

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 2933

58th Legislature
2004 Regular Session

Passed by the House March 4, 2004
Yeas 95 Nays 0

Speaker of the House of Representatives

Passed by the Senate February 25, 2004
Yeas 49 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Richard Nafziger, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 2933** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 2933

AS AMENDED BY THE SENATE

Passed Legislature - 2004 Regular Session

State of Washington 58th Legislature 2004 Regular Session

By House Committee on Commerce & Labor (originally sponsored by Representatives Conway, Cody, Benson, Ormsby, O'Brien, Sullivan, Wood and Morrell)

READ FIRST TIME 02/06/04.

1 AN ACT Relating to clarifying collective bargaining processes for
2 individual providers; amending RCW 74.39A.270, 74.39A.300, 74.39A.901,
3 41.56.030, and 41.56.113; adding a new section to chapter 41.04 RCW;
4 adding a new section to chapter 43.01 RCW; and declaring an emergency.

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

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

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

1 periodically consult with the authority during the collective
2 bargaining process to allow the authority to communicate issues
3 relating to the long-term in-home care services received by consumers.

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

8 (a) The only unit appropriate for the purpose of collective
9 bargaining under RCW 41.56.060 is a statewide unit of all individual
10 providers;

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

14 (c) The mediation and interest arbitration provisions of RCW
15 41.56.430 through 41.56.470 and 41.56.480 apply, except that:

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

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

24 (iii) The decision of the arbitration panel is not binding on the
25 legislature and, if the legislature does not approve the request for
26 funds necessary to implement the compensation and fringe benefit
27 provisions of the arbitrated collective bargaining agreement, is not
28 binding on the authority or the state;

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

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

33 (3) Individual providers who are public employees (~~(of the~~
34 ~~authority)~~) solely for the purposes of collective bargaining under
35 subsection (1) of this section are not, for that reason, employees of
36 the state, its political subdivisions, or an area agency on aging for
37 any purpose. Chapter 41.56 RCW applies only to the governance of the

1 collective bargaining relationship between the employer and individual
2 providers as provided in subsections (1) and (2) of this section.

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

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

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

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

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

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

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

31 (e) The department's obligation to comply with the federal medicaid
32 statute and regulations and the terms of any community-based waiver
33 granted by the federal department of health and human services and to
34 ensure federal financial participation in the provision of the
35 services; and

36 (f) The legislature's right to make programmatic modifications to
37 the delivery of state services under this title, including standards of
38 eligibility of consumers and individual providers participating in the

1 programs under this title, and the nature of services provided. The
2 governor shall not enter into, extend, or renew any agreement under
3 this chapter that does not expressly reserve the legislative rights
4 described in this subsection (6)(f).

5 (7)(a) The state, the department, the authority, the area agencies
6 on aging, or their contractors under this chapter ((3, Laws of 2002))
7 may not be held vicariously or jointly liable for the action or
8 inaction of any individual provider or prospective individual provider,
9 whether or not that individual provider or prospective individual
10 provider was included on the authority's referral registry or referred
11 to a consumer or prospective consumer. The existence of a collective
12 bargaining agreement, the placement of an individual provider on the
13 referral registry, or the development or approval of a plan of care for
14 a consumer who chooses to use the services of an individual provider
15 and the provision of case management services to that consumer, by the
16 department or an area agency on aging, does not constitute a special
17 relationship with the consumer.

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

20 ((+7)) (8) Nothing in this section affects the state's
21 responsibility with respect to ((the state payroll system or))
22 unemployment insurance for individual providers. However, individual
23 providers are not to be considered, as a result of the state assuming
24 this responsibility, employees of the state.

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

27 (1) Upon meeting the requirements of subsection (2) of this
28 section, the governor must submit, as a part of the proposed biennial
29 or supplemental operating budget submitted to the legislature under RCW
30 43.88.030, a request for funds necessary to administer chapter 3, Laws
31 of 2002 and to implement ((any)) the compensation and fringe benefits
32 provisions of a collective bargaining agreement entered into under RCW
33 74.39A.270 or for legislation necessary to implement ((any)) such
34 agreement ((within ten days of the date on which the agreement is
35 ratified or, if the legislature is not in session, within ten days
36 after the next legislative session convenes)).

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

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

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

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

16 ~~((+2))~~ (4) When any increase in individual provider wages or
17 benefits is negotiated or agreed to ((by the authority)), no increase
18 in wages or benefits negotiated or agreed to under this chapter ((3,
19 Laws of 2002)) will take effect unless and until, before its
20 implementation, the department has determined that the increase is
21 consistent with federal law and federal financial participation in the
22 provision of services under Title XIX of the federal social security
23 act.

