (2) and (3) of this section, the  
11 authority is the public employer, as defined in chapter 41.56 RCW, of  
12 individual providers, who are public employees solely for collective  
13 bargaining, as defined in chapter 41.56 RCW, of the authority.

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

18 (a) The only unit appropriate for the purpose of collective  
19 bargaining under RCW 41.56.060 is a statewide unit of all individual  
20 providers;

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

24 (c) The mediation and interest arbitration provisions of RCW  
25 41.56.430 through 41.56.470 and 41.56.480 apply;

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

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

30 (3) Individual providers who are public employees (~~of the~~  
31 ~~authority~~) solely for collective bargaining under subsection (1) of  
32 this section are not(~~, for that reason,~~) employees of the state for  
33 any purpose. Chapter 41.56 RCW applies only to the governance of the  
34 collective bargaining relationship between the authority and the  
35 individual providers and as provided in subsections (1) and (2) of this  
36 section. Individual providers are specifically and entirely excluded  
37 from all other provisions of Title 41 RCW.

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

--- END ---