
SUBSTITUTE SENATE BILL 5724

State of Washington

59th Legislature

2005 Regular Session

By Senate Committee on Labor, Commerce, Research & Development
(originally sponsored by Senators Kohl-Welles, Benson, Franklin,
Benton, Keiser, Esser, Pridemore, Kline, Roach, Regala and McAuliffe)

READ FIRST TIME 03/02/05.

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

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

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

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

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

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

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

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

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

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

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

32 (3) Individual providers who are public employees solely for the
33 purposes of collective bargaining under subsection (1) of this section
34 are not, for that reason, employees of the state, its political
35 subdivisions, or an area agency on aging for any purpose. Chapter
36 41.56 RCW applies only to the governance of the collective bargaining
37 relationship between the employer and individual providers as provided
38 in subsections (1) and (2) of this section.

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 this chapter, neither the
7 authority nor any of its contractors may reduce or increase the hours
8 of service for any consumer below or above the amount determined to be
9 necessary under any assessment prepared by the department or an area
10 agency on aging.

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

17 (a) The department's authority to establish a plan of care for each
18 consumer and to determine the hours of care that each consumer is
19 eligible to receive. However, with respect to a department policy or
20 rule, other than a policy or rule implementing a programmatic
21 modification adopted under (f) of this subsection, that (i) applies
22 generally to a significant group of individual providers or consumers
23 and (ii) by its general application may result in a significant change
24 in the number of hours worked by a significant number of individual
25 providers, the policy or rule, or proposal for such a policy or rule,
26 is a mandatory subject of bargaining. This subsection (6)(a) shall not
27 be interpreted to require collective bargaining over any individual
28 consumer's plan of care;

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

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

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

1 (e) The department's obligation to comply with the federal medicaid
2 statute and regulations and the terms of any community-based waiver
3 granted by the federal department of health and human services and to
4 ensure federal financial participation in the provision of the
5 services; and

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

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

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

28 (8) Nothing in this section affects the state's responsibility with
29 respect to unemployment insurance for individual providers. However,
30 individual providers are not to be considered, as a result of the state
31 assuming this responsibility, employees of the state.

32 NEW SECTION. **Sec. 2.** This act is necessary for the immediate
33 preservation of the public peace, health, or safety, or support of the
34 state government and its existing public institutions, and takes effect
35 immediately.

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