24 ~~((+3))~~ (5) The governor shall periodically consult with the joint
25 committee on employment relations established by RCW 41.80.010
26 regarding appropriations necessary to implement the compensation and
27 fringe benefits provisions of any collective bargaining agreement and,
28 upon completion of negotiations, advise the committee on the elements
29 of the agreement and on any legislation necessary to implement such
30 agreement.

31 (6) After the expiration date of any collective bargaining
32 agreement entered into under RCW 74.39A.270, all of the terms and
33 conditions specified in any such agreement remain in effect until the
34 effective date of a subsequent agreement, not to exceed one year from
35 the expiration date stated in the agreement, except as provided in RCW
36 74.39A.270(6)(f).

37 (7) If, after the compensation and benefit provisions of an
38 agreement are approved by the legislature, a significant revenue

1 shortfall occurs resulting in reduced appropriations, as declared by
2 proclamation of the governor or by resolution of the legislature, both
3 parties shall immediately enter into collective bargaining for a
4 mutually agreed upon modification of the agreement.

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

7 Individual providers, as defined in RCW 74.39A.240, are not
8 employees of the state or any of its political subdivisions and are
9 specifically and entirely excluded from all provisions of this title,
10 except as provided in RCW 74.39A.270.

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

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

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

17 If any part of this ((act)) chapter or a collective bargaining
18 agreement under this chapter is found by a court of competent
19 jurisdiction to be in conflict with federal requirements that are a
20 prescribed condition to the allocation of federal funds to the state,
21 the conflicting part of this ((act)) chapter or the agreement is
22 inoperative solely to the extent of the conflict and with respect to
23 the agencies directly affected, and this finding does not affect the
24 operation of the remainder of this ((act)) chapter or the agreement in
25 its application to the agencies concerned. The rules under this
26 ((act)) chapter shall meet federal requirements that are a necessary
27 condition to the receipt of federal funds by the state.

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

30 As used in this chapter:

31 (1) "Public employer" means any officer, board, commission,
32 council, or other person or body acting on behalf of any public body
33 governed by this chapter, or any subdivision of such public body. For
34 the purposes of this section, the public employer of district court or

1 superior court employees for wage-related matters is the respective
2 county legislative authority, or person or body acting on behalf of the
3 legislative authority, and the public employer for nonwage-related
4 matters is the judge or judge's designee of the respective district
5 court or superior court.

6 (2) "Public employee" means any employee of a public employer
7 except any person (a) elected by popular vote, or (b) appointed to
8 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 (c) whose duties as deputy, administrative
12 assistant or secretary necessarily imply a confidential relationship to
13 (i) the executive head or body of the applicable bargaining unit, or
14 (ii) any person elected by popular vote, or (iii) any person appointed
15 to office pursuant to statute, ordinance or resolution for a specified
16 term of office as a member of a multimember board, commission, or
17 committee, whether appointed by the executive head or body of the
18 public employer, or (d) who is a court commissioner or a court
19 magistrate of superior court, district court, or a department of a
20 district court organized under chapter 3.46 RCW, or (e) who is a
21 personal assistant to a district court judge, superior court judge, or
22 court commissioner, or (f) excluded from a bargaining unit under RCW
23 41.56.201(2)(a). For the purpose of (e) of this subsection, no more
24 than one assistant for each judge or commissioner may be excluded from
25 a bargaining unit.

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

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

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

2 (6) "Executive director" means the executive director of the
3 commission.

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

25 (8) "Institution of higher education" means the University of
26 Washington, Washington State University, Central Washington University,
27 Eastern Washington University, Western Washington University, The
28 Evergreen State College, and the various state community colleges.

29 (9) "Home care quality authority" means the authority under chapter
30 74.39A RCW.

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

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

37 (1) Upon the written authorization of an individual provider within

1 the bargaining unit and after the certification or recognition of the
2 bargaining unit's exclusive bargaining representative, the state as
3 payor, but not as the employer, shall, subject to subsection (3) of
4 this section, deduct from the payments to an individual provider the
5 monthly amount of dues as certified by the secretary of the exclusive
6 bargaining representative and shall transmit the same to the treasurer
7 of the exclusive bargaining representative.

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

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

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

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

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

1 NEW SECTION. **Sec. 8.** If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 remainder of the act or the application of the provision to other
4 persons or circumstances is not affected.

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

--- END ---