
SECOND SUBSTITUTE HOUSE BILL 2284

State of Washington

60th Legislature

2007 Regular Session

By House Committee on Appropriations (originally sponsored by Representatives Green, Ericksen, Sells, Strow, Seaquist, Hinkle, Wallace, Priest, Hasegawa, Fromhold, P. Sullivan, Conway, Miloscia, Linville, Kenney, O'Brien, Simpson and Hunt)

READ FIRST TIME 03/05/07.

1 AN ACT Relating to the training of and collective bargaining over
2 the training of care providers; amending RCW 74.39A.270 and 41.56.465;
3 amending 2005 c 276 s 1 (uncodified); creating a new section; repealing
4 RCW 74.39A.190; and providing an effective date.

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

6 **Sec. 1.** 2005 c 276 s 1 (uncodified) is amended to read as follows:

7 (1) The governor shall establish a joint legislative and executive
8 task force on long-term care financing and chronic care management.
9 The joint task force consists of eight members, as follows: The
10 secretary of the department of social and health services; the
11 secretary of the department of health; the administrator of the health
12 care authority; a representative from the governor's office; two
13 members of the senate appointed by the president of the senate, one of
14 whom shall be a member of the majority caucus and one of whom shall be
15 a member of the minority caucus; and two members of the house of
16 representatives appointed by the speaker of the house of
17 representatives, one of whom shall be a member of the majority caucus
18 and one of whom shall be a member of the minority caucus.

1 (2) The joint task force shall elect a member of the joint task
2 force to serve as chair of the joint task force.

3 (3) Consistent with funds appropriated specifically for this
4 purpose, the joint task force shall contract for professional services.
5 State agencies, the senate, and the house of representatives may
6 provide staff support upon request of the joint task force.

7 (4) The joint task force shall create advisory committees to assist
8 the joint task force in its work. The task force shall actively
9 consult with and solicit recommendations from the advisory committee or
10 committees regarding issues under consideration by the task force.

11 (5) Joint task force members may be reimbursed for travel expenses
12 as authorized under RCW 43.03.050 and 43.03.060, and chapter 44.04 RCW
13 as appropriate. Advisory committee members, if appointed, may not
14 receive compensation or reimbursement for travel or expenses.

15 (6) The joint task force shall review public and private mechanisms
16 for financing long-term care and make recommendations related to:

17 (a) The composition of a long-term care system that is adequate to
18 meet the needs of persons of all ages with functional limitations,
19 including appropriate services to be offered in the continuum of care
20 ranging from services to support persons residing at home through
21 residential care. This shall be accomplished by first determining
22 capacity in each level of care in the long-term care continuum and
23 assessing the impact, by geographic region, of increasing or decreasing
24 capacity in each level of care;

25 (b) Efficient payment models that will effectively sustain public
26 funding of long-term care and maximize the use of financial resources
27 to directly meet the needs of persons of all ages with functional
28 limitations;

29 (c) State laws and regulations that should be revised and/or
30 eliminated in order to reduce or contain long-term care costs to
31 individuals and the state;

32 (d) The feasibility of private options for realistically enabling
33 individuals to pay for long-term care and the most effective tools for
34 implementing these options. The assessment of options should include
35 but not be limited to: (i) Adequacy of personal savings and pensions;
36 (ii) availability of family care, including incentives and supports for
37 families to provide care or pay for care; (iii) creative
38 community-based strategies or partnerships for funding quality

1 long-term care; (iv) enhanced health insurance options; (v) long-term
2 care insurance options, including incentives to purchase long-term care
3 insurance through individual or group-based products; (vi) life
4 insurance annuities; and (vii) reverse mortgage and other products that
5 draw on home equity; and

6 (e) Options that will support long-term care needs of rural
7 communities.

8 (7) The joint task force shall recommend chronic care management
9 and disability prevention interventions that will reduce health care
10 and long-term care costs to individuals and the state, improve the
11 health of individuals over their life span, and encourage patient
12 self-management of chronic care needs.

13 (8) The joint task force shall evaluate current long-term care
14 provider and staff training requirements with respect to quality of
15 care provided to vulnerable adults in different long-term care
16 settings, and make recommendations for any changes in such training
17 requirements.

18 (9) The joint task force shall incorporate a process designed to
19 facilitate an open dialog with the public on findings and
20 recommendations.

21 ~~((+9))~~ (10) With respect to subsections (6) and (7) of this
22 section, the joint task force shall: (a) Report its initial findings
23 to the governor and appropriate committees of the legislature by
24 January 1, 2006; (b) report its recommendations to the governor and
25 appropriate committees of the legislature by January 1, 2007; and (c)
26 submit a final report to the governor and appropriate committees of the
27 legislature by ~~((June))~~ December 30, 2007.

