

---

**Commerce & Labor Committee**

---

**HB 2475**

**Brief Description:** Requiring collective bargaining regarding hours of work for individual providers.

**Sponsors:** Representatives Conway, Williams, Fromhold, Wood, B. Sullivan, Simpson, Sells, Ormsby and Green.

**Brief Summary of Bill**

- Requires, as a mandatory subject of bargaining, negotiations over certain Department of Social and Health Services rules or policies that may result in significant changes in the number of hours worked by a significant number of individual providers (home care workers).

**Hearing Date:** 1/12/06

**Staff:** Chris Cordes (786-7103).

**Background:**

Long-term Care Services Provided by Home Care Workers

The Department of Social and Health Services' (DSHS) contracts with agency and individual home care workers (individual providers) to provide long-term care services for elderly and disabled clients (consumers) who are eligible for publicly funded services through the DSHS's Aging and Adult Services and Developmental Disabilities programs. Home care workers provide consumers with personal care assistance with various tasks such as toileting, bathing, dressing, ambulating, meal preparation, and household chores. The individual providers are hired and fired by the consumer, but are paid by the DSHS.

The Home Care Quality Authority (HCQA) has responsibility for establishing qualifications for individual providers, recruiting and training individual providers, and providing assistance to consumers in finding care by establishing a referral registry.

The DSHS "Shared Living" Rule

In implementing the long-term care services program, the DSHS adopted a rule, generally known as the "shared living" rule, under which the DSHS will not pay for services such as shopping, housework, laundry, or meal preparation if the individual provider lives in the same household with the consumer. According to hearing examiner findings made in an unfair labor practice case

filed with the Public Employment Relations Commission (PERC), this rule has resulted in a 15 percent deduction from the hours allotted to individual providers as compensation for their services in homes where they also reside.

### Collective Bargaining for Individual Providers

Individual providers have collective bargaining rights under the Public Employees' Collective Bargaining Act (PECBA) administered by the PERC. The law explicitly states that wages, hours, and working conditions are determined solely through collective bargaining and, except for the HCQA, no state agency may establish policies or rules governing wages or hours of individual providers. However, this provision also states that it does not modify various responsibilities of the DSHS, including the authority to establish a consumer's plan of care and determine the hours of care for which a consumer is eligible. In addition, it does not modify the Legislature's right to make programmatic modifications to the state's long-term care services program.

The first contract to be implemented under the individual provider collective bargaining law was effective until June 30, 2005. By law, negotiations for a new agreement must begin by May 1 of the year before the year in which an existing collective bargaining agreement expires. In April 2004, the union representing the individual providers and the Governor's Labor Relations Office began negotiating for a successor contract. By August, a PERC mediator determined that the parties were at impasse on several issues, which were certified to an arbitrator. One of these issues involved the "shared living" rule.

On August 31, 2004, the Office of Financial Management filed an unfair labor practice with the PERC, alleging that the union failed to bargain in good faith by insisting on submitting some issues, including the "shared living" rule issue, to arbitration. The PERC hearing examiner agreed that the union had committed an unfair labor practice, finding that the Legislature intended the DSHS to retain its core responsibility to administer the home care program and to set the hours of care and the plan of care for consumers receiving services. This decision was affirmed by the PERC on October 12, 2005.

### **Summary of Bill:**

A Department of Social and Health Services rule or policy is a mandatory subject of bargaining if the policy or rule, or proposed rule or policy, applies generally to a significant group of individual providers or consumers and, by its general application, may result in a significant change in the number of hours worked by a significant number of individual providers. However, this bargaining requirement (1) does not apply to rules or policies that are implementing legislative programmatic modifications to the long-term care services program; and (2) is not to be interpreted as requiring bargaining over any individual consumer's plan of care.

**Rules Authority:** The bill makes certain DSHS rules subject to collective bargaining.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.