

# HOUSE BILL REPORT

## HB 2711

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**As Reported by House Committee On:**  
Labor & Workforce Development

**Title:** An act relating to narrowing the definition of language access providers.

**Brief Description:** Narrowing the definition of language access providers.

**Sponsors:** Representatives Pettigrew, Takko and Eddy; by request of Office of Financial Management.

**Brief History:**

**Committee Activity:**

Labor & Workforce Development: 1/30/12, 1/31/12 [DP].

**Brief Summary of Bill**

- Excludes interpreters in legal proceedings and the Medicaid Administrative Match program from the Public Employees' Collective Bargaining Act.

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### HOUSE COMMITTEE ON LABOR & WORKFORCE DEVELOPMENT

**Majority Report:** Do pass. Signed by 13 members: Representatives Sells, Chair; Reykdal, Vice Chair; Condotta, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Fagan, Green, Kenney, Miloscia, Moeller, Ormsby, Roberts, Taylor and Warnick.

**Staff:** Alexa Silver (786-7190).

**Background:**

Interpreters in the Medicaid Administrative Match Program.

The Medicaid Administrative Match (MAM) program provides matching federal funds to local health jurisdictions, public hospitals, schools, and tribes that provide outreach to Medicaid recipients. The federal government provides matching funds to the local entity through the Health Care Authority, the designated state Medicaid agency. The MAM program covers costs for indirect medical services, including interpreter services. Public hospitals and local health jurisdictions may have interpreters on staff or may contract with language access agencies for interpreter services.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

### Interpreters in Legal Proceedings.

When an interpreter is appointed to assist in a legal proceeding, the entity that appointed the interpreter, whether it is a court, state agency, or other governmental entity, must appoint a certified or qualified interpreter to assist. Interpreters are entitled to a reasonable fee. The cost of providing an interpreter in legal proceedings is borne by the governmental entity that initiated the proceedings if the non-English-speaking person is a party or is compelled to appear. Subject to the availability of appropriated funds, the Administrative Office of the Courts must reimburse the governmental entity for up to half the cost of providing an interpreter under certain circumstances.

The Department of Social and Health Services (DSHS) Division of Children and Family Services, with the assistance of the Office of the Attorney General (AGO), initiates dependency proceedings. The DSHS is required to provide interpreters at these proceedings. Depending on the county, interpreters in dependency proceedings may be arranged for and paid by the DSHS, the AGO, or the court.

The DSHS is separately required to provide interpreters for non-English-speaking applicants and recipients. The agency certifies, authorizes, and qualifies language access providers to maintain an adequate pool. "Language access providers" are defined as independent contractors who provide spoken language interpreter services for DSHS appointments or Medicaid enrollee appointments, but not owners, managers, or employees of brokers or language access agencies.

### Public Employee Collective Bargaining.

Employees of cities, counties, and other political subdivisions of the state bargain their wages and working conditions under the Public Employees' Collective Bargaining Act (PECBA) administered by the Public Employment Relations Commission (PERC). Individual providers (home care workers), family child care providers, adult family home providers, and language access providers also have collective bargaining rights under the PECBA. The employer and exclusive bargaining representative have a mutual obligation to negotiate in good faith over specified mandatory subjects of bargaining (grievance procedures and personnel matters, including wages, hours, and working conditions).

In 2010 Engrossed Substitute Senate Bill (ESSB) 6726 granted collective bargaining rights under the PECBA to language access providers. "Language access providers" are defined as independent contractors who provide spoken language interpreter services for DSHS appointments or Medicaid enrollee appointments, but not owners, managers, or employees of brokers or language access agencies. Mandatory subjects of bargaining are limited to: (1) economic compensation, such as the manner and rate of payments; (2) professional development and training; (3) labor-management committees; and (4) grievance procedures. Retirement benefits are not subject to collective bargaining.

Following the enactment of ESSB 6726, a dispute arose regarding the eligibility of two categories of interpreters: interpreters in the MAM program and interpreters who work in legal settings. The PERC issued a decision in November 2011, that determined that the statewide unit of language access providers under the PECBA includes interpreters who work in the MAM program, as well as those who work in legal settings.

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**Summary of Bill:**

For purposes of both the collective bargaining rights of language access providers and the requirement that the DSHS provide and certify language access providers, "language access provider" does not include an interpreter appointed or required in legal proceedings or an interpreter under the MAM program. "DSHS appointments" does not include legal proceedings of any nature, including criminal, civil, or administrative proceedings. "Medicaid enrollee appointments" does not include MAM appointments or any other service provided pursuant to the MAM program.

These changes apply prospectively and retroactively.

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**Appropriation:** None.

**Fiscal Note:** Preliminary fiscal note available.

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

**Staff Summary of Public Testimony:**

(In support) This bill clarifies the intent of the original bill that extended collective bargaining to interpreters. There was no understanding at that time that "appointments" would include court proceedings; it was meant to capture medical appointments and applications for services. For other contracts, there is an employer-employee relationship or a funding relationship, but in this case there is neither. The PERC decision has created a lot of uncertainty. There is no ability to implement a collective bargaining agreement without significant impacts at the local level. Some interpreters are organized locally and covered by another collective bargaining agreement. As sovereign nations, the tribes cannot be required to follow a collective bargaining agreement. It is unclear how the state could bargain on behalf of counties, particularly because bargaining covers labor-management committees and grievances. In the 14 counties that currently pay for interpreters in dependency proceedings, it is not unreasonable to think that the counties may shift the cost back to the state. For the MAM program, local health jurisdictions use the state agency solely as a mechanism to pass through federal funds for the matching work performed by the local entities. There are no state dollars used on interpreters in the MAM program. This bill protects local governments, and in particular, the ability of local health jurisdictions to contract for services at the local level.

(Opposed) This bill would strip union rights from over 300 interpreters. This bill is an attempt by the employer to overcome the ruling issued by the PERC, because the PERC dismissed all the employer's arguments. The administration has not demonstrated that the PERC ruling does harm. The PERC ruling creates fair standards for interpreters no matter where they work.

**Persons Testifying:** (In support) Julie Murray, Office of Financial Management; Brian Enslow, Washington State Association of Counties; and Brad Banks, Washington Association of Public Health Organizations.

(Opposed) Diana Nowman, Washington Federation of State Employees; and Chris Van Dyk, Language Access Referral Service.

**Persons Signed In To Testify But Not Testifying:** Alfonso Bautista, Washington Federation of State Employees.