28 (11) With respect to subsection (8) of this section, the joint task
29 force shall report its findings and recommendations for any changes in
30 such training requirements to the governor and appropriate legislative
31 committees by December 1, 2007.

32 **Sec. 2.** RCW 74.39A.270 and 2006 c 106 s 1 are each amended to read
33 as follows:

34 (1) Solely for the purposes of collective bargaining and as
35 expressly limited under subsections (2) and (3) of this section, the
36 governor is the public employer, as defined in chapter 41.56 RCW, of
37 individual providers, who, solely for the purposes of collective

1 bargaining, are public employees as defined in chapter 41.56 RCW. To
2 accommodate the role of the state as payor for the community-based
3 services provided under this chapter and to ensure coordination with
4 state employee collective bargaining under chapter 41.80 RCW and the
5 coordination necessary to implement RCW 74.39A.300, the public employer
6 shall be represented for bargaining purposes by the governor or the
7 governor's designee appointed under chapter 41.80 RCW. The governor or
8 governor's designee shall periodically consult with the authority
9 during the collective bargaining process to allow the authority to
10 communicate issues relating to the long-term in-home care services
11 received by consumers. The governor or the governor's designee shall
12 consult the authority on all issues for which the exclusive bargaining
13 representative requests to engage in collective bargaining under
14 subsections (6) and (7) of this section. The authority shall work with
15 the developmental disabilities council, the governor's committee on
16 disability issues and employment, the state council on aging, and other
17 consumer advocacy organizations to obtain informed input from consumers
18 on their interests, including impacts on consumer choice, for all
19 issues proposed for collective bargaining under subsections (6) and (7)
20 of this section.

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

24 (a) The only unit appropriate for the purpose of collective
25 bargaining under RCW 41.56.060 is a statewide unit of all individual
26 providers;

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

30 (c) The mediation and interest arbitration provisions of RCW
31 41.56.430 through 41.56.470 and 41.56.480 apply, except that:

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

36 (ii) ~~((With respect to factors to be taken into consideration by an
37 interest arbitration panel, the panel shall consider the financial~~

1 ~~ability of the state to pay for the compensation and fringe benefit~~
2 ~~provisions of a collective bargaining agreement; and~~

3 ~~(iii))~~ The decision of the arbitration panel is not binding on the
4 legislature and, if the legislature does not approve the request for
5 funds necessary to implement the compensation and fringe benefit
6 provisions of the arbitrated collective bargaining agreement, is not
7 binding on the authority or the state;

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

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

12 (3) Individual providers who are public employees solely for the
13 purposes of collective bargaining under subsection (1) of this section
14 are not, for that reason, employees of the state, its political
15 subdivisions, or an area agency on aging for any purpose. Chapter
16 41.56 RCW applies only to the governance of the collective bargaining
17 relationship between the employer and individual providers as provided
18 in subsections (1) and (2) of this section.

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

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

29 (6) Except as expressly limited in this section and RCW 74.39A.300,
30 the wages, hours, and working conditions of individual providers are
31 determined solely through collective bargaining as provided in this
32 chapter. No agency or department of the state may establish policies
33 or rules governing the wages or hours of individual providers.
34 However, this subsection does not modify:

35 (a) The department's authority to establish a plan of care for each
36 consumer or its core responsibility to manage long-term in-home care
37 services under this chapter, including determination of the level of
38 care that each consumer is eligible to receive. However, at the

1 request of the exclusive bargaining representative, the governor or the
2 governor's designee appointed under chapter 41.80 RCW shall engage in
3 collective bargaining, as defined in RCW 41.56.030(4), with the
4 exclusive bargaining representative over how the department's core
5 responsibility affects hours of work for individual providers. This
6 subsection shall not be interpreted to require collective bargaining
7 over an individual consumer's plan of care;

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

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

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

17 (e) The department's obligation to comply with the federal medicaid
18 statute and regulations and the terms of any community-based waiver
19 granted by the federal department of health and human services and to
20 ensure federal financial participation in the provision of the
21 services; and

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

29 (7) The scope of collective bargaining for individual providers
30 under this section shall also include contributions for the cost of
31 training and other such programs and services necessary to establish
32 and promote career ladders and a stable and skilled long-term care
33 workforce.

34 (8)(a) The state, the department, the authority, the area agencies
35 on aging, or their contractors under this chapter may not be held
36 vicariously or jointly liable for the action or inaction of any
37 individual provider or prospective individual provider, whether or not
38 that individual provider or prospective individual provider was

1 included on the authority's referral registry or referred to a consumer
2 or prospective consumer. The existence of a collective bargaining
3 agreement, the placement of an individual provider on the referral
4 registry, or the development or approval of a plan of care for a
5 consumer who chooses to use the services of an individual provider and
6 the provision of case management services to that consumer, by the
7 department or an area agency on aging, does not constitute a special
8 relationship with the consumer.

