

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 2475

59th Legislature
2006 Regular Session

Passed by the House March 7, 2006
Yeas 95 Nays 3

Speaker of the House of Representatives

Passed by the Senate March 7, 2006
Yeas 42 Nays 3

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 2475** 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 2475

AS AMENDED BY THE SENATE

Passed Legislature - 2006 Regular Session

State of Washington 59th Legislature 2006 Regular Session

By House Committee on Commerce & Labor (originally sponsored by Representatives Conway, Williams, Fromhold, Wood, B. Sullivan, Simpson, Sells, Ormsby and Green)

READ FIRST TIME 02/07/06.

1 AN ACT Relating to collective bargaining regarding hours of work
2 for individual providers; amending RCW 74.39A.270; and declaring an
3 emergency.

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

5 **Sec. 1.** RCW 74.39A.270 and 2004 c 3 s 1 are each amended to read
6 as follows:

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

1 communicate issues relating to the long-term in-home care services
2 received by consumers. The governor or the governor's designee shall
3 consult the authority on all issues for which the exclusive bargaining
4 representative requests to engage in collective bargaining under
5 subsection (6) of this section. The authority shall work with the
6 developmental disabilities council, the governor's committee on
7 disability issues and employment, the state council on aging, and other
8 consumer advocacy organizations to obtain informed input from consumers
9 on their interests, including impacts on consumer choice, for all
10 issues proposed for collective bargaining under subsection (6) of this
11 section.

12 (2) Chapter 41.56 RCW governs the collective bargaining
13 relationship between the governor and individual providers, except as
14 otherwise expressly provided in this chapter and except as follows:

15 (a) The only unit appropriate for the purpose of collective
16 bargaining under RCW 41.56.060 is a statewide unit of all individual
17 providers;

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

21 (c) The mediation and interest arbitration provisions of RCW
22 41.56.430 through 41.56.470 and 41.56.480 apply, except that:

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

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

31 (iii) The decision of the arbitration panel is not binding on the
32 legislature and, if the legislature does not approve the request for
33 funds necessary to implement the compensation and fringe benefit
34 provisions of the arbitrated collective bargaining agreement, is not
35 binding on the authority or the state;

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

37 (e) Individual providers who are related to, or family members of,

1 consumers or prospective consumers are not, for that reason, exempt
2 from this chapter or chapter 41.56 RCW.

3 (3) Individual providers who are public employees solely for the
4 purposes of collective bargaining under subsection (1) of this section
5 are not, for that reason, employees of the state, its political
6 subdivisions, or an area agency on aging for any purpose. Chapter
7 41.56 RCW applies only to the governance of the collective bargaining
8 relationship between the employer and individual providers as provided
9 in subsections (1) and (2) of this section.

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

15 (5) In implementing and administering this chapter, neither the
16 authority nor any of its contractors may reduce or increase the hours
17 of service for any consumer below or above the amount determined to be
18 necessary under any assessment prepared by the department or an area
19 agency on aging.

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

27 (a) The department's authority to establish a plan of care for each
28 consumer (~~(and to determine the hours))~~ or its core responsibility to
29 manage long-term in-home care services under this chapter, including
30 determination of the level of care that each consumer is eligible to
31 receive. However, at the request of the exclusive bargaining
32 representative, the governor or the governor's designee appointed under
33 chapter 41.80 RCW shall engage in collective bargaining, as defined in
34 RCW 41.56.030(4), with the exclusive bargaining representative over how
35 the department's core responsibility affects hours of work for
36 individual providers. This subsection shall not be interpreted to
37 require collective bargaining over an individual consumer's plan of
38 care;

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

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

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

10 (e) The department's obligation to comply with the federal medicaid
11 statute and regulations and the terms of any community-based waiver
12 granted by the federal department of health and human services and to
13 ensure federal financial participation in the provision of the
14 services; and

15 (f) The legislature's right to make programmatic modifications to
16 the delivery of state services under this title, including standards of
17 eligibility of consumers and individual providers participating in the
18 programs under this title, and the nature of services provided. The
19 governor shall not enter into, extend, or renew any agreement under
20 this chapter that does not expressly reserve the legislative rights
21 described in this subsection (6)(f).

22 (7)(a) The state, the department, the authority, the area agencies
23 on aging, or their contractors under this chapter may not be held
24 vicariously or jointly liable for the action or inaction of any
25 individual provider or prospective individual provider, whether or not
26 that individual provider or prospective individual provider was
27 included on the authority's referral registry or referred to a consumer
28 or prospective consumer. The existence of a collective bargaining
29 agreement, the placement of an individual provider on the referral
30 registry, or the development or approval of a plan of care for a
31 consumer who chooses to use the services of an individual provider and
32 the provision of case management services to that consumer, by the
33 department or an area agency on aging, does not constitute a special
34 relationship with the consumer.

35 (b) The members of the board are immune from any liability
36 resulting from implementation of this chapter.

37 (8) Nothing in this section affects the state's responsibility with

1 respect to unemployment insurance for individual providers. However,
2 individual providers are not to be considered, as a result of the state
3 assuming this responsibility, employees of the state.

4 NEW SECTION. **Sec. 2.** 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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