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

11 ~~((8))~~ (9) Nothing in this section affects the state's
12 responsibility with respect to unemployment insurance for individual
13 providers. However, individual providers are not to be considered, as
14 a result of the state assuming this responsibility, employees of the
15 state.

16 **Sec. 3.** RCW 41.56.465 and 1995 c 273 s 2 are each amended to read
17 as follows:

18 (1) In making its determination, the panel shall be mindful of the
19 legislative purpose enumerated in RCW 41.56.430 and, as additional
20 standards or guidelines to aid it in reaching a decision, ~~((it))~~ the
21 panel shall ~~((take into consideration the following factors))~~ consider:

22 (a) The constitutional and statutory authority of the employer;

23 (b) Stipulations of the parties;

24 ~~((i) For employees listed in RCW 41.56.030(7)(a) through (d),~~
25 ~~comparison of the wages, hours, and conditions of employment of~~
26 ~~personnel involved in the proceedings with the wages, hours, and~~
27 ~~conditions of employment of like personnel of like employers of similar~~
28 ~~size on the west coast of the United States;~~

29 ~~((ii) For employees listed in RCW 41.56.030(7)(e) through (h),~~
30 ~~comparison of the wages, hours, and conditions of employment of~~
31 ~~personnel involved in the proceedings with the wages, hours, and~~
32 ~~conditions of employment of like personnel of public fire departments~~
33 ~~of similar size on the west coast of the United States. However, when~~
34 ~~an adequate number of comparable employers exists within the state of~~
35 ~~Washington, other west coast employers may not be considered;~~

36 ~~(d))~~ The average consumer prices for goods and services, commonly
37 known as the cost of living;

1 ~~((e))~~ (d) Changes in any of the circumstances under (a) through
2 ~~((d))~~ (c) of this subsection during the pendency of the proceedings;
3 and

4 ~~((f))~~ (e) Such other factors, not confined to the factors under
5 (a) through ~~((e))~~ (d) of this subsection, that are normally or
6 traditionally taken into consideration in the determination of wages,
7 hours, and conditions of employment. For those employees listed in RCW
8 41.56.030(7)(a) who are employed by the governing body of a city or
9 town with a population of less than fifteen thousand, or a county with
10 a population of less than seventy thousand, consideration must also be
11 given to regional differences in the cost of living.

12 (2) For employees listed in RCW 41.56.030(7) (a) through (d), the
13 panel shall also consider a comparison of the wages, hours, and
14 conditions of employment of personnel involved in the proceedings with
15 the wages, hours, and conditions of employment of like personnel of
16 like employers of similar size on the west coast of the United States.

17 (3) For employees listed in RCW 41.56.030(7) (e) through (h), the
18 panel shall also consider a comparison of the wages, hours, and
19 conditions of employment of personnel involved in the proceedings with
20 the wages, hours, and conditions of employment of like personnel of
21 public fire departments of similar size on the west coast of the United
22 States. However, when an adequate number of comparable employers
23 exists within the state of Washington, other west coast employers may
24 not be considered.

25 (4) For employees listed in RCW 74.39A.270, the panel shall also
26 consider:

27 (a) The cost of training and other such programs and services
28 necessary to establish and promote career ladders and a stable and
29 skilled long-term care workforce; and

30 (b) The financial ability of the state to pay for the compensation
31 and fringe benefit provisions of a collective bargaining agreement.

32 (5) Subsections ~~((1)(e))~~ (2) and (3) of this section may not be
33 construed to authorize the panel to require the employer to pay,
34 directly or indirectly, the increased employee contributions resulting
35 from chapter 502, Laws of 1993 or chapter 517, Laws of 1993 as required
36 under chapter 41.26 RCW.

1 NEW SECTION. **Sec. 4.** RCW 74.39A.190 (Community long-term care
2 training and education steering committee) and 2002 c 233 s 4 & 2000 c
3 121 s 8 are each repealed.

4 NEW SECTION. **Sec. 5.** If any provision of this act or its
5 application to any person or circumstance is held invalid, the
6 remainder of the act or the application of the provision to other
7 persons or circumstances is not affected.

8 NEW SECTION. **Sec. 6.** Sections 2 and 3 of this act take effect
9 July 1, 2008.

10 NEW SECTION. **Sec. 7.** This act may be known and cited as the
11 establishing quality in long-term care services to the elderly and
12 persons with disabilities act.

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